INTRODUCTION TO IPI CRIMINAL

The following volumes of Illinois pattern jury instructions for criminal cases represent the cumulative effort of many dedicated past and present members of the Special Supreme Court Committee on Pattern Jury Instructions-Criminal.

The committee takes great effort in drafting clear and concise instructions for use by judges and practitioners, insuring that each instruction complies with all due process requirements, accurately states current statutory and case law, is grammatically correct, and is presented in a clear and uniform manner. Most importantly, the committee strives to provide jurors with easy to understand definitions and issues instructions to help guide their deliberations in reaching an accurate verdict.

The committee wishes to thank the following persons for their guidance, support, vision, and hard work: Justice Lloyd A. Karmeier, the committee's liaison with the Illinois Supreme Court; all of the former members of the committee; and all of the past chairs of the committee.

It is my privilege to serve as the chair of this committee.

Honorable Robert L. Carter
Third District Appellate Court
Chair, Special Supreme Court Committee on Pattern Jury Instructions-Criminal

1.00.
FUNCTION OF COURT, JURY, AND COUNSEL

The instructions in this chapter describe the functions of the court, the jury, and counsel. In the usual case all of the numbered paragraphs in Instructions 1.01, 1.02, and 1.03 will be given. Instruction 1.04 will be given only when a corporation is a defendant.

The Committee recommends that these be the first instructions read to the jury.

The numbers in the brackets preceding each paragraph should not be included when the instruction is given. Alternative language designed to meet the circumstances of each case is either bracketed or enclosed in parentheses.

1.01
The Functions Of The Court And The Jury

[1] Members of the jury, the evidence and arguments in this case have been completed, and I now will instruct you as to the law.

[2] The law that applies to this case is stated in these instructions, and it is your duty to follow all of them. You must not single out certain instructions and disregard others. [When I use the word "he" in these instructions, I mean a male or a female.]

[3] It is your duty to determine the facts and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case.

[4] You are not to concern yourself with possible punishment or sentence for the offense charged during your deliberation. It is the function of the trial judge to determine the sentence should there be a verdict of guilty.

[5] Neither sympathy nor prejudice should influence you. [You should not be influenced by any person's race, color, religion, national ancestry, gender, or sexual orientation.]

[6] From time to time it has been the duty of the court to rule on the admissibility of evidence. You should not concern yourselves with the reasons for these rulings. You should disregard questions [and exhibits] which were withdrawn or to which objections were sustained.

[7] [Any evidence that was received for a limited purpose should not be considered by you for any other purpose.]

[8] You should disregard testimony [and exhibits] which the court has refused or stricken.

[9] The evidence which you should consider consists only of the testimony of the witnesses [and (the exhibits) (and) (stipulations) (and) (judicially noticed facts)] which the court has received. [You may, but are not required to, accept as conclusive any fact judicially noticed.]

[10] You should consider all the evidence in the light of your own observations and experience in life.

[11] Neither by these instructions nor by any ruling or remark which I have made do I mean to indicate any opinion as to the facts or as to what your verdict should be.

[12] Faithful performance by you of your duties as jurors is vital to the administration of justice.

Committee Note

Instruction and Committee Note Approved July 18, 2014

The Committee has added the bracketed material in paragraph [2], paragraph [5], and paragraph [9] to be used when applicable.

The Committee has added "gender" and "sexual orientation" to the second sentence of paragraph [5].

The Committee recommends that the bracketed sentence in paragraph [5] be given in all cases except hate crime cases, or where otherwise not appropriate.

The Committee has added brackets to paragraph [7] because limiting instructions are not given in every case. Use paragraph [7] only when a limiting instruction has been given.

The Committee had added "stipulations" and "judicially notice facts" in paragraph [9] as types of evidence a jury should consider during the course of its deliberations. In Illinois Rule of Evidence 201(g), the Illinois Supreme Court stated, "In a criminal case, the court shall inform the jury that it may, but is not required to, accept as conclusive any fact judicially noticed". The second sentence in Paragraph [9] has been added so that this Instruction complies with Rule 201(g).

Use applicable paragraphs and bracketed material.

The brackets and numbers are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

1.01A
Preliminary Cautionary Instructions Before Opening Statements

[1] Members of the jury, the trial is about to commence, and I now will instruct you as to the law regarding some of your duties during trial and deliberations.

[2] You should not do any independent investigation or research on any subject or person relating to the case. What you may have seen or heard outside the courtroom is not evidence. This includes any press, radio, or television programs and it also includes any information available on the Internet. Such programs, reports, and information are not evidence and your verdict must not be influenced in any way by such material.

[3] For example, you must not use the Internet or any other sources to search for any information about the case, or the law which applies to the case.

[4] During the course of the trial, do not communicate with, provide information personally, in writing, or electronically to anyone about this case — not even your own families or friends, courtroom personnel, and also not even among yourselves until instructed otherwise.

[5] Lawyers, parties, and witnesses are not permitted to speak with you about any subject, even if unrelated to this case, until after the case is over and you are discharged from your duties as jurors.

Committee Note

Amendment to Committee Note Approved July 26, 2013.

Read this Instruction prior to opening statements. Submit this Instruction in writing along with the other instructions at the end of the trial.

<u>The Committee strongly encourages judges to remind the jurors before breaks and at the beginning and end of each day of trial that they are prohibited from researching the case on the Internet (including, but not limited to, an admonition that the jurors are not to view any location relevant to the trial by electronic means or visiting the site in person) and prohibited from communicating about the case by any means, including, but not limited to, social media. A judge should mention various types of social media if the judge concludes that it is warranted.</u>

A jury or juror may not conduct experiments or view extraneous information not offered into evidence that will have the effect of putting them in possession of evidence not offered at trial. *People v. Holmes,* 69 Ill.3d 507 (1978); *People v. White,* 365 Ill. 499, 514, 6 N.E.2d 1015 (1937).

"[P]rivate communications, possibly prejudicial, between jurors and third persons, or witnesses, or the officer in charge, are absolutely forbidden, and invalidate the verdict, at least unless their harmlessness is made to appear." *People v. Hobley,* 182 Ill.2d 404, 459 (1998) quoting *Mattox v. United States,* 146 U.S. 140, 150 (1898).

1.02
Jury Is Sole Judge Of The Believability Of Witnesses

Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, [his age,] his memory, his manner while testifying, any interest, bias, or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case.

[You should judge the testimony of [(a) (the)] defendant[s] in the same manner as you judge the testimony of any other witness.]

Committee Note

Give the bracketed material relating to age only when a very elderly or very young witness has testified.

Give the bracketed material relating to defendant's testimony only when a defendant has testified.

While this instruction contains most of the usual elements of believability, the Committee recognizes that the evidence of a particular case could call for the insertion of additional elements. For example, *see* People v. Franz, 54 Ill.App.3d 550, 368 N.E.2d 1091, 11 Ill.Dec. 483 (2d Dist.1977), where the Court held: "An instruction informing the jury that it could consider the evidence that a witness was addicted to drugs at the time of the crime in judging that witness' credibility would have been proper." Cf. People v. Phillips, 126 Ill.App.2d 179, 261 N.E.2d 469 (1st Dist.1970). But cf. People v. Collins, 51 Ill.App.3d 993, 367 N.E.2d 504, 10 Ill.Dec. 116 (3d Dist.1977).

In addition, the Committee has decided that the weighing of an eyewitness's testimony is deserving of a separate instruction. See Instruction 3.15.

For an example of the use of this instruction, see Sample Sets 27.01 through 27.07.

1.03
Arguments Of Counsel

Opening statements are made by the attorneys to acquaint you with the facts they expect to prove. Closing arguments are made by the attorneys to discuss the facts and circumstances in the case and should be confined to the evidence and to reasonable inferences to be drawn from the evidence. Neither opening statements nor closing arguments are evidence, and any statement or argument made by the attorneys which is not based on the evidence should be disregarded.

Committee Note

This is an appropriate reinforcement of the court's earlier admonition that the jury should decide the case only “from the evidence in this case.” See Instruction 1.01[3].

For an example of the use of this instruction, see Sample Sets 27.01 through 27.07.

1.04
Corporate Defendant

The defendant corporation[s] in this case should be given the same fair treatment you would give to an individual defendant.

Committee Note

Give this instruction only when a defendant is a corporation. Compare IPI-Civil Instruction 1.01[6]. It is best given as a part of Instruction 1.01 immediately following paragraph [5].

Give this instruction only when requested by the defendant.

1.05
Jury Notetaking

Those of you who took notes during trial may use your notes to refresh your memory during jury deliberations.

Each juror should rely on his or her recollection of the evidence. Just because a juror has taken notes does not necessarily mean that his or her recollection of the evidence is any better or more accurate than the recollection of a juror who did not take notes.

When you are discharged from further service in this case, your notes will be collected by the deputy and destroyed. Throughout that process, your notes will remain confidential and no one will be allowed to see them.

Committee Note

725 ILCS 5/115-4(n) (West 1999) (formerly Ill.Rev.Stat. ch. 38, §115-4(n)).

The Committee takes no position on whether this instruction should be given. However, it has been held that under the statute a trial judge *must* allow the jurors the right to take notes. People v. Strong, 274 Ill.App.3d 130, 653 N.E.2d 938, 210 Ill.Dec. 743 (1st Dist.1995). Therefore, should a judge decide to instruct the jury on this subject, it may be helpful to provide the jury with this instruction both before opening statements as well as at the conclusion of the case.

For an example of the use of this instruction, see Sample Set 27.07.

1.06
Interpreter's Presence During Jury Deliberations

The interpreter will be present during jury deliberations solely for the purpose of aiding communications between the hearing-impaired juror and the other jurors.

The interpreter is not a juror and therefore cannot offer opinions or recollections concerning testimony, evidence, or trial proceedings. Do not ask the interpreter for recollections or opinions concerning any aspect of the trial.

Committee Note

705 ILCS 315/1(a) (West 1999) (formerly Ill.Rev.Stat. ch. 78, §36(a) (1991)).

Section 315/1(a) provides that a hearing-impaired juror "may be accompanied by and communicate with a court appointed interpreter throughout any period during which the jury is sequestered or engaged in deliberations."

In a case where an interpreter has been assisting a juror, the court may wish to give this instruction to reduce the risk of improper communication between the jury and the interpreter during deliberations.

The Committee takes no position on whether this instruction must be given.

2.00
BURDEN OF PROOF

INTRODUCTORY NOTE

The instructions in this chapter deal with the indictment, information or complaint, burden of proof, and the presumption of innocence. One of the 2.01 *et seq.* instructions, Instruction 2.02, and one of the 2.03 *et seq.* instructions must be given in all cases. Instruction 2.04 should be given only at the defendant's request, and then it must be given.

The Committee is aware of instances where a confused jury has returned logically or legally inconsistent verdicts. (For examples of problems the Committee is seeking to avoid, *see* People v. Hoffer, 106 Ill.2d 186, 478 N.E.2d 335, 88 Ill.Dec. 20 (1985), cert. denied 474 U.S. 847, 106 S.Ct. 139, 88 L.Ed.2d 114 (1985) (guilty of murder, voluntary manslaughter, and involuntary manslaughter), People v. Spears, 130 Ill.App.3d 1006, 475 N.E.2d 8, 86 Ill.Dec. 202 (3d Dist.1985), judgment affirmed 112 Ill.2d 396, 493 N.E.2d 1030, 98 Ill.Dec. 9 (1986) (guilty of attempt murder, armed violence, and reckless conduct), and People v. Coleman, 131 Ill.App.3d 76, 475 N.E.2d 565, 86 Ill.Dec. 351 (1st Dist.1985) (guilty of attempt murder and reckless conduct).) To avoid such confusion in future cases, the Committee has expanded the concluding instructions (Instruction 26.01 *et seq.*) to be given to the jury and has made those instructions more specific depending upon the particular charges to be considered by the jury and the relationship of those charges to each other.

As part of the Committee's plan to avoid jury confusion, the Committee has similarly expanded Chapter 2.00. Thus the form of the 2.01 charging instruction should always correlate to the form of the 26.01 concluding instruction. [Example: if Instruction 2.01E is given, then Instruction 26.01E must be given as well.]

The Committee is aware that choosing among the 2.01 *et seq.* instructions at first may seem confusing and difficult. However, the Committee decided that having these options available to cover as many fact situations as possible would ultimately prove to be of great benefit to the bench and bar. Were these options not available, counsel and the court would be required in an appropriate case to concoct modifications of those instructions in IPI-Criminal closest to the case at hand. Devising instructions in the midst of a complex, perhaps hard-fought trial is not a desirable course of action. It is far preferable to permit the court and counsel to choose from among the detailed instructions provided by the Committee to meet almost any fact situation that might arise.

In the 28 instructions that comprise the 2.01 series, the Committee has attempted to provide a particular charging instruction to meet any factual variation present when the jury is to be instructed about one or more of the following areas: second degree murder, involuntary manslaughter, lesser included offenses, the guilty but mentally ill verdict, and the insanity defense.

Only one instruction of the 2.01 series (and its corresponding partner from the 26.01 series) should be appropriate to any given set of facts. The Committee has attempted to anticipate and include all potential factual situations. If, however, the court determines that the Committee has failed to provide an instruction in the 2.01 series that is appropriate to the factual situation of

the case on trial, the court should then utilize Instruction 2.01 and modify it as may be needed.

In People v. Reddick, 123 Ill.2d 184, 526 N.E.2d 141, 122 Ill.Dec. 1 (1988), the Illinois Supreme Court changed how a jury should be instructed when it is to consider both murder and voluntary manslaughter as those offenses were defined prior to P.A. 84-1450, which created the offense of second degree murder. (See Committee Note to Instruction 7.02A.) The Committee believes that the instructions contained in parts II and III of the 2.01 series, dealing with first and second degree murder and involuntary manslaughter in various combinations, are fully applicable to murder-voluntary manslaughter cases being tried under the statutes in effect before amendments contained in P.A. 84-1450, with only two slight modifications: (1) any reference in a 2.01 instruction to first degree murder should be changed to murder, and (2) any reference to second degree murder should be changed to voluntary manslaughter.

Guidelines for Choosing Among the 2.01 series Instructions

The 2.01 series has been divided into five parts to reduce the difficulty of finding the appropriate instruction for use in any given factual setting.

PART I.

GENERAL CHARGING INSTRUCTION

Introductory Note

Instruction 2.01 is the general instruction concerning the charge against the defendant (with some modifications) that previously appeared in earlier editions of IPI-Criminal. It should be used when none of the 27 other, more specific, instructions from the 2.01 series is applicable.

2.01
The Charge Against The Defendant--Jury Is Not To Be Instructed On Second Degree Murder--Jury Is Not To Be Instructed On A Lesser Included Offense--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict

The defendant[s] [(is) (are)] charged with the offense[s] of ____. The defendant[s] [(has) (have)] pleaded not guilty.

Committee Note

Whenever this instruction is given, Instruction 26.01 must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on second degree murder, (2) the jury is to be instructed on a lesser offense, (3) the jury is to be instructed on the insanity defense, or (4) the jury is to be instructed on the guilty but mentally ill verdict.

See Introductory Note at 2.00.

Insert in the blank all offenses specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.03.

PART II.
FIRST AND SECOND DEGREE MURDER--NO INVOLUNTARY MANSLAUGHTER

2.01A
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty of second degree murder.

Committee Note

Whenever this instruction is given, Instruction 26.01A must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever the jury is to be instructed *only* on first and second degree murder.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, (2) the jury is to be instructed on the insanity defense, or (3) the jury is to be instructed on some charge other than first degree murder and second degree murder.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 2.01I.

See Introductory Note at 2.00.

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.01.

2.01B
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) guilty of first degree murder; or (3) guilty of second degree murder.

The defendant[s] [(is) (are)] also charged with the offense of ____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01B must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, and (2) the jury is to be instructed on some other charge or charges.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, or (2) the jury is to be instructed on the insanity defense.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 2.01J.

See Introductory Note at 2.00.

Insert in the blanks any charge as to which the jury is to be instructed other than first and second degree murder. The second paragraph should be repeated for each such additional charge other than first and second degree murder. Only one charge at a time should be referred to in the second paragraph. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use this second paragraph; instead, use the first paragraph of Instruction 2.01R, modifying the first sentence to read: "The defendant[s] [(is) (are)] also charged with . . . ."

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder and not guilty of second degree murder." See Committee Note to Instruction 26.01B.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In

either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.05.

2.01C
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty but mentally ill of first degree murder; or (4) guilty of second degree murder; or (5) guilty but mentally ill of second degree murder.

Committee Note

Whenever this instruction is given, Instruction 26.01C must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, and (2) the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the insanity defense, or (2) the jury is to be instructed on some charge other than first and second degree murder.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 2.01K.

See Introductory Note at 2.00.

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01D
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) guilty of first degree murder; or (3) guilty but mentally ill of first degree murder; or (4) guilty of second degree murder; or (5) guilty but mentally ill of second degree murder.

The defendant[s] [(is) (are)] also charged with the offense of ____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01D must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on the guilty but mentally ill verdict, and (3) the jury is to be instructed on some other charge or charges.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 2.01L.

Do *not* use this instruction if the jury is to be instructed on the insanity defense.

See Introductory Note at 2.00.

Insert in the blanks any charge as to which the jury is to be instructed other than first and second degree murder. The second paragraph should be repeated for each such additional charge other than first and second degree murder. Only one charge at a time should be referred to in the second paragraph. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use this second paragraph; instead, use the first paragraph of Instruction 2.01T, modifying the first sentence to read: "The defendant[s] [(is) (are)] also charged with . . . ."

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder and not guilty of second degree murder." See Committee Note to Instruction 26.01D.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In

either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01E
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) not guilty by reason of insanity of second degree murder; or (5) guilty of second degree murder.

Committee Note

Whenever this instruction is given, Instruction 26.01E must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, and (2) the jury is to be instructed on the insanity defense.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, or (2) the jury is to be instructed on some charge other than first and second degree murder.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 2.01M.

See Introductory Note at 2.00.

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01F
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) not guilty by reason of insanity of second degree murder; or (5) guilty of second degree murder.

The defendant[s] [(is) (are)] also charged with the offense of ____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01F must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on the insanity defense, and (3) the jury is to be instructed on some other charge or charges.

Do *not* use this instruction if the jury is to be instructed on the guilty but mentally ill verdict.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 2.01N.

See Introductory Note at 2.00.

Insert in the blanks any charge as to which the jury is to be instructed other than first and second degree murder. The second paragraph should be repeated for each such additional charge other than first and second degree murder. Only one charge at a time should be referred to in the second paragraph. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use this second paragraph; use instead the first paragraph of Instruction 2.01V, modifying the first sentence to read: "The defendant[s] [(is) (are)] also charged with . . . ."

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder and not guilty of second degree murder." See Committee Note to Instruction 26.01F.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the

guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01G
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; or (5) not guilty by reason of insanity of second degree murder; or (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder.

Committee Note

Whenever this instruction is given, Instruction 26.01G must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on the guilty but mentally ill verdict, and (3) the jury is to be instructed on the insanity defense.

Do *not* use this instruction if the jury is to be instructed on some charge other than first and second degree murder.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 2.01O.

See Introductory Note at 2.00.

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.04B.

2.01H
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; (5) not guilty by reason of insanity of second degree murder; (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder.

The defendant[s] [(is) (are)] also charged with the offense of ____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01H must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on the guilty but mentally ill verdict, (3) the jury is to be instructed on the insanity defense, and (4) the jury is to be instructed on some other charge or charges.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 2.01P.

See Introductory Note at 2.00.

Insert in the blanks any charge as to which the jury is to be instructed other than first and second degree murder. The second paragraph should be repeated for each such additional charge other than first and second degree murder. Only one charge at a time should be referred to in the second paragraph. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use this second paragraph; use instead the first paragraph of Instruction 2.01X, modifying the first sentence to read: "The defendant[s] [(is) (are)] also charged with . . . ."

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder and not guilty of second degree murder." See Committee Note to Instruction 26.01H.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In

either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

PART III.
FIRST AND SECOND DEGREE MURDER AND INVOLUNTARY MANSLAUGHTER

2.01I
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty of second degree murder; or (4) guilty of involuntary manslaughter.

Committee Note

Whenever this instruction is given, Instruction 26.01I must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, and (2) the jury is to be instructed on involuntary manslaughter.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, (2) the jury is to be instructed on the insanity defense, or (3) the jury is to be instructed on some charge other than first degree murder, second degree murder, and involuntary manslaughter.

See Introductory Note at 2.00.

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.06.

2.01J
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder and not guilty of involuntary manslaughter; or (2) guilty of first degree murder; or (3) guilty of second degree murder; or (4) guilty of involuntary manslaughter.

The defendant[s] [(is) (are)] also charged with the offense of ____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01J must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, and (3) the jury is to be instructed on some other charge or charges.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, or (2) the jury is to be instructed on the insanity defense.

See Introductory Note at 2.00.

Insert in the blanks any charge as to which the jury is to be instructed other than first and second degree murder and involuntary manslaughter. The second paragraph should be repeated for each such additional charge other than first and second degree murder. Only one charge at a time should be referred to in the second paragraph. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use this second paragraph; instead, use the first paragraph of Instruction 2.01R, modifying the first sentence to read: "The defendant[s] [(is) (are)] also charged with . . . ."

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder, second degree murder, and involuntary manslaughter." See Committee Note to Instruction 26.01J.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly

modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01K
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty but mentally ill of first degree murder; or (4) guilty of second degree murder; or (5) guilty but mentally ill of second degree murder; or (6) guilty of involuntary manslaughter; or (7) guilty but mentally ill of involuntary manslaughter.

Committee Note

Whenever this instruction is given, Instruction 26.01K must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, and (3) the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the insanity defense, or (2) the jury is to be instructed on some charge other than first degree murder, second degree murder, and involuntary manslaughter.

See Introductory Note at 2.00.

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01L
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder and not guilty of involuntary manslaughter; or (2) guilty of first degree murder; or (3) guilty but mentally ill of first degree murder; or (4) guilty of second degree murder; or (5) guilty but mentally ill of second degree murder; or (6) guilty of involuntary manslaughter; or (7) guilty but mentally ill of involuntary manslaughter.

The defendant[s] [(is) (are)] also charged with the offense of ____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01L must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, (3) the jury is to be instructed on the guilty but mentally ill verdict, and (4) the jury is to be instructed on some other charge or charges.

Do *not* give this instruction if the jury is to be instructed on the insanity defense.

See Introductory Note at 2.00.

Insert in the blanks any charge as to which the jury is to be instructed other than first and second degree murder and involuntary manslaughter. The second paragraph should be repeated for each such additional charge other than first and second degree murder and involuntary manslaughter. Only one charge at a time should be referred to in the second paragraph. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use this second paragraph; instead, use the first paragraph of Instruction 2.01T, modifying the first sentence to read: "The defendant[s] [(is) (are)] also charged with . . . ."

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder, second degree murder, and involuntary manslaughter." See Committee Note to Instruction 26.01L.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In

either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01M
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) not guilty by reason of insanity of second degree murder; or (5) guilty of second degree murder; or (6) not guilty by reason of insanity of involuntary manslaughter; or (7) guilty of involuntary manslaughter.

Committee Note

Whenever this instruction is given, Instruction 26.01M must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, and (3) the jury is to be instructed on the insanity defense.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, or (2) the jury is to be instructed on any charge other than first degree murder, second degree murder, and involuntary manslaughter.

See Introductory Note at 2.00.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01N
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder and not guilty of involuntary manslaughter; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) not guilty by reason of insanity of second degree murder; or (5) guilty of second degree murder; or (6) not guilty by reason of insanity of involuntary manslaughter; or (7) guilty of involuntary manslaughter.

The defendant[s] [(is) (are)] also charged with the offense of ____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01N must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, (3) the jury is to be instructed on the insanity defense, and (4) the jury is to be instructed on some other charge or charges.

Do *not* use this instruction if the jury is to be instructed on the guilty but mentally ill verdict.

See Introductory Note at 2.00.

Insert in the blanks any charge as to which the jury is to be instructed other than first and second degree murder and involuntary manslaughter. The second paragraph should be repeated for each such additional charge other than first and second degree murder and involuntary manslaughter. Only one charge at a time should be referred to in the second paragraph. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use this second paragraph; instead, use the first paragraph of Instruction 2.01AA, modifying the first sentence to read: "The defendant[s] [(is) (are)] also charged with . . . ."

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder, second degree murder, and involuntary manslaughter." See Committee Note to Instruction 26.01N.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly

modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01O
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; or (5) not guilty by reason of insanity of second degree murder; or (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder; or (8) not guilty by reason of insanity of involuntary manslaughter; or (9) guilty of involuntary manslaughter; or (10) guilty but mentally ill of involuntary manslaughter.

Committee Note

Whenever this instruction is given, Instruction 26.01O must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, (3) the jury is to be instructed on the guilty but mentally ill verdict, and (4) the jury is to be instructed on the insanity defense.

Do *not* give this instruction if the jury is to be instructed on any other charge.

See Introductory Note at 2.00.

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01P
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder and not guilty of involuntary manslaughter; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; or (5) not guilty by reason of insanity of second degree murder; or (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder; or (8) not guilty by reason of insanity of involuntary manslaughter; or (9) guilty of involuntary manslaughter; or (10) guilty but mentally ill of involuntary manslaughter.

The defendant[s] [(is) (are)] also charged with the offense of ____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01P must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, (3) the jury is to be instructed on the guilty but mentally ill verdict, (4) the jury is to be instructed on the insanity defense, and (5) the jury is to be instructed on some other charge or charges.

See Introductory Note at 2.00.

Insert in the blanks any charge as to which the jury is to be instructed other than first and second degree murder and involuntary manslaughter. The second paragraph should be repeated for each such additional charge other than first and second degree murder and involuntary manslaughter. Only one charge at a time should be referred to in the second paragraph. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use this second paragraph; instead, use the first paragraph of Instruction 2.01X, modifying the first sentence to read: "The defendant[s] [(is) (are)] also charged with . . . ."

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder, not guilty of second degree murder, and not guilty of involuntary manslaughter." See Committee Note to Instruction 26.01P.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other. In either

instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

PART IV.
LESSER INCLUDED OFFENSES

2.01Q
The Charge Against The Defendant--Jury Is To Be Instructed On One Or More Charges Including Lesser Offenses--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Charge Other Than The Greater And Lesser Included Offenses

The defendant[s] [(is) (are)] [also] charged with the offense of [greater offense]. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with [greater offense] may be found (1) not guilty [of [greater offense] and not guilty of [lesser offense]]; or (2) guilty of [greater offense]; or (3) guilty of [lesser offense].

Committee Note

Whenever this instruction is given, Instruction 26.01Q must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever the jury is to be instructed on one or more charges which include a lesser offense.

This instruction should not be used under any of the following circumstances: (1) the jury is to be instructed on any charge other than the greater and the lesser included offenses, (2) the jury is to be instructed on the insanity defense, (3) the jury is to be instructed on the guilty but mentally ill verdict, or (4) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

When appropriate, this instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter, and the jury is not to be instructed on second degree murder.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a verdict form. The clauses which refer to a verdict of guilty of the lesser offense should be repeated for each such lesser offense that the jury will be instructed upon.

Repeat this instruction for each separate charge for which the jury is to be instructed on greater and lesser included offenses, including the bracketed word “also” for each additional charge, and then also include the bracketed words “of [greater offense] and not guilty of [lesser offense]” for all the charges, inserting the greater and lesser included offenses where indicated.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the codefendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the codefendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.07.

2.01R
The Charge Against The Defendant--Jury Is To Be Instructed On One Or More Charges Including Lesser Offenses--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Charge Other Than The Greater And Lesser Included Offenses

[1] The defendant[s] [(is) (are)] [also] charged with the offense of [greater offense]. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with [greater offense] may be found (1) not guilty of [greater offense] and not guilty of [lesser offense]; or (2) guilty of [greater offense]; or (3) guilty of [lesser offense].

[2] The defendant[s] [(is) (are)] also charged with the offense of ____. The defendant[s] [(has) (have)] pleaded not guilty.

Committee Note

Whenever this instruction is given, Instruction 26.01R must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on *one or more charges which include a lesser* offense and (2) the jury is also to be instructed on some other charge or charges.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the insanity defense, (2) the jury is to be instructed on the guilty but mentally ill verdict, or (3) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

When appropriate, this instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter, and the jury is not to be instructed on second degree murder.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a verdict form. The clauses which refer to a verdict of guilty of the lesser offense should be repeated for each such lesser offense that the jury will be instructed upon.

Repeat paragraph [1] for each separate charge for which the jury is to be instructed on greater and lesser included offenses, including the bracketed word “also” for each additional charge.

Insert in the blanks in paragraph [2] the other charge that will be submitted to the jury, other than the greater and lesser included offenses. Paragraph [2] should refer to only one such charge and should be repeated in its entirety for each such charge.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction

submitted to the jury.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the codefendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the codefendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.07.

2.01S
The Charge Against The Defendant--Jury Is To Be Instructed On A Lesser Included Offense--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of [greater offense]. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with [greater offense] may be found (1) not guilty; or (2) guilty of [greater offense]; or (3) guilty but mentally ill of [greater offense]; or (4) guilty of [lesser offense; or (5) guilty but mentally ill of [lesser offense].

Committee Note

Whenever this instruction is given, Instruction 26.01S must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, and (2) the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the insanity defense, (2) the jury is to be instructed on any charge other than the greater and the lesser included offenses, or (3) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

When appropriate, this instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter, and the jury is not to be instructed on second degree murder.

Insert in the blanks as indicated the greater offense specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated the lesser included offense as to which the jury will receive a form of verdict. The clauses which refer to a verdict of guilty of the lesser offense should be repeated for each such lesser offense that the jury will be instructed upon.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01T
The Charge Against The Defendant--Jury Is To Be Instructed On A Lesser Included Offense--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] also charged with the offense of [greater offense]. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with [greater offense] may be found (1) not guilty of [greater offense] and not guilty of [lesser offense]; or (2) guilty of [greater offense]; or (3) guilty but mentally ill of [greater offense]; or (4) guilty of [lesser offense]; or (5) guilty but mentally ill of [lesser offense].

The defendant[s] [(is) (are)] also charged with the offense of ____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01T must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, (2) the jury is to be instructed on the guilty but mentally ill verdict, and (3) the jury is to be instructed on some other charge or charges.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the insanity defense, or (2) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

When appropriate, this instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter, and the jury is not to be instructed on second degree murder.

Insert in the blanks as indicated the greater offense specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated the lesser included offense as to which the jury will receive a form of verdict. The clauses which refer to a verdict of guilty of the lesser offense should be repeated for each such lesser offense that the jury will be instructed upon.

Insert in the blanks in the third paragraph the other charge that will be submitted to the jury other than the greater and lesser included offenses. The third paragraph should refer to only one such charge and should be repeated in its entirety for each such charge.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 2.01 series for each defendant being jointly tried if

(1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01U
The Charge Against The Defendant--Jury Is To Be Instructed On A Lesser Included Offense--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of [greater offense]. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with [greater offense] may be found (1) not guilty; or (2) not guilty by reason of insanity of [greater offense]; or (3) guilty of [greater offense]; or (4) not guilty by reason of insanity of [lesser offense]; or (5) guilty of [lesser offense].

Committee Note

Whenever this instruction is given, Instruction 26.01U must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, and (2) the jury is to be instructed on the insanity defense.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, (2) the jury is to be instructed on any charge other than the greater and lesser included offenses, or (3) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

When appropriate, this instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter, and the jury is not to be instructed on second degree murder.

Insert in the blanks as indicated the greater offense specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a form of verdict. The last two clauses of the second paragraph, which refer to a verdict of guilty of a lesser offense, should be repeated for each such lesser offense that the jury will be instructed upon.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01V
The Charge Against The Defendant--Jury Is To Be Instructed On A Lesser Included Offense--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of [greater offense]. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with [greater offense] may be found (1) not guilty of [greater offense] and [lesser offense]; or (2) not guilty by reason of insanity of [greater offense]; or (3) guilty of [greater offense]; or (4) not guilty by reason of insanity of [lesser offense]; or (5) guilty of [lesser offense].

The defendant[s] [(is) (are)] also charged with the offense of ____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01V must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, (2) the jury is to be instructed on the insanity defense, and (3) the jury is to be instructed on some other charge or charges.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, or (2) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

When appropriate, this instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter, and the jury is not to be instructed on second degree murder.

Insert in the blanks as indicated the greater offense specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks in the third paragraph the other charge that will be submitted to the jury other than the greater and lesser included offenses. The third paragraph should refer to only one such charge and should be repeated in its entirety for each such charge.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a form of verdict. The last clause of the second paragraph, which refers to a verdict of guilty of the lesser offense, should be repeated for each such lesser offense that the jury will be instructed upon.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01W
The Charge Against The Defendant--Jury Is To Be Instructed On A Lesser Included Offense--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of [greater offense]. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with [greater offense] may be found (1) not guilty; or (2) not guilty by reason of insanity of [greater offense]; or (3) guilty of [greater offense]; or (4) guilty but mentally ill of [greater offense]; or (5) not guilty by reason of insanity of [lesser offense]; or (6) guilty of [lesser offense]; or (7) guilty but mentally ill of [lesser offense].

Committee Note

Whenever this instruction is given, Instruction 26.01W must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, (2) the jury is to be instructed on the insanity defense, (3) the jury is to be instructed on the guilty but mentally ill verdict, and (4) the jury is not to be instructed on any charge other than the greater and lesser included offenses.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on any charge other than the greater and lesser included offenses, or (2) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

When appropriate, this instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter, and the jury is not to be instructed on second degree murder.

Insert in the blanks as indicated the greater offense specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a form of verdict. The last clause of the second paragraph, which refers to a verdict of guilty of the lesser offense, should be repeated for each such lesser offense that the jury will be instructed upon.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly

modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01X
The Charge Against The Defendant--Jury Is To Be Instructed On A Lesser Included Offense--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of [greater offense]. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with [greater offense] may be found (1) not guilty of [greater offense] and not guilty of [lesser offense]; or (2) not guilty by reason of insanity of [greater offense]; or (3) guilty of [greater offense]; or (4) guilty but mentally ill of [greater offense]; or (5) not guilty by reason of insanity of [lesser offense]; or (6) guilty of [lesser offense]; or (7) guilty but mentally ill of [lesser offense].

The defendant[s] [(is) (are)] also charged with the offense of ____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01X must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, (2) the jury is to be instructed on the insanity defense, (3) the jury is to be instructed on the guilty but mentally ill verdict, and (4) the jury is to be instructed on some other charge or charges.

Do *not* use this instruction if the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

When appropriate, this instruction may be used when the jury is to be instructed on first degree murder and involuntary manslaughter and some other charge or charges as well.

Insert in the blanks as indicated the greater offense specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a form of verdict. The last two clauses of the second paragraph, which refer to a verdict of guilty of the lesser offense, should be repeated for each such lesser offense that the jury will be instructed upon.

Insert in the blanks in the third paragraph the other charge that will be submitted to the jury other than the greater and lesser included offenses. The third paragraph should refer to only one such charge and should be repeated in its entirety for each such charge.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 2.01 series for each defendant being jointly tried if

(1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

PART V.
NO LESSER INCLUDED OFFENSES

2.01Y
The Charge Against The Defendant--Jury Is Not To Be Instructed On A Lesser Included Offense--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict

The defendant[s] [(is) (are)] charged with the offense[s] of ____. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with ____ may be found (1) not guilty; or (2) not guilty by reason of insanity of ____; or (3) guilty of ____.

Committee Note

Whenever this instruction is given, Instruction 26.01Y must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever the jury is to be instructed on the insanity defense.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, (2) the jury is to be instructed on a lesser included offense, or (3) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

Insert in the blank all offenses specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict. If the jury is to be instructed on more than one charge, then the third sentence of this instruction should be repeated for each such charge, and the reference to a general not guilty verdict should be changed as well. Under these circumstances, specific not guilty verdicts for each charge should be used.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other. In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01Z
The Charge Against The Defendant--Jury Is Not To Be Instructed On A Lesser Included Offense--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict

The defendant[s] [(is) (are)] charged with the offense[s] of ____. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with ____ may be found (1) not guilty; or (2) guilty of ____; or (3) guilty but mentally ill of ____.

Committee Note

Whenever this instruction is given, Instruction 26.01Z must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on a lesser included offense, (2) the jury is to be instructed on the insanity defense, or (3) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

Insert in the blank all offenses specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict. If the jury is to be instructed on more than one charge, then the third sentence of this instruction should be repeated for each such charge, and the reference to a general not guilty verdict should be changed as well. Under these circumstances, specific not guilty verdicts for each charge should be used.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel. These numbers should be in the instruction as it is submitted to the jury.

Use applicable bracketed material.

2.01AA
The Charge Against The Defendant--Jury Is Not To Be Instructed On A Lesser Included Offense--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict

The defendant[s] [(is) (are)] charged with the offense[s] of ____. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with ____ may be found (1) not guilty; or (2) not guilty by reason of insanity of ____; or (3) guilty of ____; or (4) guilty but mentally ill of ____.

Committee Note

Whenever this instruction is given, Instruction 26.01AA must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on the insanity defense, and (2) the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on a lesser included offense, or (2) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

Insert in the first blank all offenses specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict. If the jury is to be instructed on more than one charge, then the third sentence of this instruction should be repeated for each such charge, and the reference to a general not guilty verdict should be changed as well. Under these circumstances, specific not guilty verdicts for each charge should be used.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel. These numbers should be in the instruction as it is submitted to the jury.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.04A.

2.02
Information--Indictment--Complaint Not Evidence

The charge[s] against the defendant[s] in this case [(is) (are)] contained in a document called the [(information) (indictment) (complaint)]. This document is the formal method of charging the defendant[s] and placing the defendant[s] on trial. It is not any evidence against the defendant[s].

Committee Note

By the time the jury is instructed, this proposition has been communicated to them in *voir dire* examination and closing argument. Nevertheless, it should be reinforced by the court's charge.

The Committee has received reports from trial judges that the use of the term "information" in this instruction without clarification (as it appears in the bound volume of IPI-Criminal (3d ed.)) has sometimes confused juries. Because "information" is a term unfamiliar to most laymen, the Committee has rephrased this instruction to make clear that an information is merely a charging document.

The Committee also decided to delete the last clause of the last sentence of this instruction--"and does not create any inference of guilt"--because the Committee believed that clause both redundant and unclear to a large percentage of jurors.

Use applicable bracketed material.

2.03
Presumption Of Innocence--Reasonable Doubt--Burden Of Proof Generally

[(The) (Each)] defendant is presumed to be innocent of the charge[s] against him. This presumption remains with [(him) (each defendant)] throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that he is guilty.

The State has the burden of proving the guilt of [(the) (each)] defendant beyond a reasonable doubt, and this burden remains on the State throughout the case. [(The) (A)] defendant is not required to prove his innocence.

Committee Note

The firm commitment to presumed innocence which can be overcome only by proof beyond a reasonable doubt is the touchstone of American criminal jurisprudence. This instruction must be given in *all* cases except when the only charges for the jury to consider are first and second degree murder. Under those circumstances, give Instruction 2.03A instead of this instruction.

When insanity is an issue, give this instruction and Instruction 2.03B.

For an example of the use of this instruction, see Sample Sets 27.02, 27.03, 27.04A, 27.06, and 27.07.

2.03A
Presumption Of Innocence--Reasonable Doubt--Burden Of Proof In First Degree-Second Degree Murder Cases

The defendant is presumed to be innocent of the charge against him of first degree murder. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving that the defendant is guilty of first degree murder, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

If the State proves beyond a reasonable doubt that the defendant is guilty of first degree murder, the defendant then has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder, and not guilty of first degree murder. In deciding whether a mitigating factor is present, you should consider all of the evidence bearing on this question. [The defendant is not required to present any evidence in order to establish the existence of a mitigating factor.]

Committee Note

This instruction is to be given in place of Instruction 2.03 when the jury is to be instructed on both first and second degree murder under P.A. 84-1450. However, if there is any other charge before the jury, then give *both* this instruction and Instruction 2.03, with the court reading Instruction 2.03 first.

P.A. 84-1450 took effect on July 1, 1987. *See* People v. Shumpert, 126 Ill.2d 344, 533 N.E.2d 1106, 128 Ill.Dec. 18 (1989).

Give Instruction 4.18, defining the phrase "preponderance of the evidence."

Use bracketed material in the third paragraph of Instruction 2.03A at the defendant's request when the only evidence of second degree murder has come out during the prosecution's case.

For an example of the use of this instruction, see Sample Sets 27.01, 27.04B, 27.05, and 27.06.

2.03B
Presumption Of Innocence--Reasonable Doubt--Burden Of Proof--Insanity

The defense of insanity has been presented during the trial. The burden of proof is on the defendant to prove by [(clear and convincing) (a preponderance of the)] evidence that the defendant is not guilty by reason of insanity. However, the burden remains on the State to prove beyond a reasonable doubt each of the propositions of [each of] the offense[s] charged. You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity until and unless you have first determined that the State has proved the defendant guilty beyond a reasonable doubt of the offense[s] with which he is charged.

Committee Note

720 ILCS 5/6-2(e) (1992) (formerly Ill.Rev.Stat. ch. 38, §6-2(e) (1991)), amended by P.A. 89-404, effective August 20, 1995.

When the defense of insanity is an issue, give this instruction in addition to either Instruction 2.03 or Instruction 2.03A.

P.A. 89-404, effective August 20, 1995, modified the insanity defense by eliminating the volitional prong, which provided that a person is insane if, as a result of a mental disease or defect, he lacks substantial capacity to conform his conduct to the requirements of law. P.A. 89-404 also changed the burden on the defendant to establish the insanity defense from "preponderance of the evidence" to "clear and convincing evidence." Accordingly, for offenses allegedly committed on or after August 20, 1995, use the bracketed phrase "clear and convincing."

For offenses allegedly occurring before August 20, 1995, give Instruction 4.18, defining the phrase "preponderance of the evidence." For offenses allegedly occurring on or after August 20, 1995, give Instruction 4.19, defining the phrase "clear and convincing evidence."

This instruction has been revised to be consistent with a modification adopted in the Third Edition of IPI-Criminal. In the third sentence, the phrase "of the elements" has been modified by substituting the word "propositions" for the word "elements." This change reflects the fact that the jury is told that the State must prove propositions, not elements, in order to sustain a charge.

2.04
Failure Of Defendant To Testify

The fact that [(a) (the)] defendant[s] did not testify must not be considered by you in any way in arriving at your verdict.

Committee Note

This instruction should be given *only* at the defendant's request and, then, it *must* be given. *See* People v. Greben, 352 Ill. 582, 186 N.E. 162 (1933); People v. Borneman, 66 Ill.App.2d 251, 213 N.E.2d 52 (2d Dist.1966).

The Committee substituted the word “must” for the word “should” that appeared in the Second Edition's version of Instruction 2.04. It sought to give greater emphasis to the jury's obligation not to consider the defendant's failure to testify.

For an example of the use of this instruction, see Sample Set 27.04A.

2.05
Definition Of Reasonable Doubt

Committee Note

The Committee recommends that no instruction be given defining the term "reasonable doubt." In People v. Malmenato, 14 Ill.2d 52, 61, 150 N.E.2d 806, 811 (1958), the Illinois Supreme Court stated:

> "Reasonable doubt is a term which needs no elaboration and we have so frequently discussed the futility of attempting to define it that we might expect the practice to be discontinued. (People v. Schuele, 326 Ill. 366, 157 N.E. 215; People v. Rogers, 324 Ill. 224, 154 N.E. 909.) ..."

See also People v. Bowlby, 51 Ill.App.2d 51, 201 N.E.2d 136 (4th Dist.1964).

2.06
Bill Of Particulars

Committee Note

The Committee recommends that no instruction be given on this subject. The question whether the evidence complies with a bill of particulars (when one is granted) is for the court. The bill of particulars does not go to the jury, but it does limit the character of evidence. McDonald v. People, 126 Ill. 150, 18 N.E. 817 (1888); People v. Parker, 355 Ill. 258, 189 N.E. 352 (1934).

2.07
Venue (Before August 11, 1995)

The State must prove beyond a reasonable doubt that the offense[s] of ____ occurred in ____ County, Illinois.

Committee Note

P.A. 89-288, effective August 11, 1995, amends Section 1-6(a) of the Criminal Code (720 ILCS 5/1-6(a) (West 1994)) to provide that the State is not required to prove venue. Because previous case law held that venue is an element of every offense that the State had to prove beyond a reasonable doubt, this instruction should continue to be used in cases in which the alleged offense was committed before August 11, 1995, and the court determines that venue is a material issue.

Give Instruction 2.08.

Give this instruction at the request of either party, or *sua sponte* by the trial court if the court determines venue is a material issue in the case. *See* People v. Adams, 161 Ill.2d 333, 341, 641 N.E.2d 514, 518, 204 Ill.Dec. 290, 294 (1994), wherein the court held that "venue is a material allegation which must be proved by the State beyond a reasonable doubt along with the other elements of an offense."

If venue is a contested issue, then the question of venue must be submitted to the jury for resolution. People v. Turner, 179 Ill.App.3d 510, 534 N.E.2d 179, 128 Ill.Dec. 159 (2d Dist.1989). Therefore, when there is a material question of fact as to whether an offense occurred in the county charged in the complaint, indictment, or information, this instruction should be given.

When the offense occurs in a moving vehicle, *see* People v. McClain, 60 Ill.App.3d 320, 376 N.E.2d 774, 17 Ill.Dec. 628 (4th Dist.1978). For a discussion of venue generally, *see* People v. Lambert, 195 Ill.App.3d 314, 552 N.E.2d 300, 141 Ill.Dec. 932 (4th Dist.1990), for guidance.

This instruction is not included in Chapter 24-25.00 because venue is not a defense.

Insert in the first blank the offense or offenses that have venue issues and in the second blank the county charged in the complaint, indictment, or information.

2.07X
Venue (As Of August 11, 1995)

Committee Note

P.A. 89-288, effective August 11, 1995, amends Section 1-6(a) of the Criminal Code (720 ILCS 5/1-6(a) (West 1994)) to provide that the State is not required to prove venue. Thus, no instruction on venue should be given in cases in which the alleged offense was committed on or after August 11, 1995.

2.08
Issues In Venue (Before August 11, 1995)

____ *Proposition:* That the offense of ____ occurred in ____ County.

Committee Note

P.A. 89-288, effective August 11, 1995, amends section 1-6(a) of the Criminal Code (720 ILCS 5/1-6(a) (West 1994)) to provide that the State is not required to prove venue. Because previous case law held that venue was an element of every offense that the State had to prove beyond a reasonable doubt, this instruction should continue to be used in cases in which the alleged offense was committed before August 11, 1995, and the court determines that venue is a material issue.

Give Instruction 2.07.

Give this instruction at the request of either party, or *sua sponte* by the trial court if the court determines venue is a material issue in the case. See the Committee Note to Instruction 2.07.

Give this instruction as the final proposition in the issues instruction for the offense charged.

Insert in the first blank the number of the proposition, in the second blank the offense that has a venue issue, and in the third blank the county charged in the complaint, indictment, or information.

2.08X
Issues In Venue (As Of August 11, 1995)

Committee Note

P.A. 89-288, effective August 11, 1995, amends Section 1-6(a) of the Criminal Code (720 ILCS 5/1-6(a) (West 1994)) to provide that the State is not required to prove venue. Thus, no instruction on venue should be given in cases in which the alleged offense was committed on or after August 11, 1995.

3.00
PARTICULAR TYPES OF EVIDENCE

INTRODUCTION

As a general proposition, the Committee disapproves of instructions which comment on particular types of evidence, *e.g.,* flight. We agree with those cases holding that

> "Courts are under a general obligation to avoid giving instructions which unduly emphasize one part of the evidence in a case, and are not required to give an instruction that would provide the jury with no more guidance than that available to them by application of common sense." *People v. McClellan*, 62 Ill.App.3d 590, 595, 378 N.E.2d 1221 (1st Dist.1978).

There are, however, certain exceptions to the general disapproval. This Chapter contains those exceptions. Each of the following instructions should be used only in cases where it is applicable.

Introduction Approved October 17, 2014

3.01
Date Of Offense Charged

The [(indictment) (information) (complaint)] states that the offense charged was committed [(on or about)] ____. If you find the offense charged was committed, the State is not required to prove that it was committed on the particular date charged.

Committee Note

Instruction and Committee Note Approved October 17, 2014

See People v. Vaughn, 390 Ill. 360, 61 N.E.2d 546 (1945); *People v. Bote*, 379 Ill. 245, 40 N.E.2d 55 (1942).

This instruction should be given only when there is a variance between the date alleged and the evidence, and all dates are within the period of limitations. It should not be given if the State has filed a bill of particulars stating the date of the crime.

The filing of a bill of particulars does not necessarily preclude the use of this instruction. Give this instruction whenever the time variance is immaterial. *See People v. Suter*, 292 Ill.App.3d 358, 685 N.E.2d 1023 (4th Dist. 1997).

Insert in the blank the date of the alleged offense.

Use applicable bracketed material.

3.02
Definition Of Circumstantial Evidence

Circumstantial evidence is the proof of facts or circumstances which give rise to a reasonable inference of other facts which tend to show the guilt or innocence of [(the) (a)] defendant. Circumstantial evidence should be considered by you together with all the other evidence in the case in arriving at your verdict.

Committee Note

Instruction and Committee Note Approved October 17, 2014

This instruction should not be given when all of the evidence is direct. *People v. Gardner*, 4 Ill.2d 232, 122 N.E.2d 578 (1954).

For an example of the use of this instruction, see Sample Sets 27.02, 27.05, 27.06, and 27.07.

3.03
Flight

Committee Note

Instruction and Committee Note Approved October 17, 2014

The Committee recommends that no instruction be given on this subject.

Although evidence of flight is a proper subject of argument, its probative value is questionable. *See Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963); *see also United States v. Jackson*, 572 F.2d 636 (7th Cir.1978). The use of flight instructions has frequently been found to constitute error. *See, e.g., People v. Henderson*, 39 Ill.App.3d 502, 348 N.E.2d 854 (3d Dist.1976) (Stouder, J., specially concurring) (collecting cases). For these reasons, the Committee believes that a flight instruction should not be given.

3.04
Motive

Committee Note

Instruction and Committee Note Approved October 17, 2014

The Committee recommends that no instruction be given on this subject.

Although motive or lack of motive is a proper subject of argument, it is not an element which must be proved by the State. An instruction which defines the word "motive" and then explains "its immateriality for a purpose other than one probative of intent, only creates confusion far greater than any clarification an instruction might accomplish." Federal Jury Instructions of the Seventh Circuit 23 (1980). No instruction should be given. *People v. Harrod*, 140 Ill.App.3d 96, 488 N.E.2d 316 (4th Dist.1986).

3.05
Separate Consideration For Each Defendant

You should give separate consideration to each defendant. Each is entitled to have his case decided on the evidence and the law which applies to him.

[Any evidence which was limited to [(one defendant) (some defendants)] should not be considered by you as to [(any) (the)] other defendant[s].]

Committee Note

Instruction and Committee Note Approved October 17, 2014

Give this instruction only when there is more than one defendant.

Give the second paragraph when appropriate.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.03.

3.06-3.07
Statements By Defendant

You have before you evidence that [(the) (a)] defendant made [a] statement[s] relating to the offense[s] charged in the [(indictment) (information) (complaint)]. It is for you to determine [whether the defendant made the statement[s], and, if so,] what weight should be given to the statement[s]. In determining the weight to be given to a statement, you should consider all of the circumstances under which it was made.

Committee Note

Instruction and Committee Note Approved October 17, 2014

The bracketed phrase in the second sentence should be deleted only when the defendant admits making all the material statements attributed to him.

The Committee decided that whether a statement is an admission, confession, or false exculpatory statement is a legal conclusion that ought not to be communicated to the jury. This instruction avoids the complications that ensue when a judge characterizes a statement. *See People v. Horton*, 65 Ill.2d 413, 358 N.E.2d 1121 (1976); *People v. Sovetsky*, 323 Ill. 133, 153 N.E. 615 (1926); *People v. Oliver*, 50 Ill.App.3d 665, 365 N.E.2d 618 (1st Dist.1977).

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.01.

3.08
Statements--Multiple Defendants

A statement made by one defendant may not be considered by you against any other defendant.

Committee Note

Instruction and Committee Note Approved October 17, 2014

Give this instruction in conjunction with Instruction 3.06-3.07. It applies when a statement by one defendant in a multiple defendant case has been admitted only against the declarant. The judge should distinguish this situation from that where a defendant's words are admitted against all defendants on the theory that the words were in furtherance of a conspiracy or joint venture.

3.09
Dying Declaration

Committee Note

Instruction and Committee Note Approved October 17, 2014

The Committee recommends that no instruction be given on a dying declaration.

Whether a statement is admissible as a dying declaration is a question of law to be decided by the trial court. *People v. Tilley*, 406 Ill. 398, 94 N.E.2d 328 (1950); *People v. Hubbs*, 401 Ill. 613, 83 N.E.2d 289 (1948). The significance of this evidence is a proper subject of argument to the jury.

3.10
Right Of Attorney Or Attorney's Investigator To Interview Witness

It is proper for an [(attorney) (attorney's investigator)] to interview or attempt to interview a witness for the purpose of learning the testimony the witness will give.

[However, the law does not require a witness to speak to [(an attorney) (an attorney's investigator)] before testifying.]

Committee Note

Instruction and Committee Note Approved October 17, 2014

This instruction should not be given unless the jury has heard testimony that a witness was interviewed or was asked to be interviewed by an attorney or an attorney's investigator.

The bracketed paragraph should not be given unless the jury has heard testimony that a witness refused to speak to an attorney or to an attorney's investigator prior to that witness testifying at trial.

This instruction is not intended to preclude argument concerning inferences to be drawn from a witness's refusal or willingness to be interviewed before testifying.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.02.

3.11
Prior Inconsistent Statements

The believability of a witness may be challenged by evidence that on some former occasion he [(made a statement) (acted in a manner)] that was not consistent with his testimony in this case. Evidence of this kind [ordinarily] may be considered by you only for the limited purpose of deciding the weight to be given the testimony you heard from the witness in this courtroom.

[However, you may consider a witness's earlier inconsistent statement as evidence without this limitation when

[1] the statement was made under oath at a [(trial) (hearing) (proceeding)].

[or]

[2] the statement narrates, describes, or explains an event or condition the witness had personal knowledge of;

and

[a] the statement was written or signed by the witness.

[or]

[b] the witness acknowledged under oath that he made the statement.

[or]

[c] the statement was accurately recorded by a tape recorder, videotape recording, or a similar electronic means of sound recording.]

It is for you to determine [whether the witness made the earlier statement, and, if so] what weight should be given to that statement. In determining the weight to be given to an earlier statement, you should consider all of the circumstances under which it was made.

Committee Note

Instruction and Committee Note Approved October 17, 2014

The materiality of the earlier statement is a question of law for the court.

This instruction attempts to deal with the situation in which the jury has been permitted to hear separate earlier inconsistent statements that were offered for different purposes. One earlier inconsistent statement was offered for the limited purpose of attacking believability, while the other was offered as substantive evidence under Section 115-10.1. This instruction seeks to distinguish between these two statements.

When both kinds of earlier inconsistent statements are used for both purposes this instruction should be given in its entirety at the close of the trial. The bracketed word “ordinarily” in the first paragraph should be used in the instruction as given.

When earlier inconsistent statements are used *solely* for the limited purpose of attacking believability, and not as substantive evidence under Section 115-10.1, then only the first and last paragraphs, without bracketed material, should be used at the close of trial.

The Committee believes that all evidence is substantive unless limited to a non-substantive purpose, such as impeachment. That is why the Committee recommends that the first and last paragraphs of this instruction be given orally to the jury without bracketed material when the earlier inconsistent statement is being offered for a limited, non-substantive purpose. This instruction should then be given again in the final, written instructions.

There is no need to use this instruction when the earlier inconsistent statement is being offered as substantive evidence under Section 115-10.1 and no earlier inconsistent statement is being offered for use only for the purpose of impeachment.

Use the bracketed phrase "whether the witness made the earlier statement" in the last paragraph whenever the making of the statement is an issue in the case. If the making of the statement is an issue, then this phrase should be used whether the statement is being offered for substantive use or impeachment use.

Do not use numbers or letters unless paragraphs [1] and [2] are both given.

Use applicable paragraphs, subparagraphs, and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.02.

3.12
Impeachment Of A Witness By Prior Conviction

Evidence that a witness has been convicted of an offense may be considered by you only as it may affect the believability of the witness.

Committee Note

Instruction and Committee Note Approved October 17, 2014

This instruction should be given only when there has been impeachment of a witness by proof of a prior conviction. *See People v. Montgomery*, 47 Ill.2d 510, 268 N.E.2d 695 (1971); *People v. Jacobs*, 51 Ill.App.3d 455, 366 N.E.2d 1064 (4th Dist.1977).

3.12X.
Proof Of Prior Conviction/Prior Violent Act/Reputation--Victim--Self-Defense

In this case the State must prove beyond a reasonable doubt the proposition that the defendant was not justified in using the force which he used. You have [(heard testimony) (received evidence)] of ____'s [(prior conviction of a violent crime) (prior acts of violence) (reputation for violence)]. It is for you to determine whether ____[(was convicted) (committed those acts) (had this reputation)]. If you determine that ____[(was convicted) (committed those acts) (had this reputation)] you may consider that evidence in deciding whether the State has proved beyond a reasonable doubt that the defendant was not justified in using the force which he used.

Committee Note

Instruction and Committee Note Approved October 17, 2014

Give this instruction *only* when evidence of the victim's prior conviction for a crime of violence has been admitted pursuant to *People v. Lynch*, 104 Ill.2d 194, 470 N.E.2d 1018 (1984); IRE 405(b).

Insert in the appropriate blanks the name of the victim and the victim's prior conviction(s) for a crime of violence.

The Committee devised this instruction to address the nature of evidence regarding a victim's prior conviction for a crime of violence when the defendant claims self-defense. In *People v. Lynch*, 104 Ill.2d 194, 470 N.E.2d 1018 (1984), the Illinois Supreme Court discussed the situation in which the defendant claimed to have acted in self-defense, and held that evidence of the victim's prior convictions for crimes of violence was admissible to show the victim's aggressive and violent character.

No need exists to limit the *Lynch* evidence for self-defense purposes. Instead, once evidence of the victim's prior convictions for a crime of violence is admitted, it need not satisfy *People v. Montgomery*, 47 Ill.2d 510, 268 N.E.2d 695 (1971), to be properly considered because it may affect the victim's credibility as well. This is because *Montgomery*, which contains the threshold test of admissibility for convictions used solely to impeach a witness, becomes moot once the evidence of the *Lynch* convictions is admitted substantively. *People v. Hester*, 271 Ill.App.3d 954, 959, 649 N.E.2d 1351 (4th Dist. 1995).

Insert in the blanks the name of the victim.

Use applicable bracketed material.

3.13
Impeachment--Defendant--Offenses

Evidence of a defendant's previous conviction of an offense may be considered by you only as it may affect his believability as a witness and must not be considered by you as evidence of his guilt of the offense with which he is charged.

Committee Note

Instruction and Committee Note Approved October 17, 2014

This instruction should be given only at the request of the defendant when there has been impeachment of the defendant by proof of a prior conviction. *People v. Brandon*, 283 Ill.App.3d 358, 669 N.E.2d 1253 (4th Dist.1996); *see People v. Montgomery*, 47 Ill.2d 510, 268 N.E.2d 695 (1971); *People v. Williams*, 173 Ill.2d 48, 670 N.E.2d 638 (1996) (affirming *Montgomery* as establishing the test for the admissibility of prior convictions for impeachment purposes).

When an essential element of the charged offense is that the defendant has been previously convicted of committing a prior offense, use Instruction 3.13X instead of this instruction. *See People v. Bailey*, 201 Ill.App.3d 904, 559 N.E.2d 509 (2d Dist.1990) (defendant charged with unlawful possession of weapon by felon).

For an example of the use of this instruction, see Sample Set 27.02.

3.13X
Proof Of Prior Convictions--Defendant--Admissibility

Ordinarily, evidence of a defendant's prior conviction of an offense may [be considered by you only as it may affect his believability as a witness and must] not be considered by you as evidence of his guilt of the offense with which he is charged.

However, in this case, because the State must prove beyond a reasonable doubt the proposition that the defendant has previously been convicted of ____, you may [also] consider evidence of defendant's prior conviction of the offense of ____ [only] for the purpose of determining whether the State has proved that proposition.

Committee Note

Instruction and Committee Note Approved October 17, 2014

This instruction should be given *only* when an element of the charged offense is that the defendant has been previously convicted of committing a prior offense.

Use the bracketed phrase "[be considered by you only as it may affect his believability as a witness and must]" in the first paragraph of this instruction and use the bracketed word "[also]" in the second paragraph of this instruction only when the defendant testifies at his trial.

If the defendant does not testify at his trial, this instruction should be given *only* at the defendant's request; otherwise, this instruction should *not* be given. If the defendant does request that this instruction be given and he does not testify at trial, use the bracketed word "[word]" in the second paragraph of the instruction. Do not use any other bracketed material.

The Committee created this instruction to deal with the admissibility of evidence regarding a defendant's prior conviction when this prior conviction is an essential element of the charged offense. In *People v. Bailey*, 201 Ill.App.3d 904, 559 N.E.2d 509 (2d Dist.1990), the court addressed this situation when the State charged the defendant with unlawful possession of a weapon by a felon and provided a modified Instruction 3.13 to cover the defendant's testimony at his trial. In *Bailey*, the court stated that "[i]n effect, [use of Instruction 3.13, by itself,] would have made it impossible to convict defendant of unlawful use of weapons by a felon." *Bailey,* 201 Ill.App.3d at 906, 559 N.E.2d 509. See Instructions 18.07 and 18.08, defining the offense of unlawful possession of a weapon by a felon. Accordingly, this instruction provides that when the defendant has been previously convicted of committing a prior offense and he testifies at his trial, evidence of his prior conviction is admissible as substantive evidence of the prior conviction and also as impeachment evidence against the defendant.

Insert in the blanks the defendant's prior conviction.

Use applicable bracketed material.

3.14
Proof Of Other Offenses Or Conduct

[1] Evidence has been received that the defendant[s] [(has) (have)] been involved in [(an offense) (offenses) (conduct)] other than [(that) (those)] charged in the [(indictment) (information) (complaint)].

[2] This evidence has been received on the issue[s] of the [(defendant's) (defendants')] [(identification) (presence) (intent) (motive) (design) (knowledge) (____)] and may be considered by you only for that limited purpose.

[3] It is for you to determine [whether the defendant[s] [(was) (were)] involved in [(that) (those)] [(offense) (offenses) (conduct)] and, if so,] what weight should be given to this evidence on the issue[s] of ____.

Committee Note

Instruction and Committee Note Approved October 17, 2014

The Illinois Supreme Court has made clear that evidence of other crimes is admissible if it is relevant to establish any fact material to the case other than propensity to commit crime. *People v. Stewart*, 105 Ill.2d 22, 62, 473 N.E.2d 840 (1984); IRE 404(b). Accordingly, the Committee determined that this instruction should be broadened by including a blank within the alternatives provided to explain to the jury why the evidence is being admitted. If the court concludes that none of the specific alternatives provided in paragraph [2] of this instruction fits the facts of the case before it, then the court should set forth in the blank in this instruction whatever explanation does fit the evidence.

The issue(s) on which the evidence which is the subject of this instruction has been received *must* be the same issue(s) in both paragraph [2] and paragraph [3]. Accordingly, insert in the blank in paragraph [3] whatever issue(s) that appear in paragraph [2].

On occasion evidence might be received for a limited purpose that is not technically "an offense," but for which this instruction might still be useful. Examples are *People v. Carr*, 114 Ill.App.2d 370, 252 N.E.2d 912 (1st Dist.1969) (in prosecution for unlawful possession and sale of a narcotic drug, State permitted to adduce evidence defendant had rented his apartment, the scene of the sale, under an assumed name); *People v. Jackson*, 145 Ill.App.3d 626, 495 N.E.2d 1207 (1st Dist.1986) (evidence of defendant's status and activities as a gang member admissible on issue of motive); *People v. Branion*, 47 Ill.2d 70, 265 N.E.2d 1 (1970) (evidence of defendant's extra-marital affair and marital discord probative of murder). To meet such circumstances, the word "conduct" has been added in paragraph [1] as an alternative to the word "offense."

Paragraph [3] makes clear to the jury that the limited evidence which is the subject of this instruction is still to be weighed by them; they are free to accept or reject it as they see fit. When the defense concedes that the defendant performed the conduct or committed the offense that is the subject of this instruction, *the bracketed portion of paragraph [3] should not be given.*

Whenever this instruction is given, all three paragraphs (in whatever form is applicable) must be given to the jury.

This instruction may be given both (1) during trial, either just before or immediately after the jury is to hear the evidence in question, *see People v. Roe*, 228 Ill.App.3d 628, 592 N.E.2d 596 (4th Dist.1992), and (2) at the end of the trial, before jury deliberations. *Roe* quoted with approval the following paragraph of this Committee Note. *See Roe,* 228 Ill.App.3d at 636, 592 N.E.2d 596.

At the time the evidence which is the subject of this instruction is first presented to the jury, the Committee recommends that an oral instruction should be given to explain to the jury the limited purpose of this evidence, unless the defendant objects to that instruction.

If this instruction is given just before the jury is to hear the evidence in question, paragraphs [1] and [2] should be modified to begin "Evidence will be received ..." and "This evidence will be received ...."

In *People v. Denny*, 241 Ill.App.3d 345, 360-61, 608 N.E.2d 1313 (4th Dist.1993), the court wrote the following:

> "Because of the significant prejudice to a defendant's case that the admission of other crimes evidence usually risks, we hold that trial courts should not only instruct the jury in accordance with IPI Criminal 2d No. 3.14 at the close of the case, but also orally from the bench (unless defendant objects) at the time the evidence is first presented to the jury."

This instruction is not applicable to proof of prior convictions admitted on the issue of believability. See Instruction 3.13.

Care must be taken to state the proper limited purpose for the evidence. *See People v. King*, 165 Ill.App.3d 464, 518 N.E.2d 1309 (2d Dist.1988).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.05.

3.15
Circumstances Of Identification

When you weigh the identification testimony of a witness, you should consider all the facts and circumstances in evidence, including, but not limited to, the following:

[1] The opportunity the witness had to view the offender at the time of the offense.

[2] The witness's degree of attention at the time of the offense.

[3] The witness's earlier description of the offender.

[4] The level of certainty shown by the witness when confronting the defendant.

[5] The length of time between the offense and the identification confrontation.

Committee Note

Instruction and Committee Note Approved October 17, 2014

This new instruction simply lists factors well-established by case law. *Manson v. Brathwaite*, 432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977); *People v. Manion*, 67 Ill.2d 564, 367 N.E.2d 1313 (1977); *People v. Slim*, 127 Ill.2d 302, 537 N.E.2d 317 (1989). The Committee believes this instruction would serve the interests of justice by offering guidance in an area that contains complexities and pitfalls not readily apparent to some jurors.

Give this instruction when identification is an issue.

Give numbered paragraphs that are supported by the evidence.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

The jury should be instructed on only the factors with any support in the evidence. Other factors should be omitted. Do not use “or” or “and” between the factors where more than one factor is used. *People v. Herron,* 215 Ill.2d 167, 191-92, 830 N.E.2d 467 (2005).

For an example of the use of this instruction, see Sample Set 27.02.

3.16
Evidence Of Defendant's Reputation

The defendant has introduced evidence of his reputation for [(truth and veracity) (morality) (chastity) (honesty and integrity) (being a peaceful and law-abiding citizen) (____)]. This evidence may be sufficient when considered with the other evidence in the case to raise a reasonable doubt of the defendant's guilt. However, if from all the evidence in the case you are satisfied beyond a reasonable doubt of the defendant's guilt, then it is your duty to find him guilty, even though he may have a good reputation for [(truth and veracity) (morality) (chastity) (honesty and integrity) (being a peaceful and law-abiding citizen) (____)].

Committee Note

Instruction and Committee Note Approved October 17, 2014

The instruction comports with the decision in *People v. Hrdlicka*, 344 Ill. 211, 176 N.E. 308 (1931); *see also* IRE 405(a).

3.17
Testimony Of An Accomplice

When a witness says he was involved in the commission of a crime with the defendant, the testimony of that witness is subject to suspicion and should be considered by you with caution. It should be carefully examined in light of the other evidence in the case.

Committee Note

Instruction and Committee Note Approved October 17, 2014

The Committee decided that accomplice testimony represents an area of evidence that requires judicial comment. *See People v. Wilson*, 66 Ill.2d 346, 362 N.E.2d 291 (1977). The term "accomplice" was eliminated from the instruction.

In *People v. Rivera*, 166 Ill.2d 279, 292, 652 N.E.2d 307 (1995), the supreme court held that an accomplice's testimony should be cautiously scrutinized regardless of which side he testifies for. As a result, the Committee now recommends that this instruction be given any time an accomplice testifies.

The appellate court has held that trial counsel renders ineffective assistance of counsel when counsel fails to tender Instruction 3.17 under certain circumstances. *People v. Campbell*, 275 Ill.App.3d 993, 999, 657 N.E.2d 87 (5th Dist.1995). The defendant is entitled to have Instruction 3.17 given to the jury (1) if the witness, rather than the defendant, could have been the person responsible for the crime, or (2) if the witness admits being present at the scene of the crime and could have been indicted either as a principal or under a theory of accountability, but denies involvement. *See People v. Montgomery*, 254 Ill.App.3d 782, 790, 626 N.E.2d 1254 (1st Dist.1993); *People v. Lewis*, 240 Ill.App.3d 463, 467, 609 N.E.2d 673 (1st Dist.1992).

For an example of the use of this instruction, see Sample Set 27.02.

3.18
Weighing Expert Testimony

Committee Note

Instruction and Committee Note Approved October 17, 2014

The Committee recommends that no instruction be given on this subject. The believability of witnesses in general is the subject of Instruction 1.02. No separate instruction is needed in this area. *People v. Everist*, 52 Ill.App.2d 73, 201 N.E.2d 655 (1st Dist.1964).

In *People v. Cloutier*, 156 Ill.2d 483, 509-10, 622 N.E.2d 774 (1993), the supreme court noted that the Committee "specifically advises against any comment on the weight to be given [expert] testimony." Relying upon the above paragraph, the court held that the trial court did not err in refusing to give the defendant's proposed instruction. *Cloutier,* 156 Ill.2d at 510, 622 N.E.2d 774.

3.19
Weighing Police Testimony

Committee Note

Instruction and Committee Note Approved October 17, 2014

The Committee recommends that no instruction be given on this subject. The believability of witnesses in general is the subject of Instruction 1.02. No separate instruction is needed in this area. *Accord People v. Springs*, 2 Ill.App.3d 817, 277 N.E.2d 764 (2d Dist.1972); *see also People v. Smith*, 67 Ill.App.3d 672, 385 N.E.2d 44 (1st Dist.1978); *People v. Uselding*, 39 Ill.App.3d 677, 350 N.E.2d 283 (4th Dist.1976); *People v. Taylor*, 8 Ill.App.3d 727, 290 N.E.2d 342 (2d Dist.1972).

In *People v. Cloutier*, 156 Ill.2d 483, 509-10, 622 N.E.2d 774 (1993), the supreme court noted that the Committee "specifically advises against any comment on the weight to be given [expert] testimony." Relying upon the Committee Note to Instruction 3.18, the court held that the trial court did not err in refusing to give the defendant's proposed instruction. *Cloutier,* 156 Ill.2d at 510, 622 N.E.2d 744. The Committee believes that the same principle applies to the weight to be given police testimony.

3.20
Use Of Transcripts Of Tape-Recorded Conversations

[(A) (An)] [(electronic) (_____)] recording has been admitted into evidence. In addition to the [(electronic) (_____)] recording you are being given a transcript of the [(electronic) (_____)] recording. The transcript only represents what the transcriber believes was said on the [(electronic) (_____)] recording, and merely serves as an aid when you listen to the [(electronic) (_____)] recording. The [(electronic) (_____)] recording, and not the transcript, is the evidence. If you perceive a conflict between the [(electronic) (_____)] recording and the transcript, the [(electronic) (_____)] controls.

Committee Note

Instruction and Committee Note Approved October 17, 2014

The jury should be instructed on the role of tape-recordings and other forms of recording including but not limited to video recording, and transcripts. *See People v. Hunley*, 313 Ill.App.3d 16, 37-38, 728 N.E.2d 1183 (2000); *People v. Criss,* 307 Ill.App.3d 888, 899-900, 719 N.E.2d 776 (1999). The instruction should be given during the trial when a tape-recording or other form of recording is admitted. While a tape-recording or other form of recording should not be treated differently than any other evidentiary exhibit, the question of whether a tape-recording or other form of recording and transcript should be sent to the jury along with other exhibits at the close of the case is a matter for the trial court's discretion. *Hunley*, 313 Ill. App. 3d at 38, 728 N.E. 2d 1183. If the court sends the tape or other form of recording and transcript to the jury at the close of the case, this instruction should be given along with the other instructions.

4.00
DEFINITIONS OF CERTAIN WORDS

INTRODUCTION

The instructions in this chapter define certain words used in the instructions defining various offenses. These definitions should be given following the instruction in which the defined word is used.

The necessity for additional definitions may arise. When the court gives one of these instructions, it should use prefatory language such as, “The word ____ means ...,” “The term ____ means ...,” or “The phrase ____ means ...” When necessary definitions are not found in this chapter, use the appropriate statutory definitions.

4.01
Definition Of Act

The word “act” includes a failure or omission to take action.

Committee Note

720 ILCS 5/2-2 (West 2013).

4.02
Definition Of Conduct

The word “conduct” means an act or a series of acts and the accompanying mental state.

Committee Note

720 ILCS 5/2-4 (West 2013).

4.03
Definition Of Dwelling Place

The term "dwelling place" means

> [1] a[n] [(building or portion of a building) (tent) (vehicle) (enclosed space)] which is used or intended for use as a human habitation, home, or residence.

[or]

> [2] a[n] [(house) (apartment) (mobile home) (trailer) (living quarters)] in which at the time of the alleged offense the [(owners) (occupants)] actually reside, or in their absence, intend within a reasonable period of time to reside.

Committee Note

720 ILCS 5/2-6 (West 2013).

Give paragraph [2] when used in conjunction with residential burglary. The phrase "in their absence" does not imply that the owner or occupant must have previously resided there. *People v. Pearson*, 183 Ill.App.3d 72, 538 N.E.2d 1202 (5th Dist. 1989). See Committee Note to Instruction 14.13.

Use applicable bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

4.04
Definition Of Felony

Committee Note

720 ILCS 5/2-7 (West 2013).

The Committee believes that determining whether an offense is a felony is a question of law for the court rather than a question of fact for the jury. Accordingly, no instruction defining the word "felony" is necessary. When the word “felony” appears, the court should substitute the name of the particular felony in that instruction.

4.05
Definition Of Forcible Felony

Committee Note

720 ILCS 5/2-8 (West 2013).

The Committee believes that determining whether an offense is a "forcible felony" is a question of law for the court rather than a question of fact for the jury. Accordingly, no instruction defining the words "forcible felony" is necessary. When the words “forcible felony” appears, the court should substitute the name of the particular forcible felony in that instruction.

4.06
Definition Of Misdemeanor

Committee Note

720 ILCS 5/2-11 (West 2013).

The Committee believes that determining whether an offense is a "misdemeanor" is a question of law for the court rather than a question of fact for the jury. Accordingly, no instruction defining the word "misdemeanor" is necessary. When the word “misdemeanor” appears, the court should substitute the name of the particular misdemeanor in that instruction.

4.07
Definition Of Offense

Committee Note

720 ILCS 5/2-12 (West 2013)

The Committee no longer believes it is necessary to instruct on the definition of the word "offense" because the jury would never be called upon to make such a factual determination. When the word "offense" appears, the court should substitute the name of the particular offense in that instruction.

4.08
Definition Of Peace Officer

The term “peace officer” means

[1] any person who, by virtue of his office or public employment, is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses.

[or]

[2] [(officers) (agents) (employees of the federal government)] commissioned by federal statute to make arrests for violations of federal criminal laws including, but not limited to, all criminal investigators of

[a] the United States Department of Justice, the Federal Bureau of Investigation, the Drug Enforcement Agency, and the Department of Immigration and Naturalization.

[or]

[b] the United States Department of the Treasury, the Secret Service, the Bureau of Alcohol, Tobacco and Firearms, and the Customs Service.

[or]

[c] the United States Internal Revenue Service.

[or]

[d] the United States General Services Administration.

[or]

[e] the United States Postal Service.

[or]

[f] all United States Marshals or Deputy United States Marshals whose duties involve the enforcement of federal criminal laws.

Committee Note

720 ILCS 5/2-13 (West 2013)

When applicable, give paragraph [2] in cases concerning unlawful use of weapons.

See Arrington v. City of Chicago, 45 Ill.2d 316, 259 N.E.2d 22 (1970).

Use applicable paragraphs and bracketed material.

The brackets, numbers, and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

4.09
Definition Of Penal Institution

The term "penal institution" means a penitentiary, state farm, reformatory, prison, jail, house of correction, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

Committee Note

720 ILCS 5/2-14 (West 2013).

See People v. Marble, 91 Ill.2d 242, 437 N.E.2d 641 (1982); *People v. Simmons*, 88 Ill.2d 270, 430 N.E.2d 1032 (1981).

4.10
Definition Of Person

The word “person” means an individual, natural person, public or private corporation, government, partnership, unincorporated association, or other entity.

Committee Note

720 ILCS 5/2-15 (West 2013), amended by P.A. 97-597, effective Jan. 1, 2012.

4.10A
Definition Of Physically Handicapped Person

The term "physically handicapped person" means a person who suffers from a permanent and disabling physical characteristic, resulting from disease, injury, functional disorder, or congenital condition.

Committee Note

720 ILCS 5/2-15a (West 2013).

4.11
Definition Of Public Employee

The term "public employee" means a person, other than a public officer, who is authorized to perform any official function on behalf of, and is paid by, the State or any of its political subdivisions.

Committee Note

720 ILCS 5/2-17 (West 2013).

4.12
Definition Of Public Officer

The term "public officer" means a person who is elected to office pursuant to statute, or who is appointed to an office which is established, and the qualifications and duties of which are prescribed, by statute, to discharge a public duty for the State or any of its political subdivisions.

Committee Note

720 ILCS 5/2-18 (West 2013).

4.13
Definition Of Reasonable Belief

The phrases "reasonable belief" or "reasonably believes" mean that the person concerned, acting as a reasonable person, believes that the described facts exist.

Committee Note

720 ILCS 5/2-19 (West 2013).

For an example of the use of this instruction, see Sample Set 27.03.

4.14
Omission As Voluntary Act

A voluntary act includes an omission to perform a duty which the law imposes on a person and which that person is physically capable of performing.

Committee Note

720 ILCS 5/4-1 (West 2013).

Where the voluntariness of an act is an issue, the jury should be told in the Issues Instruction that it must find the act was voluntary.

This instruction should be given only if an omission is an issue.

See People v. Grant, 71 Ill.2d 551, 377 N.E.2d 4 (1978).

4.15
Possession As Voluntary Act

Possession is a voluntary act if the person knowingly procured or received the thing possessed, or was aware of his control of the thing for a sufficient time to have been able to terminate his possession.

Committee Note

720 ILCS 5/4-2 (West 2013).

This instruction should be given only if voluntariness is an issue.

See People v. Grant, 71 Ill.2d 551, 377 N.E.2d 4 (1978).

4.16
Possession

[1] Possession may be actual or constructive. A person has actual possession when he has immediate and exclusive control over a thing. A person has constructive possession when he lacks actual possession of a thing but he has both the power and the intention to exercise control over a thing [either directly or through another person].

[2] If two or more persons share the immediate and exclusive control or share the intention and the power to exercise control over a thing, then each person has possession.

Committee Note

When there is no evidence that the possession was either constructive or joint, as, for example, when the substance or object was found on the defendant's person, it generally will be unnecessary to instruct the jury regarding the definition of possession. *See People v. Rentsch*, 167 Ill.App.3d 368, 521 N.E.2d 213 (2d Dist. 1988).

Give paragraph [1] only when there is an issue as to whether the defendant was in constructive possession.

Give paragraph [2] only when there is an issue of joint possession. *See People v. Pittman*, 216 Ill.App.3d 598, 575 N.E.2d 967 (4th Dist. 1991).

Use applicable paragraphs and bracketed material when appropriate.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.07.

4.17
Dangerous Weapon

An object or an instrument which is not inherently dangerous may be a dangerous weapon depending on the manner of its use and the circumstances of the case.

Committee Note

This definition is appropriate in cases where the alleged weapon is not inherently dangerous. The definition is from *People v. Skelton*, 83 Ill.2d 58, 414 N.E.2d 455 (1980). Do not give this instruction when the alleged weapon is inherently dangerous.

Do not give this instruction in armed violence cases, aggravated kidnapping cases, or in other cases where the term "dangerous weapon" is expressly defined by statute. Do not give this instruction in prosecutions of weapon violations under Chapter 720, Article 24.

For an example of the use of this instruction, see Sample Set 27.02.

4.18
Definition Of Preponderance Of The Evidence

The phrase "preponderance of the evidence" means whether, considering all the evidence in the case, the proposition on which the defendant has the burden of proof is more probably true than not true.

Committee Note

For an example of the use of this instruction, see Sample Sets 27.04A and 27.04B.

4.19
Definition Of Clear And Convincing Evidence

The phrase "clear and convincing evidence" means that degree of proof which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition on which the defendant has the burden of proof is true.

Committee Note

P.A. 89-404, effective August 20, 1995, changed the burden of proof on a defendant asserting the insanity defense from "preponderance of the evidence" to "clear and convincing evidence." (*See* 720 ILCS 5/6-2(e) (West 1994).) Because the insanity defense frequently arises in first degree murder cases and because juries in such cases often are instructed to consider the applicability of the second degree murder statute (in which the defendant has the burden of proving the existence of a mitigating factor by a preponderance of the evidence), the Committee believes that an instruction defining "clear and convincing evidence" must be used in such cases in order to provide guidance regarding the difference between "clear and convincing evidence" and "preponderance of the evidence" (as defined in Instruction 4.18).

Note that in Instructions 24-25.01E, 24-25.01F, 24-25.01G, and 24-25.01H, the jury receives issues instructions containing references to both "clear and convincing evidence" and "preponderance of the evidence." The Committee is aware that Instructions 24-25.01E, 24-25.01F, 24-25.01G, and 24-25.01H also contain the phrase "proof beyond a reasonable doubt" for which no instruction exists. *See* Instruction 2.05. However, (1) Illinois case law prohibits an instruction defining that phrase (*see People v. Speight*, 153 Ill.2d 365, 374, 606 N.E.2d 1174, 1177 (1992); *People v. Failor*, 271 Ill.App.3d 968, 970-71, 649 N.E.2d 1342 (4th Dist. 1995)), and (2) that phrase is much better known to—and understood by—non-lawyers than either "clear and convincing evidence" or "preponderance of the evidence."

Because the Committee found no Illinois case or statute directly on point, the Committee derived this instruction from *State v. King*, 158 Ariz. 419, 763 P.2d 239 (1988).

4.20
Definition Of Streetgang Or Gang Or Organized Gang Or Criminal Street Gang

The term [(streetgang) (gang) (organized gang) (criminal street gang)] means any combination, confederation, alliance, network, conspiracy, understanding, or other similar conjoining, in law or in fact, of three or more persons with an established hierarchy that, through its membership or through the agency of any member, engages in a course or pattern of criminal activity.

Committee Note

740 ILCS 147/10 (West 2013).

4.21
Definition Of Streetgang Member Or Gang Member

The term [(streetgang) (gang)] member means any person who actually and in fact belongs to a gang, and any person who knowingly acts in the capacity of an agent for or accessory to, or is legally accountable for, or voluntarily associates himself with a course or pattern of gang-related criminal activity, whether in a preparatory, executory, or cover-up phase of any activity, or who knowingly performs, aids, or abets any such activity.

Committee Note

740 ILCS 147/10 (West 2013).

4.22
Definition Of Streetgang Related Or Gang-Related

The term [(streetgang related) (gang-related)] means any criminal activity, enterprise, pursuit, or undertaking directed by, ordered by, authorized by, consented to, agreed to, requested by, acquiesced in, or ratified by any gang leader, officer, or governing or policy-making person or authority, or by any agent, representative, or deputy of any such officer, person, or authority

[1] with the intent to increase the gang's size, membership, prestige, dominance, or control in any geographical area.

[or]

[2] with the intent to provide the gang with any advantage in, or any control or dominance over any criminal market sector, including but not limited to, the manufacture, delivery, or sale of controlled substances or cannabis; arson or arson-for-hire; traffic in stolen property or stolen credit cards; traffic in prostitution, obscenity, or pornography; or that involves robbery, burglary, or theft.

[or]

[3] with the intent to exact revenge or retribution for the gang or any member of the gang.

[or]

[4] with the intent to obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang.

[or]

[5] with the intent to otherwise directly or indirectly cause any benefit, aggrandizement, gain, profit or other advantage whatsoever to or for the gang, its reputation, influence, or membership.

Committee Note

740 ILCS 147/10 (West 2013)

Use applicable bracketed material.

The brackets and numbers are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

4.23
Definition Of School Speed Zone

The term "school speed zone" means [(a school zone) (a roadway on public school property) (any public thoroughfare where children pass going to and from school)] on a school day between the hours of 7 a.m. and 4 p.m. when school children are present and so close thereto that a potential hazard exists because of the close proximity of the motorized traffic and where appropriate signs have been posted and maintained upon streets and highways which give proper due warning that a school zone is being approached and which indicate the school zone and the maximum speed limit in effect during school days when school children are present.

Committee Note

625 ILCS 5/11-605 (West 2013).

Use applicable bracketed material.

The brackets are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

4.24
Definition Of Proximate Cause

The term "proximate cause" means any cause which, in the natural or probable sequence, produced the [(great bodily harm) (permanent disability) (permanent disfigurement) (death of another person) (death of the child) (injury to a peace officer)]. [It need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause which in combination with it, causes the [(great bodily harm) (permanent disability) (permanent disfigurement) (death of another person) (death of the child) (injury to a peace officer)].]

Committee Note

720 ILCS 5/8-4 (c)(1)(D) (West 2013)

720 ILCS 5/9-1.2(d)(4) (West 2013)

720 ILCS 5/10-2(a)(8) (West 2013)

720 ILCS 5/12-4.3 (b)(3) (West 2013)

720 ILCS 5/12-11(a)(5) (West 2013)

720 ILCS 5/12-14(a)(10) (West 2013)

720 ILCS 5/12-21.6 (d) (West 2013)

720 ILCS 5/18-2(a)(4) (West 2013)

720 ILCS 5/18-4(a)(6) (West 2013)

720 ILCS 5/31-1(a-7) (West 2013)

720 ILCS 5/33 A-2 (c) (West 2013)

730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2013)

In *People v. Martin*, 266 Ill.App.3d 369, 378-79, 640 N.E.2d 638 (4th Dist. 1994), the court held that an instruction very similar to this instruction was properly given when a DUI is subject to enhancement pursuant to section 11-501(d)(3). The Committee based this instruction upon IPI Criminal Instruction 23.28A, but modified it for use in this context.

This definition should be given when causation is an issue in the above listed statutory offenses or sentencing enhancement factors.

The first part of this instruction should be given where the evidence shows that the sole cause of the injury or death was the conduct of the defendant. The instruction in its entirety, however, should be given when there is evidence of a concurring or contributing cause of the injury or death.

In the statutes listed above, the language regarding "proximate cause" is variously stated as follows:

(1) 720 ILCS 5/8-4(c)(1)(D), 720 ILCS 5/9-1.2(d)(4), 720 ILCS 5/10-2(a)(8), 720 ILCS 5/12-4.3(b)(3), 720 ILCS 5/12-14(a)(10), and 730 ILCS 5/5-8-1(a)(1), use the wording "proximately caused."

(2) 720 ILCS 5/12-11(a)(5), 720 ILCS 5/18-2(a)(4), 720 ILCS 5/18-4(a)(6), and 720 ILCS 5/33A-2(c), use the wording "proximately causes."

(3) 720 ILCS 5/12-21.6(d), uses the wording "a proximate cause."

(4) 720 ILCS 5/31-1(a-7), uses the wording "the proximate cause."

The Committee believes there is no significance to the variation in the phraseology that affects the applicability of this definition with one possible exception. When using 720 ILCS 5/31-1(a-7) (the proximate cause) the Committee directs the user to *Sibenaller v. Milschewski*, 379 Ill.App.3d 717, 721-22, 884 N.E.2d 1215 (2nd Dist. 2008), where the appellate court discusses a principle of statutory construction when "the" is used instead of "a." The Committee takes no position as to whether the bracketed second sentence should be given when defining "the proximate cause."

This instruction should not be given when causation is an issue in intentional, knowing or reckless homicide cases. Instruction 7.15 should be given under those circumstances.

This instruction should not be given when causation is an issue in felony murder cases. Instruction 7.15A should be given under those circumstances.

This instruction should not be given when causation is an issue in driving under the influence cases. Instruction 23.28A should be given under those circumstances.

Use applicable bracketed material.

The brackets are provided solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

4.25
Definition Of Intoxicating Compound

The term "intoxicating compound" means:

[1] any compound, liquid, or chemical containing [(toluol) (hexane) (trichloroethylene) (acetone) (toluene) (ethyl acetate) (methyl ethyl ketone) (tricholorethane) (isopropanol) (methyl isobutyl ketone) (methyl cellosolve acetate) (cyclohexanone) (the alkaloid atropine) (the alkaloid hyoscyamine) (the alkaloid scopolamine)].

[or]

[2] any substance [(ingested) (breathed) (inhaled) (drunk)] by a person for the purpose of inducing a condition of [(intoxication) (stupefaction) (depression) (giddiness) (paralysis) (irrational behavior)].

[or]

[3] any substance [(ingested) (breathed) (inhaled) (drunk)] by a person which in any manner [(changes) (distorts) (disturbs)] the auditory, visual, or mental processes.

Committee Note

720 ILCS 690/1 (West 2013).

Use applicable definition.

Use applicable bracketed material.

The brackets and numbers are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

4.26
Definition Of Correctional Institution Employee

The phrase "correctional institution employee" means a person employed by a penal institution.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-0.1 (West 2016).

4.27
Definition Of Sports Venue

The term "sports venue" means a publicly or privately owned sports or entertainment arena, stadium, community or convention hall, special events center, or amusement facility, or a special events center in a public park, during the 12 hours before or after the sanctioned sporting event.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-0.1 (West 2016).

4.28
Definition Of Domestic Violence Shelter

The phrase "domestic violence shelter" means any building or other structure used to provide shelter or other services to victims or to the dependent children of victims of domestic violence pursuant to the Illinois Domestic Violence Act of 1986 or the Domestic Violence Shelters Act, or any place within 500 feet of such a building or other structure in the case of a person who is going to or from such a building or other structure.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(i) (West 2016).

4.29
Definition Of Physically Handicapped Person

The phrase "physically handicapped person" means a person who suffers from a permanent and disabling physical characteristic, resulting from disease, injury, functional disorder, or congenital condition.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-0.1 (West 2016).

4.30
Definition Of Emergency Medical Technician

An “emergency medical technician” includes a paramedic, ambulance driver, first aid worker, hospital worker, or other medical assistance worker.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-0.1 (West 2016).

4.31
Definition Of Utility Worker

A "utility worker" means any of the following:

(1) A person employed by a public utility.

(2) An employee of a municipally owned utility.

(3) An employee of a cable television company.

(4) An employee of an electric cooperative.

(5) An independent contractor or an employee of an independent contractor working on behalf of a cable television company, public utility, municipally owned utility, or electric cooperative.

(6) An employee of a telecommunications carrier, or an independent contractor or employee of an independent contractor working on behalf of a telecommunications carrier.

(7) An employee of a telephone or telecommunications cooperative, or an independent contractor or an employee of an independent contractor working on behalf of a telephone or telecommunications cooperative.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-0.1 (West 2016).

"Public utility" is defined in the Public Utilities Act at 220 ILCS 5/3-105 (West 2016) if that definition becomes an issue in (1) or (5).

"Electric cooperative" is defined in the Public Utilities Act at 220 ILCS 5/3-119 (West 2016) if that definition becomes an issue in (4) or (5).

"Telecommunications carrier" is defined in the Public Utilities Act at 220 ILCS 5/13-202 (West 2016) if that definition becomes an issue in (6).

"Telephone or telecommunications cooperative" is defined in the Public Utilities Act at 220 ILCS 5/13-212 (West 2016) if that definition becomes an issue in (7).

4.32
Definition Of Transit Employee

A “transit employee” means a driver, operator, or employee of any transportation facility or system engaged in the business of transporting the public for hire.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-0.1 (West 2016).

4.33
Definition Of Transit Passenger

A “transit passenger” means a passenger of any transportation facility or system engaged in the business of transporting the public for hire, including a passenger using any area designated by a transportation facility or system as a vehicle boarding, departure, or transfer location.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-0.1 (West 2016).

4.34
Definition Of Machine Gun For Use In Aggravated Battery — Based On Use Of A Firearm

The words "machine gun" mean any weapon, which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot without manually reloading by a single function of the trigger.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(i) and 720 ILCS 5/24-1 (West 2016).

4.35
Definition Of Air Rifle

An “air rifle” means and includes any air gun, air pistol, spring gun, spring pistol, B-B gun, paint ball gun, pellet gun or any implement that is not a firearm which impels a breakable paint ball containing washable marking colors or, a pellet constructed of hard plastic, steel, lead or other hard materials with a force that reasonably is expected to cause bodily harm.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/24.8-0.1 (West 2016).

5.00.
MENTAL STATE, ACCOUNTABILITY, AND RESPONSIBILITY

5.01
Recklessness--Wantonness

A person [(is reckless) (acts recklessly)] when he consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.

[An act performed recklessly is performed wantonly.]

Committee Note

720 ILCS 5/4-6 (West 1994) (formerly Ill.Rev.Stat. ch. 38, §4-6 (1991)).

See People v. Baier, 54 Ill.App.2d 74, 203 N.E.2d 633 (1st Dist.1964).

The bracketed second paragraph is for use in conjunction with offenses including a mental state of "wantonness." In such cases, also give the bracketed second paragraph defining that term.

When wantonness is an issue, Section 4-6 requires the trial court to determine whether the statute using that term "clearly requires another meaning." If so, the jury should be instructed accordingly.

Use applicable bracketed material.

5.01A
Intent

A person [(intends) (acts [(intentionally) (with intent)]] to accomplish a result or engage in conduct when his conscious objective or purpose is to accomplish that result or engage in that conduct.

Committee Note
Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/4-4 (West 2016).

The Committee takes no position as to whether this definition should be routinely given in the absence of a specific jury request. *See People v. Powell*, 159 Ill.App.3d 1005, 512 N.E.2d 1364 (1st Dist. 1987), for the general proposition that the words “intentionally” and “knowingly” have a plain meaning within the jury's common understanding. If given, it should only be given when the result or conduct at issue is the result or conduct described by the statute defining the offense.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.07.

5.01B
Knowledge--Willfulness

[1] A person [(knows) (acts knowingly with regard to) (acts with knowledge of)] the nature or attendant circumstances of his conduct when he is consciously aware that his conduct is of that nature or that those circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that the fact exists.

[2] A person [(knows) (acts knowingly with regard to) (acts with knowledge of)] the result of his conduct when he is consciously aware that that result is practically certain to be caused by his conduct.

[3] [Conduct performed knowingly or with knowledge is performed willfully.]

Committee Note
Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/4-5 (West 2016), amended by P.A. 96-710, effective Jan. 1, 2010.

The Committee takes no position as to whether this definition should be routinely given in the absence of a specific jury request. *See People v. Powell*, 159 Ill.App.3d 1005, 512 N.E.2d 1364 (1st Dist. 1987), for the general proposition that the words "intentionally" and "knowingly" have a plain meaning within the jury's common understanding. If given, it should only be given when the result or conduct at issue is the result or conduct described by the statute defining the offense.

In cases where the instruction is given, use paragraph [1] if the offense is defined in terms of prohibited conduct. Use paragraph [2] if the offense is defined in terms of a prohibited result. If both conduct and result are at issue, use *both* paragraphs [1] and [2]. *See People v. Lovelace*, 251 Ill.App.3d 607, 622 N.E.2d 859 (2d Dist. 1993), where the trial court committed reversible error by giving the jury only paragraph [1], and not both paragraphs [1] and [2], when both conduct and result were at issue.

The bracketed third paragraph is for use in conjunction with offenses including a mental state of "willfulness". In such cases, give the bracketed third paragraph defining that term. Also give the first or second paragraph, or both, as appropriate.

When willfulness is an issue, Section 4-6 requires the trial court to determine whether the statute using that word "clearly requires another meaning". If so, the jury should be instructed accordingly.

The bracketed numbers are present solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

Use applicable paragraphs and bracketed material.

5.01C
Actual Knowledge

Actual knowledge is direct and clear knowledge, that is, knowledge of such information as would lead a reasonable person to inquire further.

Committee Note

In People v. Hinton, 402 Ill.App.3d 181, 931 N.E.2d 769 (3d Dist. 2010), the appellate court held that section 12-30(a)(2) of the Criminal Code of 1961 (Code) (720 ILCS 5/12-30(a)(2) (West 2010) (Violation of an Order of Protection) mandates that a defendant have acquired actual knowledge of the order of protection. Proof by the State of constructive knowledge is insufficient.

5.02
Negligence

A person [(is negligent) (acts negligently)] when that person fails to be aware of a substantial and unjustifiable risk that circumstances exist or that a result will follow, and that failure is a substantial deviation from the standard of care that a reasonable person would exercise in the situation.

Committee Note
Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/4-7 (West 2016), amended by P.A. 96-710, effective Jan. 1, 2010.

Use applicable bracketed material.

5.02A
Other Mental States

Committee Note
Committee Note Approved October 28, 2016

In certain cases it may be appropriate to define mental states other than those defined in this Chapter. *See* 720 ILCS 5/4-4 and 4-5 (West 2016).

5.03
Accountability

A person is legally responsible for the conduct of another person when, either before or during the commission of an offense, and with the intent to promote or facilitate the commission of [(an) (the)] offense, he knowingly solicits, aids, abets, agrees to aid, or attempts to aid the other person in the planning or commission of [(an) (the)] offense.

[The word "conduct" includes any criminal act done in furtherance of the planned and intended act.]

Committee Note
Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/5-2(c) (West 2016), amended by P.A. 96-710, effective Jan. 1, 2010.

Use the bracketed word "an" and use the bracketed paragraph when the offense is different than the planned and intended offense, but done in furtherance of it. *People v. Kessler*, 57 Ill.2d 493, 315 N.E.2d 29 (1974); *People v. Terry*, 99 Ill.2d 508, 460 N.E.2d 746 (1984). *See also People v. Taylor*, 199 Ill.App.3d 933, 557 N.E.2d 917 (4th Dist. 1990), for a recent clarification of the "common design" rule as discussed by the Illinois Supreme Court in *Terry*.

When this instruction is given, *ordinarily* insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition of the issues instruction for the offense charged. *See also* Instructions 5.05 and 5.06.

Note, however, that for some offenses, it will be inappropriate to insert that phrase in some or all of the propositions. For instance, in a prosecution for the offense of calculated criminal drug conspiracy based upon the theory that the defendant received something of value greater than $500 as a result of the offense, the State must prove that the defendant himself received that amount of money. *People v. Holmes*, 41 Ill.App.3d 585, 353 N.E.2d 396 (3d Dist. 1976). *See* Instruction 17.15 and Committee Note thereto. The Third Proposition in the issues instruction for that offense must read: "That the defendant obtained something of value greater than $500 from such delivery or agreement." It *cannot* read: "That the defendant, or one for whose conduct he was legally responsible, obtained something of value greater than $500 from such delivery or agreement." *See also People v. Griffin*, 247 Ill.App.3d 1, 616 N.E.2d 1242 (1st Dist. 1993), holding that accountability language should not have been inserted into the aggravated criminal sexual assault issues instruction where the age of the person who actually penetrated the victim defines whether that crime ever occurred. *See* Instruction 11.58B.

Other statutes would appear to require that particular conduct be committed by the defendant personally or that a status that is an element of the offense pertain to the defendant himself. Whenever accountability language is to be inserted in an issues instruction, caution should be exercised to assure that accountability language is not used in any proposition that involves such conduct or status.

For an example of the use of this instruction, see Sample Sets 27.02 and 27.03.

The three instructions given, in addition to 5.03, are set forth below as modified by the Committee to be consistent with style, language and form of IPI-Criminal Instructions:

(1) A parent has a legal duty to aid a small child if the parent knows or should know about a danger to the child and the parent has the physical ability to protect the child. Criminal conduct may arise by overt acts or by an omission to act where there is a legal duty to do so.

(2) Actual physical presence at the commission of a crime is not a requirement for legal responsibility.

(3) Intent to promote or facilitate the commission of an offense may be shown by evidence that the defendant shared a criminal intent of the principal or evidence that there was a common criminal design.

5.03A
Accountability--Felony Murder

To sustain the charge of first degree murder, it is not necessary for the State to show that it was or may have been the original intent of the defendant or one for whose conduct he is legally responsible to kill the deceased, ____.

It is sufficient if the jury believes from the evidence beyond a reasonable doubt that the defendant and one for whose conduct he is legally responsible combined to do an unlawful act, such as to commit ____, and that the deceased was killed by one of the parties committing that unlawful act.

Committee Note
Instruction and Committee Note Approved October 28, 2016

Give this instruction only in addition to--not in lieu of--Instruction 5.03.

In *People v. Ramey*, 151 Ill.2d 498, 536-38, 603 N.E.2d 519 (1992), the supreme court approved the above instruction, which the trial court gave along with Instruction 5.03. In *Ramey*, the State charged defendant and his alleged accomplice with murder (based in part upon felony murder), home invasion, aggravated unlawful restraint, and possession of a stolen motor vehicle. The blank in the second paragraph of the above instruction read "home invasion". The supreme court in *Ramey* upheld the use of this instruction, holding that "we agree with the State *** that the [above] instruction was explanatory and it served to clarify the concept of felony murder". *Ramey*, 151 Ill.2d at 537, 603 N.E.2d at 535.

Insert in the blank in the first paragraph the name of the alleged victim.

Insert in the blank in the second paragraph the felony offense(s) that the evidence shows the defendant or his accomplice may have committed in order to come within the forcible felony murder rule.

5.04
Responsibility For Act Of Another--Withdrawal

A person is not legally responsible for the conduct of another, if, before the commission of the offense charged, he terminates his effort to promote or facilitate the commission of the offense charged and [(wholly deprives his prior efforts of effectiveness in the commission of that offense) (gives timely warning to the proper law enforcement authorities) (makes proper effort to prevent the commission of that offense)].

Committee Note
Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/5-2(c)(3) (West 2016)

Give in conjunction with Instruction 5.03 when there is evidence of withdrawal.

Use applicable bracketed material.

5.05
Defendant's Responsibility For Act Of Another--Actor Not Legally Responsible

A person who causes another person to perform a criminal act is legally responsible for that act although the person who actually performed the act was not legally responsible because he was [(intoxicated) (in a drugged condition) (insane) (an innocent agent) (an infant) (____)].

Committee Note
Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/5-2(a) (West 2016)

See Chapter 720, Articles 6 and 7 for defenses and justifications.

Insert in the blank any other appropriate term.

Use applicable bracketed material.

5.06
Defendant's Responsibility For Act Of Another--Actor Not Prosecuted, Etc.

A person who is legally responsible for the conduct of another may be convicted for the offense committed by the other person even though the other person, who it is claimed committed the offense, [(has not been prosecuted) (has not been convicted) (has been convicted of a different offense) (is not amenable to justice) (has been acquitted)].

Committee Note
Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/5-3 (West 2016).

Give Instruction 5.03.

See also Standefer v. United States, 447 U.S. 10, 14-20, 100 S.Ct. 1999, 2003-06, 64 L.Ed.2d 689, 695-98 (1980) (permitting the conviction of accessories to federal criminal offenses despite the prior acquittal of the actual perpetrator of the offense).

Use applicable bracketed material.

5.07
Corporate Responsibility--Act Of Agent

A corporation is legally responsible for conduct which an agent of the corporation performs while acting within the scope of his office or employment and on behalf of the corporation.

The word “agent” means any director, officer, servant, employee, or other person who is authorized to act on behalf of the corporation.

Committee Note
Instruction and Committee Note Approved October 28, 2016

This instruction is based upon Section 5-4. It is applicable to misdemeanors and prosecutions under Chapter 720, Section 24- 720 ILCS 5/24-1(Weapons) or any other statute which clearly indicates a legislative purpose to impose liability on a corporation.

5.08
Corporate Responsibility--Authorized Acts

A corporation is legally responsible for conduct which is authorized, requested, commanded, or performed by the board of directors or by a high managerial agent who is acting within the scope of his employment on behalf of the corporation.

Committee Note
Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/5-4(a)(2) (West 2016).

Give Instruction 5.10, defining the term “high managerial agent”.

5.09
Corporate Responsibility--Defense

If the corporate defendant proves by a preponderance of the evidence that a high managerial agent, having supervisory responsibility over the conduct which is the subject matter of the offense charged, exercised due diligence to prevent the commission of the offense charged, you should find the corporate defendant not guilty.

Committee Note

720 ILCS 5/5-4(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §5-4(b) (1991)).

Give Instruction 4.18, defining the phrase "preponderance of the evidence."

Give Instruction 5.10, defining the term "high managerial agent."

This instruction should be given under Section 5-4(b) and should not be given except when appropriate and then in conjunction with Instruction 5.07. It is not applicable to Instruction 5.08 and is not applicable if the legislative purpose of the statute defining the offense is inconsistent with the provisions of Section 5-4(b) or if the offense is one for which absolute liability is imposed.

5.10
Definition Of High Managerial Agent

The term "high managerial agent" means an officer of the corporation, or any other agent who has a position of comparable authority for the formulation of corporate policy or the supervision of subordinate employees in a managerial capacity.

Committee Note
Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/5-4(c)(2) (West 2016).

Give whenever Instructions 5.08 or 5.09 are given.

5.11
Personal Responsibility Of Corporate Agent

A person is legally responsible for conduct which he performs or causes to be performed in the name of or on behalf of a corporation to the same extent as though the conduct were performed in his own name or behalf.

Committee Note
Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/5-5(a) (West 2016).

Give when an individual is jointly charged with his corporate employer or is charged individually for conduct committed on behalf of his corporate employer.

5.12
Definition Of Digital Signature

The phrase “digital signature” means an encrypted electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature.

Committee Note

205 ILCS 705/5 (West 2013).

5.13
Definition Of Electronic Signature

The phrase “electronic signature” means a signature in electronic form attached to or logically associated with an electronic record.

Committee Note

5 ILCS 175/5-105 (West 2013).

5.14
Definition Of Signature Device

The phrase “signature device” means unique information, such as codes, algorithms, letters, numbers, private keys, or personal identification numbers (PINs), or a uniquely configured physical device, that is required, alone or in conjunction with other information or devices, in order to create an electronic signature attributable to a specific person.

Committee Note

5 ILCS 175/5-105 (West 2013).

5.15
Definition Of "False Document" or "Document That Is False"

The phrases "false document" or "document that is false" includes, but is not limited to, a document whose contents are false in some material way, or that purports to have been made by another or at another time, or with different provisions, or by authority of one who did not give such authority.

Committee Note

720 ILCS 5/17-3(c-5) (West 2013), P.A. 97-231, effective January 1, 2012.

6.00
INCHOATE OFFENSES

6.01
Definition Of Solicitation—Other Than Solicitation Of Murder Or Solicitation Of Murder For Hire

A person commits the offense of solicitation when, with intent that the offense of ____ be committed, he [(commands) (encourages) (requests)] another to commit ____.

The offense solicited need not have been committed.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-1 (West 2013).

Give Instruction 6.02.

Do not give this instruction if the defendant is charged with solicitation of murder or solicitation of murder for hire; instead, give the appropriate instructions from Instructions 6.01A, 6.01B, 6.02A, and 6.02B.

The court must also give an instruction that defines the offense which is the alleged subject of the solicitation. However, the issues instruction for that offense should not be given in conjunction with the solicitation instruction. For example, if a defendant is charged with solicitation to commit robbery, Instruction 14.03 defining robbery should be given following this instruction, but Instruction 14.04 listing the issues in a robbery prosecution would not be given unless the defendant was also charged with the substantive offense of robbery.

The words "commands," "encourages," and "requests" are disjunctive methods by which the offense of solicitation can be committed. *See People v. Cole*, 91 Ill.2d 172, 435 N.E.2d 490 (1982). If the charging document alleges separate methods of solicitation in separate counts, the jury should receive one definitional Instruction 6.01 naming from the bracketed material each method alleged; but the jury should receive a separate Instruction 6.02 for the issues in each solicitation count.

720 ILCS 5/8-3 (West 2013) raises a legal issue for the court.

For the relationships among inchoate offenses, *see People v. Stroner*, 96 Ill.2d 204, 449 N.E.2d 1326 (1983) (solicitation to commit murder is not a lesser included offense of conspiracy to commit murder and conspiracy to commit murder is not a lesser included offense of attempted murder on theory of accountability).

Insert in the blanks the name of the offense that is the alleged subject of the solicitation.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

6.01A
Definition Of Solicitation Of Murder

A person commits the offense of solicitation of murder when, with the intent that the offense of first degree murder be committed, he [(commands) (encourages) (requests)] another to commit that offense.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-1.1 (West 2013).

Give Instruction 6.02A.

Give Instruction 6.01C, defining the offense of first degree murder (for use when solicitation of murder or solicitation of murder for hire is charged). In *People v. Eaglin*, 224 Ill.App.3d 668, 672, 586 N.E.2d 1280 (3d Dist. 1992), a case involving a prosecution of solicitation of murder for hire, the court held that an instruction defining first degree murder was erroneous because it included a reference to a defendant's mental state other than his intent to kill an individual. Even though *Eaglin* dealt with solicitation of murder for hire (720 ILCS 5/8-1.2) and not with solicitation of murder (720 ILCS 5/8-1(b)), the Committee believes that the *Eaglin* analysis applies to solicitation of murder because of that statute's similarity to solicitation of murder for hire.

Both Section 8-1(b) and Section 8-1.2 speak of a person committing their respective solicitation offenses when that person performs certain acts "with the intent that the offense of first degree murder be committed." In *Eaglin*, the court wrote that solicitation requires proof of an intent to kill. *Eaglin,* 224 Ill.App.3d at 671-72. The Committee believes that holding applies to solicitation of murder as well as to solicitation of murder for hire.

The words "commands," "encourages," and "requests" are disjunctive methods by which the offense of solicitation can be committed. *See People v. Cole*, 91 Ill.2d 172, 435 N.E.2d 490 (1982). The Committee believes this concept would also apply to the alternatives in the crime of solicitation of murder. If the charging document alleges separate methods of solicitation of murder in separate counts, the jury should receive one definitional Instruction 6.01A naming from the bracketed material each method alleged; but the jury should receive a separate Instruction 6.02A for the issues in each solicitation of murder count.

Solicitation of murder is a new, distinct statutory offense; it is not a general inchoate offense, such as those found in 720 ILCS 5/8-1 *et seq*.

For the relationships among inchoate offenses, *see People v. Stroner*, 96 Ill.2d 204, 449 N.E.2d 1326 (1983) (solicitation to commit murder is not a lesser included offense of conspiracy to commit murder and conspiracy to commit murder is not a lesser included offense of attempted murder on theory of accountability).

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

6.01B
Definition Of Solicitation Of Murder For Hire

A person commits the offense of solicitation of murder for hire when, with the intent that the offense of first degree murder be committed, he procures another to commit that offense pursuant to any [(contract) (agreement) (understanding) (command) (request)] for money or anything of value.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-1.2 (West 2013).

Give Instruction 6.02B.

Give Instruction 6.01C, defining the offense of first degree murder (for use when solicitation of murder or solicitation of murder for hire is charged).

The words "commands," "encourages," and "requests" are disjunctive methods by which the offense of solicitation can be committed. *See People v. Cole*, 91 Ill.2d 172, 435 N.E.2d 490 (1982). The Committee believes this concept would also apply to the alternatives in the new crime of solicitation of murder for hire. If the charging document alleges separate methods of solicitation of murder for hire in separate counts, the jury should receive one definitional Instruction 6.01B naming from the bracketed material each method alleged; but the jury should receive a separate Instruction 6.02B for the issues in each solicitation of murder for hire count.

Solicitation of murder for hire is a new, distinct statutory offense; it is not a general inchoate offense, such as those found in 720 ILCS 5/8-1 *et seq*.

For the relationships among inchoate offenses, *see People v. Stroner*, 96 Ill.2d 204, 449 N.E.2d 1326 (1983) (solicitation to commit murder is not a lesser included offense of conspiracy to commit murder and conspiracy to commit murder is not a lesser included offense of attempted murder on theory of accountability).

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

6.01C
Definition Of First Degree Murder For Use When Solicitation Of Murder Or Solicitation Of Murder For Hire Is Charged

A person commits the offense of first degree murder when he kills an individual if, in performing the acts which cause the death, he intends to kill that individual.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/9-1(a)(1) (West 2013), defining first degree murder, and 720 ILCS 5/8-1(b) (formerly 720 ILCS 5/8-1.1) (West 2013), repealed by P.A. 96-710, effective Jan. 1, 2010, defining solicitation of murder.

In *People v. Eaglin*, 224 Ill.App.3d 668, 672, 586 N.E.2d 1280 (3d Dist. 1992), a case involving a prosecution of solicitation of murder, the court held that an instruction defining first degree murder was erroneous because it included a reference to a defendant's mental state other than his intent to kill an individual.

6.02
Issues In Solicitation—Other Than Solicitation Of Murder Or Solicitation Of Murder For Hire

To sustain the charge of solicitation, the State must prove the following propositions:

First Proposition: That the defendant [(commanded) (encouraged) (requested)] ____ to commit ____; and

Second Proposition: That the defendant did so with intent that the offense of ____ be committed.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-1 (West 2013).

Give Instruction 6.01.

Do not give this instruction if the defendant is charged with solicitation of murder or solicitation of murder for hire; instead, give the appropriate instructions from Instructions 6.01A, 6.01B, 6.02A, and 6.02B.

The words "commands," "encourages," and "requests" are disjunctive methods by which the offense of solicitation can be committed. *See People v. Cole*, 91 Ill.2d 172, 435 N.E.2d 490 (1982). If the charging document alleges separate methods of solicitation in separate counts, the jury should receive one definitional Instruction 6.01 naming from the bracketed material each method alleged; but the jury should receive a separate Instruction 6.02 for the issues in each solicitation count.

Insert in the appropriate blanks the name of the person solicited and the crime solicited.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. Give Instruction 5.03.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

6.02A
Issues In Solicitation Of Murder

To sustain the charge of solicitation of murder, the State must prove the following propositions:

First Proposition: That the defendant [(commanded) (encouraged) (requested)] ____ to commit the offense of first degree murder; and

Second Proposition: That the defendant did so with the intent that the offense of first degree murder be committed.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-1(b) (West 2013) (formerly 720 ILCS 5/8-1.1) (West 2013), repealed by P.A. 96-710, effective Jan. 1, 2010.

Give Instruction 6.01A.

The words "commands," "encourages," and "requests" are disjunctive methods by which the offense of solicitation can be committed. *See People v. Cole*, 91 Ill.2d 172, 435 N.E.2d 490 (1982). The Committee believes this concept would also apply to the alternatives in the crime of solicitation of murder. If the charging document alleges separate methods of solicitation of murder in separate counts, the jury should receive one definitional Instruction 6.01A naming from the bracketed material each method alleged; but the jury should receive a separate Instruction 6.01A for the issues in each solicitation of murder count.

Solicitation of murder is a distinct statutory offense; it is not a general inchoate offense, such as those found in 720 ILCS 5/8-1 *et seq.*

Insert in the blank the name of the person solicited.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. Give Instruction 5.03.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

6.02B
Issues In Solicitation Of Murder For Hire

To sustain the charge of solicitation of murder for hire, the State must prove the following propositions:

First Proposition: That the defendant procured ____ to commit the offense of first degree murder pursuant to any [(contract) (agreement) (understanding) (command) (request)] for money or anything of value; and

Second Proposition: That the defendant did so with the intent that the offense of first degree murder be committed.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-1.2 (West 2013).

Give Instruction 6.01B.

The words "commands," "encourages," and "requests" are disjunctive methods by which the offense of solicitation can be committed. *See People v. Cole*, 91 Ill.2d 172, 435 N.E.2d 490 (1982). The Committee believes this concept would also apply to the alternatives in the crime of solicitation of murder for hire. If the charging document alleges separate methods of solicitation of murder for hire in separate counts, the jury should receive one definitional Instruction 6.01B naming from the bracketed material each method alleged; but the jury should receive a separate Instruction 6.02B for the issues in each solicitation of murder for hire count.

Solicitation of murder for hire is a distinct statutory offense; it is not a general inchoate offense, such as those found in 720 ILCS 5/8-1 *et seq*.

Insert in the blank the name of the person solicited.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. Give Instruction 5.03.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

6.03
Definition Of Conspiracy—Other Than Certain Drug Conspiracies

A person commits the offense of conspiracy when he, with intent that the offense of ____ be committed, agrees with [(another) (others)] to the commission of the offense of ____, and an act in furtherance of the agreement is performed by any party to the agreement.

An agreement may be implied from the conduct of the parties although they acted separately or by different means and did not come together or enter into an express agreement.

To constitute the offense of conspiracy it is not necessary that the conspirators succeed in committing the offense of ____.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-2 (West 2013).

Give Instruction 6.04.

The court must also give an instruction that defines the offense that is the alleged subject of the conspiracy. For example, if a defendant is charged with conspiracy to commit first degree murder, Instruction 7.01A defining first degree murder would be given following this instruction, but Instruction 7.02A listing the issues in a first degree murder prosecution would not be given unless the defendant was also charged with the substantive offense of first degree murder.

720 ILCS 5/8-3 raises a legal issue for the court.

720 ILCS 5/8-2(a) encompasses the bilateral theory of conspiracy requiring actual agreement between at least two persons to commit the offense to support a conspiracy conviction. *People v. Foster*, 99 Ill.2d 48, 457 N.E.2d 405 (1983). The unilateral theory is largely embraced by the solicitation statute (720 ILCS 5/8-1). *See Foster,* 99 Ill.2d at 53 (addressing what was Chapter 38, Section 8-1).

For the relationships among inchoate offenses, *see People v. Stroner*, 96 Ill.2d 204, 449 N.E.2d 1326 (1983) (solicitation to commit murder is not a lesser included offense of conspiracy to commit murder and conspiracy to commit murder is not a lesser included offense of attempted murder on theory of accountability).

Insert in the blanks the name of the offense that is the alleged subject of the conspiracy.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

6.04
Issues In Conspiracy—Other Than Certain Drug Conspiracies

To sustain the charge of conspiracy, the State must prove the following propositions:

First Proposition: That the defendant agreed with ____ to the commission of the offense of ____; and

Second Proposition: That the defendant did so with intent that the offense of ____ be committed; and

Third Proposition: That an act in furtherance of the agreement was performed by any party to the agreement.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-2 (West 2013).

Give Instruction 6.03.

Insert in the appropriate blanks the name of the offense which is the alleged subject of the conspiracy and the name of the person or persons with whom the defendant is charged with conspiring.

6.05
Definition Of Attempt—Other Than Attempt First Degree Murder

A person commits the offense of attempt when he, [without lawful justification and] with the intent to commit the offense of ____, does any act which constitutes a substantial step toward the commission of the offense of ____.

The offense attempted need not have been committed.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-4(a) (West 2013).

Give Instruction 6.07.

Do not give this instruction if the defendant is charged with attempt first degree murder; instead, give Instruction 6.05X.

The court must also give an instruction that defines the offense which is the alleged subject of the attempt. However, the issues instruction for that offense should not be given in conjunction with the attempt instruction. For example, if a defendant is charged with attempt to commit robbery, Instruction 14.01 defining robbery would be given following this instruction, but Instruction 14.02 listing the issues in a robbery prosecution would not be given unless the defendant was also charged with the substantive offense of robbery.

Use the phrase "without lawful justification" whenever an instruction is to be given on an affirmative defense contained in 720 ILCS 5/7-1 (West 2013).

Insert in the blanks the name of the offense that is the alleged subject of the attempt.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

6.05X
Definition Of Attempt First Degree Murder

A person commits the offense of attempt first degree murder when he, [without lawful justification and] with the intent to kill an individual, does any act which constitutes a substantial step toward the killing of an individual.

The killing attempted need not have been accomplished.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-4(a) and 5/9-1(a)(1) (West 2013).

Give Instruction 6.07X.

Give this instruction whenever the defendant is charged with attempt first degree murder. Do not use Instruction 6.05, the general definitional instruction for the charge of attempt, when the defendant is charged with attempt first degree murder.

The Illinois Supreme Court has unequivocally held that the specific intent to kill is an essential element of the offense of attempt first degree murder. *People v. Harris*, 72 Ill.2d 16, 377 N.E.2d 28 (1978). Nonetheless, attempt first degree murder cases continue to be tried in which the jury is not properly instructed. *See People v. Velasco*, 184 Ill.App.3d 618, 540 N.E.2d 521 (1st Dist. 1989). Accordingly, the Committee believes this special instruction is necessary to overcome this problem.

Use the phrase "without lawful justification" whenever an instruction is to be given on an affirmative defense contained in 720 ILCS 5/7-1 (West 2013).

For an example of the use of this instruction, see Sample Set 27.02.

6.05XX
Definition Of Attempt First Degree Murder—Enhancing Factors Based On Victim

A person commits the offense of attempt first degree murder of [(a peace officer) (a fireman) ([(an employee of) (an inmate at) (an individual present in)] a correctional institution or facility) (an emergency medical technician) (an ambulance driver) (a medical assistant) (a first aid attendant)] when he, [without lawful justification and] with the intent to kill an individual, does any act which constitutes a substantial step toward the killing of an individual who was

[1] a [(peace officer) (fireman)] [(who at the time was in the course of) (with the intent to prevent him from) (in retaliation for his)] performing his official duties, and the defendant knew or should have known that the individual was a [(peace officer) (fireman)].

[or]

[2] an employee of an institution or facility of the Department of Corrections [or any similar local correctional agency] [(who at the time was in the course of) (with the intent to prevent him from) (in retaliation for his)] performing his official duties.

[or]

[3] [(an inmate at) (an individual present in)] an institution or facility of the Department of Corrections [or any similar local correctional agency].

[or]

[4] [(an emergency medical technician) (an ambulance driver) (a medical assistant) (a first aid attendant)] employed by a municipality [or other governmental unit] [(who at the time was in the course of) (with the intent to prevent him from) (in retaliation for his)] performing his official duties, and the defendant knew or should have known that the individual was [(an emergency medical technician) (an ambulance driver) (a medical assistant) (a first aid attendant)].

The killing attempted need not have been accomplished.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-4(a), (c)(1), and 5/9-1(b)(1), (2), and (12) (West 2013).

Give Instruction 6.07XX.

Give this instruction when the defendant is charged with attempt first degree murder and the intended victim was a peace officer, fireman, correctional institution or facility employee, emergency medical technician (EMT), ambulance driver, or other medical assistance or first aid

personnel.

Public Act 87-921 amended Section 8-4(c)(1) by enhancing the penalty for attempt first degree murder when (1) the intended victim is a peace officer, a fireman, an employee of, inmate at, or visitor to a correctional institution or facility, an EMT, an ambulance driver, or other medical assistance or first aid personnel, and (2) the defendant intends to kill the intended victim (a) at a time when he is in the course of performing his official duties, (b) to prevent him from performing his official duties, or (c) in retaliation for performing his official duties.

P.A. 88-433, effective January 1, 1994, amended this section by changing the term "paramedic" to "emergency medical technician". If the definition of EMT or the type of EMT becomes an issue, see Sections 3.5 of the Emergency Medical Services System Act (210 ILCS 50/3.5 (West 2013)) which define EMT-Basic, EMT-Intermediate, and EMT-Paramedic. *See* 720 ILCS 5/2-6.5 (West 2013).

Give Instruction 6.05X for all other charges of attempt first degree murder. Do not use Instruction 6.05, the general definitional instruction for the charge of attempt, when the defendant is charged with attempt first degree murder.

The supreme court has unequivocally held that the specific intent to kill is an essential element of the offense of attempt first degree murder. *People v. Harris*, 72 Ill.2d 16, 377 N.E.2d 28 (1978). Nonetheless, attempt first degree murder cases continue to be tried in which the jury is not properly instructed. *See People v. Velasco*, 184 Ill.App.3d 618, 540 N.E.2d 521 (1st Dist. 1989). Accordingly, the Committee believes that this instruction and Instruction 6.05X are necessary to overcome this problem.

Use the phrase "without lawful justification" whenever an instruction is to be given on an affirmative defense contained in 720 ILCS 5/7-1 to 5/7-14.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

6.06
Impossibility Of Committing Offense Attempted—No Defense

It is not a defense to the charge of attempt that, because of a misapprehension of the circumstances, it would have been impossible to commit the offense attempted.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-4(b) (West 2013).

Give this instruction only when there is evidence of impossibility.

6.07
Issues In Attempt—Other Than Attempt First Degree Murder

To sustain the charge of attempt, the State must prove the following propositions:

First Proposition: That the defendant performed an act which constituted a substantial step toward the commission of the offense of ____; and

Second Proposition: That the defendant did so with the intent to commit the offense of ____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-4(a) (West 2013).

Give Instruction 6.05.

Do *not* use this instruction if the defendant is charged with attempt first degree murder; instead, use Instruction 6.07X.

Insert in the blanks the name of the offense that is the alleged subject of the attempt.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. Give Instruction 5.03.

6.07X
Issues In Attempt First Degree Murder

To sustain the charge of attempt first degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed an act which constituted a substantial step toward the killing of an individual; and

Second Proposition: That the defendant did so with the intent to kill an individual.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-4 and 5/9-1 and 9-1(a)(1) (West 2013).

Give this instruction *only* when Instruction 6.05X is also given. *See* Committee Note to Instruction 6.05X.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24-25.00.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. Give Instruction 5.03.

For an example of the use of this instruction, see Sample Set 27.02.

6.07XX
Issues In Attempt First Degree Murder—Enhancing Factors Based On Victim

To sustain the charge of attempt first degree murder of [(a peace officer) (a fireman) ([(an employee of) (an inmate at) (an individual present in)] a correctional institution or facility) (an emergency medical technician) (a paramedic) (an ambulance driver) (a medical assistant) (a first aid attendant)], the State must prove the following propositions:

First Proposition: That the defendant performed an act which constituted a substantial step toward the killing of an individual; and

Second Proposition: That the defendant did so with the intent to kill that individual;

and

Third Proposition: That the individual the defendant intended to kill was
[1] a [(peace officer) (fireman)];

[or]

[2] an employee of an institution or facility of the Department of Corrections [or any similar local correctional agency];

[or]

[3] an [(inmate at) (individual present in)] an institution or facility of the Department of Corrections [or any similar local correctional agency] [with the knowledge and approval of the chief administrative officer thereof];

[or]

[4] [(an emergency medical technician) (a paramedic) (an ambulance driver) (a medical assistant) (a first aid attendant)] employed by a municipality [or other governmental unit];

and

Fourth Proposition: That the defendant did so
[A] at a time when that [(peace officer) (fireman) (employee of an institution or facility of the Department of Corrections [or any similar local correctional agency]) ([(an emergency medical technician) (paramedic) (ambulance driver) (medical assistant) (first aid attendant)] employed by a municipality [or other governmental unit])] was in the course of performing his official duties[(.) (; and)]

[or]

[B] with the intent to prevent that [(peace officer) (fireman) (employee of an institution or facility of the Department of Corrections [or any similar local correctional agency]) ([(an emergency medical technician) (paramedic) (ambulance driver) (medical assistant) (first aid attendant)] employed by a municipality [or other governmental unit])] from performing his official duties[(.) (; and)]

[or]

[C] in retaliation for that [(peace officer) (fireman) (employee of an institution or facility of the Department of Corrections [or any similar local correctional agency]) ([(an emergency medical technician) (paramedic) (ambulance driver) (medical assistant) (first aid attendant)] employed by a municipality [or other governmental unit])] performing his official duties[(.) (; and)]

[or]

[D] at a time when that [(inmate) (individual)] was present on the grounds of an institution or facility of the Department of Corrections [with the knowledge and approval of the chief administrative officer thereof].

[*Fifth Proposition:* That the defendant knew or should have known that the individual was [(a peace officer) (a fireman) (an emergency medical technician) (a paramedic) (an ambulance driver) (a medical assistant) (a first aid attendant)].]

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-4(a), (c)(1), and 5/9-1(a)(1), (b)(1), (2), and (12) (West 2013).

Give this instruction *only* when Instruction 6.05XX is also given. *See* Committee Note to Instruction 6.05XX.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24-25.00.

Use the bracketed Fifth Proposition *only* when the enhancing factor is based on the victim‘s status as a peace officer, fireman, an emergency medical technician, paramedic, ambulance driver, medical assistant, or first aid attendant. *See* Sections 9-1(b)(1) and 9-1(b)(12).

Do *not* use the Fifth Proposition when the enhancing factor is based on the victim's status as an employee, an inmate at, or an individual present in the Department of Corrections or a similar local correctional agency. *See* Section 9-1(b)(2).

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. Give Instruction 5.03.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury. The bracketed number paragraphs in the Third Proposition correlate to the bracketed number paragraphs in Instruction 6.05XX. The bracketed letter paragraphs in the Fourth Proposition do not correlate to Instruction 6.05XX.

7.01
Definition Of First Degree Murder

A person commits the offense of first degree murder when he kills an individual [without lawful justification] if, in performing the acts which cause the death,

[1] he intends to kill or do great bodily harm to that individual [or another];

[or]

[2] he knows that such acts will cause death to that individual [or another];

[or]

[3] he knows that such acts create a strong probability of death or great bodily harm to that individual [or another];

[or]

[4] he [(is attempting to commit) (is committing)] the offense of ____.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1 (West 2013).

This instruction applies to cases tried under P.A. 84-1450, which abolishes the offense of murder and replaces it with the offense of first degree murder.

Give Instruction 6.05, defining the offense of attempt following the definition of the forcible felony, when the basis for an instruction on felony murder is an alleged attempt to commit a forcible felony. However, no attempt issues instruction should be given unless the defendant also had been charged with an attempt offense.

When the prosecution is for an inchoate offense (i.e., attempt first degree murder, solicitation to commit first degree murder, conspiracy to commit first degree murder), do not give paragraphs [2], [3], or [4]. In addition, modify the murder definition in paragraph [1] in attempt first degree murder cases to require that the defendant had the intent to kill another. *See People v. Harris*, 72 Ill.2d 16, 377 N.E.2d 28 (1978).

Use the phrase “without lawful justification” whenever an instruction is to be given on an affirmative defense contained in Article 720. *See People v. Worsham*, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist. 1975).

When paragraph [4] is given, insert in the blank the applicable forcible felony from those

listed in 720 ILCS 5/2-8 (except second degree murder). Follow this instruction with the instruction defining that forcible felony.

The Committee has elected to put the phrase "or another" in brackets because, in the usual case, this portion of the statutory definition is not applicable to the factual context presented, and the presence of this might cause confusion.

In *People v. Ehlert*, 274 Ill.App.3d 1026, 1038, 654 N.E.2d 705 (1st Dist. 1995), the appellate court held that when some evidence showed that the victim (defendant's newborn child) may have died either shortly before birth or in the birth process, the court should instruct the jury that to find the defendant guilty, the jury must find beyond a reasonable doubt that the victim was born alive. In *Ehlert*, the appellate court proposed the following instruction:

"To sustain the charge of first degree murder, the State must prove the following propositions:

First: That the baby, Jane Doe, was born alive; and

Second: That after the live birth the defendant performed the acts which caused the death of the baby, Jane Doe; and

Third: That when the defendant did so, she intended to kill or do great bodily harm to the baby, Jane Doe, or She [sic] knew that her acts created a strong probability of death or great bodily harm to the baby, Jane Doe."

Ehlert, 274 Ill.App.3d at 1038.

Use applicable paragraphs and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Sets 27.01, 27.04A, 27.04B, 27.05, and 27.06.

7.01S
Definition Of Second Degree Murder When First Degree Murder Is Not Charged

A person commits the offense of second degree murder when he kills an individual [without lawful justification] if, in performing the acts which cause the death,

[1] he intends to kill or do great bodily harm to that individual [or another];

[or]

[2] he knows that such acts will cause death to that individual [or another];

[or]

[3] he knows that such acts create a strong probability of death or great bodily harm to that individual [or another].

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-2 (West 2013).

Give Instruction 7.02S.

Use the phrase "without lawful justification" whenever an instruction is to be given on an affirmative defense contained in 720 ILCS 5/7-1 through 5/7-14.

In *People v. Burks*, 189 Ill.App.3d 782, 545 N.E.2d 782 (3d Dist. 1989), the appellate court held that the State could elect to bring a charge of second degree murder without first charging the defendant with first degree murder. The indictment in *Burks* alleged that the defendant had committed first degree murder by shooting the victim, but that at the time of the killing he had unreasonably believed the circumstances to be such that if they existed would justify or exonerate his action. In this context, the appellate court stated the following:

"By charging a defendant with second degree murder, the State is alleging that it can prove the elements of first degree murder, but is conceding the presence of mitigating factors. Under these circumstances the defendant bears no burden to prove any mitigating factors. Of course, if the instant defendant is tried by a jury and the cause reaches the deliberations stage, special jury instructions will be needed to explain the elements of the offense."

Burks, 189 Ill.App.3d at 785.

The Committee believes this instruction and Instruction 7.02S comply with the directions of *Burks*. In effect, the State is required to prove the elements of first degree murder, but if it satisfies the jury it has done so, the only verdict and judgment to which it is entitled is guilty of

second degree murder. This result follows because the State, in the *Burks* situation, has conceded the presence of the mitigating factor that reduces the defendant's criminal behavior from first degree murder to second degree murder.

Accordingly, this instruction is identical to Instruction 7.01A except for two changes: (1) the name of the offense is different, and (2) paragraph [4] is omitted. This omission results from the statutory definition of second degree murder which excludes "felony murder" provisions contained in paragraph [4].

This instruction also applies when a defendant is charged with first degree murder, is convicted of second degree murder, and later has that conviction reversed and a new trial ordered. At the new trial, collateral estoppel prevents the State from retrying the defendant for first degree murder. *See People v. Newbern*, 219 Ill.App.3d 333, 354, 579 N.E.2d 583 (4th Dist. 1991); *People v. Thomas*, 216 Ill.App.3d 469, 472-73, 576 N.E.2d 1020 (1st Dist. 1991). Under these circumstances, give Instructions 7.01S and 7.02S.

The Committee has elected to put the phrase "or another" in brackets because, in the usual case, this portion of the statutory definition is not applicable to the factual context presented, and the presence of this phrase might cause confusion.

Use applicable bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

7.01X
Explanation To Jury Of The Reason For Designating One Category Of First Degree Murder As (Type A) And Another Category Of First Degree Murder As (Type B)

The terms "(Type A)" and "(Type B)" that I use in referring to first degree murder have no legal significance. I use those terms simply to distinguish between different kinds of first degree murder.

Committee Note

Instruction and Committee Note Approved January 30, 2015

Pursuant to 720 ILCS 5/9-2(a), as amended by P.A. 84-1450, effective July 1, 1987, a conviction of second degree murder cannot be based upon a charge of first degree murder under 720 ILCS 5/9-1(a)(3) (felony murder). Accordingly, when both kinds of first degree murder are charged, one kind under Section 9-1(a)(3) (felony murder) and the other kind under Section 9-1(a)(1) or 9-1(a)(2) ("knowing or intentional murder"), and when the court is going to instruct the jury on the lesser offense of second degree murder, Instruction 7.02 should be used for the first degree murder count under Section 9-1(a)(3) and either Instruction 7.04 or 7.06 should be used for the other first degree murder counts upon which the second degree murder instruction is based.

The Committee suggests using the designations (Type A) and (Type B) to distinguish between these two categories of first degree murder. The purpose of this instruction is to explain to the jury why these designations are being used.

The felony murder doctrine, embodied in 720 ILCS 5/9-1(a)(3), is almost never the sole basis for a charge in this State of first degree murder. Instead, the prosecution typically alleges "knowing or intentional murder" under Section 9-1(a)(1) or 9-1(a)(2) when charging first degree murder, and the prosecution adds to those charges a first degree murder count based on the felony murder doctrine if such a count may be supported by the evidence.

Accordingly, the Committee believes that there is no need for this instruction unless the jury is going to be instructed on second degree murder. Since the jury may be instructed on second degree murder as a lesser offense *only* of "knowing or intentional murder" (9-1(a)(1) or 9-1(a)(2)) and not of felony murder (9-1(a)(3)), the court must distinguish in its instructions between these two different categories of first degree murder.

For a further discussion of this subject, see the Committee Notes to Instructions 7.02X, 7.04, and 7.06; see also Sample Instruction 27.05 for an example of the utilization of this instruction.

The Committee recommends that this instruction be read to the jury immediately after the

court has read to the jury whichever instruction from the 2.01 series the court found applicable. Failure to use this instruction has been held to be reversible error. *People v. Alvine*, 173 Ill.2d 273, 671 N.E.2d 713 (1996).

For an example of the use of this instruction, see Sample Set 27.05.

7.02
Issues In First Degree Murder (When Second Degree Murder Is Not Also An Issue)

To sustain the charge of first degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of ____; and

Second Proposition: That when the defendant did so,

[1] he intended to kill or do great bodily harm to ____;

[or]

[2] he knew that his acts would cause death to ____;

[or]

[3] he knew that his acts created a strong probability of death or great bodily harm to ____;

[or]

[4] he was [(attempting to commit) (committing)] the offense of ____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1 (West 2013).

Give Instruction 7.01.

Use Instruction 7.02 to set forth the issues in first degree murder only when the court is not also instructing on the lesser offense of second degree murder. When the court is also instructing on second degree murder, instead of using a separate issues instruction for first degree murder, give the combined issues Instruction 7.04 or 7.06.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24-25.00.

Insert the name of the victim and the name of the felony (see Committee Note to Instruction 7.01) in the appropriate blanks. Modify this instruction to fit the transferred intent situation. *See People v. Forrest*, 133 Ill.App.2d 70, 272 N.E.2d 813 (1st Dist. 1971).

This instruction--and only one of this instruction--should be given to the jury to explain the issues in first degree murder. Do *not* give separate issues instructions for each of the different ways first degree murder can be charged under Sections 9-1(a)(1) through (a)(4). Instead, use the appropriate paragraphs within the Second Proposition. *People v. Johnson*, 250 Ill.App.3d 887, 620 N.E.2d 506 (4th Dist. 1993).

In *People v. Ehlert*, 274 Ill.App.3d 1026, 1038, 654 N.E.2d 705 (1st Dist. 1995), the appellate court held that when some evidence showed that the victim (defendant's newborn child) may have died either shortly before birth or in the birth process, the court should instruct the jury that to find the defendant guilty, the jury must find beyond a reasonable doubt that the victim was born alive. In *Ehlert*, the appellate court proposed the following instruction:

> To sustain the charge of first degree murder, the State must prove the following propositions:
>
> First: That the baby, Jane Doe, was born alive; and
>
> Second: That after the live birth the defendant performed the acts which caused the death of the baby, Jane Doe; and
>
> Third: That when the defendant did so, she intended to kill or do great bodily harm to the baby, Jane Doe, or She [sic] knew that her acts created a strong probability of death or great bodily harm to the baby, Jane Doe.

Ehlert, 274 Ill.App.3d at 1038.

Use applicable bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. Give Instruction 5.03.

7.02S
Issues In Second Degree Murder When First Degree Murder Is Not Charged

To sustain the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of ____; and

Second Proposition: That when the defendant did so,

[1] he intended to kill or do great bodily harm to ____;

[or]

[2] he knew that his acts would cause death to ____;

[or]

[3] he knew that his acts created a strong probability of death or great bodily harm to ____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-2 (West 2013).

Give Instruction 7.01S.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instructions from Chapter 24-25.00.

Insert in the blanks the name of the victim and the name of the felony (see note to Instruction 7.01). When the intended victim is someone other than the deceased, modify this instruction to fit the transferred intent situation. *See People v. Forrest*, 133 Ill.App.2d 70, 272 N.E.2d 813 (1st Dist. 1971).

Use applicable bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

7.02X
Explanation To Jury That It May Not Find Defendant Guilty Of Felony Murder And Not Guilty Of Underlying Felony

To sustain the charge of first degree murder (Type B), the State must prove that when the defendant performed the acts which caused the death of ____, the defendant was committing the offense of ____. Accordingly, you may find the defendant guilty of first degree murder (Type B) only if you also find the defendant guilty of ____.

If you find the defendant not guilty of ____, then you must find the defendant not guilty of first degree murder (Type B).

Committee Note

Instruction and Committee Note Approved January 30, 2015

This instruction should be used to avoid legally inconsistent verdicts that could arise when the jury is to be instructed on first degree murder under Instruction 7.02 and the *sole* basis for conviction is the felony murder doctrine.

When the felony murder doctrine is the sole basis for conviction, only paragraph [4] of the Second Proposition of Instruction 7.02 should be used.

Insert in the first blank the name of the alleged victim. Insert in the following blanks the name of the underlying felony as used in Instruction 7.02.

For an example of the use of this instruction, see Sample Set 27.05.

7.03
Definition Of Mitigating Factor—Second Degree Murder—Provocation

A mitigating factor exists so as to reduce the offense of first degree murder to the lesser offense of second degree murder if, at the time of the killing, the defendant acts under a sudden and intense passion resulting from serious provocation by [(the deceased) (some other person he endeavors to kill, but he negligently or accidentally kills the deceased)]. Serious provocation is conduct sufficient to excite an intense passion in a reasonable person.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-2(a)(1) and (b) (West 2013).

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Sets 27.04B and 27.05.

7.04
Issues Where Jury Instructed On Both First Degree Murder And Second Degree Murder—Provocation

To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of ____; and

Second Proposition: That when the defendant did so,

[1] he intended to kill or do great bodily harm to ____;

[or]

[2] he knew that such acts would cause death to ____;

[or]

[3] he knew that such acts created a strong probability of death or great bodily harm to ____.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations [on these charges] should end, and you should return a verdict of not guilty [of first degree murder].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of ____, acted under a sudden and intense passion resulting from serious provocation by [(the deceased) (some other person he endeavors to kill, but he negligently or accidentally kills the deceased)].

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of first degree murder.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1, 9-2(a)(1) and 9-2(b) (West 2013).

Give Instruction 7.01.

Pursuant to Section 9-2(a), as amended by P.A. 84-1450, the offense of second degree murder may not be based upon first degree murder under Section 9-1(a)(3) (felony murder). When first degree murder is charged under only Section 9-1(a)(3), Instruction 7.02 should be used. When first degree murder under Section 9-1(a)(3) and first degree murder under Section 9-1(a)(1) or 9-1(a)(2) are both charged and the court is also instructing on the lesser offense of second degree murder, Instruction 7.02 should be used for the count under Section 9-1(a)(3), and Instruction 7.04 should be used for the other first degree murder counts upon which second degree murder may be based. *See* Instructions 7.01X and 7.02X.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24-25.00.

Insert in the blanks the name of the victim. When the intended victim is someone other than the deceased, modify this instruction to fit the transferred intent situation. *See People v. Forrest*, 133 Ill.App.2d 70, 272 N.E.2d 813 (1st Dist. 1971).

Use bracketed language "[of first degree murder]" and "[on these charges]" when the jury will be instructed on other offenses in addition to first degree murder and second degree murder.

This instruction—and only one of this instruction—should be given to the jury to explain the issues in first degree murder. Do *not* give separate issues instructions for each of the different ways first degree murder can be charged under 720 ILCS 5/9-1(a)(1) through (a)(4). Instead, use the appropriate paragraphs within the Second Proposition. *People v. Johnson*, 250 Ill.App.3d 887, 620 N.E.2d 506 (4th Dist. 1993).

Use applicable paragraphs and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and

should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

For an example of the use of this instruction, see Sample Set 27.04B.

7.04X
Issues Where Jury Instructed On First Degree Murder And Second Degree Murder (Provocation) And Involuntary Manslaughter

To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of ____; and

Second Proposition: That when the defendant did so,

[1] he intended to kill or do great bodily harm to ____;

[or]

[2] he knew that such acts would cause death to ____;

[or]

[3] he knew that such acts created a strong probability of death or great bodily harm to ____.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of ____, acted under a sudden and intense passion resulting from serious provocation by [(the deceased) (some other person he endeavors to kill, but he negligently or accidentally kills the deceased)].

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of first degree murder.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1(a), 9-2(a)(1) and 9-2(b) (West 2013).

Pursuant to Section 9-2(a), as amended by P.A. 84-1450, the offense of second degree murder may not be based upon first degree murder under Section 9-1(a)(3) (felony murder). When first degree murder is charged under only Section 9-1(a)(3), Instruction 7.02 should be used. When first degree murder under Section 9-1(a)(3) and first degree murder under Section 9-1(a)(1) or 9-1(a)(2) are both charged and the court is also instructing on the lesser offense of second degree murder and the lesser included offense of involuntary manslaughter, Instruction 7.02 should be used for the count under Section 9-1(a)(3), and Instruction 7.04X should be used for the other first degree murder counts upon which second degree murder and involuntary manslaughter may be based. *See* Instructions 7.01X and 7.02X.

Give Instructions 7.01 (definition of first degree murder), 7.03 (definition of mitigating factor—second degree murder—provocation), 7.07 (definition of involuntary manslaughter), and 7.08 (issues in involuntary manslaughter).

This instruction should be used in conjunction with Instructions 2.01I and 26.01I through 2.01P and 26.01P, the charging and concluding instructions for use when first degree murder, second degree murder, and involuntary manslaughter are all at issue. Do *not* use this instruction in conjunction with any other instruction from the 2.01 and 26.01 series.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24-25.00.

This instruction should be used *only* when the jury is to be instructed on first degree murder, second degree murder (provocation), and involuntary manslaughter.

This instruction should *not* be used if the jury is to be instructed on: (1) second degree murder (belief in justification); (2) second degree murder (belief in justification *and* provocation); (3) first degree murder only; (4) second degree murder only; (5) first degree

murder and second degree murder only; (6) first degree murder and involuntary manslaughter only; or (7) second degree murder and involuntary manslaughter only. *See* Instructions 7.04A, 7.06A, 7.06B, 7.06X, and 7.06Y.

Insert in the blanks the name of the victim. When the intended victim is someone other than the deceased, modify this instruction to fit the transferred intent situation. *See People v. Forrest*, 133 Ill.App.2d 70, 272 N.E.2d 813 (1st Dist. 1971).

Use applicable paragraphs and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

7.05
Definition Of Mitigating Factor—Second Degree Murder—Belief In Justification

A mitigating factor exists so as to reduce the offense of first degree murder to the lesser offense of second degree murder if at the time of the killing the defendant believes that circumstances exist which would justify the deadly force he uses, but his belief that such circumstances exist is unreasonable.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-2(a)(2) (West 2013).

For an example of the use of this instruction, see Sample Sets 27.01, 27.05, and 27.06.

7.06
Issues Where Jury Instructed On Both First Degree Murder And Second Degree Murder—Belief In Justification

To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of ____; and

Second Proposition: That when the defendant did so,

[1] he intended to kill or do great bodily harm to ____;

[or]

[2] he knew that such acts would cause death to ____;

[or]

[3] he knew that such acts created a strong probability of death or great bodily harm to ____;

and

Third Proposition: That the defendant was not justified in using the force which he used.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations [on these charges] should end, and you should return a verdict of not guilty [of first degree murder].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of

____, believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable.

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of first degree murder.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1, 9-2(a), and 9-2(b) (West 2013).

Give Instruction 7.01.

Pursuant to Section 9-2(a), as amended by P.A. 84-1450, the offense of second degree murder may not be based upon first degree murder under Section 9-1(a)(3) (felony murder). When first degree murder is charged under only Section 9-1(a)(3), Instruction 7.02 should be used. When first degree murder under Section 9-1(a)(3) and first degree murder under Section 9-1(a)(1) or 9-1(a)(2) are both charged and the court is also instructing on the lesser offense of second degree murder, Instruction 7.02 should be used for the count under Section 9-1(a)(3), and Instruction 7.06 should be used for the other first degree murder counts upon which second degree murder may be based. *See* Instructions 7.01X and 7.02X.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24-25.00.

Insert in the blanks the name of the victim. When the intended victim is someone other than the deceased, modify this instruction to fit the transferred intent situation. *See People v. Forrest*, 133 Ill.App.2d 70, 272 N.E.2d 813 (1st Dist. 1971).

This instruction—and only one of this instruction—should be given to the jury to explain the issues in first degree murder. Do *not* give separate issues instructions for each of the different ways first degree murder can be charged under 720 ILCS 5/9-1(a)(1) through (a)(4). Instead, use the appropriate paragraphs within the Second Proposition. *People v. Johnson*, 250 Ill.App.3d 887, 620 N.E.2d 506 (4th Dist. 1993).

Use bracketed language "[of first degree murder]" and "[on these charges]" when the jury will be instructed on other offenses in addition to first degree murder and second degree murder.

Use applicable paragraphs and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

For an example of the use of this instruction, see Sample Set 27.01, 27.05, and 27.06.

7.06B
Issues Where Jury Instructed On Both First Degree Murder And Second Degree Murder—Both Provocation And Belief In Justification

To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of ____; and

Second Proposition: That when the defendant did so,

[1] he intended to kill or do great bodily harm to ____;

[or]

[2] he knew that such acts would cause death to ____;

[or]

[3] he knew that such acts created a strong probability of death or great bodily harm to ____;

and

Third Proposition: That the defendant was not justified in using the force which he used.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations [on these charges] should end, and you should return a verdict of not guilty [of first degree murder].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that either of the following mitigating factors is present: that the defendant, at the time he performed the acts which caused

the death of ____,

believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable,

or

acted under a sudden and intense passion resulting from serious provocation by [(the deceased) (some other person he endeavors to kill, but he negligently or accidentally kills the deceased)].

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that either mitigating factor is present so that he is guilty of the lesser offense of second degree murder, instead of first degree murder, you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that either mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of first degree murder.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1(a), 9-2(a)(1) and (2) (West 2013).

Pursuant to Section 9-2(a), the offense of second degree murder may not be based upon first degree murder under Section 9-1(a)(3) (felony murder). When first degree murder is charged under only Section 9-1(a)(3), Instruction 7.02 should be used. When first degree murder under Section 9-1(a)(3) and first degree murder under Section 9-1(a)(1) or 9-1(a)(2) are both charged and the court is also instructing on the lesser offense of second degree murder, Instruction 7.02 should be used for the count under Section 9-1(a)(3), and Instruction 7.06B should be used for the other first degree murder counts upon which second degree murder may be based. *See* Instructions 7.01X and 7.02X.

Give Instructions 7.01 (definition of first degree murder), 7.03 (definition of mitigating factor--second degree murder—provocation), and 7.05 (definition of mitigating factor--second degree murder—belief in justification).

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24-25.00.

The Committee added this instruction for use *only* in cases in which the court will instruct the jury on first degree murder and *both* theories of second degree murder: provocation

and belief in justification. Do *not* give this instruction if the jury is to be instructed on only one theory of second degree murder.

If the jury is to be instructed solely on provocation theory second degree murder, give Instruction 7.04.

If the jury is to be instructed solely on belief in justification theory second degree murder, give Instruction 7.06.

Insert in the blanks the name of the victim. When the intended victim is someone other than the deceased, modify this instruction to fit the transferred intent situation. *See People v. Forrest*, 133 Ill.App.2d 70, 272 N.E.2d 813 (1st Dist. 1971).

Use the bracketed language "[of first degree murder]" and "[on these charges]" when the jury will be instructed on other offenses in addition to first degree murder and second degree murder.

This instruction—and only one of this instruction—should be given to the jury to explain the issues in first degree murder. Do *not* give separate issues instructions for each of the different ways first degree murder can be charged under 720 ILCS 5/9-1(a)(1) through (a)(4). Instead, use the appropriate paragraphs within the Second Proposition. *People v. Johnson*, 250 Ill.App.3d 887, 620 N.E.2d 506 (4th Dist. 1993).

Use the bracketed language "[of first degree murder]" and "[on these charges]" when the jury will be instructed on other offenses in addition to first degree murder and second degree murder.

Use applicable paragraphs and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. Give Instruction 5.03.

7.06X
Issues Where Jury Instructed On First Degree Murder And Second Degree Murder (Belief In Justification) And Involuntary Manslaughter

To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of ____; and

Second Proposition: That when the defendant did so,

[1] he intended to kill or do great bodily harm to ____;

[or]

[2] he knew that such acts would cause death to ____;

[or]

[3] he knew that such acts created a strong probability of death or great bodily harm to ____;

and

Third Proposition: That the defendant was not justified in using the force which he used.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating

factor is present: that the defendant, at the time he performed the acts which caused the death of ____, believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable.

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of first degree murder.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1(a), 9-2(a)(2) (West 2013).

Pursuant to Section 9-2(a), as amended by P.A. 84-1450, the offense of second degree murder may not be based upon first degree murder under Section 9-1(a)(3) (felony murder). When first degree murder is charged under only Section 9-1(a)(3), Instruction 7.02 should be used. When first degree murder under Section 9-1(a)(3) and first degree murder under Section 9-1(a)(1) or 9-1(a)(2) are both charged and the court is also instructing on the lesser offense of second degree murder and the lesser included offense of involuntary manslaughter, Instruction 7.02 should be used for the count under Section 9-1(a)(3), and Instruction 7.06X should be used for the other first degree murder counts upon which second degree murder and involuntary manslaughter may be based. *See* Instructions 7.01X and 7.02X.

Give Instructions 7.01 (definition of first degree murder), 7.05 (definition of mitigating factor—second degree murder—belief in justification), 7.07 (definition of involuntary manslaughter), and 7.08 (issues in involuntary manslaughter).

This instruction should be used in conjunction with Instructions 2.01I and 26.01I through 2.01P and 26.01P, the charging and concluding instructions for use when first degree murder, second degree murder, and involuntary manslaughter are all at issue. Do *not* use this instruction in conjunction with any other instruction from the 2.01 and 26.01 series.

This instruction should be used *only* when the jury is to be instructed on first degree murder, second degree murder (belief in justification), and involuntary manslaughter.

This instruction should *not* be used if the jury is to be instructed on: (1) second degree murder (provocation); (2) second degree murder (provocation *and* belief in justification); (3) first degree murder only; (4) second degree murder only; (5) first degree murder and second degree

murder only; (6) first degree murder and involuntary manslaughter only; or (7) second degree murder and involuntary manslaughter only. *See* Instructions 7.04A, 7.04X, 7.06A, 7.06B, and 7.06Y.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24-25.00.

Insert in the blanks the name of the victim. When the intended victim is someone other than the deceased, modify this instruction to fit the transferred intent situation. *See People v. Forrest*, 133 Ill.App.2d 70, 272 N.E.2d 813 (1st Dist. 1971).

Use applicable paragraphs and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

7.06Y
Issues Where Jury Instructed On First Degree Murder And Second Degree Murder (Provocation And Belief In Justification) And Involuntary Manslaughter

To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of ____; and

Second Proposition: That when the defendant did so,

[1] he intended to kill or do great bodily harm to ____;

[or]

[2] he knew that such acts would cause death to ____;

[or]

[3] he knew that such acts created a strong probability of death or great bodily harm to ____;

and

Third Proposition: That the defendant was not justified in using the force which he used.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that either of the following

mitigating factors is present: that the defendant, at the time he performed the acts which caused the death of ____,

believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable,

or

acted under a sudden and intense passion resulting from serious provocation by [(the deceased) (some other person he endeavors to kill, but he negligently or accidentally kills the deceased)].

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that either mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that either mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of first degree murder.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1(a), 9-2(a)(1) and (2) (West 2013).

Pursuant to Section 9-2(a), as amended by P.A. 84-1450, the offense of second degree murder may not be based upon first degree murder under Section 9-1(a)(3) (felony murder). When first degree murder is charged under only Section 9-1(a)(3), Instruction 7.02 should be used. When first degree murder under Section 9-1(a)(3) and first degree murder under Section 9-1(a)(1) or 9-1(a)(2) are both charged and the court is also instructing on the lesser offense of second degree murder and the lesser included offense of involuntary manslaughter, Instruction 7.02 should be used for the count under Section 9-1(a)(3), and Instruction 7.06Y should be used for the other first degree murder counts upon which second degree murder and involuntary manslaughter may be based. *See* Instructions 7.01X and 7.02X.

Give Instructions 7.01 (definition of first degree murder), 7.03 (definition of mitigating factor—second degree murder—provocation), 7.05 (definition of mitigating factor—second degree murder—belief in justification), 7.07 (definition of involuntary manslaughter), and 7.08 (issues in involuntary manslaughter).

This instruction should be used in conjunction with Instructions 2.01I and 26.01I through 2.01P and 26.01P, the charging and concluding instructions for use when first degree murder,

second degree murder, and involuntary manslaughter are all at issue. Do *not* use this instruction in conjunction with any other instruction from the 2.01 and 26.01 series.

This instruction should be used *only* when the jury is to be instructed on first degree murder, second degree murder (provocation *and* belief in justification), and involuntary manslaughter.

This instruction should *not* be used if the jury is to be instructed on: (1) second degree murder (provocation only); (2) second degree murder (belief in justification only); (3) first degree murder only; (4) second degree murder only; (5) first degree murder and second degree murder only; (6) first degree murder and involuntary manslaughter only; or (7) second degree murder and involuntary manslaughter only. *See* Instructions 7.04, 7.04X, 7.06, 7.06X, and 7.06B.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24-25.00.

Insert in the blanks the name of the victim. When the intended victim is someone other than the deceased, modify this instruction to fit the transferred intent situation. *See People v. Forrest*, 133 Ill.App.2d 70, 272 N.E.2d 813 (1st Dist.1971).

Use applicable paragraphs and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

7.07
Definition Of Involuntary Manslaughter

A person commits the offense of involuntary manslaughter when he unintentionally causes the death of an individual [without lawful justification] by acts which are performed recklessly and are likely to cause death or great bodily harm to another.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-3(a) (West 2013).

Give Instruction 5.01, defining "recklessness."

Use the phrase "without lawful justification" whenever an instruction is to be given on an affirmative defense contained in Article 7. *See People v. Worsham*, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist. 1975).

For an example of the use of this instruction, see Sample Set 27.06.

7.08
Issues In Involuntary Manslaughter

To sustain the charge of involuntary manslaughter, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of _____; and

Second Proposition: That the defendant performed those acts recklessly; and

Third Proposition: That those acts were likely to cause death or great bodily harm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty of involuntary manslaughter.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-3(a) (West 2013).

Give Instruction 7.07.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24-25.00.

Insert in the blank the victim's name.

The Committee added the phrase "of involuntary manslaughter" in the second to the last paragraph to highlight this offense when the jury is also considering first degree murder or second degree murder. *See, e.g.*, Instruction 26.01I. However, the Committee chose not to place that phrase in brackets because its inclusion should not interfere with the jury's deliberations in any other context.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. Give Instruction 5.03.

7.11
Definition Of Concealment Of Homicidal Death

A person commits the offense of concealment of homicidal death when he knowingly conceals the death of any other person with knowledge that the other person has died by homicidal means.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-3.4(a) (West 2013).

7.12
Issues In Concealment Of Homicidal Death

To sustain the charge of concealment of homicidal death, the State must prove the following propositions:

First Proposition: That the defendant performed acts which concealed the death of ____; and

Second Proposition: That when the defendant did so he knew that ____ had died by homicidal means.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-3.4 (West 2013).

Give Instruction 7.11.

Give Instruction 7.13, defining "homicidal means".

When applicable, give Instruction 7.14, defining "conceals".

Insert in the blanks the name of the person whose death was concealed.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. Give Instruction 5.03.

7.13
Definition Of Homicidal Means

The term "homicidal means" means any act[s], lawful or unlawful, of a person which cause[s] the death of another person.

Committee Note

Instruction and Committee Note Approved January 30, 2015

See 720 ILCS 5/9-3.4(b-5) (West 2013).

7.14
Definition Of Conceal

The word "conceal" means the performing of some act or acts for the purpose of preventing or delaying the discovery of a death by homicidal means. "Conceal" means something more than simply withholding knowledge or failing to disclose information.

Committee Note

Instruction and Committee Note Approved January 30, 2015

See 720 ILCS 5/9-3.4(b-5) (West 2013).

See People v. Stiles, 46 Ill.App.3d 359, 360 N.E.2d 1217 (3d Dist. 1977).

Although the statute does not specifically refer to concealment of the "cause of death," at least two appellate courts have held the statute includes situations where "the body itself is concealed or where the homicidal nature of death is actively concealed, as in making a homicide appear an accident." *People v. Vath*, 38 Ill.App.3d 389, 395, 347 N.E.2d 813 (5th Dist. 1976), cited with approval in *People v. Hummel*, 48 Ill.App.3d 1002, 1004, 365 N.E.2d 122 (4th Dist. 1977).

7.15
Causation In Homicide Cases Excluding Felony Murder

In order for you to find that the acts of the defendant caused the death of ____, the State must prove beyond a reasonable doubt that defendant's acts were a contributing cause of the death and that the death did not result from a cause unconnected with the defendant. However, it is not necessary that you find the acts of the defendant were the sole and immediate cause of death.

Committee Note

Instruction and Committee Note Approved January 30, 2015

The Illinois Supreme Court has held that a defendant's act need not be the sole or immediate cause of death; it is sufficient if the defendant's act contributed to cause the death. *People v. Brown*, 169 Ill.2d 132, 661 N.E.2d 287 (1996); *People v. Brackett*, 117 Ill.2d 170, 510 N.E.2d 877 (1987). *See also People v. Woodard*, 367 Ill.App.3d 304, 854 N.E.2d 674 (1st Dist. 2006); *People v. Martinez*, 348 Ill.App.3d 521, 810 N.E.2d 199 (1st Dist. 2004).

The Committee recommends that this instruction be given whenever causation is an issue under Section 720 ILCS 9-1(a)(1) (intentional murder), 9-1(a)(2) (knowing murder), or 720 ILCS 5/9-3(a) (reckless homicide). However, when felony murder (720 ILCS 9-1(a)(3)) is charged and causation is an issue, Instruction 7.15A should also be given.

For the definition of "proximate cause" in aggravated driving under the influence cases, see Instruction 23.28A.

For the definition of "proximate cause" in all other cases, see Instruction 4.24.

Insert in the blank the name of the alleged victim.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant." Give Instruction 5.03.

For an example of the use of this instruction, see Sample Set 27.06.

7.15A
Causation In Felony Murder Cases

A person commits the offense of first degree murder when he commits the offense of _____, and the death of an individual results as a direct and foreseeable consequence of a chain of events set into motion by his commission of the offense of _____.

It is immaterial whether the killing is intentional or accidental [(or committed by a confederate without the connivance of the defendant) (or committed by a third person trying to prevent the commission of the offense of _____)].

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1(a)(3) (West 2013).

In *People v. Hudson*, 222 Ill.2d 392, 408, 856 N.E.2d 1078 (2006), the supreme court set out the above definition of causation in felony murder cases where the defendant did not perform the acts which caused the death of the deceased. *See also People v. Lowery*, 178 Ill.2d 462, 467, 687 N.E.2d 973 (1997).

When causation is an issue under section 720 ILCS 5/9-1(a)(1) (intentional murder), 720 ILCS 5/9-1(a)(2) (knowing murder) or 720 ILCS 5/9-3(a) (reckless homicide) as well as felony murder then Instruction 7.15 should also be given.

For the definition of "proximate cause" in aggravated driving under the influence cases, see Instruction 23.28A.

For the definition of "proximate cause" in all other cases, see Instruction 4.24.

Insert in all three blanks the applicable forcible felony.

Use applicable bracketed material in the second paragraph. In some instances neither clause in the bracketed paragraph is appropriate and under those circumstances the sentence should stop after the word "accidental." *See, e.g.*, *People v. Brackett*, 117 Ill.2d 170, 510 N.E.2d 877 (1987).

The brackets are provided solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

7.16
Definition Of Intentional Homicide Of An Unborn Child

A person commits the offense of intentional homicide of an unborn child if, in performing the acts which cause the death of an unborn child, [without lawful justification,] he

[1] intended to cause the death of or do great bodily harm to the pregnant woman or her unborn child;

[or]

[2] knew that such acts would cause death or great bodily harm to the pregnant woman or her unborn child;

[or]

[3] knew that his acts created a strong probability of death or great bodily harm to the pregnant woman or her unborn child;

and

[4] he knew that the woman was pregnant.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1.2 (West 2013).

Give Instruction 7.17.

Give Instructions 7.24 and 7.25.

Use applicable bracketed paragraphs. *See People v. Gillespie*, 276 Ill.App.3d 495, 659 N.E.2d 12 (1st Dist. 1995) (holding that the defendant's actual knowledge of pregnancy constitutes an element of offense).

Use the phrase "without lawful justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 (720 ILCS 5/7-1 *et seq.*). *See People v. Worsham*, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist. 1975).

Use applicable bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

7.17
Issues In Intentional Homicide Of An Unborn Child

To sustain the charge of intentional homicide of an unborn child, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of the unborn child of ____; and

Second Proposition: That when the defendant did so, he

[1] intended to cause the death of or do great bodily harm to ____ or her unborn child;

[or]

[2] knew that such acts would cause death or great bodily harm to ____ or her unborn child;

[or]

[3] knew that his acts created a strong probability of death or great bodily harm to ____ or her unborn child;

and

Third Proposition: That the defendant knew ____ was pregnant.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1.2 (West 2013).

Give Instruction 7.16.

Give Instruction 7.24, defining “unborn child”.

Use applicable bracketed paragraphs. The bracketed numbers correspond to the alternatives of the same number in Instruction 7.16, the definitional instruction for this offense. Select the corresponding alternatives to the alternatives selected from the definitional instruction.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

7.18
Definition Of Voluntary Manslaughter Of An Unborn Child—Provocation

A person commits the offense of voluntary manslaughter of an unborn child when he kills an unborn child [without lawful justification] if, in performing the acts which cause the death, he acts under a sudden and intense passion resulting from serious provocation by a person, and he

[1] intends to kill or do great bodily harm to that person,

[or]

[2] knows that such acts will cause death to that person,

[or]

[3] knows that such acts create a strong probability of death or great bodily harm to that person, but he negligently or accidently kills the unborn child.

Serious provocation is conduct sufficient to excite an intense passion in a reasonable person.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-2.1(a) (West 2013).

Give Instruction 7.19A or 7.19B.

Give Instruction 7.24, defining "unborn child".

Give Instruction 7.25, defining "person as not including the pregnant woman whose unborn child is killed".

Use the phrase "without lawful justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 (720 ILCS 5/7-1 *et seq.*). *See People v. Worsham*, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist. 1975).

Section 9-2.1(a) contains no mental state applicable to the defendant's endeavoring to kill the person causing the serious provocation. Because of Sections 4-3 and 4-9, and cases interpreting those sections (*see People v. Whitlow*, 89 Ill.2d 322, 433 N.E.2d 629 (1982); *People v. Langford*, 195 Ill.App.3d 366, 552 N.E.2d 274 (4th Dist. 1990)), the Committee believes that voluntary manslaughter of an unborn child (under Section 9-2.1(a)) is not an absolute liability offense and must contain some mental states. The Committee decided to use those mental states shown in above paragraphs [1], [2], and [3] because these mental states are consistent with those required for second degree murder of a person and the former offense of voluntary manslaughter.

This latter consideration is particularly important because the Committee believes the Illinois Supreme Court decision in *People v. Reddick*, 123 Ill.2d 184, 526 N.E.2d 141 (1988), is applicable to the relationship between voluntary manslaughter of an unborn child—provocation and intentional homicide of an unborn child. *See* Committee Note to Instructions 7.19A and 7.19B.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

7.18A
Definition Of Voluntary Manslaughter Of An Unborn Child—Belief In Justification

A person commits the crime of voluntary manslaughter of an unborn child when he kills an unborn child [without lawful justification] if, in performing the acts which cause the death, he

[1] intends to kill or do great bodily harm to the pregnant woman or her unborn child,

[or]

[2] knows that such acts will cause death to the pregnant woman or her unborn child,

[or]

[3] knows that such acts create a strong probability of death or great bodily harm to the pregnant woman or her unborn child, and, at the time of the killing, he believes that circumstances exist which would justify the deadly force he uses, but his belief that such circumstances exist is unreasonable.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-2.1(a) (West 2013).

Give Instruction 7.19A.

Give Instruction 7.24, defining "unborn child".

Give Instruction 7.25, defining "person as not including the pregnant woman whose unborn child is killed".

Use the phrase "without lawful justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of Chapter 720. *See People v. Worsham*, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist. 1975).

Even though the mental state set forth in Section 9-2.1(b) is that the accused "intentionally or knowingly kills an unborn child," the Committee elaborated upon those mental states, as shown in paragraphs [1], [2], and [3] above. The Committee did so in order to meld the charges of intentional homicide of an unborn child and voluntary manslaughter of an unborn child (under Section 9-2.1(b)) into one issues instruction having the same mental states. (*See* Instruction 7.19A and the discussion of *People v. Reddick*, 123 Ill.2d 184, 526 N.E.2d 141(1988), in that instruction's Committee Note.) The Committee believes that the elaborated mental states contained in this instruction are consistent with the "intentionally or knowingly" language of Section 9-2.1(b).

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

7.19A
Issues In Intentional Homicide Of An Unborn Child When The Jury Is Also To Be Instructed On Voluntary Manslaughter Of An Unborn Child—Provocation By The Pregnant Woman

To sustain the charge of intentional homicide of an unborn child, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of the unborn child of ____; and

Second Proposition: That when the defendant did so, he

[1] intended to kill or do great bodily harm to the unborn child of ____;

[or]

[2] knew that his acts would cause death to the unborn child of ____;

[or]

[3] knew that his acts created a strong probability of death or great bodily harm to the unborn child of ____.

If you find from your consideration of all the evidence that both of these propositions have been proved beyond a reasonable doubt, you should find the defendant guilty of intentional homicide of an unborn child and your deliberations should end.

If you find from your consideration of all the evidence that the First Proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty of intentional homicide of an unborn child and not guilty of voluntary manslaughter of an unborn child and your deliberations should end.

If you find from your consideration of all the evidence that the First Proposition has been proved beyond a reasonable doubt, but the Second Proposition has not been proved beyond a reasonable doubt, you should now consider the following proposition:

Third Proposition: That when the defendant performed the acts which caused the death of the pregnant woman's unborn child, he

[1] intended to kill or do great bodily harm to the pregnant woman;

[or]

[2] knew that his acts would cause death to the pregnant woman;

[or]

[3] knew that his acts created a strong probability of death or great bodily harm to the pregnant woman.

If you find from your consideration of all the evidence that this Third Proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty of intentional homicide of an unborn child and not guilty of voluntary manslaughter of an unborn child and your deliberations should end.

If you find from your consideration of all the evidence that this Third Proposition has been proved beyond a reasonable doubt, you should go on with your deliberations to decide whether the defendant is guilty of intentional homicide of an unborn child instead of voluntary manslaughter of an unborn child.

To sustain the charge of intentional homicide of an unborn child instead of voluntary manslaughter of an unborn child, the State must prove beyond a reasonable doubt the following additional proposition:

> That the defendant, at the time he performed the acts which caused the death of the unborn child of ____, did not act under a sudden and intense passion resulting from serious provocation by the pregnant woman he endeavored to kill, but he negligently or accidently killed the unborn child of ____.

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt this additional proposition, you should find the defendant guilty of intentional homicide of an unborn child.

If you find from your consideration of all the evidence that the State has not proved beyond a reasonable doubt this additional proposition, you should find the defendant guilty of voluntary manslaughter of an unborn child.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1.2(a) and 9-2.1(a) (West 2013).

Give Instruction 7.18.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instructions from Chapter 24-25.00. Any additional proposition to be considered by

the jury pursuant to Chapter 24-25.00 must be added to this instruction as a Third Proposition which the State must prove beyond a reasonable doubt *before* the jury may consider whether the State has proved beyond a reasonable doubt the additional proposition in its determination as to whether the defendant is guilty of murder or voluntary manslaughter.

Because the Committee believes the relationship between intentional homicide of an unborn child and voluntary manslaughter of an unborn child is essentially the same as the relationship between murder and voluntary manslaughter (as those offenses were defined in Sections 9-1 and 9-2, prior to the enactment of first degree murder and second degree murder under P.A. 84-1450), the Committee has chosen for this instruction to follow the format used in Instruction 7.02B of the Third Edition.

The Committee also believes that the analysis of the Illinois Supreme Court in *People v. Reddick,* 123 Ill.2d 184, 526 N.E.2d 141 (1988), is applicable to the relationship between intentional homicide of an unborn child and voluntary manslaughter of an unborn child. In *Reddick,* the supreme court reassessed the elements of murder and voluntary manslaughter in cases in which a jury is to be instructed on both charges. The supreme court stated the following:

> "Thus, under the 1961 Code, if a defendant in a murder trial presents sufficient evidence to raise issues which would reduce the charge of murder to voluntary manslaughter, then to sustain the murder conviction, the People must prove beyond a reasonable doubt that those defenses are meritless, and must also prove beyond a reasonable doubt the statutory elements of murder.
>
> The burden-of-proof instructions regarding both voluntary manslaughter and murder in both of these cases were thus incorrect in placing upon the People the burden of proving the existence of intense passion or unreasonable belief in justification. The instructions should have placed upon the People the burden of disproving the existence of either of these two states of mind."

Reddick, 123 Ill.2d at 197.

This instruction follows the mandate of the supreme court by requiring the State, in order to obtain a conviction for intentional homicide of an unborn child, to prove beyond a reasonable doubt each of the elements thereof and then further to prove beyond a reasonable doubt that a reducing factor which reduces that charge to voluntary manslaughter of an unborn child is *not* present.

Because the elements of intentional homicide of an unborn child and voluntary manslaughter of an unborn child are identical except for the presence of a reducing factor, this issues instruction need not contain a separate set of propositions constituting the elements of voluntary manslaughter of an unborn child. The question of the existence of the reducing factor is one which the jury need not consider until it has first found that the State has proved beyond a reasonable doubt each of the elements of intentional homicide of an unborn child.

In view of *Reddick*, the Committee has not provided a separate issues instruction on the charge of voluntary manslaughter of an unborn child—provocation by the pregnant woman because the Committee believes that this charge is not likely to be brought by the State without a defendant also being charged with intentional homicide of an unborn child.

Insert in the blanks the name of the pregnant woman. Use this instruction only if the pregnant woman is the source of the serious provocation. If another person is the source of the serious provocation, use Instruction 7.19B.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

7.19B
Issues In Voluntary Manslaughter Of An Unborn Child—Provocation By A Person Other Than The Pregnant Woman—Transferred Intent

To sustain the charge of voluntary manslaughter of an unborn child, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of the unborn child of ____; and

Second Proposition: That when the defendant did so, he

[1] intended to kill or do great bodily harm to a person other than ____;

[or]

[2] knew that his acts would cause death to a person other than ____;

[or]

[3] knew that his acts created a strong probability of death or great bodily harm to a person other than _____;

and

Third Proposition: That the defendant, at the time he performed the acts which caused the death of the unborn child of ____, acted under a sudden and intense passion resulting from serious provocation by the person he endeavors to kill, but he negligently or accidentally killed the unborn child of ____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-2.1(a) (West 2013).

This instruction is to be given only when the defendant is charged with voluntary manslaughter of an unborn child under a "transferred intent" theory. In this situation, the State is alleging that the defendant, while acting under a passion caused by serious provocation, endeavored to kill a person (other than a pregnant woman), but he negligently or accidently killed an unborn child.

In a transferred intent situation, the offense of intentional homicide of an unborn child is never an issue, because there is no allegation that the defendant either intentionally or knowingly acted to kill either the pregnant woman or the unborn child. The jury need only consider whether the State has proved all the elements of voluntary manslaughter of an unborn child beyond a reasonable doubt.

Insert in the blanks the name of the pregnant woman.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

7.19C
Issues In Intentional Homicide Of An Unborn Child When The Jury Is Also To Be Instructed On Voluntary Manslaughter Of An Unborn Child—Belief In Justification

To sustain either the charge of intentional homicide of an unborn child or the charge of voluntary manslaughter of an unborn child, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of the unborn child of ____; and

Second Proposition: That when the defendant did so, he

[1] intended to kill or do great bodily harm to ____ or her unborn child;

[or]

[2] knew that his acts would cause death to ____ or her unborn child;

[or]

[3] knew that his acts created a strong probability of death or great bodily harm to _____ or her unborn child.

and

Third Proposition: That the defendant was not justified in using the force that he used.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of intentional homicide of an unborn child and not guilty of voluntary manslaughter] and your deliberations [on these charges] should end.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should go on with your deliberations to decide whether the defendant is guilty of intentional homicide of an unborn child instead of voluntary manslaughter of an unborn child.

To sustain the charge of intentional homicide of an unborn child instead of voluntary manslaughter of an unborn child, the State must prove beyond a reasonable doubt the following additional proposition:

> That the defendant, at the time he performed the acts which caused the death of the unborn child of ____, did not believe that circumstances existed which would have justified the deadly force he used.

If you find from your consideration of all the evidence that this additional proposition has

been proved beyond a reasonable doubt, you should find the defendant guilty of intentional homicide of an unborn child.

If you find from your consideration of all the evidence that this additional proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty of voluntary manslaughter of an unborn child.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-2.1(a) (West 2013).

Give Instruction 7.18A.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instructions from Chapter 24-25.00. Any additional proposition to be considered by the jury pursuant to Chapter 24-25.00 must be added to this instruction as a Fourth Proposition which the State must prove beyond a reasonable doubt *before* the jury may consider whether the State has proved beyond a reasonable doubt the additional proposition in its determination as to whether the defendant is guilty of murder or voluntary manslaughter.

Because the Committee believes the relationship between intentional homicide of an unborn child and voluntary manslaughter of an unborn child is essentially the same as the relationship between murder and voluntary manslaughter (as those offenses were defined in Chapter 38, Sections 9-1 and 9-2, prior to the enactment of first degree murder and second degree murder under P.A. 84-1450), the Committee has chosen for this instruction to follow the format used in Instruction 7.02C of the Third Edition.

The Committee also believes that the analysis of the Illinois Supreme Court in *People v. Reddick*, 123 Ill.2d 184, 526 N.E.2d 141 (1988), is applicable to the relationship between intentional homicide of an unborn child and voluntary manslaughter of an unborn child. In *Reddick*, the supreme court reassessed the elements of murder and voluntary manslaughter in cases in which a jury is to be instructed on both charges. The supreme court stated the following:

> "Thus, under the 1961 Code, if a defendant in a murder trial presents sufficient evidence to raise issues which would reduce the charge of murder to voluntary manslaughter, then to sustain the murder conviction, the People must prove beyond a reasonable doubt that those defenses are meritless and must also prove beyond a reasonable doubt the statutory elements of murder.
>
> The burden-of-proof instructions regarding both voluntary manslaughter and murder in both of these cases were thus incorrect in placing upon the People the burden of proving the existence of intense passion or unreasonable belief in justification. The

instructions should have placed upon the People the burden of disproving the existence of either of these two states of mind."

Reddick, 123 Ill.2d at 197.

This instruction follows the mandate of the supreme court by requiring the State, in order to obtain a conviction for intentional homicide of an unborn child, to prove beyond a reasonable doubt each of the elements thereof and then further to prove beyond a reasonable doubt that a reducing factor which reduces that charge to voluntary manslaughter of an unborn child is *not* present.

Because the elements of intentional homicide of an unborn child and voluntary manslaughter of an unborn child are identical except for the presence of a reducing factor, this issues instruction need not contain a separate set of propositions constituting the elements of voluntary manslaughter of an unborn child. The question of the existence of the reducing factor is one which the jury need not consider until it has first found that the State has proved beyond a reasonable doubt each of the elements of intentional homicide of an unborn child.

In view of *Reddick*, the Committee has not provided a separate issues instruction on the charge of voluntary manslaughter of an unborn child—belief in justification because the Committee believes that this charge is not likely to be brought by the State without a defendant also being charged with intentional homicide of an unborn child.

Insert in the blanks the name of the pregnant woman.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. Give Instruction 5.03.

7.20
Definition Of Involuntary Manslaughter Of An Unborn Child

A person commits the offense of involuntary manslaughter of an unborn child when he unintentionally causes the death of an unborn child [without lawful justification] by acts, whether lawful or unlawful, which are performed recklessly and are likely to cause death or great bodily harm.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-3.2 (West 2013).

Use the phrase "without lawful justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 (720 ILCS 5/7-1 *et seq.*). *See People v. Worsham*, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist. 1975).

7.21
Issues In Involuntary Manslaughter Of An Unborn Child

To sustain the charge of involuntary manslaughter of an unborn child, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of the unborn child of ____; and

Second Proposition: That the defendant performed those acts recklessly; and

Third Proposition: That those acts were likely to cause death or great bodily harm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-3.2 (West 2013).

Give Instruction 7.20.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24-25.00.

Insert in the blank the name of the pregnant woman.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

7.22
Definition Of Reckless Homicide Of An Unborn Child

A person commits the offense of reckless homicide of an unborn child when he unintentionally causes the death of an unborn child [without lawful justification] by driving a motor vehicle recklessly and in a manner likely to cause death or great bodily harm.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-3.2 (West 2013).

Use the phrase "without lawful justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 (720 ILCS 5/7-1 *et seq.*). *See People v. Worsham*, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist. 1975).

7.23
Issues In Reckless Homicide Of An Unborn Child

To sustain the charge of reckless homicide of an unborn child, the State must prove the following propositions:

First Proposition: That the defendant caused the death of the unborn child of ____ by driving a motor vehicle; and

Second Proposition: That the defendant drove the motor vehicle recklessly; and

Third Proposition: That the defendant drove the motor vehicle in a manner likely to cause death or great bodily harm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-3.2 (West 2013).

Give Instruction 7.22.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24-25.00.

Insert in the blank the name of the pregnant woman.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

7.24
Definition Of Unborn Child

The term "unborn child" means any individual of the human species from fertilization until birth.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1.2(b)(1), 9-2.1(d)(1), and 9-3.2(c)(1) (West 2013).

This instruction should be given whenever Instruction 7.16, 7.18, or 7.22 is given.

7.25
Definition Of Person As Not Including The Pregnant Woman Whose Unborn Child Is Killed

The word "person" does not include the pregnant woman whose unborn child is killed.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1.2(b)(2), 9-2.1(d)(2), and 9-3.2(c)(2) (West 2013).

This instruction should be given whenever Instruction 7.15, 7.18, 7.20, or 7.22 is given.

7.26
Exclusion Of Acts Performed Under Illinois Abortion Law Or During Medical Procedures From Homicides Involving Unborn Children

The offense of [(intentional homicide) (voluntary manslaughter) (involuntary manslaughter) (reckless homicide)] of an unborn child does not apply to acts which cause the death of an unborn child if those acts are performed [(during an abortion to which the pregnant woman has consented) (pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment)].

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1.2(c), 9-2.1(e), and 9-3.2(d) (West 2013).

The Committee believes having this instruction available might prove helpful if the court, in its discretion, deemed it advisable to instruct the jury on what a case before it does *not* concern.

Use applicable bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

7.27
Definition Of Drug Induced Homicide--Delivery Of Controlled Substances By Weight

A person commits the offense of drug induced homicide when he knowingly delivers to another a substance containing ____, a controlled substance, the substance containing the controlled substance weighs ____ gram[s] or more, and any person dies as a result of the [(injection) (inhalation) (ingestion)] of any amount of that controlled substance.

Committee Note

720 ILCS 5/9-3.3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §9-3.3 (1991)), added by P.A. 85-1259, effective January 1, 1989, and amended by P.A. 87-1198, effective September 25, 1992.

Give Instruction 7.28.

Insert in the blanks the name of the controlled substance and the weight at issue.

If the court chooses to define the word "deliver," use Instruction 17.05A.

The Committee has divided the definitional and issues instructions for this offense into two separate sets of instructions--one set dealing with delivery of controlled substances as determined by weight (Instructions 7.27 and 7.28), and the other set dealing with delivery of LSD as contained in separate objects or multiple segregated parts of the same object (Instructions 7.29 and 7.30). The Committee believes that this division will avoid jury confusion.

Drug induced homicide is defined by including therein violations of 720 ILCS 401(a) and (c) (West 1992) (formerly Ill.Rev.Stat. ch. 561/2, §1401(a) and 1401(c) (1991)), (defining unlawful delivery of a controlled substance). Those sections differ only as to the weight of the substance containing the controlled substance. Section 401(a) sets forth the greater weights that need to be involved before delivery of a controlled substance becomes a Class X felony, while Section 401(c) sets forth the lesser weights that make such a delivery a Class 1 felony. However, because the drug induced homicide statute (720 ILCS 5/9-3.3) makes no distinction between violations of Section 401(a) and Section 401(c), the actual weight of the substance containing the controlled substance is irrelevant as long as that weight exceeds the minimum threshold in Section 401(c). Accordingly, insert in the blank the *minimum* weight set forth in Section 401(c) for the particular controlled substance in question. Thus, for example, if heroin or morphine is the controlled substance in question, insert the number 10 in the blank. (See Section 401(c)(1), (c)(3).) If cocaine is the controlled substance, insert the number 1. (See Section 401(c)(2).) If a derivative of barbituric acid, peyote, amphetamine, or methamphetamine is involved, insert the number 50. (Section 401(c)(4), (c)(5), and (c)(6).)

Use applicable bracketed material.

7.28
Issues In Drug Induced Homicide--Delivery Of Controlled Substances By Weight

To sustain the charge of drug induced homicide, the State must prove the following propositions:

First Proposition: That the defendant knowingly delivered to another a substance containing ____, a controlled substance; and

Second Proposition: That the weight of the substance containing the controlled substance was ____ grams or more; and

Third Proposition: That any person [(injected) (inhaled) (ingested)] any amount of that controlled substance; and

Fourth Proposition: That ____ died as a result of that [(injection) (inhalation) (ingestion)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/9-3.3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §9-3.3 (1991)), added by P.A. 85-1259, effective January 1, 1989, and amended by P.A. 87-1198, effective September 25, 1992.

Give Instruction 7.27.

Insert the name of the controlled substance at issue in the blank in the first proposition.

Insert the weight of the controlled substance at issue in the blank in the second proposition. See the Committee Note to Instruction 7.27 for an explanation regarding the weight to be inserted.

Insert the name of the victim in the blank in the fourth proposition. Note that the named victim inserted in the fourth proposition need not be the same person as the person engaging in the conduct described in the third proposition.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

7.29
Definition Of Drug Induced Homicide--Delivery Of Objects Or Segregated Parts Containing LSD

A person commits the offense of drug induced homicide when he knowingly delivers to another more than 10 [(objects) (segregated parts of an object)] containing in them or having on them any amount of any substance containing lysergic acid diethylamide (LSD), and any person dies as a result of the [(injection) (inhalation) (ingestion)] of any amount of that LSD.

Committee Note

720 ILCS 5/9-3.3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §9-3.3 (1991)), added by P.A. 85-1259, effective January 1, 1989, and amended by P.A. 87-1198, effective September 25, 1992.

Give Instruction 7.30.

If the court chooses to define the word "deliver," give Instruction 17.05A.

The Committee has divided the definitional and issues instructions for this offense into two separate sets of instructions--one set dealing with delivery of controlled substances as determined by weight (Instructions 7.27 and 7.28), and the other set dealing with delivery of LSD as contained in separate objects or multiple segregated parts of the same object (Instructions 7.29 and 7.30). The Committee believes that this division will avoid jury confusion.

Use applicable bracketed material.

7.30
Issues In Drug Induced Homicide--Delivery Of Objects Or Segregated Parts Containing LSD

To sustain the charge of drug induced homicide, the State must prove the following propositions:

First Proposition: That the defendant knowingly delivered to another more than 10 [(objects) (segregated parts of an object)] containing in them or having on them any amount of any substance containing lysergic acid diethylamide (LSD); and

Second Proposition: That any person [(injected) (inhaled) (ingested)] any amount of that LSD; and

Third Proposition: That ____ died as a result of that [(injection) (inhalation) (ingestion)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/9-3.3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §9-3.3 (1991)), added by P.A. 85-1259, effective January 1, 1989, and amended by P.A. 87-1198, effective September 25, 1992.

Give Instruction 7.29.

Insert the name of the victim in the blank in the third proposition. Note that the named victim inserted in the third proposition need not be the same person as the person engaging in the conduct described in the second proposition.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

8.00
KIDNAPPING

8.01.
Definition Of Kidnapping

A person commits the offense of kidnapping when he knowingly and
[1] secretly confines another person against his will.

[or]

[2] by force, or by threat of imminent force, carries another person from one place to another with intent secretly to confine that person against his will.

[or]

[3] by deceit or enticement, induces another person to go from one place to another place with intent secretly to confine that person against his will.

Committee Note

720 ILCS 5/10-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §10-1 (1991)).

Give Instruction 8.03 immediately following this instruction, when appropriate.

Use applicable paragraphs.

8.02
Issues In Kidnapping

To sustain the charge of kidnapping, the State must prove the following propositions:
First Proposition: That the defendant acted knowingly; and
Second Proposition: That the defendant secretly confined ____ against his will.

[or]

Second Proposition: That the defendant, by force or threat of imminent force, carried ____ from one place to another place; and
Third Proposition: That when the defendant did so, he intended secretly to confine ____ against his will.

[or]

Second Proposition: That the defendant, by deceit or enticement, induced ____ to go from one place to another place; and
Third Proposition: That when the defendant did so, he intended secretly to confine ____ against his will.
If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.
If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/10-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §10-1 (1991)).

Note that intent to confine is not an issue when the evidence tends to show that the defendant did confine the victim. See Section 10-1(a)(1). However, when the evidence shows only forcible or deceitful carrying of the victim, intent is a necessary issue. See Sections 10-1(a)(2) and (3).

Insert in the blanks the name of the victim.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

8.03
Confinement Of A Child Under 13

Confinement of a child under the age of 13 years is deemed to be against his will if his parent or legal guardian has not consented to the confinement.

Committee Note

720 ILCS 5/10-1(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §10-1(b) (1991)).

See Instruction 8.04.

8.04
Definition Of Aggravated Kidnapping

A person who kidnaps another commits the offense of aggravated kidnapping when
[1] he kidnaps for the purpose of obtaining ransom.

[or]

[2] the victim is [(a child under the age of 13 years) (an institutionalized severely or profoundly mentally retarded person)].

[or]

[3] he [(inflicts great bodily harm) (commits ____)] upon the victim.

[or]

[4] he [(wears a hood, robe, or mask) (conceals his identity)].

[or]

[5] he does so while armed with a dangerous weapon.

Committee Note

720 ILCS 5/10-2 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §10-2 (1991)), amended by P.A. 85-1392, effective January 1, 1989.

Give Instruction 8.01 and either Instruction 8.05, 8.05A, or 8.05B. The underlying offense of kidnapping can be committed in one of three ways: (1) secret confinement (see Section 10-1(a)(1)); (2) carrying another by force or threat of imminent force (see Section 10-1(a)(2)); or (3) inducing travel by deceit or enticement (see Section 10-1(a)(3)). When the defendant is charged under Section 10-1(a)(1), give this instruction and Instruction 8.05. When the defendant is charged under Section 10-1(a)(2), give this instruction and Instruction 8.05A. When the defendant is charged under Section 10-1(a)(3), give this instruction and Instruction 8.05B.

Give Instruction 8.04A, defining the word “ransom” when paragraph [1] is used.

Give Instruction 8.03 when the defendant is charged with confining a child under the age of 13 years against his will.

When the victim is alleged to be an institutionalized severely or profoundly mentally retarded person, give Instruction 11.65G, defining that term.

In paragraph [3], insert in the blank the name of the applicable felony and give the instruction defining that felony immediately following this instruction.

When paragraph [5] is used, give the definition of the term “dangerous weapon” which is found in 720 ILCS 5/33A-1 (1992) (formerly Ill.Rev.Stat. ch. 38, §33A-1 (1991)). See Committee Note to Instruction 4.17.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

8.04A
Definition Of Ransom

The word “ransom” means money, benefit, or other valuable thing or concession.

Committee Note

720 ILCS 5/10-2(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §10-2(a) (1991)).

Give this instruction when paragraph [1] of Instruction 8.04 is used.

8.05
Issues In Aggravated Kidnapping--Kidnapping By Secret Confinement

To sustain the charge of aggravated kidnapping, the State must prove the following propositions:

First Proposition: That the defendant secretly confined ____ against his will; and

Second Proposition: That the defendant acted knowingly; and

Third Proposition: That the defendant acted for the purpose of obtaining ransom from ____ or from any other person.

[or]

Third Proposition: That ____ was [(a child under the age of 13 years who was confined without the consent of his parent or legal guardian) (an institutionalized severely or profoundly mentally retarded person)].

[or]

Third Proposition: That the defendant [(inflicted great bodily harm) (committed ____)] upon ____.

[or]

Third Proposition: That the defendant [(wore a hood, robe, or mask) (concealed his identity)].

[or]

Third Proposition: That the defendant was armed with a dangerous weapon.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/10-1(a) and 5/10-2 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §§10-1(a) and 10-2 (1991)), amended by P.A. 85-1392, effective January 1, 1989.

Give Instruction 8.04.

See the Committee Note to Instruction 8.04 concerning whether to give Instruction 8.05, 8.05A, or 8.05B.

See People v. Marin, 48 Ill.2d 205, 269 N.E.2d 303 (1971), when the case concerns the

kidnapping of a child under 13 for ransom.

Insert in the appropriate blanks the name of the victim or the specific felony. See Committee Note to Instruction 8.04.

Use applicable propositions and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

8.05A
Issues In Aggravated Kidnapping--Kidnapping By Force Or Threat

To sustain the charge of aggravated kidnapping, the State must prove the following propositions:

First Proposition: That the defendant, by force or threat of imminent force, carried ____ from one place to another place; and

Second Proposition: That the defendant acted knowingly; and

Third Proposition: That when the defendant did so, he intended secretly to confine ____ against his will; and

Fourth Proposition: That ____ was [(a child under the age of 13 years who was confined without the consent of his parent or legal guardian) (an institutionalized severely or profoundly mentally retarded person)].

[or]

Fourth Proposition: That the defendant [(inflicted great bodily harm) (committed ____)] upon ____.

[or]

Fourth Proposition: That the defendant [(wore a hood, robe, or mask) (concealed his identity)].

[or]

Fourth Proposition: That the defendant was armed with a dangerous weapon.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/10-1(a)(2) and 5/10-2 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §§10-1(a)(2) and 10-2 (1991)), amended by P.A. 85-1392, effective January 1, 1989.

Give Instruction 8.04.

See the Committee Note to Instruction 8.04 concerning whether to give Instruction 8.05, 8.05A, or 8.05B.

See People v. Marin, 48 Ill.2d 205, 269 N.E.2d 303 (1971), when the case concerns the kidnapping of a child under 13 for ransom.

Insert in the appropriate blanks the name of the victim or the specific felony. See

Committee Note to Instruction 8.04.

Use applicable propositions and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

8.05B
Issues In Aggravated Kidnapping--Kidnapping By Deceit Or Enticement

To sustain the charge of aggravated kidnapping, the State must prove the following propositions:

First Proposition: That the defendant, by deceit or enticement, induced ____ to go from one place to another place; and

Second Proposition: That the defendant acted knowingly; and

Third Proposition: That when the defendant did so, he intended secretly to confine ____ against his will; and

Fourth Proposition: That ____ was [(a child under the age of 13 years who was confined without the consent of his parent or legal guardian) (an institutionalized severely or profoundly mentally retarded person)].

[or]

Fourth Proposition: That the defendant [(inflicted great bodily harm) (committed ____)] upon ____.

[or]

Fourth Proposition: That the defendant [(wore a hood, robe, or mask) (concealed his identity)].

[or]

Fourth Proposition: That the defendant was armed with a dangerous weapon.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/10-1(a)(3) and 5/10-2 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §§10-1(a)(3) and 10-2 (1991)), amended by P.A. 85-1392, effective January 1, 1989.

Give Instruction 8.04.

See the Committee Note to Instruction 8.04 concerning whether to give Instruction 8.05, 8.05A, or 8.05B.

See People v. Marin, 48 Ill.2d 205, 269 N.E.2d 303 (1971), when the case concerns the kidnapping of a child under 13 for ransom.

Insert in the appropriate blanks the name of the victim or the specific felony. See

Committee Note to Instruction 8.04.

Use applicable propositions and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

8.06
Definition Of Unlawful Restraint

A person commits the offense of unlawful restraint when he knowingly and without legal authority detains another person.

Committee Note

720 ILCS 5/10-3 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §10-3 (1991)).

Give Instruction 8.07.

If legal authority is a question of fact, an instruction defining legal authority should be given as applied to the facts in the case. See, for example, Section 107-3 (arrest by private person), and Section 16A-6 (merchant's defense). See also Article 7 of Chapter 720.

8.06A
Definition Of Aggravated Unlawful Restraint

A person commits the offense of aggravated unlawful restraint when he knowingly and without legal authority detains another person while using a deadly weapon.

Committee Note

720 ILCS 5/10-3.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §10-3.1 (1991)).

Give Instruction 8.07A.

If legal authority is a question of fact, an instruction defining legal authority should be given as applied to the facts in the case. See, for example, Section 107-3 (arrest by private person) and Section 16A-6 (merchant's defense). See also Article 7 of Chapter 720.

The Committee notes that the legislative phrase “while using a deadly weapon” in the new section contrasts with the phrase “while armed with a dangerous weapon” found elsewhere in Chapter 720 (see, e.g., Sections 10-2(a)(5), 10-4(a)(1), and 33A-2), and defined in Section 33A-1. No definition of the new phrase is suggested by the Committee. This conforms with previous instructions involving the phrase “uses a deadly weapon.” See Instructions 11.03 and 11.09.

8.07
Issue In Unlawful Restraint

To sustain the charge of unlawful restraint, the State must prove the following proposition:

That the defendant knowingly and without legal authority detained ____.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/10-3 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §10-3 (1991)).

Give Instruction 8.06.

See Instruction 6.13.

When the question of legal authority is involved, see Committee Note to Instruction 8.06.

Insert in the blank the name of the victim.

When accountability is an issue ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

8.07A
Issues In Aggravated Unlawful Restraint

To sustain the charge of aggravated unlawful restraint, the State must prove the following propositions:

First Proposition: That the defendant knowingly and without legal authority detained ____; and

Second Proposition: That the defendant did so while using a deadly weapon.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/10-3.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §10-3.1 (1991)).

Give Instruction 8.06A.

When the question of legal authority is involved, see Committee Note to Instruction 8.06A.

Insert in the blank the name of the victim.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

8.08
Shopkeeper's Defense To Unlawful Restraint

Committee Note

720 ILCS 5/16A-5 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-5 (1991)).

The Committee decided not to include an instruction on this defense because so few cases are brought under this statute.

8.09
Definition Of Forcible Detention

A person commits the offense of forcible detention when he holds an individual hostage without lawful authority for the purpose of obtaining performance by a third person of demands made by the person holding the hostage, and

[1] the person holding the hostage is armed with a dangerous weapon.

[or]

[2] the hostage is known to the person holding him to be [(a peace officer) (a correctional employee)] engaged in the performance of his official duties.

Committee Note

720 ILCS 5/10-4 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §10-4 (1991)).

Give Instruction 8.10.

Give Instruction 4.08, defining the term "peace officer," when paragraph [2] is given.

When appropriate, give the definition of the term "dangerous weapon" found in Section 33A-1. See Committee Note to Instruction 4.17.

If legal authority is a question of fact, an instruction defining legal authority should be given as applied to the facts in the case. See, for example, 725 ILCS 5/107-3 (arrest by private person). See also Article 7 of Chapter 720.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

8.10
Issues In Forcible Detention

To sustain the charge of forcible detention, the State must prove the following propositions:

First Proposition: That the defendant held ____ hostage without lawful authority; and

Second Proposition: That ____ was held hostage for the purpose of obtaining performance by a third person upon the demand of the defendant; and

Third Proposition: That the defendant was armed with a dangerous weapon.

[or]

Third Proposition: That the hostage ____ was known to the defendant to be [(a peace officer) (a correctional employee)] engaged in the performance of his official duties.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/10-4 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §10-4 (1991)).

Give Instruction 8.09.

When the question of legal authority is involved, see Committee Note to Instruction 8.09.

Insert in the blanks the name of the person held hostage if the person is named in the charge.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

8.11
Definition Of Child Abduction

A person commits the offense of child abduction when

[1] he intentionally violates any terms of a court order granting sole or joint custody, care, or possession of a child to another, by concealing or detaining the child or removing the child from the jurisdiction of the court.

[or]

[2] he intentionally violates a court order prohibiting [(him) (her)] from concealing or detaining a child or removing a child from the jurisdiction of the court.

[or]

[3] he, being a putative father of a child [(whose paternity of the child has not been legally established) (whose paternity of the child has been legally established in a court proceeding where no custody order has been entered)] intentionally conceals, detains, or removes the child without the consent of the child's mother or lawful custodian.

[or]

[4] she, being a mother who has [(abandoned a child) (relinquished custody of a child)], intentionally conceals or removes the child from the child's putative father who has not established paternity of the child, but who has provided sole ongoing care and custody of the child in the mother's absence.

[or]

[5] he, after [(filing a petition)] (being served with process)] in an action affecting [(marriage) (paternity)], but before issuance of a temporary or final order determining custody, intentionally conceals or removes a child from a parent.

[or]

[6] he, at the expiration of visitation rights outside the State, intentionally [(fails to return) (refuses to return) (impedes the return of)] a child to the child's lawful custodian in Illinois.

[or]

[7] he, being a parent of a child and [(being) (having been)] married to the child's other parent, knowingly conceals the child for 15 days when there has been no court order of custody, and fails to make reasonable attempts within the 15 day period to notify the other parent as to the specific whereabouts of the child, including a means by which to contact such child or to arrange reasonable visitation or contact with the child.

[or]

[8] he, being a parent of a child and [(being) (having been)] married to the child's other parent, knowingly [(conceals) (detains) (removes)] the child with physical force or threat of physical force when there has been no court order of custody.

[or]

[9] he knowingly [(conceals) (detains) (removes)] a child for [(payment) (promise of payment)] at the instruction of a person who has no legal right to custody of the child.

[or]

[10] he knowingly retains in this State for 30 days a child removed from another state [(without the consent of the lawful custodian) (in violation of a valid court order of custody)].

[or]

[11] he intentionally [(lures) (attempts to lure)] a child under the age of 16 into a [(motor vehicle) (building) (house trailer) (dwelling place)] without the consent of the child's parent or lawful custodian for other than a lawful purpose.

[or]

[12] he intentionally [(lures) (attempts to lure)] a child [(under the age of 17) (while traveling to or from a primary or secondary school)] into a [(motor vehicle) (building) (house trailer) (dwelling place)] without the consent of the child's parent or lawful custodian for other than a lawful purpose.

[or]

[13] he, with the intent to obstruct or prevent efforts to locate the child victim of a child abduction, [(knowingly (destroys) (alters) (conceals) (disguises) physical evidence) (knowingly furnishes false information)].

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/10-5 (West 2013), amended by P.A. 92-434, effective January 1, 2002, substituting "a" for "an institutionalized"; amended by P.A. 97-227, effective January 1, 2012, substituting "intellectually disabled" for "mentally retarded"; amended by P.A. 97-998, effective January 1, 2013.

Give Instruction 8.16.

When applicable, give Instruction 8.11A, defining "inference of unlawful purpose in child abduction". See Committee Note to Instruction 8.11A.

When applicable, give Instruction 8.12, defining "putative father".

When applicable, give Instruction 8.13, defining “child”.

When applicable, give Instruction 8.14, defining “detains”.

When applicable, give Instruction 8.17, “affirmative defense to child abduction”.

When applicable, give Instruction 11.65G, defining “severely or profoundly intellectually disabled person”.

The legislature amended Section 10-5(b)(10), effective January 1, 2013. Accordingly, use paragraph [11] for offenses committed before the effective date of the amendment and use paragraph [12] for offenses committed on or after the effective date of the amendment. The legislature also amended the statute by adding Section 10-5(b)(11), effective January 1, 2013. Accordingly, use paragraph [13] for offenses committed on or after the effective date.

In *People v. Williams*, 133 Ill.2d 449, 551 N.E.2d 631 (1990), the Illinois Supreme Court upheld the constitutionality of Section 10-5(b)(10).

Several subsections of Section 10-5 refer to the existence of a valid court order. The Committee believes that the court, and not the jury, should determine whether a court order is valid, so that the word “valid” has been omitted from instructions on this offense.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

8.11A
Inference Of Unlawful Purpose In Child Abduction

If you find that the defendant lured or attempted to lure a child under [(16) (17)] years of age into a [(motor vehicle) (building) (house trailer) (dwelling place)] and that he did so [(without the express consent of a parent or lawful custodian of the child) (with the intent to avoid the express consent of the child's parent or lawful custodian)], you may infer it was for other than a lawful purpose.

You are never required to make this inference. It is for the jury to determine whether the inference should be made. You should consider all of the evidence in determining whether to make this inference.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/10-5(b)(10) (West 2013), amended by P.A. 92-434, effective January 1, 2002, substituting "a" for "an institutionalized"; amended by P.A. 97-227, effective January 1, 2012, substituting "intellectually disabled" for "mentally retarded"; amended by P.A. 97-998, effective January 1, 2013.

The legislature amended Section 10-5(b)(10), effective January 1, 2013, by raising the age of the child from 16 to 17.

This instruction should be used *only* when the defendant is charged with child abduction under Section 10-5(b)(10).

Use applicable bracketed material.

The bracketed material is present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

8.12
Definition Of Putative Father--Child Abduction

The term "putative father" means a man alleged or reputed to be the father of a child born of a woman who is not his wife.

Committee Note

The term "putative father" is used throughout the child abduction statute, but is not defined. See Chapter 720, Section 10-5. The term was not used or defined in the former Paternity Act, Chapter 40, Section 1351 *et seq.*, repealed in 1984, nor is the term used or defined in the present Parentage Act, Chapter 750, Section 2501 *et seq.* This definition is drawn from Black's Law Dictionary, and from use of the term "putative father" in cases decided under the Paternity Act and the Parentage Act.

8.13
Definition Of Child--Child Abduction

The word "child" means [(a person under the age of 18) (a severely or profoundly intellectually disabled person)] at the time the alleged violation occurred.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/10-5(a)(1) (West 2013), amended by P.A. 92-434, effective January 1, 2002, substituting "a" for "an institutionalized"; amended by P.A. 97-227, effective January 1, 2012, substituting "intellectually disabled" for "mentally retarded"; amended by P.A. 97-998, effective January 1, 2013.

When applicable, give Instruction 11.65G, defining "severely or profoundly intellectually disabled person".

Use applicable bracketed material.

The bracketed material is present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

8.14
Definition Of Detains--Child Abduction

The word "detains" means taking or retaining physical custody of a child, whether or not the child resists or objects.

Committee Note

720 ILCS 5/10-5(a)(2) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §10-5(a)(2) (1991)).

8.15
Definition Of Lawful Custodian--Child Abduction

Committee Note

Chapter 720, Section 10-5(a)(3) provides that the term "lawful custodian" means a person granted legal custody or entitled to physical possession of a child pursuant to a court order. That statute further provides that if the parents of a child have never been married to each other, it is presumed that a mother has legal custody of the child unless a valid court order states otherwise, and that if an adjudication of paternity has been completed and the father has been assigned support obligations or visitation rights, such a paternity order should be considered a valid court order granting custody to the mother.

The Committee believes that application of the above definition involves questions of law to be determined by the court rather than the jury. When a case involves a subsection of the child abduction statute that uses the term "lawful custodian," the court should determine who the lawful custodian of the child is under Section 10-5(a)(3), and should insert in the appropriate blank the name of that person in Instruction 8.16.

8.16
Issues In Child Abduction

To sustain the charge of child abduction, the State must prove the following propositions:

First Proposition: That [(child)] was [(under the age of 18) (a severely or profoundly intellectually disabled person)]; and

[1] *Second Proposition*: That the defendant [(concealed [(child)]) (detained [(child)]) (removed [(child)] from the jurisdiction of the court)]; and

Third Proposition: That when the defendant did so, there was a court order granting [(sole) (joint)] [(custody) (care) (possession)] of the child to another; and

Fourth Proposition: That when he did so, the defendant intended to violate any terms of that court order.

[or]

[2] *Second Proposition*: That the defendant [(concealed [(child)]) (detained [(child)]) (removed [(child)] from the jurisdiction of the court)]; and

Third Proposition: That when the defendant did so, there was a court order that prohibited him from [(concealing [(child)]) (detaining [(child)]) (removing [(child)] from the jurisdiction of the court)]; and

Fourth Proposition: That when he did so, the defendant intended to violate that order.

[or]

[3] *Second Proposition*: That the defendant was [(child)]'s putative father, and,

Third Proposition: That the defendant's paternity of [(child)] [(had not been legally established) (had been legally established in a court proceeding where no custody order had been entered)]; and

Fourth Proposition: That the defendant intentionally [(concealed) (detained) (removed) [(child)] without the consent of [(mother) (lawful custodian)].

[or]

[4] *Second Proposition*: That the defendant was [(child)]'s mother; and

Third Proposition: That the defendant intentionally [(concealed) (removed)] [(child)] from [(child)]'s putative father; and

Fourth Proposition: That defendant had previously [(abandoned) (relinquished custody of)] [(child)]; and

Fifth Proposition: That [(child)]'s putative father had provided sole ongoing care and custody of [(child)] in defendant's absence.

[or]

[5] *Second Proposition*: That the defendant intentionally [(concealed) (removed)] [(child)] from his parent; and

Third Proposition: That at the time the defendant did so, defendant had [(filed a petition) (been served with process)] in an action affecting [(marriage) (paternity)]; and

Fourth Proposition: That at the time the defendant did so, no temporary or final order determining custody had issued.

[or]

[6] *Second Proposition*: That the defendant intentionally [(failed to return) (refused to return) (impeded the return of)] [(child)] to the lawful custodian in Illinois; and

Third Proposition: That at the time the defendant did so, visitation rights outside the State of Illinois had expired.

[or]

[7] *Second Proposition*: That the defendant is [(child)]'s parent; and

Third Proposition: That the defendant [(is) (was)] married to [(child)]'s other parent; and

Fourth Proposition: That the defendant knowingly concealed [(child)] for 15 days; and

Fifth Proposition: That at the time the defendant did so, there was no court order of custody; and

Sixth Proposition: That the defendant failed to make reasonable attempts within the 15 day period to notify [(child)]'s other parent as to [(child)]'s specific whereabouts, including notifying the other parent of a means by which to contact [(child)] or to arrange reasonable visitation or contact with [(child)].

[or]

[8] *Second Proposition*: That the defendant is [(child)]'s parent; and

Third Proposition: That the defendant [(is) (was)] married to [(child)]'s other parent; and

Fourth Proposition: That the defendant knowingly [(concealed) (detained) (removed)] [(child)]; and

Fifth Proposition: That when the defendant did so, he [(used physical force) (threatened physical force)]; and

Sixth Proposition: That when the defendant did so, there was no court order of custody.

[or]

[9] *Second Proposition*: That the defendant knowingly [(concealed) (detained) (removed)] [(child)]; and

Third Proposition: That the defendant did so for [(payment) (promise of payment)]; and

Fourth Proposition: That the defendant did so at the instruction of a person who had no legal right to custody of [(child)].

[or]

[10] *Second Proposition*: That [(child)] had been removed from another state; and

Third Proposition: That the defendant knowingly retained [child)] in the State of Illinois for 30 days; and

Fourth Proposition: That the defendant did so [(without the consent of the [(lawful custodian)]) (in violation of a court order of custody)].

[or]

[11] *First Proposition*: That [(child)] [(was under the age of [(16) (17)] years) (was traveling to or from a primary or secondary school)]; and

Second Proposition: That the defendant intentionally [(lured) (attempted to lure)] [(child)] into a [(motor vehicle) (building) (house trailer) (dwelling place)]; and

Third Proposition: That the defendant did so without the consent of a [(parent or lawful custodian)]; and

Fourth Proposition: That the defendant did so for other than a lawful purpose.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/10-5 (West 2013), amended by P.A. 92-434, effective January 1, 2002, substituting “a” for “an institutionalized”; amended by P.A. 97-227, effective January 1, 2012, substituting “intellectually disabled” for “mentally retarded”; amended by P.A. 97-998, effective January 1, 2013.

Give Instruction 8.11.

When applicable, give Instruction 8.11A, defining "inference of unlawful purpose in child abduction". See Committee Note to Instruction 8.11A.

When applicable, give Instruction 8.12, defining "putative father".

When applicable, give Instruction 8.13, defining "child".

When applicable, give Instruction 8.14, defining "detains".

When applicable, give Instruction 8.17, "affirmative defense to child abduction".

When applicable, give Instruction 11.65G, defining "severely or profoundly intellectually disabled person".

Insert in the blanks labeled "(child)" the name of the child or severely or profoundly or intellectually disabled person. Insert in the balks labeled "(lawful custodian)" or "(parent or lawful custodian)" the name of the child's parent or lawful custodian.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. Give Instruction 5.03.

8.17
Affirmative Defenses To Child Abduction

It is a defense to the charge of child abduction

[1] that at the time of the alleged violation, the defendant had custody of ____ pursuant to a court order granting legal custody or visitation rights.

[or]

[2] that prior to the time of the alleged violation, the defendant had physical custody of ____ pursuant to a court order granting legal custody or visitation rights; that defendant failed to return ____ as a result of circumstances beyond his control; and that the defendant [(notified and disclosed to the other parent or legal custodian the specific whereabouts of ____ and a means by which ____ could be contacted) (within 24 hours after the custody or visitation period had expired, made a reasonable attempt to notify the other parent or lawful custodian of such circumstances and returned the child as soon as possible)].

[or]

[3] that the defendant was fleeing an incidence or pattern of domestic violence.

Committee Note

720 ILCS 5/10-5(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §10-5(c) (1991)).

Whenever this instruction is given, it will be necessary to add a proposition to the issues instruction. For example, if the defendant asserts as an affirmative defense that he had custody pursuant to a court order at the time of the alleged visitation, the following proposition should be added to Instruction 8.16:

See Chapter 720, Section 3-2, and the Introduction to Chapter 24-25.00.

Section 10-5(c)(4) states what is designated as a fourth affirmative defense to child abduction, but only to Section 10-5(b)(10). Section 10-5(b)(10) makes it an offense to lure or attempt to lure a child under 16 into certain vehicles or structures "for other than a lawful purpose." Section 10-5(c)(4) merely provides that it is an affirmative defense to that particular subsection if the defendant lured or attempted to lure the child "for a lawful purpose." Since the jury must find, under Instructions 8.11 and 8.16, that the defendant's purpose was unlawful, the Committee believes that no purpose would be served by a further instruction on Section 10-5(c)(4).

Insert in the blanks the name of the child.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

8.18
Definition Of Aiding And Abetting Child Abduction

A person commits the offense of aiding and abetting child abduction when

[1] before or during the commission of a child abduction, and with the intent to promote or facilitate the child abduction, he intentionally aids or abets another in the planning or commission of that offense, unless before the offense is committed, he makes proper effort to prevent its commission.

[or]

[2] with the intent to prevent the apprehension of a person known to have committed the offense of child abduction, he knowingly [([(destroys) (alters) (conceals) (disguises)] physical evidence) (furnishes false information)].

[or]

[3] with the intent to obstruct or prevent efforts to locate the child victim of a child abduction, he knowingly [([(destroys) (alters) (conceals) (disguises)] physical evidence) (furnishes false information)].

Committee Note

720 ILCS 5/10-7 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §10-7 (1991)).

Give Instructions 8.11 and 8.19.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

8.19
Issues In Aiding And Abetting Child Abduction

To sustain the charge of aiding and abetting child abduction, the State must prove the following propositions:

[1] *First Proposition:* That a child abduction was committed; and

Second Proposition: That before or during the commission of the child abduction, the defendant aided or abetted another in the planning or commission of that offense; and

Third Proposition: That when the defendant did so, he intended to promote or facilitate commission of the offense of child abduction; and

Fourth Proposition: That the defendant did not make a proper effort to prevent the child abduction before it was committed.

[or]

[2] *First Proposition:* That the defendant knowingly [([(destroyed) (altered) (concealed) (disguised)] physical evidence) (furnished false information)]; and

Second Proposition: That the defendant did so with the intent to prevent the apprehension of ____; and

Third Proposition: That the defendant knew that ____ had committed the offense of child abduction.

[or]

[3] *First Proposition:* That the defendant knowingly [([(destroyed) (altered) (concealed) (disguised)] physical evidence) (furnished false information)]; and

Second Proposition: That the defendant did so with the intent to [(obstruct) (prevent)] efforts to locate a child victim of a child abduction.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/10-7 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §10-7 (1991)).

Give Instructions 8.18 and 8.11.

Insert in the blank the name of the person who committed the child abduction and whose apprehension the defendant had allegedly sought to prevent.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

8.20
Definition Of Harboring A Runaway

A person commits the offense of harboring a runaway when he knowingly gives shelter to a minor for more than 48 hours without the knowledge and consent of the minor's parent or guardian, and without notifying local law enforcement authorities of the minor's name and the fact that the minor is being provided shelter.

Committee Note

720 ILCS 5/10-6 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §10-6 (1991)).

Give Instruction 8.21.

By its terms, Section 10-6 does not apply to agencies or associations providing crisis intervention services as defined in Section 3-5 of the Juvenile Court Act of 1987, Chapter 705, Section 405/3-5, or to operators of youth emergency shelters as defined in Section 2.21 of the Child Care Act of 1969, Chapter 225. In addition, Section 10-6 does not apply to minors who have been emancipated under the Emancipation of Mature Minor's Act, Chapter 750, Section 30/1 *et seq.* Whenever the evidence in the case raises issues as to those exclusions, this instruction must be modified to indicate the exclusion, a definition of the excluded class of persons should be given, and an additional proposition requiring the jury to find that the defendant did not belong to the excluded class or that the minor was not emancipated at the time the shelter was given must be added to Instruction 8.21.

8.21
Issues In Harboring A Runaway

To sustain the charge of harboring a runaway, the State must prove the following propositions:

First Proposition: That the defendant knowingly gave shelter to ____ for more than 48 hours; and

Second Proposition: That when the defendant did so, ____ was a minor; and

Third Proposition: That the defendant did so without the knowledge of ____'s parent or guardian; and

Fourth Proposition: That the defendant did so without the consent of ____'s parent or guardian; and

Fifth Proposition: That the defendant did so without notifying local law enforcement authorities of ____'s name; and

Sixth Proposition: That the defendant did so without notifying local law enforcement authorities that he was providing shelter to ____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/10-6 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §10-6 (1991)).

Give Instruction 8.20.

Insert in the blank the name of the child to whom the defendant allegedly gave shelter.

Whenever the evidence in the case presents an issue as to whether the defendant falls within a category of persons excluded from criminal liability under Section 10-6, or whether the minor was emancipated at the time of the offense, an additional proposition must be added to this instruction. See Committee Note to Instruction 8.20.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

8.22
Definition Of Unlawful Visitation Or Parenting Time Interference

A person commits the offense of unlawful visitation or parenting time interference when he or she, in violation of the [(visitation) (parenting time) (custody time)] provisions of a court order relating to child custody, [(detains) (conceals)] a child with the intent to deprive another person of his or her rights to [(visitation) (parenting time) (custody time)].

Committee Note

Instruction and Note Approved January 18, 2013.

720 ILCS 5/10-5.5 (West 2013).

Give Instruction 8.23.

When applicable, give Instruction 8.13, defining "child".

When applicable, give Instruction 8.14, defining "detains".

Chapter 720, Section 10-5(a)(3) provides that the term "lawful custodian" means a person granted legal custody or entitled to physical possession of a child pursuant to a court order. That statute further provides that if the parents of a child have never been married to each other, it is presumed that a mother has legal custody of the child unless a valid court order states otherwise, and that if an adjudication of paternity has been completed and the father has been assigned support obligations or visitation rights, such a paternity order should be considered a valid court order granting custody to the mother.

The Committee believes that application of the above definition involves questions of law to be determined by the court rather than the jury. When a case involves the interference of the visitation, parenting time or custody time of a lawful custodian, the court should determine who the lawful custodian of the child is under 720 ICLS 5/10-5(3), and should insert in the appropriate blank the name of that person in Instruction 8.23.

The Illinois Supreme Court upheld the constitutionality of this statute in *People v. Warren*, 173 Ill.2d 348, 671 N.E.2d 700 (1996).

Only non-custodial parents can be aggrieved by visitation interference. *Id.* at 365. Persons with joint custody cannot commit visitation interference. *Id.* at 364.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

8.23
Issues In Unlawful Visitation Or Parenting Time Interference

To sustain the charge of unlawful visitation or parenting time interference, the State must prove the following propositions:

First Proposition: That there was a court order relating to child custody [(visitation) (parenting time) (custody time)].

Second Proposition: That the defendant detained or concealed _____ with the
(child)
intent to deprive _____ of [(his) (her)] rights to
(parent or other person granted custody)
[(visitation) (parenting time) (custody time)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Note Approved January 18, 2013.

720 ILCS 5/10-5.5 (West 2013).

Give instruction 8.22

When applicable, give Instruction 8.13, defining "child".

When applicable, give Instruction 8.14, defining "detains".

Chapter 720, Section 10-5(a)(3) provides that the term "lawful custodian" means a person granted legal custody or entitled to physical possession of a child pursuant to a court order. That statute further provides that if the parents of a child have never been married to each other, it is presumed that a mother has legal custody of the child unless a valid court order states otherwise, and that if an adjudication of paternity has been completed and the father has been assigned support obligations or visitation rights, such a paternity order should be considered a valid court order granting custody to the mother.

The Committee believes that application of the above definition involves questions of law to be determined by the court rather than the jury. When a case involves the interference of the visitation, parenting time or custody time of a lawful custodian, the court should determine who the lawful custodian of the child is under 720 ICLS 5/10-5(3), and should insert in the appropriate blank the name of that person in Instruction 8.23.

The Illinois Supreme Court upheld the constitutionality of this statute in *People v. Warren*, 173 Ill.2d 348, 671 N.E.2d 700 (1996).

Only non-custodial parents can be aggrieved by visitation interference. *Id.* at 365. Persons with joint custody cannot commit visitation interference. *Id.* at 364.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in the Second Proposition.

8.24
Affirmative Defenses To The Charge Of Unlawful Visitation Or Parenting Time Interference

It is a defense to the charge of unlawful visitation or parenting time interference that the defendant committed the act to protect _____ from imminent physical harm,
(child)
provided that the defendant's belief that there was physical harm imminent was reasonable and that the defendant's conduct in withholding [(visitation rights) (parenting time) or (custody time)] was a reasonable response to the harm believed to be imminent.

[or]

the act was committed with the mutual consent of all parties having a right to custody and [(visitation of) or (parenting time with)] _____ .
(child)

[or]

the act was otherwise authorized by law.

Committee Note

Instruction and Note Approved January 18, 2013.

720 ILCS 5/10-5.5 (West 2013).

Give this instruction when any of these issues are raised by the evidence.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

9.00
SEX OFFENSES

9.01
Definition Of Indecent Solicitation Of A Child

[1] A person of the age of 17 years or older commits the offense of indecent solicitation of a child when, with the intent that the offense of [(aggravated criminal sexual assault) (criminal sexual assault) (predatory criminal sexual assault of a child) (aggravated criminal sexual abuse)] be committed, he knowingly solicits [(a child under the age of 17 years) (one whom he believes to be a child under the age of 17 years)] to perform an act of sexual [(penetration) (conduct)].

[or]

[2] A person of the age of 17 years or older commits the offense of indecent solicitation of a child when, with the intent that the offense of [(aggravated criminal sexual assault) (predatory criminal sexual assault of a child) (aggravated criminal sexual abuse)] be committed, he knowingly discusses an act of sexual [(conduct) (penetration)] with [(a child under the age of 17 years) (one whom he believes to be a child under the age of 17 years)] by means of the Internet.

[It is not a defense to this offense that the person did not solicit the child to perform an act of sexual [(conduct) (penetration)] with the person.]

Committee Note

Instruction and Committee Note Approved January 18, 2013.

720 ILCS 5/11-6 (West 2013) (formerly Ill.Rev.Stat. ch. 38, § 11-6 (1991)), amended by P.A. 91-226, § 5, effective July 22, 1999; P.A. 95-143, § 5, effective January 1, 2008; P.A. 96-1551, Art. 2, § 5, effective July 1, 2011.

This Instruction has been revised to conform with the rewriting and amendment of 720 ILCS 5/11-6 (West 1999), as acknowledged by the Illinois Appellate Court in *People v. Carter*, 405 Ill.App.3d 246, 939 N.E.2d 46 (1st Dist. 2010). Public Act 91-226, section 5, effective July 22, 1999, rewrote Section 11-6 by adding the elements of intent and knowledge, changing the age range of potential victims to children under the age of 17, and deleting the provision that it was not a defense that the accused reasonably believed the child to be of the age of 13 years and upwards. Public Act 95-143, section 5, effective January 1, 2008, added subsections concerning a person knowingly discussing an act of sexual conduct or sexual penetration with a child by means of the Internet.

Give Instruction 9.02.

When applicable, give Instruction 11.57 defining "aggravated criminal sexual assault".

When applicable, give Instruction 11.55 defining "criminal sexual assault".

When applicable, give Instruction 11.103 defining "predatory criminal sexual assault of a child".

When applicable, give Instruction 11.61 defining "aggravated criminal sexual abuse".

When applicable, give Instruction 9.01C defining "solicit".

When applicable, give Instruction 11.65E defining "sexual penetration".

When applicable, give Instruction 11.65D defining "sexual conduct".

When applicable, give Instruction 4.27 defining "access".

When applicable, give Instruction 4.32 defining "computer".

When applicable, give Instruction 4.38 defining "Internet".

When applicable, give Instruction 4.48 defining "online".

When applicable, give Instruction 4.69 defining "wireless device".

The offense option of criminal sexual assault cannot be used with alternative [2]. *See* 720 ILCS 5/11-6(a-5) (West 2013).

It is also not a defense to Section 11-6(a-5) that the person did not solicit the child to perform sexual conduct or sexual penetration with the person. *See* 720 ILCS 5/11-6(a-6) (West 2013). When this issue is raised and the person is charged under Section 11-6(a-5), the committee suggests giving the last-bracketed sentence with alternative [2].

Use applicable bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.01A
Definition Of Solicit Or Solicitation

The words "solicit" or "solicitation" mean to command, authorize, urge, incite, request, or advise another to commit an offense.

Committee Note

Amended Instruction and Committee Note Approved January 18, 2013.

720 ILCS 5/2-20 (West 2013) (formerly Ill.Rev.Stat. ch. 38, § 2-20 (1991)).

When a defendant is charged with indecent solicitation of a child, do not use this definition. Under those circumstances, give Instruction 9.01C. *See* 720 ILCS 5/11-6(b) (West 2013).

9.01B
Belief Of Age No Defense To Indecent Solicitation Of A Child

It is not a defense to the charge of indecent solicitation of a child that the defendant reasonably believed the child to be of the age of 13 years or older.

Committee Note

Amended Instruction and Committee Note Approved January 18, 2013.

720 ILCS 5/11-6(b) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 11-6(b) (1991)).

This Committee Note has been edited to conform with the rewriting and amendment of 720 ILCS 5/11-6 (West 1999), as acknowledged by the Illinois Appellate Court in *People v. Carter*, 405 Ill.App.3d 246, 939 N.E.2d 46 (1st Dist. 2010).

Public Act 91-226, section 5, effective July 22, 1999, rewrote Section 11-6 by adding the elements of intent and knowledge, changing the age range of potential victims to children under the age of 17, and deleting the provision that it was not a defense that the accused reasonably believed the child to be of the age of 13 years and upwards. Consequently, Instruction 9.01B, concerning the accused's belief about the child's age being 13 years and upwards, should only be used for offenses committed before July 22, 1999.

9.01C
Definition Of Solicit

The word "solicit" means to command, authorize, urge, incite, request, or advise another to perform an act by any means, including, but not limited to, in person, over the phone, in writing, by computer, or by advertisement of any kind.

Committee Note

Instruction and Committee Note Approved January 18, 2013.

720 ILCS 5/11-6 (West 2013) (formerly Ill.Rev.Stat. ch. 38, § 11-6 (1991)), amended by P.A. 91-226, § 5, effective July 22, 1999; P.A. 95-143, § 5, effective January 1, 2008; P.A. 96-1551, Art. 2, § 5, effective July 1, 2011.

This definition is to be used when a defendant is charged with indecent solicitation of a child. Do not use the definition of solicit found in Instruction 9.01A.

9.02
Issues In Indecent Solicitation Of A Child

To sustain the charge of indecent solicitation of a child, the State must prove the following propositions:

[1] *First Proposition*: That the defendant knowingly solicited [(a child under the age of 17 years) (one whom the defendant believed to be a child under the age of 17 years)] to perform an act of sexual [(penetration) (conduct)]; and

Second Proposition: That when the defendant did so, he intended that the offense of [(aggravated criminal sexual assault) (criminal sexual assault) (predatory criminal sexual assault of a child) (aggravated criminal sexual abuse)] be committed; and

Third Proposition: That the defendant was then 17 years of age or older.

[or]

[2] *First Proposition:* That the defendant knowingly discussed an act of sexual [(conduct) (penetration)] with [(a child under the age of 17 years) (one whom the defendant believed to be a child under the age of 17 years)] by means of the Internet; and

Second Proposition: That when the defendant did so, he intended that the offense of [(aggravated criminal sexual assault) (predatory criminal sexual assault of a child) (aggravated criminal sexual abuse)] be committed; and

Third Proposition: That the defendant was then 17 years of age or older.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Amended Instruction and Committee Note Approved January 18, 2013.

720 ILCS 5/11-6 (West 2013) (formerly Ill.Rev.Stat. ch. 38, § 11-6 (1991)), amended by P.A. 91-226, § 5, effective July 22, 1999; P.A. 95-143, § 5, effective January 1, 2008; P.A. 96-1551, Art. 2, § 5, effective July 1, 2011.

This Instruction has been revised to conform with the rewriting and amendment of 720 ILCS 5/11-6 (West 1999), as acknowledged by the Illinois Appellate Court in *People v. Carter*, 405 Ill.App.3d 246, 939 N.E.2d 46 (1st Dist. 2010).

Give Instruction 9.01.

When applicable, give Instruction 11.57 defining "aggravated criminal sexual assault".

When applicable, give Instruction 11.55 defining "criminal sexual assault".

When applicable, give Instruction 11.103 defining "predatory criminal sexual assault of a child".

When applicable, give Instruction 11.61 defining "aggravated criminal sexual abuse".

When applicable, give Instruction 9.01C defining "solicit".

When applicable, give Instruction 11.65E defining "sexual penetration".

When applicable, give Instruction 11.65D defining "sexual conduct".

When applicable, give Instruction 4.27 defining "access".

When applicable, give Instruction 4.32 defining "computer".

When applicable, give Instruction 4.38 defining "Internet".

When applicable, give Instruction 4.48 defining "online".

When applicable, give Instruction 4.69 defining "wireless device".

The offense option of criminal sexual assault cannot be used in the Second Proposition of alternative [2]. *See* 720 ILCS 5/11-6(a-5) (West 2013).

It is also not a defense to Section 11-6(a-5) that the defendant did not solicit the child to perform sexual conduct or sexual penetration with the defendant. *See* 720 ILCS 5/11-6(a-6) (West 2013). When this issue is raised and the defendant is charged under Section 11-6(a-5), the committee suggests giving the last-bracketed sentence included in alternative [2] of Instruction 9.01.

Use applicable bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily the phrase "or one for whose conduct he is legally responsible" is inserted after the word "defendant" in each proposition. Give Instruction 5.03. However, some statutes appear to require that particular conduct be committed by the defendant personally or that a status that is an element of the offense pertain to the defendant himself. Whenever accountability language is to be inserted in an issues instruction, caution should be exercised to assure that accountability language is not used in any proposition that involves such conduct or status. *See* Committee Note to Instruction 5.03. Do not insert accountability language in the Third Proposition of this instruction. *See People v. Griffin*, 247 Ill. App. 3d 1, 616 N.E.2d 1242 (1st Dist. 1993) (holding that accountability language should not have been inserted into Instruction 11.58B, the aggravated criminal sexual assault issues

instruction, where the age of the person who actually penetrated the victim defines whether that crime ever occurred).

9.02A
Consent Of Child No Defense To Indecent Solicitation Of A Child

Consent of the child is not a defense to the charge of indecent solicitation of a child.

Committee Note

Amended Committee Note Approved January 18, 2013.

720 ILCS 5/11-6 (West 2013) (formerly Ill.Rev.Stat. ch. 38, § 11-6 (1991)), amended by P.A. 91-226, § 5, effective July 22, 1999; P.A. 95-143, § 5, effective January 1, 2008; P.A. 96-1551, Art. 2, § 5, effective July 1, 2011.

Give this Instruction with Instruction 9.01 only when the issue of consent is raised by the evidence. See Introduction to Chapter 24-25.00.

See Instruction 11.63A.

9.03
Definition Of Public Indecency

A person of the age of 17 years or older commits the offense of public indecency when, in a place where the conduct may reasonably be expected to be viewed by others, he performs [(an act of sexual penetration) (an act of sexual conduct) (a lewd exposure of the body done with the intent to arouse or to satisfy the sexual desire of the person)].

[Breast-feeding of an infant is not an act of public indecency.]

Committee Note

720 ILCS 5/11-9 (West 1994) (formerly Ill.Rev.Stat. ch. 38, §11-9 (1991)), amended by P.A. 83-1067, effective July 1, 1984; and P.A. 89-59, effective January 1, 1996.

Give Instruction 9.04.

Give Instruction 11.65E when it is alleged that an act of sexual penetration is the indecent act. Give Instruction 11.65D when it is alleged that an act of sexual conduct is the indecent act.

P.A. 89-59, effective January 1, 1996, provides that breast-feeding of infants is not an act of public indecency. Accordingly, the Committee has provided the bracketed alternative in case such an issue arises.

Use applicable bracketed material.

9.04
Issues In Public Indecency

To sustain the charge of public indecency, the State must prove the following propositions:

First Proposition: That the defendant performed [(an act of sexual penetration) (an act of sexual conduct) (a lewd exposure of the body done with the intent to arouse or satisfy the sexual desire of the person)]; and

Second Proposition: That the defendant performed the [(act) (lewd exposure)] in a place where his conduct might reasonably be expected to be viewed by others; and

Third Proposition: That the defendant was then 17 years of age or older.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-9 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-9 (1991)).

Give Instruction 9.03.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

9.05
Definition Of Bigamy

A person commits the offense of bigamy when [(he) (she)], having a [(husband) (wife)], marries another [and thereafter cohabits in this state].

Committee Note

720 ILCS 5/11-12(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-12(a) (1991)).

Give the last clause only when the second marriage takes place outside Illinois and give Instruction 9.05A.

Use applicable bracketed material.

9.05A
Definition Of Cohabit

The word "cohabit" means the living together of a man and woman in the same manner as if they were married to one another.

Committee Note

See Searls v. People, 13 Ill. 597, 598 (1852) ("In order to constitute this crime [adultery], the parties must dwell together openly and notoriously, upon terms as if the conjugal relation existed between them."). This definition is applicable to offenses other than adultery, such as bigamy.

9.05B
Affirmative Defenses To Bigamy

It is a defense to a charge of bigamy that, at the time of the marriage charged in the [(indictment) (information)],

[1] the defendant's prior marriage was dissolved or declared invalid by court judgment.

[or]

[2] the defendant reasonably believed [(his) (her)] prior [(husband) (wife)] to be dead.

[or]

[3] the prior [(husband) (wife)] had been continually absent for a period of five years, during which time the defendant did not know the prior [(husband) (wife)] to be alive.

[or]

[4] the defendant reasonably believed that [(he) (she)] was legally eligible to remarry.

Committee Note

720 ILCS 5/11-12(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-12(b) (1991)).

Give this instruction only when the issue is raised by the evidence. See Chapter 720, Section 3-2 and the Introduction to Chapter 24-25.00.

The word "judgment," as used in paragraph [1], is defined in Supreme Court Rule 2(b)(2).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

9.06
Issues In Bigamy

To sustain the charge of bigamy, the State must prove the following propositions:

First Proposition: That the defendant married ____ [and thereafter cohabited with [(him) (her)] in this State]; and

Second Proposition: That at the time of [(his) (her)] marriage to ____, the defendant was married to ____;

and

Third Proposition: That the defendant's prior marriage was not dissolved or declared invalid by court judgment.

[or]

Third Proposition: That the defendant did not reasonably believe that [(his) (her)] prior [(husband) (wife)] was dead.

[or]

Third Proposition: That the defendant's prior [(husband) (wife)] had not been continually absent for a period of 5 years during which time the defendant did not know the prior [(husband) (wife)] to be alive.

[or]

Third Proposition: That the defendant did not reasonably believe that [(he) (she)] was legally eligible to remarry.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of the propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-12 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-12 (1991)).

Give Instruction 9.05.

The Third Proposition presents alternative defenses. Give one or more of these alternatives when the issue is raised by the evidence. See Chapter 720, Section 3-2 and the Introduction to Chapter 24-25.00. If more than one is used they should be stated in the

conjunctive because the State must overcome every defense.

Use applicable paragraphs and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.07
Definition Of Marrying A Bigamist

A person commits the offense of marrying a bigamist when [(he) (she)] knowingly marries another known to [(him) (her)] to be married [and thereafter cohabits in this State].

Committee Note

720 ILCS 5/11-13 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-13 (1991)).

Give Instruction 9.08.

Give the last clause only when the second marriage took place outside Illinois.

Use applicable bracketed material.

9.07A
Affirmative Defenses To Marrying A Bigamist

It is a defense to the charge of marrying a bigamist that at the time of the marriage
[1] the prior marriage of the other person was dissolved or declared invalid by court judgment.

[or]

[2] the defendant reasonably believed the prior [(husband) (wife)] of the other person to be dead.

[or]

[3] the other person's prior [(husband) (wife)] had been continually absent for a period of five years, during which time the defendant did not know that the other person's prior [(husband) (wife)] was alive.

[or]

[4] the defendant reasonably believed that the other person was legally eligible to remarry.

Committee Note

720 ILCS 5/11-12 and 11-13 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§11-12 and 11-13 (1991)).

Give this instruction only when the issue is raised by the evidence. See Chapter 720, Section 3-2 and the Introduction to Chapter 24-25.00.

The word "judgment," as used in paragraph [1], is defined in Supreme Court Rule 2(b)(2).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

9.08
Issues In Marrying A Bigamist

To sustain the charge of marrying a bigamist, the State must prove the following propositions:

First Proposition: That the defendant married ____ [and thereafter cohabited with [(him) (her)] in this State]; and

Second Proposition: That defendant then knew that ____ was then married to another person[; and

Third Proposition: That ____'s prior marriage was not dissolved or declared invalid by court judgment

[or]

Third Proposition: That the defendant did not reasonably believe that ____'s prior [(husband) (wife)] was dead

[or]

Third Proposition: That ____'s prior [(husband) (wife)] had not been continually absent for a period of five years, during which time the defendant did not know [(he) (she)] was alive

[or]

Third Proposition: That the defendant did not reasonably believe that ____ was legally eligible to remarry].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-12(b) and 11-13 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§11-12(b) and 11-13 (1991)).

Give Instruction 9.07.

See Instruction 9.07A.

The Third Proposition presents alternative defenses. Give one or more of these alternatives if the issue is raised by the evidence. See Chapter 720, Section 3-2 and the Introduction to Chapter 24-25.00. If more than one alternative is used they should be stated in the conjunctive because the State must overcome every defense.

Use applicable paragraphs and bracketed material.

9.09
Definition Of Prostitution

A person commits the offense of prostitution when [(he) (she)] [(intentionally) (knowingly)] [(performs) (offers to perform) (agrees to perform)] [(any act of sexual penetration) (any touching or fondling of the sex organs of one person by another person for the purpose of sexual arousal or gratification)] for any money, property, token, object, or article or anything of value.

Committee Note

720 ILCS 5/11-14 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §11-14 (1991)), amended by P.A. 83-1067, effective July 1, 1984; and P.A. 88-680, effective January 1, 1995.

Give Instruction 9.10.

When sexual penetration is an issue, give Instruction 11.65E.

Because Section 11-14 does not include a mental state, the Committee decided to provide two alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness.

In People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982), the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state. Consistent with these cases and the Committee's view that it would be inappropriate to speak of a defendant's "recklessly" committing prostitution under Section 11-14, the Committee has provided only the alternative mental states of "intentionally" and "knowingly." Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

This instruction has been revised to conform to the interpretation placed upon the prostitution statute by the Appellate Court in People v. Pettigrew, 215 Ill.App.3d 393, 395, 574 N.E.2d 1282, 1283-84, 158 Ill.Dec. 889, 890-91 (4th Dist.1991). In Pettigrew, the court found that a "purpose of sexual arousal or gratification" is an element of the offense only when an offer, agreement, or act of *touching or fondling* is alleged. The court held that proof of a "purpose of sexual arousal or gratification" is not required where an offer, agreement, or act of *sexual penetration* is alleged.

Use applicable bracketed material.

9.10
Issue In Prostitution

To sustain the charge of prostitution, the State must prove the following proposition:

That the defendant [(intentionally) (knowingly)] [(performed) (offered to perform) (agreed to perform)] [(any act of sexual penetration) (any touching or fondling of the sex organs of one person by another person for the purpose of sexual arousal or gratification)] for any money, property, token, object, or article or anything of value.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-14 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §11-14 (1991)), amended by P.A. 83-1067, effective July 1, 1984; and P.A. 88-680, effective January 1, 1995.

Give Instruction 9.09.

When sexual penetration is an issue, give Instruction 11.65E.

Because Section 11-14 does not include a mental state, the Committee decided to provide two alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness.

In People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982), the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state. Consistent with these cases and the Committee's view that it would be inappropriate to speak of a defendant's "recklessly" committing prostitution under Section 11-14, the Committee has provided only the alternative mental states of "intentionally" and "knowingly." Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

This instruction has been revised to conform to the interpretation placed upon the prostitution statute by the Appellate Court in People v. Pettigrew, 215 Ill.App.3d 393, 574 N.E.2d 1282, 158 Ill.Dec. 889 (4th Dist.1991). See Committee Note to Instruction 9.09.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he

is legally responsible" after the word "defendant" in the proposition. See Instruction 5.03.

9.11
Definition Of Soliciting For A Prostitute

A person commits the offense of soliciting for a prostitute when he [(solicits another) (arranges or offers to arrange a meeting of persons) (directs another to a place knowing such direction is)] for the purpose of prostitution.

Committee Note

720 ILCS 5/11-15 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-15 (1991)).

Give Instruction 9.12.

When sexual penetration is an issue, give Instruction 11.65E.

Give Instruction 9.01A, defining the word "solicit." Give Instruction 9.09, defining the word "prostitution."

Use applicable bracketed material.

9.12
Issue In Soliciting For A Prostitute

To sustain the charge of solicitation for a prostitute, the State must prove the following proposition:

That the defendant solicited ____ for the purpose of prostitution.

[or]

That the defendant arranged or offered to arrange a meeting of persons for the purpose of prostitution.

[or]

That the defendant directed ____ to a place knowing such direction was for the purpose of prostitution.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-15 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-15 (1991)).

Give Instruction 9.11.

Use applicable paragraphs.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

9.13
Definition Of Soliciting For A Juvenile Prostitute [Or Institutionalized Mentally Retarded Person]

A person commits the offense of soliciting for a juvenile prostitute when he [(solicits another) (arranges or offers to arrange a meeting of persons) (directs another to a place knowing such direction is)] for the purpose of prostitution, and the prostitute for whom such person is soliciting is [(under 16 years of age) (an institutionalized severely or profoundly mentally retarded person)].

Committee Note

720 ILCS 5/11-15.1(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-15.1(a) (1991)).

Give Instruction 9.14.

The element concerning the mental disability of the victim was added by P.A. 85-1392, and that portion of the Instruction should only be used for offenses committed after the effective date of that Act. The term "institutionalized mentally retarded person" is defined in Instruction 11.65G.

Give Instruction 9.01A, defining the word "solicit." Give Instruction 9.09, defining the word "prostitution."

When sexual penetration is an issue, give Instruction 11.65E.

Use applicable bracketed material.

9.13A
Affirmative Defense To Soliciting For A Juvenile Prostitute [Or Institutionalized Mentally Retarded Person]

It is a defense to the charge of soliciting for a juvenile prostitute that, at the time of the act giving rise to the charge, the defendant reasonably believed the person involved was [(of the age of 16 years or older) (not an institutionalized severely or profoundly mentally retarded person)].

Committee Note

720 ILCS 5/11-15.1(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-15.1(b) (1991)).

The portion of the Instruction concerning the mental disability of the victim was added by P.A. 85-1392 and should not be used for an offense committed before the effective date of that Act.

See Chapter 720, Section 3-2 and the Introduction to Chapter 24-25.00.

Use applicable bracketed material.

9.14
Issues In Soliciting For A Juvenile Prostitute

To sustain the charge of soliciting for a juvenile prostitute, the State must prove the following propositions:

First Proposition: That the defendant solicited ____ for the purpose of prostitution;

[or]

First Proposition: That the defendant arranged or offered to arrange a meeting of persons for the purpose of prostitution;

[or]

First Proposition: That the defendant directed ____ to a place knowing such direction was for the purpose of prostitution;

and

Second Proposition: That ____, for whom the defendant was soliciting, was [(under the age of 16 years of age) (an institutionalized severely or profoundly mentally retarded person)] at the time of the act giving rise to the charge[; and

Third Proposition: That the defendant did not reasonably believe that ____ was [(of the age of 16 years or older) (not an institutionalized severely or profoundly mentally retarded person)]].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-15.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-15.1 (1991)).

Give Instruction 9.13.

Give the Third Proposition when the issue is raised by the evidence. When there is sufficient evidence to raise the issue, the burden is on the State to overcome the defense beyond a reasonable doubt. See Chapter 720, Section 3-2 and the Introduction to Chapter 24-25.00.

The element concerning the mental disability of the alleged prostitute was added by P.A. 85-1392, and that portion of the Instruction should only be used for offenses committed after the effective date of that Act.

Insert in the blanks the name of the alleged prostitute.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

9.15
Definition Of Pandering

A person commits the offense of pandering when he, for any money, property, token, object, or article or anything of value [(compels a person to become a prostitute) (arranges or offers to arrange a situation in which a person may practice prostitution)].

Committee Note

720 ILCS 5/11-16 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §11-16 (1991)), amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 9.16.

Give Instruction 9.09, defining the word "prostitution," and Instruction 9.21, defining the word "prostitute," as applicable.

Use applicable bracketed material.

9.16
Issues In Pandering

To sustain the charge of pandering, the State must prove the following propositions:

First Proposition: That the defendant compelled ____ to become a prostitute;

[or]

First Proposition: That the defendant arranged or offered to arrange a situation in which ____ might practice prostitution;

and

Second Proposition: That the defendant acted for the purpose of obtaining any money, property, token, object, or article or anything of value.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-16 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §11-16); amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 9.15.

To obtain a conviction under Section 11-16, the State need not prove an actual exchange of money. See Committee Comments to Section 11-16; People v. Houston, 43 Ill.App.3d 677, 357 N.E.2d 184, 2 Ill.Dec. 207 (1st Dist.1976). Compare Section 11-19 with Instructions 9.23 and 9.24.

Insert in the blanks the name of the alleged prostitute.

Use applicable paragraphs.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

9.17
Definition Of Keeping A Place Of Prostitution

A person commits the offense of keeping a place of prostitution when he has or exercises control over the use of any place which could offer seclusion or shelter for the practice of prostitution, if he

[1] knowingly [(grants) (permits)] the use of such place for the purpose of prostitution.

[or]

[2] [(grants) (permits)] the use of such place under circumstances from which he could reasonably know that the place is used or is to be used for purposes of prostitution.

[or]

[3] permits the continued use of a place after becoming aware of facts or circumstances from which he should reasonably know that the place is being used for purposes of prostitution.

Committee Note

720 ILCS 5/11-17 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-17 (1991)).

Give Instruction 9.18.

Give Instruction 9.09, defining the word "prostitution."

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

9.18
Issues In Keeping A Place Of Prostitution

To sustain the charge of keeping a place of prostitution, the State must prove the following propositions:

First Proposition: That the defendant [(had) (exercised control over)] the use of a place which could offer seclusion or shelter for the practice of prostitution; and

Second Proposition: That the place was used for the purposes of prostitution; and

Third Proposition: That the defendant knowingly [(granted) (permitted)] the use of such place for the purposes of prostitution.

[or]

Third Proposition: That the defendant [(granted) (permitted)] the use of the place under circumstances from which he could reasonably have known that the place was used or to be used for prostitution.

[or]

Third Proposition: That the defendant [(granted) (permitted)] the continued use of the place after he became aware of facts or circumstances from which he should have reasonably known that the place was being used for purposes of prostitution.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-17 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-17 (1991)).

Give Instruction 9.17.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

9.19
Definition Of Patronizing A Prostitute

A person commits the offense of patronizing a prostitute when [(he) (she)] with a person not [(his) (her)] spouse [(engages in an act of sexual penetration with a prostitute) (enters or remains in a place of prostitution with intent to engage in an act of sexual penetration)].

Committee Note

720 ILCS 5/11-18 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-18 (1991)).

Give Instruction 9.20.

Give Instruction 11.65E, defining the term "sexual penetration."

If the issue is whether the accused has engaged in an act of sexual penetration with a prostitute, give the definition of the word "prostitute" found in Instruction 9.21.

If the issue is whether the accused entered or remained in a place of prostitution with the intent to engage in an act of sexual penetration, give Instruction 9.22, defining the term "place of prostitution."

Use applicable bracketed material.

9.20
Issue In Patronizing A Prostitute

To sustain the charge of patronizing a prostitute, the State must prove the following proposition:

That the defendant engaged in an act of sexual penetration with a prostitute not [(his) (her)] spouse.

[or]

That the defendant entered or remained in a place of prostitution with the intent to engage in an act of sexual penetration with a person not [(his) (her)] spouse.

If you find from your consideration of the all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-18 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-18 (1991)).

Give Instruction 9.19.

Use applicable paragraph and bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in the proposition. See Instruction 5.03.

9.21
Definition Of Prostitute

The word "prostitute" means a person who [(performs) (offers to perform) (agrees to perform)] [(an act of sexual penetration) (any touching or fondling of the sex organs of a person by another person for the purpose of sexual arousal or gratification)] for any money, property, token, object, or article or anything of value.

Committee Note

720 ILCS 5/11-14 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §11-14 (1991)), amended by P.A. 83-1067, effective July 1, 1984; and P.A. 88-680, effective January 1, 1995.

Use applicable bracketed material.

9.22
Definition Of Place Of Prostitution

The term "place of prostitution" means any place which is used for the purpose of offering seclusion or shelter for [(an act of sexual penetration) (any touching or fondling of the sex organs of a person by another person for the purpose of sexual arousal or gratification)] for any money, property, token, object, or article or anything of value.

Committee Note

720 ILCS 5/11-14, 11-17 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §§11-14, 11-17 (1991)), amended by P.A. 88-680, effective January 1, 1995.

Use applicable bracketed material.

9.23
Definition Of Pimping

A person commits the offense of pimping when he receives any money, property, token, object, or article or anything of value from a prostitute, not for lawful consideration, knowing that it was earned in whole or in part from the practice of prostitution.

Committee Note

720 ILCS 5/11-19 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §11-19 (1991)), amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 9.09, defining the word "prostitution," and Instruction 9.21, defining the word "prostitute."

Use applicable bracketed material.

9.24
Issues In Pimping

To sustain the charge of pimping, the State must prove the following propositions:

First Proposition: That the defendant received any money, property, token, object, or article or anything of value from a prostitute; and

Second Proposition: That there was no lawful consideration for the defendant's receipt of the money, property, token, object, or article or thing of value; and

Third Proposition: That the defendant knew that the money, property, token, object, or article or thing of value was earned in whole or in part from the practice of prostitution.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-19 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §11-19 (1991)), amended by P.A. 88-680; effective January 1, 1995.

Give Instruction 9.23.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.25
Definition Of Juvenile Pimping [Or Pimping For Institutionalized Mentally Retarded Person]

A person commits the offense of juvenile pimping when he receives any money, property, token, object, or article or anything of value from a prostitute [(under the age of 16 years) (who is an institutionalized severely or profoundly mentally retarded person)], not for lawful consideration, knowing it was earned in whole or in part from the practice of prostitution.

Committee Note

720 ILCS 5/11-19.1(a) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §11-19.1(a) (1991)), amended by P.A. 85-1392, effective January 1, 1989; and P.A. 88-680, effective January 1, 1995.

Give Instruction 9.26.

Give Instruction 9.09, defining the word "prostitution."

Give Instruction 11.656, defining the phrase "institutionalized severely or profoundly mentally retarded person," when applicable.

Use applicable bracketed material.

9.25A
Affirmative Defense To Juvenile Pimping [Or Pimping For Institutionalized Mentally Retarded Person]

It is a defense to the charge of juvenile pimping that, at the time of the act giving rise to the charge, the defendant reasonably believed the person involved was [(of the age of 16 years or older) (not an institutionalized severely or profoundly mentally retarded person)].

Committee Note

720 ILCS 5/11-19.1(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-19.1(b) (1991)).

Give this instruction when the issue is raised by the evidence. See Chapter 38, Section 3-2 and the Introduction to Chapter 24-25.00.

9.26
Issues In Juvenile Pimping [Or Pimping For Institutionalized Mentally Retarded Person]

To sustain the charge of juvenile pimping, the State must prove the following propositions:

First Proposition: That the defendant received any money, property, token, object, or article or anything of value from a prostitute; and

Second Proposition: That there was no lawful consideration for the defendant's receipt of the money, property, token, object, or article or thing of value; and

Third Proposition: That the defendant knew that the money, property, token, object, or article or thing of value was earned in whole or in part from the practice of prostitution; and

Fourth Proposition: That the prostitute was [(under the age of 16 years) (an institutionalized severely or profoundly mentally retarded person)] at the time the defendant received the money, property, token, object, or article or thing of value[; and

Fifth Proposition: That the defendant did not reasonably believe that the prostitute was [(of the age of 16 years or older) (not an institutionalized severely or profoundly mentally retarded person)]].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-19.1 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §11-19.1 (1991)), amended by P.A. 85-1392, effective January 1, 1989; and P.A. 88-680, effective January 1, 1995.

Give Instruction 9.25.

Give the bracketed Fifth Proposition when the issue is raised by the evidence. When there is sufficient evidence to raise the issue, the burden is on the State to overcome the defense beyond a reasonable doubt. See Section 3-2 and the Introduction to Chapter 24-25.00.

Give Instruction 4.13, defining the term “reasonable belief”, when requested by the defendant and when the issue is raised by the evidence.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.27
Definition Of Obscenity

A person commits the offense of obscenity when he, [(with knowledge of the nature or content thereof) (recklessly failing to exercise reasonable inspection which would have disclosed the nature or content thereof)],

[1] [(sells) (delivers) (provides) (offers or agrees to) [(sell) (deliver) (provide)]] any obscene [(writing) (picture) (record) [or other representation or embodiment of the obscene]].

[or]

[2] [(presents) (directs)] an obscene [(play) (dance) [or other performance]].

[or]

[3] participates directly in that portion of an obscene [(play) (dance) [or other performance]] which makes it obscene.

[or]

[4] [(publishes) (exhibits) [or otherwise makes available]] anything obscene.

[or]

[5] performs an obscene act [or otherwise presents an obscene exhibition of his body] for gain.

[or]

[6] [(creates) (buys) (procures) (possesses)] obscene matter or material with intent to disseminate it.

[or]

[7] [(creates) (buys) (procures) (possesses)] obscene matter or material with intent to disseminate it in violation of the [(penal laws) (regulations)] of ____.

[or]

[8] advertises or otherwise promotes the sale of material represented or held out by him

to be obscene, whether or not it is obscene.

Committee Note

720 ILCS 5/11-20(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-20(a) (1991)).

Give Instructions 9.27A and 9.28.

Insert in the blank the name of the other jurisdiction.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.27A
Definition Of Obscene

Any [(material) (performance)] is obscene if

[1. the average person, applying contemporary adult community standards, would find that the work, taken as a whole, appeals to the prurient interest; and

[2] the average person, applying contemporary adult community standards, would find that it depicts or describes, in a patently offensive way, ultimate sexual acts or sadomasochistic sexual acts, whether normal or perverted, actual or simulated, or masturbation, excretory functions, or lewd exhibition of the genitals; and

[3] a reasonable person, taking the [(material) (performance)] as a whole, would find no serious literary, artistic, political, or scientific value.

[Obscenity is judged with reference to the standards of adults, except that it is judged with reference to children or other specially susceptible audiences if it appears from the character of the material or the circumstances of its dissemination to be specially designed for or directed to such an audience.]

In determining how any [(material) (performance)] would be viewed by the average person, you are to consider how it would be viewed by ordinary adults in the whole State of Illinois rather than by the people in any single city or town or region within the State.

Committee Note

720 ILCS 5/11-20(b) and (c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-20(b) and (c) (1991)).

This instruction is based on the present language of Sections 11-20(b) and (c), together with additional language in paragraph [3] suggested by the United States Supreme Court in Pope v. Illinois, 481 U.S. 497, 107 S.Ct. 1918, 95 L.Ed.2d 439 (1987), at footnote 3. *See also* Miller v. California, 413 U.S. 15, 93 S.Ct. 2607, 37 L.Ed.2d 419 (1973), and People v. Ridens, 59 Ill.2d 362, 321 N.E.2d 264 (1974).

The final paragraph of the instruction complies with the requirement of People v. Butler, 49 Ill.2d 435, 275 N.E.2d 400 (1971), and People v. Ridens, 59 Ill.2d 362, 321 N.E.2d 264 (1974), that the jury must be instructed on a state-wide standard.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.27B
Inferences Of Intent To Disseminate In Obscenity Cases

If you find that the defendant
[1] [(created) (purchased) (procured) (possessed)] a [(mold) (engraved plate) [or other embodiment]] of obscenity specially adopted for reproducing multiple copies,

[or]

[2] possessed more than three copies of the same obscene material,

you may infer that defendant intended to disseminate obscene material.

Committee Note

720 ILCS 5/11-20(e) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-20(e) (1991)).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

9.27C
Obscenity--Affirmative Defenses

It is a defense to the charge of obscenity that the dissemination
[1] was not for gain and was made to personal associates other than children under 18 years of age.

[or]

[2] was to institutions or individuals having scientific or other special justification for possession of such material.

Committee Note

720 ILCS 5/11-20(f) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-20(f) (1991)).

This instruction presents alternative defenses. Give one or both of these defenses if the issue is raised by the evidence. See Chapter 720, Section 3-2 and the Introduction to Chapter 24-25.00.

Use applicable paragraphs.

9.28
Issues In Obscenity

To sustain the charge of obscenity, the State must prove the following propositions:

First Proposition: That the defendant [(sold) (delivered) (provided) (offered or agreed to [(sell) (deliver) (provide)])] an obscene ____;

[or]

First Proposition: That the defendant [(presented) (directed)] an obscene [(play) (dance) [or other performance]];

[or]

First Proposition: That the defendant participated directly in that portion of an obscene [(play) (dance) [or other performance]] which made it obscene;

[or]

First Proposition: That the defendant [(published) (exhibited) [or otherwise made available]] anything obscene;

[or]

First Proposition: That the defendant performed [(an obscene act) [or otherwise presented an obscene exhibition of his body]] for gain;

[or]

First Proposition: That the defendant [(created) (bought) (procured) (possessed)] obscene matter or material with intent to disseminate it;

[or]

First Proposition: That the defendant advertised or otherwise promoted the sale of material represented or held out by him to be obscene whether or not it was obscene;

and

Second Proposition: That the defendant then knew the nature or content of ____[; and

Third Proposition: That the dissemination was for gain or was made to persons other than personal associates of the defendant.

[or]

Third Proposition: That the dissemination was not to institutions or individuals having scientific or other special justification for possession of such material].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-20(a) and (b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-20(a) and (b) (1991)).

Give Instructions 9.27 and 9.27A.

When intent to disseminate is an issue, give Instruction 9.27B.

When the defendant raises the affirmative defense(s) contained in Section 11-20(f), give Instruction 9.27C and use the applicable alternative(s) from the Third Proposition. Once a defense is raised by the introduction of sufficient evidence supporting it, the State must overcome the defense beyond a reasonable doubt. See Chapter 720, Section 3-2 and the Introduction to Chapter 24-25.00.

If the defendant is alleged to have the intent to disseminate obscene matter in violation of the laws of a jurisdiction other than Illinois, the jury must be specifically instructed on the law of the other jurisdiction.

The Third Proposition presents alternative defenses. However, the first alternative is based upon Section 11-20(f)(1) which states the defense in the conjunctive "was not for gain *and* was made to personal associates . . . ." Therefore, if the State overcomes *either* element of the defense it may prevail. Accordingly, when submitted to the jury as an issue in the case, it is phrased in the disjunctive.

Insert in the appropriate blank the name of the other jurisdiction.

Insert in the appropriate blanks the descriptive word, e.g., writing, picture, record, exhibition, or other presentation or embodiment of the obscene.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

9.29
Definition Of Child Pornography

A person commits the offense of child pornography when he
[1] [([(films) (videotapes) (photographs) (depicts) (portrays)] by any means of visual medium or reproduction) (depicts by computer)] any [(child he knows or reasonably should know to be under the age of 18) (institutionalized severely or profoundly mentally retarded person)] where such [(child) (institutionalized severely or profoundly mentally retarded person)] is:

[a] actually or by simulation engaged in any act of sexual intercourse with any [(person) (animal)].

[or]

[b] actually or by simulation engaged in any act of sexual contact involving the sex organs of the [(child) (institutionalized severely or profoundly mentally retarded person)] and the [(mouth) (anus) (sex organs)] of another [(person) (animal)].

[or]

[c] actually or by simulation engaged in any act of sexual contact involving the [(mouth) (anus) (sex organs)] of the [(child) (institutionalized severely or profoundly mentally retarded person)] and the sex organs of another [(person) (animal)].

[or]

[d] actually or by simulation engaged in any act of masturbation.

[or]

[e] actually or by simulation portrayed as [(being the object of) (otherwise engaged in)] any act of lewd [(fondling) (touching) (caressing)] involving another [(person) (animal)].

[or]

[f] actually or by simulation engaged in any act of [(excretion) (urination)] within a sexual context.

[or]

[g] actually or by simulation [(portrayed) (depicted)] as [(bound) (fettered) (subject to sadistic abuse) (subject to masochistic abuse) (subject to sadomasochistic abuse)] in any sexual context.

[or]

[h] [(depicted) (portrayed)] in any [(pose) (posture) (setting)] involving a lewd exhibition of the [(unclothed genitals) (pubic area) (buttocks) (a fully or partially developed breast)] of the [(child) (other person)] [if the [(child) (other person)] is a female].

[or]

[2] with the knowledge of the [(nature) (content)] thereof, [(reproduces) (disseminates) (offers to disseminate) (exhibits) (possesses with the intent to disseminate)] any [(film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] of any [(child) (institutionalized severely or profoundly mentally retarded person)] whom the person knows or reasonably should know to be [(under the age of 18) (an institutionalized severely or profoundly mentally retarded person)] engaged in ____.

[or]

[3] with knowledge of the [(subject matter) (theme)] thereof, produces any [(stage play) (live performance) (film) (videotape) (depiction by computer) [or other similar visual portrayal]] which includes [(a child whom the person knows or reasonably should know to be under the age of 18) (an institutionalized severely or profoundly mentally retarded person)] engaged in ____.

[or]

[4] [(solicits) (uses) (persuades) (induces) (entices) (coerces)] any [(child whom he knows or reasonably should know to be under the age of 18) (institutionalized severely or profoundly mentally retarded person)] to appear in any [(stage play) (live presentation) (film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] in which the [(child) (institutionalized severely or profoundly mentally retarded person)] [(is) (will be depicted, actually,) (will be depicted, by simulation,)] in ____.

[or]

[5] is a [(parent) (step-parent) (legal guardian) (other person having care or custody)] of [(a child whom the person knows or reasonably should know to be under the age of 18)

(an institutionalized severely or profoundly mentally retarded person)] and who knowingly [(permits) (induces) (promotes) (arranges for)] such [(child) (institutionalized severely or profoundly mentally retarded person)] to appear in any [(stage play) (live performance) (film) (videotape) (photograph) (depiction by computer) [or other similar visual presentation, portrayal, or simulation]] in which ____.

[or]

[6] with the knowledge of the [(nature) (content)] thereof, possesses any [(film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] of any [(child) (institutionalized severely or profoundly mentally retarded person)] whom the person knows or reasonably should know to be [(under the age of 18) (an institutionalized severely or profoundly mentally retarded person)] engaged in ____.

[or]

[7] [(solicits) (uses) (persuades) (induces) (entices) (coerces)] a person to provide any [(child under the age of 18) (institutionalized severely or profoundly mentally retarded person)] to appear in any [(stage play) (live presentation) (film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] in which the [(child) (institutionalized severely or profoundly mentally retarded person)] will be depicted, actually or by simulation, in ____.

Committee Note

720 ILCS 5/11-20.1(a) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §11-20.1(a) (1991)), amended by P.A. 84-1029, effective November 18, 1985; P.A. 85-1392, effective January 1, 1989; P.A. 85-1440, effective February 1, 1989; P.A. 85-1447, effective January 1, 1990; P.A. 86-820, effective January 1, 1990; P.A. 86-1168, effective January 1, 1991; P.A. 87-1069, effective January 1, 1993; and P.A. 88-680, effective January 1, 1995.

When paragraphs [2], [3], [4], [5], [6], or [7] are used, the applicable subparagraph or subparagraphs [a] through [h] of paragraph [1] must be included where the blank appears.

When applicable, give Instruction 11.65G, defining the phrase "institutionalized severely or profoundly mentally retarded person."

When applicable, give the definitions of the terms "disseminate," "produce," "reproduce," "depict by computer," and "depiction by computer" as set forth in Instruction 9.29B. If the definition of "computer," "computer program," or "data" becomes an issue, see 720 ILCS 5/16D-2 (West 1994) (formerly Ill.Rev.Stat. ch. 38, §16D-2 (1991)).

When applicable, give Instruction 9.01A, defining the words "solicits" and "solicitation."

Sections 11-20.1(b)(1), (b)(2), and (b)(3) provide affirmative defenses to the offense of child pornography which are set forth in Instruction 9.29A.

Section 11-20.1(b)(4) provides a presumption that under certain circumstances, the defendant possessed child pornography with the intent to disseminate. This presumption is set forth in Instruction 9.29C.

Use applicable paragraphs and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.29A
Affirmative Defenses To Child Pornography

[1] It is a defense to a charge of child pornography that the defendant reasonably believed, under all of the circumstances, that the [(child was 18 years of age or older) (person was not an institutionalized severely or profoundly mentally retarded person)] but only where, prior to the act or acts giving rise to prosecution, he [(took some affirmative action) (made a *bona fide* inquiry)] designed to ascertain whether the [(child was 18 years of age or older) (person was not an institutionalized severely or profoundly mentally retarded person)] and his reliance upon the information so obtained was clearly reasonable.

[or]

[2] It is a defense to a charge of child pornography that the defendant was employed by [(a public library) (any library operated by an institution accredited by a generally recognized accrediting agency)] at the time the act leading to the charge of child pornography took place and such act was committed during the course of employment.

[or]

[3] The charge of child pornography shall not apply to the performance of official duties by [(law enforcement officers) (prosecuting officers) (court personnel) (attorneys) (*bona fide* treatment programs conducted by licensed physicians) (*bona fide* treatment programs conducted by licensed psychologists) (*bona fide* treatment programs conducted by licensed social workers) (professional education programs conducted by licensed physicians) (professional education programs conducted by licensed psychologists) (professional education programs conducted by licensed social workers)].

Committee Note

720 ILCS 5/11-20.1(b) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §11-20.1(b) (1991)), amended by P.A. 84-1029, effective November 18, 1985; and P.A. 85-1392, effective January 1, 1989.

Give this instruction when the defense is raised by the evidence. See 720 ILCS 5/3-2 and the Introduction to Chapter 24-25.00.

Use applicable paragraphs and bracketed material.

9.29B
Definitions Of Disseminate, Produce, And Reproduce Under The Offense Of Child Pornography

[For purposes of the offense of child pornography,] [(the) (The)] word "disseminate" means to

[1] sell, distribute, exchange, or transfer possession, whether with or without consideration.

[or]

[2] make a depiction by computer available for distribution or downloading through facilities of any telecommunications network or through any other means of transferring computer programs or data to a computer.

[For purposes of the offense of child pornography,] [(the) (The)] word "produce" means to direct, promote, advertise, publish, manufacture, issue, present, or show.

[For purposes of the offense of child pornography,] [(the) (The)] word "reproduce" means to make a duplication or copy.

[For purposes of the offense of child pornography,] [(the) (The)] phrase "depict by computer" means to generate, create, or cause to be created or generated a computer program or data that after being processed by a computer, either alone or in conjunction with one or more computer programs, results in a visual depiction on a computer monitor, screen, or display.

[For purposes of the offense of child pornography,] [(the) (The)] phrase "depiction by computer" means a computer program or data that after being processed by a computer, either alone or in conjunction with one or more computer programs, results in a visual depiction on a computer monitor, screen, or display.

Committee Note

720 ILCS 5/11-20.1(f) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §11-20.1(f) (1991)), amended by P.A. 88-680, effective January 1, 1995.

These definitions apply only to the offense of child pornography.

9.29C
Presumption Of Possession With Intent To Disseminate--Child Pornography

If you find that the defendant possessed one or more of the same film, videotape, visual reproduction, or depiction by computer in which child pornography is depicted, you may infer that the defendant possessed these materials with the intent to disseminate them.

Committee Note

720 ILCS 5/11-20.1(b)(4) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §11-20.1(b)(4) (1991)), created by P.A. 85-1447, effective January 1, 1990, amended by P.A. 88-680, effective January 1, 1995.

This presumption applies only to the offense of child pornography.

See Instruction 9.29B regarding the definitions of the terms "disseminate" and "depiction by computer."

9.30
Issues In Child Pornography

To sustain the charge of child pornography, the State must prove the following propositions:

[1] *First Proposition:* That the defendant [([(filmed) (videotaped) (photographed) (depicted) (portrayed)] by means of visual medium or reproduction) (depicted by computer)] [(a child he knew or reasonably should have known to be under the age of 18) (an institutionalized severely or profoundly mentally retarded person)];

[or]

[2] *First Proposition:* That the defendant with the knowledge of the [(nature) (content)] thereof, [(reproduced) (disseminated) (offered to disseminate) (exhibited) (possessed with the intent to disseminate)] a [(film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] of [(a child) (an institutionalized severely or profoundly mentally retarded person)] whom the defendant knew or reasonably should have known to be [(under the age of 18) (an institutionalized severely or profoundly mentally retarded person)];

[or]

[3] *First Proposition:* That the defendant with the knowledge of the [(subject matter) (theme)] thereof, produced a [(stage play) (live performance) (film) (videotape) (depiction by computer) [or other similar visual portrayal]] which included [(a child whom the defendant knew or reasonably should have known to be under the age of 18) (an institutionalized severely or profoundly mentally retarded person)];

[or]

[4] *First Proposition:* That the defendant [(solicited) (used) (persuaded) (induced) (enticed) (coerced)] [(a child whom he knew or reasonably should have known to be under the age of 18) (an institutionalized severely or profoundly mentally retarded person)] to appear in a [(stage play) (live presentation) (film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] in which the [(child) (institutionalized severely or profoundly mentally retarded person)] [(would be) (would be depicted, actually) (would be depicted, by simulation)] in the following [(act) (pose) (setting)]: ____;

[or]

[5] *First Proposition:* That the defendant was a [(parent) (step-parent) (legal guardian) (other person having care or custody)] of [(a child whom the defendant knew or

reasonably should have known to be under the age of 18) (an institutionalized severely or profoundly mentally retarded person)] and that the defendant knowingly [(permitted) (induced) (promoted) (arranged for)] such [(child) (institutionalized severely or profoundly mentally retarded person)] to appear in a [(stage play) (live performance) (film) (videotape) (photograph) (depiction by computer) [or other similar visual [(presentation) (portrayal) (simulation)]] of the following [(act) (activity)]: ____;

[or]

[6] *First Proposition:* That the defendant with the knowledge of the [(nature) (content)] thereof, possessed a [(film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] of [(a child) (an institutionalized severely or profoundly mentally retarded person)] whom the defendant knew or reasonably should have known to be [(under the age of 18) (an institutionalized severely or profoundly mentally retarded person)];

[or]

[7] *First Proposition:* That the defendant [(solicited) (used) (persuaded) (induced) (enticed) (coerced)] a person to provide [(a child under the age of 18) (an institutionalized severely or profoundly mentally retarded person)] to appear in a [(stage play) (live presentation) (film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] in which the [(child) (institutionalized severely or profoundly mentally retarded person)] would be depicted, actually or by simulation: ____;

and

[a] *Second Proposition:* That such [(child) (institutionalized severely or profoundly mentally retarded person)] actually or by simulation engaged in an act of sexual intercourse with [(a person) (an animal)].

[or]

[b] *Second Proposition:* That such [(child) (institutionalized severely or profoundly mentally retarded person)] actually or by simulation engaged in an act of sexual contact involving the sex organs of the [(child) (institutionalized severely or profoundly mentally retarded person)] and the [(mouth) (anus) (sex organs)] of another [(person) (animal)].

[or]

[c] *Second Proposition:* That such [(child) (institutionalized severely or profoundly mentally retarded person)] actually or by simulation engaged in an act

of sexual contact involving the [(mouth) (anus) (sex organs)] of the [(child) (institutionalized severely or profoundly mentally retarded person)] and the sex organs of another [(person) (animal)].

[or]

[d] *Second Proposition:* That such [(child) (institutionalized severely or profoundly mentally retarded person)] actually or by simulation engaged in an act of masturbation.

[or]

[e] *Second Proposition:* That such [(child) (institutionalized severely or profoundly mentally retarded person)] actually or by simulation was portrayed as [(being the object of) (otherwise engaged in)] an act of lewd [(fondling) (touching) (caressing)] involving another [(person) (animal)].

[or]

[f] *Second Proposition:* That such [(child) (institutionalized severely or profoundly mentally retarded person)] actually or by simulation engaged in an act of [(excretion) (urination)] within a sexual context.

[or]

[g] *Second Proposition:* That such [(child) (institutionalized severely or profoundly mentally retarded person)] actually or by simulation was [(portrayed) (depicted)] as [(bound) (fettered) (subject to sadistic abuse) (subject to masochistic abuse) (subject to sadomasochistic abuse)] in a sexual context.

[or]

[h] *Second Proposition:* That such [(child) (institutionalized severely or profoundly mentally retarded person)] was [(depicted) (portrayed)] in a [(pose) (posture) (setting)] involving a lewd exhibition of the [(unclothed genitals) (pubic area) (buttocks) (a fully or partially developed breast)] of the [(child) (institutionalized severely or profoundly mentally retarded person) (other person)] [if the [(child) (institutionalized severely or profoundly mentally retarded person) (other person)] is a female].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-20.1(a) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §11-20.1(a) (1991)), amended by P.A. 84-1029, effective November 18, 1985; P.A. 85-1392, effective January 1, 1989; P.A. 85-1440, effective February 1, 1989; P.A. 85-1447, effective January 1, 1990; P.A. 86-820, effective January 1, 1990; P.A. 86-1168, effective January 1, 1991; P.A. 87-1069, effective January 1, 1993; and P.A. 88-680, effective January 1, 1995.

Give Instruction 9.29.

When applicable, insert in the blank the act, pose, setting, or activity at issue.

The bracketed numbers [1] through [7] for the First Proposition correspond to the alternatives of the same number in Instruction 9.29, the definitional instruction for this offense, and the bracketed letters [a] through [h] for the Second Proposition correspond to the alternatives of the same letter in Instruction 9.29. Select the alternatives that correspond to the alternatives selected from the definitional instruction.

Use applicable bracketed paragraphs and material. Based upon the evidence, one or more alternative propositions may be applicable.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

9.31
Definition Of Distributing Harmful Material

A person commits the offense of distributing harmful material when he knowingly [(distributes) (sends) (causes to be sent) (exhibits) (offers to distribute) (offers to exhibit)] any harmful material to a child the defendant [(knows) (reasonably should know)] was then under the age of 18 years.

Committee Note

720 ILCS 5/11-21(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-21(a) (1991)).

Give Instructions 9.31A and 9.32.

See Instruction 9.31B.

Use applicable bracketed material.

9.31A
Definitions Of Harmful Material, Distribute, And Knowingly

The term "harmful material" means material which, considered by the average person, applying contemporary standards, and taken as a whole,

[1] predominantly appeals to a prurient interest; that is, a shameful or morbid interest in nudity, sex, or excretion; and

[2] which goes substantially beyond customary limits of candor in describing or representing nudity, sex, or excretion; and

[3] whose redeeming social importance is substantially less than its prurient appeal.

The word "material" means any writing, picture, record, or other representation or embodiment.

The word "distribute" means any transfer of possession, whether with or without consideration.

The word "knowingly" means that the person knew the contents of the subject matter or recklessly failed to exercise reasonable inspection which would have disclosed its contents.

You should consider whether the predominant appeal of the material is to a prurient interest by judging it with reference to average children of the same general age of the child to whom such material allegedly was offered, distributed, sent, or exhibited, unless it appears from the nature of the matter or the circumstances of its dissemination, distribution, or exhibition that it is designed for specially susceptible groups. In that case, you should judge the predominant appeal of the material with reference to the group who was intended to or probably would receive it.

Committee Note

720 ILCS 5/11-21(b) and (c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-21(b) and (c) (1991)).

Give Instructions 9.31 and 9.32.

See Instruction 9.31B.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.31B
Affirmative Defenses To Charge Of Distributing Harmful Material

It shall be a defense to the charge of distributing harmful material that
[1] the defendant distributed or exhibited the material in aid of a legitimate scientific or educational purpose.

[or]

[2] the defendant was a parent of the child to whom the harmful material was distributed or exhibited.

[or]

[3] the defendant demanded, was shown, and relied upon a document issued by the federal, state, county, or municipal government, or any subdivision or agency of government, as proof of the age of the child. Such documents include, but are not limited to, a motor vehicle operator's license, a registration certificate issued under the Federal Selective Service Act, or an identification card issued to a member of the armed forces.

[or]

[4] where the alleged sale or distribution of the harmful material was the result of an advertisement, and neither the order for the material nor its delivery involved any personal confrontation between the child and the defendant or his employees or agents; and

> [a] the advertisement contained the following statement or one substantially similar to it:
> "NOTICE: It is unlawful for any person under 18 years of age to purchase the matter herein advertised. Any person under 18 years of age who falsely states that he is not under 18 years of age for the purpose of obtaining the material advertised herein, is guilty of a Class B misdemeanor under the laws of the State of Illinois"; and
> [b] the defendant required the child to certify that he was not under the age of 18 years; and
> [c] the child falsely stated that he was not under the age of 18 years.

Committee Note

720 ILCS 5/11-21(e) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-21(e) (1991)).

Give this instruction when the issue is raised by the evidence. See Introduction to Chapter 24-25.00.

Use applicable paragraphs and subparagraphs.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.32
Issues In Distributing Harmful Material

To sustain the charge of distributing harmful material, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(distributed) (sent) (caused to be sent) (exhibited) (offered to distribute) (offered to exhibit)] harmful material to ____; and

Second Proposition: That the defendant [(knew the material was harmful) (recklessly failed to exercise reasonable inspection which would have disclosed that it was harmful)]; and

Third Proposition: That ____ was then under the age of 18 years; and

Fourth Proposition: That the defendant knew or failed to exercise reasonable care in ascertaining that ____ was then under the age of 18 years[; and

Fifth Proposition: That the defendant did not distribute or exhibit the harmful material in aid of a legitimate scientific or educational purpose

[or]

Fifth Proposition: That the defendant was not a parent of ____

[or]

Fifth Proposition: That the defendant did not demand, was not shown, and did not rely upon a government document as proof of the age of ____, such as a motor vehicle operator's license, a Selective Service registration certificate, or an armed forces identification card

[or]

Fifth Proposition: That the defendant, if the transaction did not involve a personal confrontation with ____, did not supply a notice warning ____ against falsely stating his age and that the defendant did not require ____ to certify that he was under the age of 18 years].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-21 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-21 (1991)).

Give Instructions 9.31 and 9.31A.

Give the appropriate Fifth Proposition when the issue is raised by the evidence. See the Introduction to Chapter 24-25.00.

See Instruction 9.31B.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.33
Definition Of Sexual Relations Within Families

A person commits the offense of sexual relations within families when he commits an act of sexual penetration and

[1] knows that he is related to the victim as [(brother) (sister)] either of the whole-blood or the half-blood.

[or]

[2] knows that he is related to the victim as [(father) (mother)] regardless of legitimacy and regardless of whether the child was of the whole-blood or was adopted, and the victim was 18 years of age or over when the act was committed.

[or]

[3] knows that he is related to the victim as [(stepfather) (stepmother)] and the victim was 18 years of age or over when the act was committed.

Committee Note

720 ILCS 5/11-11 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-11 (1991)).

Give Instruction 9.34.

The Committee deleted the term "half-blood" from paragraph [2], even though the term is found in the statute, because the term "half-blood" describes a relationship between siblings and does not concern the relationship between a child and his mother or father. *See* People v. Parker, 123 Ill.2d 204, 526 N.E.2d 135, 121 Ill.Dec. 941 (1988).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.34
Issues In Sexual Relations Within Families

To sustain the charge of sexual relations within families, the State must prove the following propositions:

First Proposition: That the defendant committed an act of sexual penetration upon ____; and

Second Proposition: That the defendant knew that [(he) (she)] was related to ____ as [(brother) (sister)] either of the whole-blood or of the half-blood.

[or]

First Proposition: That the defendant committed an act of sexual penetration upon ____; and

Second Proposition: That the defendant knew that [(he) (she)] was related to ____ as [(father) (mother)] regardless of legitimacy and regardless of whether ____ is of the whole-blood or adopted; and

Third Proposition: That ____ was 18 years of age or over when the act was committed.

[or]

First Proposition: That the defendant committed an act of sexual penetration upon ____; and

Second Proposition: That the defendant knew that [(he) (she)] was related to ____ as [(stepfather) (stepmother)]; and

Third Proposition: That ____ was 18 years of age or over when the act was committed.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-11 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-11 (1991)).

Give Instruction 9.33.

The term "sexual penetration" is defined in Instruction 11.65E.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

9.35
Definition Of Exploitation Of A Child [Or Institutionalized Mentally Retarded Person]

A person commits the offense of exploitation of a child when he confines [(a child under the age of 16 years) (an institutionalized severely or profoundly mentally retarded person)] against his will by [(the infliction or threat of imminent infliction of great bodily harm) (the infliction or threat of imminent infliction of permanent disability or disfigurement) (administering to [(the child) (an institutionalized severely or profoundly mentally retarded person)] without his consent or by threat or deception and for other than medical purposes, any [(alcoholic intoxicant) (drug)])]

and

[(compels [(the child) (the institutionalized severely or profoundly mentally retarded person)] to become a prostitute) (arranges a situation in which [(the child) (the institutionalized severely or profoundly mentally retarded person)] may practice prostitution) (receives any money, property, token, object, or article or anything of value from [(the child) (an institutionalized severely or profoundly mentally retarded person)] knowing it was obtained in whole or in part from the practice of prostitution)].

Committee Note

720 ILCS 5/11-19.2 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §11-19.2 (1991)), amended by P.A. 85-1392, effective January 1, 1989; and P.A. 88-680, effective January 1, 1995.

Give Instruction 9.36.

Give Instruction 9.09, defining the term "prostitution".

Give Instruction 9.35A when the issue of consent is raised by the evidence.

Give Instruction 11.65G, defining the term "institutionalized severely or profoundly mentally retarded person," when applicable.

If the administration of a drug is an issue and there arises a need for a definitional instruction concerning the nature of the substance involved, give the appropriate statutory definition found in 720 ILCS 550/3 or 570/102. See the Introduction to Chapter 17.

Use applicable bracketed material.

9.35A
Definition Of Lack Of Consent In Exploitation Of A Child [Or Institutionalized Mentally Retarded Person]

The term "administering [(an alcoholic intoxicant) (a drug)] to [(a child under the age of 13 years) (an institutionalized severely or profoundly mentally retarded person)] without consent" means the [(alcoholic intoxicant) (drug)] is administered without the consent of the [(child's) (person's)] parents or legal guardian.

Committee Note

720 ILCS 5/11-19.2(B) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-19.2(B) (1991)).

Give this instruction when the issue of consent is raised by the evidence.

The portion of the instruction concerning the mental disability of the victim was added by P.A. 85-1392 and should not be used for offenses committed prior to the effective date of that Act.

The Committee takes no position as to whether consent by the parents or legal guardian operates as a defense to the offense of exploitation of a child.

Use applicable bracketed material.

9.36
Issues In Exploitation Of A Child [Or Institutionalized Mentally Retarded Person]

To sustain the charge of exploitation of a child, the State must prove the following propositions:

First Proposition: That the defendant confined ____ against his will by inflicting or threatening to imminently inflict great bodily harm;

[or]

First Proposition: That the defendant confined ____ against his will by inflicting or threatening to imminently inflict permanent disability or disfigurement;

[or]

First Proposition: That the defendant confined ____ against his will by administering to ____ without his consent or by threat or deception and for other than medical purposes, any [(alcoholic intoxicant) (drug)];

and

Second Proposition: That ____ at the time was [(under 16 years of age) (an institutionalized severely or profoundly mentally retarded person)]; and

Third Proposition: That the defendant compelled ____ to become a prostitute.

[or]

Third Proposition: That the defendant arranged a situation in which ____ may practice prostitution.

[or]

Third Proposition: That the defendant received any money, property, token, object, or article or anything of value from ____ knowing it was obtained in whole or in part from the practice of prostitution.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-19.2 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §11-19.2 (1991)), amended by P.A. 85-1392, effective January 1, 1989; and P.A. 88-680, effective January 1, 1995.

Give Instruction 9.35.

Insert in the blanks the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

9.37
Definition Of Sexual Exploitation Of A Child

A person commits the offense of sexual exploitation of a child when, while in the presence of a child, and with intent or knowledge that the child would view his acts, he

[1] engages in [(masturbation) (sexual conduct) (sexual penetration)].

[or]

[2] exposes his [(sex organs) (anus) (breast)] for the purpose of sexual arousal or gratification of himself or the child.

The word "child" means a person under 17 years of age.

Committee Note

720 ILCS 5/11-9.1 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §11-9.1 (1992)), added by P.A. 87-1198, effective September 25, 1992.

Give Instruction 9.38.

When "sexual conduct" or "sexual penetration" is an issue, give Instruction 11.65D or 11.65E defining those terms.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.38
Issues In Sexual Exploitation Of A Child

To sustain the charge of sexual exploitation of a child, the State must prove the following propositions:

First Proposition: That the defendant was in the presence of a child; and

[1] *Second Proposition:* That the defendant engaged in [(masturbation) (sexual conduct) (sexual penetration)]; and

[or]

[2] *Second Proposition:* That the defendant exposed his [(sexual organs) (anus) (breast)] for the purpose of sexual arousal or gratification of himself or the child; and

Third Proposition: That the defendant did so while [(intending) (knowing)] that the child would view his acts; and

Fourth Proposition: That the child was under 17 years of age.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-9.1 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §11-9.1 (1992)), added by P.A. 87-1198, effective September 25, 1992.

Give Instruction 9.37.

Use applicable paragraphs and bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

9.39
Definition Of Solicitation Of A Sexual Act

A person commits the offense of solicitation of a sexual act when he offers a person not his spouse any money, property, token, object, or article or anything of value to perform any [(act of sexual penetration) (touching or fondling of the sex organs of one person by another person for the purpose of sexual arousal or gratification)].

Committee Note

720 ILCS 5/11-14.1 (West Supp.1993), added by P.A. 88-325, effective January 1, 1994; amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 9.40.

When sexual penetration is an issue, give Instruction 11.65E.

Use applicable bracketed material.

9.40
Issue In Solicitation Of A Sexual Act

To sustain the charge of solicitation of a sexual act, the State must prove the following proposition:

That the defendant offered a person not his spouse any money, property, token, object, or article or anything of value to perform any [(act of sexual penetration) (touching or fondling of the sex organs of one person by another person for the purpose of sexual arousal or gratification)].

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-14.1 (West Supp.1993), added by P.A. 88-325, effective January 1, 1994; amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 9.39.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

9.41
Definition Of Indecent Solicitation Of An Adult

A person commits the offense of indecent solicitation of an adult when he [(intentionally) (knowingly) (recklessly)] arranges for a person 17 years of age or over to commit an act of sexual [(penetration) (conduct)] with a person [(under 13 years of age) (13 years of age or older but under 17 years of age) (under 17 years of age)].

Committee Note

720 ILCS 5/11-6.5 (West Supp.1993), added by P.A. 88-165, effective January 1, 1994.

Give Instruction 9.42.

Give either Instruction 11.65D, defining "sexual conduct", or Instruction 11.65E, defining "sexual penetration", whichever applies.

Section 11-6.5(b) enhances the penalty for a violation of this statute when the second person is under 13 years of age. Thus, the Committee has included a bracketed alternative covering the age of the second person. Use the second alternative ("13 years of age or older but under 17 years of age") only when that second person's age is an issue. When age is an issue, it should be resolved by the jury.

Because Section 11-6.5 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable bracketed material.

9.42
Issues In Indecent Solicitation Of An Adult

To sustain the charge of indecent solicitation of an adult, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] arranged for a person 17 years of age or over to commit an act of sexual [(penetration) (conduct)] with a second person; and

Second Proposition: That at the time defendant did so, the second person was [(under 13 years of age) (13 years of age or older but under 17 years of age) (under 17 years of age)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-6.5 (West Supp.1993), added by P.A. 88-165, effective January 1, 1994.

Give Instruction 9.41.

Give either Instruction 11.65D, defining "sexual conduct", or Instruction 11.65E, defining "sexual penetration", whichever applies.

See the Committee Note to Instruction 9.41 regarding the bracketed alternative covering the age of the person referred to in the Second Proposition.

Because Section 11-6.5 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

9.43
Definition Of "Sex Offender"

"Sex Offender" means any person who is charged with [(a sex offense) (the attempt to commit a sex offense)], [(pursuant to Illinois law) (pursuant to federal law) (pursuant to another state's law) (pursuant to a foreign country's law)], and

is convicted of [(such offense) (an attempt to commit such offense)].

or

is found not guilty by reason of insanity [(pursuant to a discharge hearing) (following a hearing conducted pursuant to a (federal) (state) (foreign country's) law)] of [(such offense) (an attempt to commit such offense)].

or

is the subject of a finding not resulting in an acquittal [(at a discharge hearing) (following a hearing conducted pursuant to a (federal) (state) (foreign country's) law)] for the alleged [(commission) (attempted commission) of such offense].

or

"Sex Offender" means any person who is [(certified as a sexually dangerous person) (found to be a sexually violent person)] [(pursuant to Illinois law) (pursuant to federal law) (pursuant to another state's law) (pursuant to a foreign country's law) (subject to the Interstate Agreements on Sexually Dangerous Persons Act)].

Committee Note

730 ILCS 150/2(A). When the State relies upon a prior conviction or disposition from another jurisdiction, an issue may arise concerning whether that jurisdiction's statute is "substantially similar" to that of Illinois. This is a question of law to be determined by the court rather than a factual question on which the jury should be instructed. *See* People v. Guest, 115 Ill.2d 72, 503 N.E.2d 255, 104 Ill.Dec. 698 (1986); *See also* Committee Note, Instruction 7B.07[3].

See 725 ILCS 205 *et seq.* for Sexually Dangerous Persons Act

See 45 ILCS 20/1 *et seq.* for Interstate Agreements on Sexually Dangerous Persons Act

See 725 ILCS 207/1 *et seq.* for Sexually Violent Persons Commitment Act

Use applicable bracketed material. The bracketed numbers are present solely for the

guidance of the court and counsel and should not be included in the instruction submitted to the jury.

9.43A
Definition Of "Sexual Predator"

A "sexual predator" means any person [(who is convicted of ____.)

or

(who is (certified as sexually dangerous) (found to be a sexually violent person) (convicted of a second or subsequent sex offense which requires registration) [(pursuant to Illinois law) (pursuant to a substantially similar federal law) (pursuant to a substantially similar law in another state) (pursuant to a foreign country's law) (subject to the Interstate Agreements on Sexually Dangerous Persons Act))].

Committee Note

730 ILCS 150/2(E).

See 725 ILCS 205 *et seq.* for Sexually Dangerous Persons Act.

See 45 ILCS 20/1 *et seq.* for Interstate Agreements on Sexually Dangerous Persons Act.

See 725 ILCS 207/1 *et seq.* for Sexually Violent Persons Commitment Act.

Insert appropriate offense(s) in the blank. See 730 ILCS 150/2 (E)(1-2) for each possible alternative definition of qualifying offenses, and their respective effective dates.

Use applicable bracketed material.

9.43B
Definition Of "Sex Offense"

A "sex offense" includes (an attempt to commit) [(pursuant to Illinois law) (pursuant to federal law) (pursuant to another state's law) (pursuant to a foreign country's law)]

[1] [a violation of ____) (a former law substantially equivalent to ____)].

or

[2] a felony violation of ____ when the victim is a person under 18 years of age, the defendant is not a parent of the victim, and the offense was committed on or after January 1, 1996.

or

[3] first degree murder when the victim was a person under 18 years of age, the defendant was at least 17 years of age at the time of the commission of the offense, and the offense was committed on or after June 1, 1996.

or

[4] the offense of sexual relations within families when the victim was a person under 18 years of age and the offense was committed on or after June 1, 1997.

or

[5] the offense of child abduction, committed by [(luring) (attempting to lure) a child under the age of 16 into a [(motor vehicle) (building) (housetrailer (dwelling place)] without the consent of the [(parent) (lawful custodian)] for other than a lawful purpose, when the offense was committed on or after January 1, 1998.

Committee Note:

See 730 ILCS 150/2(B), (C), (C-5) for each possible alternative definition of sex offenses. For child abduction, only paragraph 10 is a qualifying offense; see 720 ILCS 5/10-5(10).

The standards governing whether a felony violation of a former law is "substantially equivalent" to current qualifying offenses has not been determined by Illinois case law. The Committee recommends that this is a question of law to be determined by the court rather than a factual question on which the jury should be instructed. *See* People v. Guest, 115 Ill.2d 72, 503 N.E.2d 255, 104 Ill.Dec. 698 (1986).

Insert applicable offense(s). The bracketed numbers are present solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

9.43C
Definition Of "Law Enforcement Agency Having Jurisdiction"

"Law enforcement agency having jurisdiction" means the [(Chief of Police in the municipality) (sheriff of the county [(if the sex offender intends to reside in an unincorporated area) (in the event no Police Chief exists)] in which the (sex offender) (out-of-state student) (out-of-state employee) expects to reside [(upon his discharge, parole or release) (during the service of his sentence of probation or conditional discharge)].

Committee Note

730 ILCS 150/2(D). Use applicable bracketed material.

9.43D
Definition Of "Out-Of-State Student"

An "out-of-state student" is any (sex offender) (sexual predator) who is enrolled in Illinois, on a (full-time) (part-time) basis, in any (public) (private) educational institution.

Committee Note

See 730 ILCS 150/2(F).

9.43E
Definition Of "Out-Of-State Employee"

An "out-of-state employee" is any (sex offender) (sexual predator) who works in Illinois, regardless of whether he receives payment for services performed, for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year.

[Persons who operate motor vehicles in Illinois accrue one day of employment time for any portion of a day spent in Illinois.]

Committee Note

730 ILCS 150/2(G).

Use applicable bracketed material.

9.43F
Definition Of Failure To Register As A Sex Offender

A person commits the offense of failure to register as a sex offender when he [knowingly fails to register) (knowingly fails to report) (knowingly fails to report a change of [(residence) (address) (place of employment) (educational status)] [(willfully) (knowingly) gives material information required by law that is false] [(intentionally) (knowingly) (recklessly)] seeks to change his name].

Committee Note

730 ILCS 150/10. The statute does not include a scienter requirement for seeking a change of name. The Committee recommends that an applicable mental state be included consistent with 720 ILCS 5/4-3(b).

9.43G
Duty To Register

A (sex offender) (sexual predator) (out-of-state student) (out-of-state employee) shall register in person with the [(Chief of Police of his municipality) (Chicago Police Department Headquarters) [(sheriff of his county if domiciled (in an unincorporated area) (in an incorporated area where no police chief exists)] within 10 days

[1] of establishing (residence) (temporary domicile)]

or

[2] after entry of the sentencing order based upon the conviction

or

[3] of [(release) (discharge) (parole)] from [(confinement) (institutionalization) (imprisonment)].

or

[4] of beginning [(school) (employment)].

[A (person adjudicated to be sexually dangerous) (sexually violent person) (sexual predator) shall register for the period of his natural life]

[A sex offender shall register for a period of 10 years after [(conviction) (adjudication), if not confined to a penal institution, hospital or any other institution or facility] [(parole) (discharge) (release) from a (penal institution) (hospital) (any other institution or facility).]

Committee Note

730 ILCS 150/3; 730 ILCS 150/7.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

9.43H
Issues In Failure To Register As A Sex Offender

To sustain the charge of failure to register as a sex offender the State must prove the following propositions:

First Proposition: That the defendant is a (sex offender) (sexual predator) [(out-of state (student)(employee)], and

Second Proposition: That the defendant

(knowingly failed to register)

or

(knowingly failed to report)

or

[(knowingly failed to report an (address) (residence) (employment) change within __(days)(years)]

or

(knowingly failed to report a change in (educational) (employment) status)

or

((willingly) (knowingly) gave material information required by law that is false)

or

((intentionally) (knowingly) (recklessly) sought to change his name).

If you find from your consideration of all the evidence that each of these propositions has been proven beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any of these propositions has not been proven beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

730 ILCS 150/10. The statute does not include a scienter requirement for seeking a change of name. The Committee recommends that an applicable mental state be included consistent with 720 ILCS 5/4-3(b).

9.43I
Duty To Report

[A person [(adjudicated) (found) to be sexually (dangerous) (violent)], (if released) (found no longer to be sexually (dangerous) (violent) and discharged)] must report in person to the law enforcement agency with whom he last registered no later than 90 days after the date of his last registration and every 90 days thereafter.]

[A sex offender shall report in person to the law enforcement agency with whom he last registered within one year from the date of that registration and every year thereafter.]

[If a person required to register changes his [(residence) (address) (place of employment)], he shall, in writing, within 10 days inform the law enforcement agency with whom he last registered of his new (residence) (address) (place of employment) and register with the appropriate law enforcement agency within 10 days.]

[If a person required to register establishes (residence) (employment) outside of Illinois, within 10 days of establishing that (residence) (employment), he shall, in writing, inform the law enforcement agency with whom he last registered of his out-of-state (residency) (employment).]

[A person required to register shall complete, sign and return any verification letter sent by the Department of State Police within 10 days of the mailing date of the letter.]

[An out-of-state (student) (employee) must notify the agency having jurisdiction of any change in (educational) (employment) status, in writing, within 10 days of the change.]

Committee Note

730 ILCS 150/6; 730 ILCS 150/5-10, 730 ILCS 150/6-5.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

9.44
Definition Of Custodial Sexual Misconduct (Employee)

A person commits the offense of custodial sexual misconduct when he is an employee of a [(penal system) (treatment and detention facility)] and [(intentionally) (knowingly) (recklessly)] engages in [(sexual conduct) (sexual penetration)] with a person who is in the custody of that [(penal system) (treatment and detention facility)].

The word "employee" means: [(an employee of any governmental agency of this State or any county or municipal corporation that has by statute, ordinance, or court order the responsibility for the care, control, or supervision of pretrial or sentenced persons in a penal system or persons detained or civilly committed under the Sexually Violent Persons Commitment Act) (a contractual employee of a penal system who works in a penal institution) (a contractual employee of a treatment and detention facility or a contractual employee of the Department of Human Services who provides supervision of persons serving a term of conditional release)].

The word "custody" means: [(pretrial incarceration or detention) (incarceration or detention under a sentence or commitment to a State or local penal institution) (parole or mandatory supervised release) (electronic home detention) (probation) (detention or civil commitment either in secure care or in the community under the Sexually Violent Persons Commitment Act)].

Committee Note

720 ILCS 5/11-9.2(a), 5/11-9.2(g)(3)(i), (ii), (iii) and 5/11-9.2(g)(1) (West 2005).

Give Instruction 11.65D, defining the term "sexual conduct," if sexual conduct is alleged.

Give Instruction 11.65E, defining the term "sexual penetration," if sexual penetration is alleged.

Give Instruction 9.50.

Give applicable Instruction 9.45 defining the term "penal system" or 9.46 defining the term "treatment and detention facility."

Because Section 11-9.2(a) does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 2005). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.45
Definition Of Penal System

The term "penal system" means a[n] [(penitentiary) (state farm) (reformatory) (prison) (jail) (house of correction) (institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses) (county shelter care or detention home)].

Committee Note

720 ILCS 5/11-9.2(g)(2) (West 2005).

See 720 ILCS 5/2-14 (West 2005) for definition of the term "penal institution."

See 55 ILCS 75/1 *et seq.* (West 2005) for County Shelter Care and Detention Home Act.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.46
Definition Of Treatment And Detention Facility

The term "treatment and detention facility" means any Department of Human Services facility established for the detention or civil commitment of persons under the Sexually Violent Persons Commitment Act.

Committee Note

720 ILCS 5/11-9.2(g)(2.1) (West 2005).

See 725 ILCS 207/1 *et seq.* (West 2005) for Sexually Violent Persons Commitment Act.

9.47
Issues In Custodial Sexual Misconduct (Employee)

To sustain the charge of custodial sexual misconduct, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] engaged in [(sexual conduct) (sexual penetration)] with ____; and

Second Proposition: That ____ was in the custody of a [(penal system) (treatment and detention facility)] at the time of the [(sexual conduct) (sexual penetration)]; and

Third Proposition: That the defendant was an employee of that [(penal system) (treatment and detention facility)] at the time of the [(sexual conduct) (sexual penetration)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-9.2 (West 2005).

Give Instruction 9.44.

Give applicable Instruction 9.45 defining the term "penal system" or Instruction 9.46 defining the term "treatment and detention facility."

Insert in the blanks the name of the person in custody with whom the defendant is charged with engaging in sexual conduct or sexual penetration.

Because Section 11-9.2(a) does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 2005). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.48
Definition Of Custodial Sexual Misconduct (Probation Officer, Supervising Officer, Surveillance Agent)

A [(probation officer) (supervising officer) (surveillance agent)] commits the offense of custodial sexual misconduct when he [(intentionally) (knowingly) (recklessly)] engages in [(sexual conduct) (sexual penetration)] with a [(probationer) (parolee) (releasee) (person serving a term of conditional release)] who is under the supervisory, disciplinary, or custodial authority of the [(officer) (agent)] so engaging in the [(sexual conduct) (sexual penetration)].

The term [("probation officer" means any person employed in a probation or court services department) ("supervising officer" means any person employed to supervise persons placed on parole or mandatory supervised release) ("surveillance agent" means any person employed or contracted to supervise persons placed on conditional release in the community under the Sexually Violent Persons Commitment Act)].

Committee Note

720 ILCS 5/11-9.2(b) and 5/11-9.2(g)(4), (5), (6), and (7) (West 2005).

Give Instruction 11.65D, defining the term "sexual conduct," if sexual conduct is alleged.

Give Instruction 11.65E, defining the term "sexual penetration," if sexual penetration is alleged.

Give Instruction 9.49, defining the term "conditional release," if the person with whom the defendant engaged in sexual conduct or sexual penetration was serving a term of conditional release.

Because Section 11-9.2(b) does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 2005). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.49
Definition Of Conditional Release

The term "conditional release" means a program of [(treatment and services) (vocational services) (alcohol or other drug abuse treatment)] provided to a person civilly committed and conditionally released to the community under the Sexually Violent Persons Commitment Act.

Committee Notes

720 ILCS 5/11-9.2(g)(2.2) (West 2005).

See 725 ILCS 207/40 (West 2005) for commitment and conditional release provisions of the Sexually Violent Persons Commitment Act.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.50
Issues In Custodial Sexual Misconduct (Probation Officer, Supervising Officer, Surveillance Agent)

To sustain the charge of custodial sexual misconduct, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] engaged in [(sexual conduct) (sexual penetration)] with ____; and

Second Proposition: That ____ was a [(probationer) (parolee) (releasee) (person serving a term of conditional release)] at the time of the [(sexual conduct) (sexual penetration)]; and

Third Proposition: That ____ was under the supervisory, disciplinary, or custodial authority of the defendant at the time of the [(sexual conduct) (sexual penetration)]; and

Fourth Proposition: That the defendant was a [(probation officer) (supervising officer) (surveillance agent)] at the time of the [(sexual conduct) (sexual penetration)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-9.2(b) (West 2005).

Give the applicable portion of Instruction 9.48 defining terms "probation officer," "supervising officer," or "surveillance agent."

Give Instruction 9.49, defining the term "conditional release," if the person with whom the defendant engaged in sexual conduct or sexual penetration was serving a term of conditional release.

Insert in the blanks the name of the person who is under the supervisory, disciplinary or custodial authority of the defendant and with whom the defendant is charged with engaging in sexual conduct or sexual penetration.

Because Section 11-9.2(b) does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 2005). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.51
Affirmative Defenses To The Charge Of Custodial Sexual Misconduct

It is a defense to the charge of custodial sexual misconduct that
[1] the defendant was lawfully married to ____before the date of custody.

[or]

[2] the defendant has no knowledge and would have no reason to believe that the person with whom he engaged in custodial sexual misconduct was a person in custody.

Committee Note

720 ILCS 5/11-9.2(f) (West 2005).

Give this instruction only when the issue is raised by the evidence. See Chapter 720 ILCS 5/3-2 and the Introduction to IPI Criminal, Chapter 24-25.00.

Give Instruction 9.52A, if the affirmative defense of marriage is asserted.

Give Instruction 9.52B, if the affirmative defense of lack of knowledge is asserted.

Insert in the blank the name of the person with whom the defendant is charged with engaging in sexual misconduct.

Use applicable bracketed paragraph.

The bracketed numbers are presented solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.52A
Issue In Defense Of Previous Marriage

____ *Proposition:* That the defendant was not lawfully married to ____ before the date of custody.

Committee Note

720 ILCS 5/11-9.2(f)(1) (West 2005).

Give Instruction 9.51.

Insert in the first blank the number of the proposition.

Insert in the second blank the name of the person with whom the defendant is charged with engaging in sexual misconduct.

Give this issue as the final proposition in the issues instruction for the offense charged.

9.52B
Issue In Defense Of Knowledge Of Custodial Status

____ *Proposition:* That the defendant [(knew) (had reason to believe)] that ____ was a person in custody.

Committee Note

720 ILCS 5/11-9.2(f) (2) (West 2005).

Give Instruction 9.51.

Insert in the first blank the number of the proposition.

Insert in the second blank the name of the person with whom the defendant is charged with engaging in sexual misconduct.

Give this issue as the final proposition in the issues instruction for the offense charged.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

10.00 ABORTION

10.01
Definition Of Unauthorized Waiver Of Notice

A person commits the offense of unauthorized waiver of notice when he signs a waiver of notice required before an abortion for [(a minor) (an incompetent person)] and he is not an adult family member of the [(minor) (incompetent person)].

Committee Note
Instruction and Committee Note Approved October 28, 2016

750 ILCS 70/40(b) (West 2016).

Give Instruction 10.02.

When applicable, give Instruction 10.01A, defining the word “minor”.

When applicable, give Instruction 10.01B, defining the word “incompetent”.

When applicable, give Instruction 10.01C, defining the term “adult family member”.

10.01A
Definition Of Minor

The word "minor" means any person under 18 years of age who is not or has not been married or who has not been emancipated.

Committee Note
Instruction and Committee Note Approved October 28, 2016

750 ILCS 70/10 (West 2016).

The statute defining the term "minor" requires that the minor was emancipated under the Emancipation of Minors Act. Whether the minor was emancipated under the Emancipation of Minors Act, 750 ILCS 30/1 *et. seq.*, is a legal issue for the court to determine.

10.01B
Definition Of Incompetent

The word "incompetent" means any person who [(has been adjudged as mentally ill) (is a person with developmental disabilities and who, because of her mental illness or developmental disability, is not fully able to manage her person and for whom a guardian of the person has been appointed)].

Committee Note
Instruction and Committee Note Approved October 28, 2016

750 ILCS 70/10 (West 2016).

When the issue involves a person for whom a guardian has been appointed, the statute requires that the guardian was appointed under Section 11a-3(a)(1) of the Probate Code of 1975, (755 ILCS 5/1-1 *et. seq.*). Whether a guardian was appointed pursuant to that Act is a legal issue for the court to determine.

10.01C
Definition Of Adult Family Member

The term "adult family member" means a person over 21 years of age who is the parent, grandparent, step-parent living in the household, or legal guardian.

Committee Note
Instruction and Committee Note Approved October 28, 2016

750 ILCS 70/10 (West 2016).

10.02
Issues In Unauthorized Waiver Of Notice

To sustain the charge of unauthorized waiver of notice, the State must prove the following propositions:

First Proposition: That the defendant signed a waiver of notice for [(a minor) (an incompetent person)] who was seeking an abortion, and

Second Proposition: That the defendant was not an adult family member of the [(minor) (incompetent person)].

Committee Note
Instruction and Committee Note Approved October 28, 2016

750 ILCS 70/1 *et seq.* (West 2016).

Give Instruction 10.01.

11.00.
ASSAULT, BATTERY, AND RELATED CRIMES

11.01
Definition Of Assault

A person commits the offense of assault when he [(knowingly) (intentionally)] [without lawful authority] engages in conduct which places another person in reasonable apprehension of receiving [(bodily harm) (physical contact of an insulting or provoking nature)].

Committee Note

720 ILCS 5/12-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-1 (1991)).

Give Instruction 11.02.

Use the mental state that conforms to the allegation in the charge. *See* People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Use the phrase "without lawful authority" whenever an instruction is to be given on an affirmative defense contained in Article 7 of Chapter 38. *See* People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Use applicable bracketed material.

11.02
Issue In Assault

To sustain the charge of assault, the State must prove the following proposition:

That the defendant [(knowingly) (intentionally)] engaged in conduct which placed ____ in reasonable apprehension of receiving [(bodily harm) (physical contact of an insulting or provoking nature)].

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-1 (1991)).

Give Instruction 11.01.

Use the mental state that conforms to the allegation in the charge. *See* People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase "without lawful authority" in Instruction 11.01 (see Committee Note to Instruction 11.01), and this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Since the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without lawful authority, the Committee has concluded that the phrase "without lawful authority" need not be used in this issues instruction.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.03
Definition Of Aggravated Assault

A person commits the offense of aggravated assault when, he [(intentionally) (knowingly) (recklessly)] [without lawful authority] engages in conduct which places another person in reasonable apprehension of receiving [(bodily harm) (physical contact of an insulting or provoking nature)], and

[1] in doing so, he uses a deadly weapon.

[or]

[2] in doing so, he is hooded, robed, or masked in such a manner as to conceal his identity.

[or]

[3] in doing so, he knows the individual assaulted is a teacher or other person employed in any school and such teacher or other employee is upon the grounds of a school or grounds adjacent thereto, or is in any part of a building used for school purposes.

[or]

[4] in doing so, he knows the individual assaulted is a supervisor, director, instructor, or other person employed in any park district, and such supervisor, director, instructor, or other employee is upon the grounds of the park or grounds adjacent thereto, or is in any part of a building used for park purposes.

[or]

[5] in doing so, he knows the individual assaulted is a [(caseworker) (investigator) (person)] employed by [(the State Department of Public Aid) (a County Department of Public Aid)] and such [(caseworker) (investigator) (person)] is

[a] upon the grounds of a public aid office or grounds adjacent to a public aid office.

[or]

[b] in any part of a building used for public aid purposes.

[or]

[c] on the grounds of the home of a [(public aid applicant or recipient) (person being interviewed or investigated in the employee's discharge of his duties)].

[or]

[d] on grounds adjacent to the home of the [(public aid applicant or recipient) (person being interviewed or investigated in the employee's discharge of his duties)].

[or]

[e] in any part of a building in which a [(public aid applicant or recipient) (person being investigated in the employee's discharge of his duties)] resides or is located.

[or]

[6] in doing so, he knows the individual assaulted is a

[a] [(peace officer) (fireman)] [(who at the time is engaged in the execution of) (and he assaults that [(officer) (fireman)] to prevent him from performing) (and he assaults that [(officer) (fireman)] in retaliation for performing)] his official duties.

[or]

[b] person summoned or directed by a peace officer [(who at the time is engaged in the execution of) (and he assaults that person to prevent that peace officer from performing) (and he assaults that person in retaliation for that person helping the peace officer perform)] his official duties.

[or]

[7] in doing so, he knows the individual assaulted is [(an emergency medical technician) (an ambulance driver) (a medical assistant) (a first aid attendant)] employed by a municipality [or other governmental unit] [(who at the time was engaged in the execution of) (and he assaults that individual to prevent him from performing) (and he assaults that individual in retaliation for that individual performing)] his official duties.

[or]

[8] in doing so, he knows the individual assaulted is the [(driver) (operator) (employee) (passenger)] of any transportation facility or system engaged in the business of transportation of the public for hire and the individual assaulted is

[a] then performing in such capacity.

[or]

[b] then using such public transportation as a passenger.

[or]

[c] using any area of any description designated by the transportation facility or system as a vehicle boarding, departure, or transfer location.

[or]

[9] the person he assaults is, at the time of the assault, on or about a public way, public property, or public place of accommodation or amusement.

[or]

[10] in doing so, he knows the individual assaulted is an employee of [(the State of Illinois) (a municipal corporation of the State of Illinois) (a political subdivision of the State of Illinois)] engaged in the performance of his authorized duties as such employee.

[or]

[11] the other person is physically handicapped. A physically handicapped person is a person who suffers from a permanent and disabling physical characteristic, resulting from disease, injury, functional disorder, or congenital condition.

[or]

[12] the other person is an individual of 60 years of age or older.

[or]

[13] in doing so, he discharges a firearm.

[or]

[14] in doing so, he knows the individual assaulted is a correctional officer [(who at the time is engaged in the execution of) (and he assaults the employee to prevent him from

performing) (and he assaults the employee in retaliation for performing)] his official duties.

[or]

[15] in doing so, he knows the individual assaulted is a correctional employee [(who at the time is engaged in the execution of) (and he assaults the employee to prevent him from performing) (and he assaults the employee in retaliation for performing)] his official duties.

Committee Note

720 ILCS 5/12-2 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-2 (1991)), amended by P.A. 87-921, effective January 1, 1993; P.A. 88-433, effective January 1, 1994; and P.A. 88-467, effective July 1, 1994; and P.A. 88-670, effective December 2, 1994.

Give Instructions 11.01 and 11.04.

Regarding assaults committed upon emergency medical technicians (EMT) (paragraph [7] of this instruction), if the definition of EMT or the type of EMT becomes an issue, see Section 4.12, 4.13, or 4.15 of the Emergency Medical Services System Act (210 ILCS 50/4.12, 4.13, or 4.15 (West 1992)) which define EMT-ambulance, EMT-paramedic, and EMT-intermediate. See 720 ILCS 5/2-6.5 (West Supp.1993).

Regarding assaults committed upon persons over 60 years of age (paragraph [12] of this instruction) or physically handicapped (paragraph [11] of this instruction), the defendant does not have to *know* that the victim is 60 years of age or older or physically handicapped in order to be convicted of aggravated assault under Sections 12-2(a)(11) and (a)(12). *See* People v. White, 241 Ill.App.3d 291, 302, 608 N.E.2d 1220, 1229, 181 Ill.Dec. 746, 755 (2d Dist.1993).

Because Section 12-2 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use the phrase “without lawful authority” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 1961. *See* People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Use applicable paragraphs, subparagraphs, and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.04
Issues In Aggravated Assault

To sustain the charge of aggravated assault, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] placed ____ in reasonable apprehension of receiving [(bodily harm) (physical contact of an insulting or provoking nature)]; and

[1] *Second Proposition:* That the defendant used a deadly weapon.

[or]

[2] *Second Proposition:* That the defendant was hooded, robed, or masked in such a manner as to conceal his identity.

[or]

[3] *Second Proposition:* That the defendant knew ____ to be a teacher or other person employed in a school; and

Third Proposition: ____ was on the grounds of the school or grounds adjacent to the school, or in any part of a building used for school purposes.

[or]

[4] *Second Proposition:* That the defendant knew ____ to be a supervisor, director, instructor, or other person employed in any park district; and

Third Proposition: That ____ was upon the grounds of the park or grounds adjacent to the park, or in any part of a building used for park purposes.

[or]

[5] *Second Proposition:* That the defendant knew ____ to be a [(caseworker) (investigator) (person)] employed by [(the State Department of Public Aid) (a County Department of Public Aid)]; and

[a] *Third Proposition:* That ____ was upon the grounds of a public aid office or grounds adjacent to a public aid office.

[or]

[b] *Third Proposition:* That ____ was in any part of a building used for public aid purposes.

[or]

[c] *Third Proposition:* That ____ was on the grounds of the home of a [(public aid applicant or recipient) (person being interviewed or investigated in the employee's discharge of his duties)].

[or]

[d] *Third Proposition:* That ____ was on grounds adjacent to the home of the [(public aid applicant or recipient) (person being interviewed or investigated in the employee's discharge of his duties)].

[or]

[e] *Third Proposition:* That ____ was in any part of a building in which a [(public aid applicant or recipient) (person being investigated in the employee's discharge of his duties)] resided or was located.

[or]

[6] *Second Proposition:* That the defendant knew ____ to be a [(peace officer) (fireman) (person summoned or directed by a peace officer)]; and

[a] *Third Proposition:* That the defendant [(knew that ____ was engaged in the execution of) (assaulted ____ to prevent him from performing) (assaulted ____ in retaliation for his performing)] his official duties.

[or]

[b] *Third Proposition:* That the defendant assaulted that person [(while the peace officer was engaged in the execution of) (to prevent the peace officer from performing) (to retaliate for that person helping the peace officer perform)] his official duties.

[or]

[7] *Second Proposition:* That the defendant knew ____ to be [(an emergency medical technician) (an ambulance driver) (a medical assistant) (a first aid attendant)]; and

Third Proposition: That the defendant [(knew that ____ was engaged in the execution of) (assaulted ____ to prevent him from performing) (assaulted ____ in retaliation for his performing)] his official duties.

[or]

[8] *Second Proposition:* That the defendant knew ____ to be [(a driver) (an operator) (an employee) (a passenger)] of any transportation facility or system engaged in the business of transportation of the public for hire; and

[a] *Third Proposition:* ____ was then performing in such capacity.

[or]

[b] *Third Proposition:* ____ was then using such public transportation as a passenger.

[or]

[c] *Third Proposition:* ____ was using any area of any description designated by the transportation facility or system as a vehicle boarding, departure, or transfer location.

[or]

[9] *Second Proposition:* That when the defendant did so, ____ was on or about a public way, public property, or public place of accommodation or amusement.

[or]

[10] *Second Proposition:* That the defendant knew ____ to be an employee of [(the State of Illinois) (a municipal corporation of the State of Illinois) (a political subdivision of the State of Illinois)] engaged in the performance of his authorized duties as such employee.

[or]

[11] *Second Proposition:* That at the time the defendant did so, ____ was a physically handicapped person.

[or]

[12] *Second Proposition:* That at the time the defendant did so, ____ was 60 years of age or older.

[or]

[13] *Second Proposition:* That in doing so, the defendant discharged a firearm.

[or]

[14] *Second Proposition:* That the defendant knew ____ to be a correctional officer; and
Third Proposition: That the defendant [(knew that ____ was engaged in the execution of) (assaulted ____ to prevent him from performing) (assaulted ____ in retaliation for his performing)] his official duties.

[or]

[15] *Second Proposition:* That the defendant knew ____ to be a correctional employee; and
Third Proposition: That the defendant [(knew that ____ was engaged in the execution of) (assaulted ____ to prevent him from performing) (assaulted ____ in retaliation for his performing)] his official duties.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-2 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-2 (1991)), amended by P.A. 87-921, effective January 1, 1993; P.A. 88-433, effective January 1, 1994; and P.A. 88-467, effective July 1, 1994; and P.A. 88-670, effective December 2, 1994.

Give Instruction 11.03.

Use the applicable alternative for the second proposition or second and third propositions.

Because Section 12-2 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982), for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase "without lawful authority" in Instruction 11.03 (see Committee Note to Instruction 11.03), and this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without lawful authority, the Committee has

concluded that the phrase “without lawful authority” need not be used in this issues instruction.

Insert in the blank the name of the victim.

The bracketed numbers in this instruction correspond with the bracketed numbers in Instruction 11.03. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Use applicable bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.05
Definition Of Battery

A person commits the offense of battery when he [(intentionally) (knowingly)] [without legal justification] and by any means [(causes bodily harm to) (makes physical contact of an insulting or provoking nature with)] another person.

Committee Note

720 ILCS 5/12-3 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-3 (1991)).

Give Instruction 11.06.

Use the mental state that conforms to the allegations in the charge. *See* People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Use the phrase "without legal justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of Chapter 38. *See* People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Use applicable bracketed material.

11.06
Issue In Battery

To sustain the charge of battery, the State must prove the following proposition:

That the defendant [(knowingly) (intentionally)] [(caused bodily harm to) (made physical contact of an insulting or provoking nature with)] ____.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-3 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-3 (1991)).

Give Instruction 11.05.

Use the mental state that conforms to the allegation in the charge. *See* People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase "without legal justification" in Instruction 11.05 (see Committee Note to Instruction 11.05), and this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Since the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.07
Definition Of Battery Of An Unborn Child

A person, not the pregnant mother of the unborn child, commits the offense of battery of an unborn child when he [(knowingly) (intentionally)] [without legal justification] and by any means causes bodily harm to an unborn child.

Committee Note

720 ILCS 5/12-3.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-3.1 (1991)).

Give Instructions 11.07A and 11.08.

Use the mental state that conforms to the allegation in the charge. *See* People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Use the phrase "without legal justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of Chapter 38. *See* People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Section 12-3.1(d) sets forth exceptions to the offense of battery of an unborn child. The statute does not apply to acts committed during an abortion, as authorized by Chapter 720, Section 81-21 *et seq.*, or to acts committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment. It will be necessary to give additional instructions if the defendant relies upon either of those exceptions.

Use applicable bracketed material.

11.07A
Definition Of Unborn Child

The term "unborn child" means any individual of the human species from fertilization until birth.

Committee Note

720 ILCS 5/12-3.1(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-3.1(b) (1991)).

This definition applies for charges brought under Section 12-3.1, which is battery of an unborn child.

See Instruction 11.07.

11.08
Issues In Battery Of An Unborn Child

To sustain the charge of battery of an unborn child, the State must prove the following propositions:

First Proposition: That the defendant [(knowingly) (intentionally)] caused bodily harm to an unborn child; and

Second Proposition: That the defendant was not the pregnant mother of the unborn child.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-3.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-3.1 (1991)).

Give Instruction 11.07.

Use the mental state that conforms to the allegation in the charge. *See* People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase "without legal justification" in Instruction 11.07 (see Committee Note to Instruction 11.07), and this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Since the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction.

Section 12-3.1(d) sets forth exceptions to the offense of battery of an unborn child, and additional instructions must be given when the defendant relies upon one of those exceptions. See Committee Note to Instruction 11.07.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.09
Definition Of Aggravated Battery Of An Unborn Child

A person, not the pregnant mother of the unborn child, commits the offense of aggravated battery of an unborn child when he [(intentionally) (knowingly)] [without legal justification] and by any means causes [(great bodily harm) (permanent disability) (permanent disfigurement)] to an unborn child.

Committee Note

720 ILCS 5/12-4.4 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4.4 (1991)).

Give Instructions 11.07, 11.07A, and 11.10.

Use the mental state that conforms to the allegation in the charge. *See* People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Use the phrase "without legal justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of Chapter 38. *See* People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Section 12-3.1(d) sets forth exceptions to the offense of battery of an unborn child, and additional instructions must be given when the defendant relies upon one of those exceptions. See Committee Note to Instruction 11.07.

Use applicable bracketed material.

11.10
Issues In Aggravated Battery Of An Unborn Child

To sustain the charge of aggravated battery of an unborn child, the State must prove the following propositions:

First Proposition: That the defendant [(knowingly) (intentionally)] caused [(great bodily harm) (permanent disability) (permanent disfigurement)] to an unborn child; and

Second Proposition: That the defendant was not the pregnant mother of the unborn child.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-4.4 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4.4 (1991)).

Give Instruction 11.09.

Use the mental state that conforms to the allegation in the charge. *See* People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase "without legal justification" in Instruction 11.09 (see Committee Note to Instruction 11.09), and this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Since the additional proposition or propositions that will thereby be without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction.

Section 12-3.1(d) sets forth exceptions to the offense of battery of an unborn child, and additional instructions must be given when the defendant relies upon one of those exceptions. See Committee Note to Instruction 11.07.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.11
Definition Of Domestic Battery

A person commits the offense of domestic battery when he [(intentionally) (knowingly)] [without legal justification] and by any means [(causes bodily harm to) (makes physical contact of an insulting or provoking nature with)] any family or household member.

Committee Note

720 ILCS 5/12-3.2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-3.2 (1991)).

Give Instruction 11.12.

Use the phrase "without legal justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of Chapter 720.

Use applicable bracketed material.

11.11A
Definition Of Family Or Household Member--Domestic Battery

The phrase "family or household member" means [(spouses) (former spouses) (parents) (children) (stepchildren) (persons related by blood or marriage) (persons who share or formerly shared a common dwelling) (persons who [allegedly] have a child in common) (persons who [allegedly] share a blood relationship through a child) (persons who have or have had a dating or engagement relationship) (persons with disabilities and their personal assistants)].

Committee Note

725 ILCS 5/112A-3(3), amended by P.A. 87-1186, effective Jan. 1, 1993.

11.12
Issues In Domestic Battery

To sustain the charge of domestic battery, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly)] [(caused bodily harm to) (made physical contact of an insulting or provoking nature with)] ____; and

Second Proposition: That ____ was then a family or household member to the defendant.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-3.2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-3.2 (1991)).

Give Instructions 11.11 and 11.11A.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase "without legal justification" in Instruction 11.11 (see Committee Note to Instruction 11.11), and this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Since the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction.

Insert in the blanks the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.13
Definition Of Aggravated Battery--Great Bodily Harm

A person commits the offense of aggravated battery when he [(intentionally) (knowingly)] [without legal justification] and by any means causes [(great bodily harm) (permanent disability) (permanent disfigurement)] to another person.

Committee Note

720 ILCS 5/12-4(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4(a) (1991)).

Give Instruction 11.14.

Use the mental state that conforms to the allegations in the charge. *See* People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Use the phrase "without legal justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of Chapter 38. *See* People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Use applicable bracketed material.

11.14
Issue In Aggravated Battery--Great Bodily Harm

To sustain the charge of aggravated battery, the State must prove the following proposition:

That the defendant [(intentionally) (knowingly)] caused [(great bodily harm) (permanent disability) (permanent disfigurement)] to ____.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-4(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4(a) (1991)).

Give Instruction 11.13.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase "without legal justification" in Instruction 11.13 (see Committee Note to Instruction 11.13), and this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Since the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.15.
Definition Of Aggravated Battery--While Armed, Hooded, Or Involving Specific Categories Of Victims

A person commits the offense of aggravated battery when he [(intentionally) (knowingly)] [without legal justification] and by any means [(causes bodily harm to) (makes physical contact of an insulting or provoking nature with)] another person, and

[1] in doing so, he uses a deadly weapon other than by the discharge of a firearm.

[or]

[2] in doing so, he is hooded, robed, or masked in such a manner as to conceal his identity.

[or]

[3] in doing, so, he knows the individual harmed is a teacher or other person employed in any school and such teacher or other employee is on the grounds of a school or grounds adjacent thereto, or is in any part of a building used for school purposes.

[or]

[4] in doing so, he knows the individual harmed is a supervisor, director, instructor, or other person employed in any park district, and such supervisor, director, instructor, or other employee is on the grounds of the park or grounds adjacent thereto, or in any part of a building used for park purposes.

[or]

[5] in doing so, he knows the individual harmed to be a caseworker, investigator, or other person employed by the State Department of Public Aid or a County Department of Public Aid and such caseworker, investigator, or other person is

[a] on the grounds of a public aid office or grounds adjacent to a public aid office.

[or]

[b] in any part of a building used for public aid purposes.

[or]

[c] on the grounds of the home of a [(public aid applicant or recipient) (person being interviewed or investigated in the employee's discharge of his duties)].

[or]

[d] on grounds adjacent to the home of the [(public aid applicant or recipient) (person being interviewed or investigated in the employee's discharge of his duties)].

[or]

[e] in any part of a building in which the applicant, recipient, or other person resides or is located.

[or]

[6] in doing so, he knows the individual harmed is a

[a] [(peace officer) (correctional institution employee) (fireman)] [(who at the time is engaged in the execution of) (and he harms that [(officer) (fireman)] to prevent the [(officer) (fireman)] from performing) (and he harms that [(officer) (fireman)] in retaliation for performing)] official duties.

[or]

[b] person summoned or directed by a peace officer [(who at the time is engaged in the execution of) (and he harms that person to prevent the peace officer from performing) (and he harms that person in retaliation for that person helping the peace officer perform)] official duties.

[or]

[7] in doing so, he knows the individual harmed is [(an emergency medical technician) (an ambulance driver) (a medical assistant) (a first aid attendant)] employed by a municipality [or other governmental unit] [(who at the time is engaged in the performance of his) (and he harms that individual to prevent the individual from performing) (and he harms that individual in retaliation for that individual performing)] official duties.

[or]

[8a] in doing so, he is on or about [(a public way) (public property) (a public place of accommodation) (a public place of amusement)].

[or]

[8b] at the time he does so, the other person is on or about [(a public way) (public

property) (a public place of accommodation) (a public place of amusement)].

[or]

[9] in doing so, he knows the individual harmed is the [(driver) (operator) (employee) (passenger)] of any transportation facility or system engaged in the business of transportation of the public for hire and the individual harmed is [(then performing in such capacity) (then using such public transportation as a passenger) (using any area of any description designated by the transportation facility or system as a vehicle boarding, departure, or transfer location)].

[or]

[10] the other person is an individual of 60 years of age or older.

[or]

[11] in doing so, he knows the individual harmed is pregnant.

[or]

[12] in doing so, he knows the individual harmed to be a judge whom he intended to harm as a result of the judge's performance of his official duties as a judge.

[or]

[13] in doing so, he knows the individual harmed to be an employee of the Illinois Department of Children and Family Services who at the time was engaged in the performance of his authorized duties.

[or]

[14] in doing so, he knows the individual harmed to be a person who is physically handicapped. A physically handicapped person is a person who suffers from a permanent and disabling physical characteristic, resulting from disease, injury, functional disorder, or congenital condition.

[or]

[15] in doing so, he knowingly and without legal justification and by any means causes bodily harm to a merchant who detains the person for an alleged commission of retail theft. A merchant is an owner or operator of any retail mercantile establishment or any

agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of such owner or operator.

Committee Note

720 ILCS 5/124(b) (West 1992) (formerly Ill.Rev.Stat. ch. §12-4(b) (1991)), amended by P.A. 86-979 and P.A. 86-980, effective July 1, 1990; P.A. 87-921, effective January 1, 1993; P.A. 88-45, effective July 6, 1993; P.A. 88-433, effective January 1, 1994; and P.A. 90-115, effective January 1, 1998.

Give Instruction 11.16.

In People v. Hale, 77 Ill.2d 114, 395 N.E.2d 929, 32 Ill.Dec. 548 (1979), the Illinois Supreme Court held that a charge of aggravated battery can rest upon either of the two methods of committing a battery (i.e., causing bodily harm or making physical contact of an insulting or provoking nature) when the offense is aggravated because of the identity of the victim. 720 ILCS 5/12-4(b)(3) through (12). The supreme court did not specifically address what conduct must be proved when the offense is aggravated by the fact that the defendant used a deadly weapon or was hooded, robed, or masked. 720 ILCS 5/12-4(b)(1) and (2). However, the wording of the statute would appear to mandate the same result as that reached in Hale for such charges, and this instruction has, therefore, been drafted to allow either alternative to be used for any of the aggravating factors. Use the alternative that conforms to the allegation in the charge. *See* People v. Lutz, 73 Ill.2d 204, 383 N.E.2d 171, 22 Ill.Dec. 695 (1978).

Regarding offenses committed upon emergency medical technicians (EMT) (paragraph [7] of this instruction), if the definition of EMT or the type of EMT becomes an issue, see Section 4.12, 4.13, or 4.15 of the Emergency Medical Services System Act (210 ILCS 50/4.12, 4.13, or 4.15 (West 1992)) which define EMT-ambulance, EMT-paramedic, and EMT-intermediate. See 720 ILCS 5/26.5 (West Supp. 1993).

The Committee would caution that the specific wording of the provision regarding batteries committed upon persons over 60 years of age (Section 12-4(b)(10), paragraph [10] in this instruction), differs from that employed in any of the other provisions. Although no court has yet addressed the issue, the Committee believes that when paragraph [10] is used, the alternative involving contact of an insulting or provoking nature should not be used.

Also regarding batteries committed upon persons over 60 years of age (paragraph [10] of this instruction), the defendant does not have to *know* that the victim is 60 years of age or older in order to be convicted of aggravated battery under Section 12-4(b)(10). *See* People v. White, 241 Ill.App.3d 291, 302, 608 N.E.2d 1220, 1229, 181 Ill.Dec. 746, 755 (2d Dist. 1993).

Use the phrase "without legal justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 1961. *See* People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist. 1975).

The definition of aggravated battery under Section 12-4(b) has grown over the last several years due to the inclusion by the legislature of additional designations of individuals who are to receive special protection. Court and counsel should ensure that a particular category of persons mentioned in a charge under this Section was in fact included within the statute when the

allegedly criminal behavior occurred.

Use applicable paragraphs, subparagraphs, and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.16
Issues In Aggravated Battery--While Armed, Hooded, Or Involving Specific Categories Of Victims

To sustain the charge of aggravated battery, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly)] [(caused bodily harm to ____) (made physical contact of an insulting or provoking nature with ____)]; and

[1] *Second Proposition:* That the defendant used a deadly weapon other than by the discharge of a firearm.

[or]

[2] *Second Proposition:* That the defendant was hooded, robed, or masked in such a manner as to conceal his identity.

[or]

[3] *Second Proposition:* That the defendant knew ____ to be a teacher or other person employed in a school; and

Third Proposition: That ____ was on the grounds of a school or grounds adjacent to a school, or in any part of a building used for school purposes.

[or]

[4] *Second Proposition:* That the defendant knew ____ to be a supervisor, director, instructor, or other person employed in a park district; and

Third Proposition: That ____ was on the grounds of the park, or on grounds adjacent to the park, or in any part of a building used for park purposes.

[or]

[5] *Second Proposition:* That the defendant knew ____ to be a caseworker, investigator, or other person employed by the State Department of Public Aid or a County Department of Public Aid; and

Third Proposition: That ____ was

[a] on the grounds of a public aid office or grounds adjacent to a public aid office.

[or]

[b] in any part of a building used for public aid purposes.

[or]

[c] on the grounds of the home of a [(public aid applicant or recipient) (person being interviewed or investigated in the employee's discharge of his duties)]

[or]

[d] on grounds adjacent to the home of the [(public aid applicant or recipient) (person being interviewed or investigated in the employee's discharge of his duties)].

[or]

[e] in any part of a building in which the applicant, recipient, or other such person resides or is located.

[or]

[6] *Second Proposition:* That the defendant knew ____ to be a [(peace officer) (correctional institution employee) (fireman) (person summoned or directed by a peace officer)]; and

[a] *Third Proposition:* That the defendant [(knew that ____ was engaged in the execution of) (harmed ____ to prevent him from performing) (harmed ____ in retaliation for his performing)] official duties.

[or]

[b] *Third Proposition:* That the defendant harmed that person [(while the peace officer was engaged in the execution of) (to prevent the peace officer from performing) (to retaliate for that person helping the peace officer perform)] official duties.

[or]

[7] *Second Proposition:* That the defendant knew ____ to be [(an emergency medical technician) (and ambulance driver) (a medical assistant) (a first aid attendant)]; and

Third Proposition: That the defendant [(knew that ____ was engaged in the performance of his) (harmed ____ to prevent him from performing) (harmed ____ in retaliation for his performing)] official duties.

[or]

[8a] *Second Proposition:* That the defendant did so while on or about [(a public way) (public property) (a public place of accommodation) (a public place of amusement)].

[or]

[8b] *Second Proposition:* That when the defendant did so, ____ was on or about [(a public way) (public property) (a public place of accommodation) (a public place of amusement)].

[or]

[9] *Second Proposition:* That the defendant knew ____ to be the [(driver) (operator)(employee) (passenger)] of any transportation facility or system engaged in the business of transportation of the public for hire; and

Third Proposition: That ____ was [(then performing in such capacity) (then using such public transportation as a passenger) (then using any area of any description designated by the transportation facility or system as a vehicle boarding, departure, or transfer location)].

[or]

[10] *Second Proposition:* That at the time defendant did so, ____ was an individual of 60 years of age or older.

[or]

[11] *Second Proposition:* That the defendant knew ____ to be pregnant.

[or]

[12] *Second Proposition:* That the defendant knew ____ to be a judge whom he intended to harm as a result of the judge's performance of his or her official duties as a judge.

[or]

[13] *Second Proposition:* That the defendant knew ____ to be an employee of the Illinois Department of Children and Family Services engaged in the performance of his or her official duties as such an employee.

[or]

[14] *Second Proposition:* That the defendant knew ____ to be a person who was physically handicapped.

[or]

[15] *Second Proposition*: That the defendant knew ____ to be a merchant who was detaining the defendant for an alleged commission of retail theft.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-4(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-4(b) (1991)), amended by P.A. 86-979 and P.A. 86-980, effective July 1, 1990; P.A. 87-921, effective January 1, 1993, P.A. 88-45, effective July 6, 1993; P.A. 88-433, effective January 1, 1994; and P.A. 90-115, effective January 1, 1998.

Give Instruction 11.15.

See Committee Note to Instruction 11.15, concerning selection of the appropriate alternative method of committing a battery.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase "without legal justification" in Instruction 11.15 (see Committee Note to Instruction 11.15), and this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction.

Insert in the blank(s) the name of the victim.

The bracketed numbers in this instruction correspond with the bracketed numbers in Instruction 11.15. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Use applicable paragraphs, subparagraphs, and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.17
Definition Of Aggravated Battery--Administering Dangerous Substance

A person commits the offense of aggravated battery when he, for other than medical purposes [(administers to an individual) (causes an individual to take)] [(without the individual's consent) (by threat) (by deception)] any [(intoxicating) (poisonous) (stupefying) (narcotic) (anesthetic)] substance.

Committee Note

720 ILCS 5/12-4(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4(c) (1991)).

Give Instruction 11.18.

Use applicable bracketed material.

11.18
Issues In Aggravated Battery--Administering Dangerous Substance

To sustain the charge of aggravated battery, the State must prove the following propositions:

First Proposition: That the defendant [(administered to ____) (caused ____ to take)] an [(intoxicating) (poisonous) (stupefying) (narcotic) (anesthetic)] substance; and

Second Proposition: That ____[(did not consent) (was threatened by the defendant) (was deceived by the defendant)]; and

Third Proposition: That the defendant acted for other than medical purposes.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-4(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4(c) (1991)).

Give Instruction 11.17.

Insert in the blanks the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.19
Definition Of Aggravated Battery--Food Containing Foreign Substance Or Object

A person commits the offense of aggravated battery when he knowingly gives to another person any food that contains any [(substance) (object)] that is intended to cause physical injury if eaten.

Committee Note

720 ILCS 5/12-4(d) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4(d) (1991)).

Give Instruction 11.20.

Use applicable bracketed material.

11.20
Issues In Aggravated Battery--Food Containing Foreign Substance Or Object

To sustain the charge of aggravated battery, the State must prove the following propositions:

First Proposition: That the defendant knowingly gave food to another person; and

Second Proposition: That the food contained any [(substance) (object)] that was intended to cause physical injury if eaten; and

Third Proposition: That the defendant knew the food contained such [(a substance) (an object)].

If you find from your consideration of all the evidence that the State has proved each one of these propositions beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that the State has not proved any one of these propositions beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-4(d) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4(d) (1991)).

Give Instruction 11.19.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.21
Definition Of Heinous Battery

A person commits the offense of heinous battery when he knowingly [without legal justification] causes severe and permanent [(disability) (disfigurement)] to another person by means of a [(caustic) (flammable)] substance.

Committee Note

720 ILCS 5/12-4.1 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-4.1 (1991)), amended by P.A. 88-285, effective January 1, 1994.

Give Instruction 11.22.

Use applicable bracketed material.

Use the phrase "without legal justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 1961 (720 ILCS 5/7-1 *et seq.*). *See* People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

11.22
Issues In Heinous Battery

To sustain a charge of heinous battery, the State must prove the following propositions:

First Proposition: That the defendant knowingly caused severe and permanent [(disability) (disfigurement)] to ____; and

Second Proposition: That the defendant did so by means of a [(caustic) (flammable)] substance.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-4.1 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-4.1 (1991)), amended by P.A. 88-285, effective January 1, 1994.

Give Instruction 11.21.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase "without legal justification" in Instruction 11.21 (see Committee Note to Instruction 11.21), and this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.23
Definition Of Aggravated Battery With A Firearm

A person commits the offense of aggravated battery with a firearm when he, by means of discharging a firearm, [(intentionally) (knowingly)] causes injury to

[1] another person.

[or]

[2] a person he knows to be [(a peace officer) (a person summoned by a peace officer) (a correctional institution employee) (a fireman) (an emergency medical technician) (an ambulance driver) (a medical assistant) (a first aid attendant)] [employed by a municipality [or other governmental unit]]

[a] while the [(officer) (employee) (fireman) (emergency medical technician) (ambulance driver) (medical assistant) (first aid attendant)] is engaged in the execution of his official duties.

[or]

[b] to prevent the [(officer) (employee) (fireman) (emergency medical technician) (ambulance driver) (medical assistant) (first aid attendant)] from performing his official duties.

[or]

[c] in retaliation for the [(officer) (employee) (fireman) (emergency medical technician) (ambulance driver) (medical assistant) (first aid attendant)] performing his official duties.

Committee Note

720 ILCS 5/12-4.2 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-4.2 (1991)), added by P.A. 86-980, effective July 1, 1990; amended by P.A. 87-921, effective January 1, 1993; P.A. 87-1256, effective July 1, 1993; and P.A. 88-433, effective January 1, 1994.

Give Instructions 11.23A and 11.24.

Use the phrase "without legal justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 1961. *See* People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Regarding offenses committed upon emergency medical technicians (EMT) (paragraph [2]), if the definition of EMT or the type of EMT becomes an issue, see Section 4.12, 4.13, or 4.15 of the Emergency Medical Services System Act (210 ILCS 50/4.12, 4.13, or 4.15 (West 1992)) which define EMT-ambulance, EMT-paramedic, and EMT-intermediate. See 720 ILCS 5/2-6.5 (West Supp.1993).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

11.23A
Definition Of Firearm--Aggravated Battery With A Firearm

The word "firearm" means any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas, or escape of gas.

[However, this word does not include ____.]

Committee Note

720 ILCS 5/83-1.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §83-1.1 (1991)).

The statutory definition on which this instruction is based contains several exclusions, such as a spring-gun, a B-B gun, etc. In the event the case on trial presents a jury issue on the applicability of any of these exclusions, the bracketed second paragraph should be given with the particular device at issue inserted in the blank.

11.24
ISSUES IN AGGRAVATED BATTERY WITH A FIREARM

To sustain the charge of aggravated battery with a firearm, the State must prove the following propositions:

[1] *First Proposition:* That the defendant [(intentionally) (knowingly)] caused injury to another person; and

Second Proposition: That the defendant did so by discharging a firearm.

[or]

[2] *First Proposition:* That the defendant [(intentionally) (knowingly)] caused injury to another person; and

Second Proposition: That the defendant did so by discharging a firearm; and

Third Proposition: That the defendant knew that the other person was [(a peace officer) (a person summoned by a peace officer) (a correctional institution employee) (a fireman) (an emergency medical technician) (an ambulance driver) (a medical assistant) (a first aid attendant)]; and

Fourth Proposition: That the defendant did so

> [a] while the [(peace officer) (correctional officer) (fireman) (emergency medical technician) (ambulance driver) (medical assistant) (first aid attendant)] was engaged in the execution of his official duties.
>
> [or]
>
> [b] to prevent the [(peace officer) (correctional officer) (fireman) (emergency medical technician) (ambulance driver) (medical assistant) (first aid attendant)] from performing his official duties.
>
> [or]
>
> [c] in retaliation for the [(peace officer) (correctional officer) (fireman) (emergency medical technician) (ambulance driver) (medical assistant) (first aid attendant)] performing his official duties.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-4.2 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-4.2 (1991)), added by P.A. 86-980, effective July 1, 1990; amended by P.A. 87-921, effective January 1, 1993; P.A. 87-1256, effective July 1, 1993; and P.A. 88-433, effective January 1, 1994.

Give Instruction 11.23.

Whenever the jury is to be instructed on an affirmative defense, this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction, although it does need to be included in Instruction 11.23 (see the Committee Note to Instruction 11.23).

The bracketed numbers in this instruction correspond with the bracketed numbers in Instruction 11.23. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.25
Definition Of Aggravated Battery Of A Child [Or Institutionalized Mentally Retarded Person]

A person commits the offense of aggravated battery of a child when he, being a person of the age of 18 years or more, [(intentionally) (knowingly)] [without legal justification] by any means, causes [(great bodily harm) (permanent disability) (permanent disfigurement)] to [(any child under the age of 13 years) (any institutionalized severely or profoundly mentally retarded person)].

Committee Note

720 ILCS 5/12-4.3 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4.3 (1991)).

Give Instruction 11.26.

P.A. 85-1392, effective January 1, 1989, amended Section 12-4.3 to include aggravated battery of an institutionalized severely or profoundly mentally retarded person. See also P.A. 85-1440. The offense is still entitled "aggravated battery of a child," and the Committee retained that designation in the body of this instruction. The bracketed reference to "institutionalized mentally retarded person" was included in the title to this instruction to facilitate identification of the appropriate instruction.

Give Instruction 11.65G when the alleged victim is an institutionalized severely or profoundly mentally retarded person.

Use the mental state that conforms to the allegation in the charge. *See* People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Use the phrase "without legal justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of Chapter 720. *See* People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Use applicable bracketed material.

11.26
Issues In Aggravated Battery Of A Child [Or Institutionalized Mentally Retarded Person]

To sustain the charge of aggravated battery of a child, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly)] caused [(great bodily harm) (permanent disability) (permanent disfigurement)] to ____; and

Second Proposition: That when the defendant did so, he was of the age of 18 years or older; and

Third Proposition: That when the defendant did so, ____ was under 13 years.

[or]

Third Proposition: That ____ was an institutionalized severely or profoundly mentally retarded person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-4.3 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4.3 (1991)).

Give Instruction 11.25.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase "without legal justification" in Instruction 11.25 (see Committee Note to Instruction 11.25), and this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Since the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction.

Insert in the blanks the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.27
Definition Of Cruelty To Children

A person commits the offense of cruelty to children when he

[1] wilfully and unnecessarily exposes to the inclemency of the weather any [(child) (apprentice) (person)] under his legal control.

[or]

[2] [(knowingly) (intentionally) (recklessly)] injures the health or limb of a [(child) (apprentice) (person)] under his legal control.

Committee Note

720 ILCS 115/53 (West, 1999) (formerly Ill.Rev.Stat. ch. 23, §2368 (1991)).

Give Instruction 11.28.

The second alternative method of violating the statute excludes wilful and unnecessary exposure "to the inclemency of the weather." Since the second alternative does not contain a mental state, this instruction incorporates the requirements of Chapter 38, Section 4-3. *See* People v. Smith, 60 Ill.App.3d 403, 376 N.E.2d 787, 17 Ill.Dec. 641 (4th Dist.1978). *But see* People v. Miller, 116 Ill.App.3d 361, 452 N.E.2d 391, 72 Ill.Dec. 266 (2d Dist.1983), where the Court held the cruelty statute applies only to conduct committed with the mental state of wilfulness and does not apply to recklessness.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.28
Issue In Cruelty To Children

To sustain the charge of cruelty to children, the State must prove the following proposition:

That the defendant wilfully and unnecessarily exposes to the inclemency of the weather ____, a[n] [(child) (apprentice) (person)] under his legal control.

[or]

That the defendant [(knowingly) (intentionally) (recklessly)] injured the [(health) (limb)] of a[n] [(child) (apprentice) (person)] under his legal control.

If you find from your consideration of all the evidence that the State has proved this proposition beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that the State has not proved this proposition beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 115/53 (West, 1999) (formerly Ill.Rev.Stat. ch. 23, §2368 (1991)).

Give Instruction 11.27.

The mental states referred to in Chapter 720, Section 4-3, have been added to the second alternative proposition. *See* People v. Smith, 60 Ill.App.3d 403, 376 N.E.2d 787, 17 Ill.Dec. 641 (4th Dist.1978). *But see* People v. Miller, 116 Ill.App.3d 361, 452 N.E.2d 391, 72 Ill.Dec. 266 (2d Dist.1983). Give the mental state that conforms with the charge.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.29
Definition Of Endangering Life Or Health Of A Child

A person commits the offense of endangering the life or health of a child when he has the care or custody of a child and wilfully causes or permits [(the life of that child to be endangered) (the health of that child to be injured) (that child to be placed in such a situation that the child's life or health may be endangered)].

Committee Note

720 ILCS 150/4 (West, 1999) (formerly Ill.Rev.Stat. ch. 23, §2354 (1991)).

Give Instruction 11.30.

See People v. Vandiver, 51 Ill.2d 525, 283 N.E.2d 681 (1971), wherein the supreme court held that, for purposes of this section, the word "child" refers to children under 14 years of age, and the word "health" includes, *inter alia*, "freedom from physical injury."

See People v. Marquis, 54 Ill.App.3d 209, 369 N.E.2d 372, 11 Ill.Dec. 918 (4th Dist.1977), concerning the required mental state of wilfulness; see also Chapter 720, Section 4-5.

Use applicable bracketed material.

11.30
Issues In Endangering Life Or Health Of A Child

To sustain the charge of endangering the life or health of a child, the State must prove the following propositions:

First Proposition: That the defendant had the care or custody of ____; and

Second Proposition: That the defendant wilfully caused or permitted [(the life of ____ to be endangered) (the health of ____ to be injured) (____ to be placed in such a situation that endangered the life or health of ____)].

If you find from your consideration of all the evidence that the State has proved each one of these propositions beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that the State has not proved any one of these propositions beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 150/4 (West, 1999) (formerly Ill.Rev.Stat. ch. 23, §2354 (1991)).

Give Instruction 11.29.

Insert in the blanks the name of the child.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.31
Definition Of Tampering With Food, Drugs, Or Cosmetics

A person commits the offense of tampering with food, drugs, or cosmetics when he knowingly puts any substance capable of causing death or great bodily harm to a human being into any food, drug, or cosmetic offered for sale or consumption.

Committee Note

720 ILCS 5/12-4.5 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4.5 (1991)).

Give Instruction 11.32.

11.32
Issues In Tampering With Food, Drugs, Or Cosmetics

To sustain the charge of tampering with food, drugs, or cosmetics, the State must prove the following propositions:

First Proposition: That the defendant knowingly put a substance into a [(food) (drug) (cosmetic)] offered for sale or consumption; and

Second Proposition: That the substance was capable of causing death or great bodily harm to a human being; and

Third Proposition: That the defendant knew the substance was capable of causing death or great bodily harm to a human being.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-4.5 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4.5 (1991)).

Give Instruction 11.31.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.33
Definition Of Aggravated Battery Of A Senior Citizen

A person commits the offense of aggravated battery of a senior citizen when he [(intentionally) (knowingly)] [without legal justification] and by any means causes [(great bodily harm) (permanent disability) (permanent disfigurement)] to an individual of 60 years of age or older.

Committee Note

720 ILCS 5/12-4.6 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4.6 (1991)).

Give Instruction 11.34.

Use the mental state that conforms to the allegations in the charge. *See* People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Use the phrase "without legal justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of Chapter 38. *See* People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Use applicable bracketed material.

11.34
Issues In Aggravated Battery Of A Senior Citizen

To sustain the charge of aggravated battery of a senior citizen, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly)] caused [(great bodily harm) (permanent disability) (permanent disfigurement)] to ____; and

Second Proposition: That when the defendant did so, ____ was an individual of 60 years of age or older.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-4.6 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4.6 (1991)).

Give Instruction 11.33.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase "without legal justification" in Instruction 11.33 (see Committee Note to Instruction 11.33), and this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Since the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this instruction.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.35
Definition Of Drug Induced Infliction Of Great Bodily Harm

A person commits the offense of drug induced infliction of great bodily harm when he knowingly delivers a controlled substance to another and any person experiences [(great bodily harm) (permanent disability)] as a result of the [(injection) (inhalation) (ingestion)] of any amount of that controlled substance.

Committee Note

720 ILCS 5/12-4.6 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4.6 (1991)).

Give Instruction 11.36, and Instruction 17.10, defining the offense of delivery of a controlled substance.

Use applicable bracketed material.

11.36
Issues In Drug Induced Infliction Of Great Bodily Harm

To sustain the charge of drug induced infliction of great bodily harm, the State must prove the following propositions:

First Proposition: That the defendant knowingly delivered a controlled substance; and

Second Proposition: That any person experienced [(great bodily harm) (permanent disability)] as a result of the [(injection) (inhalation) (ingestion)] of the controlled substance.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-4.6 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4.6 (1991)).

Give Instruction 11.35.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.37
Definition Of Reckless Conduct

A person commits the offense of reckless conduct when he recklessly performs any act which [(causes bodily harm to) (endangers the bodily safety of)] another person.

Committee Note

720 ILCS 5/12-5 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-5 (1991)).

Give Instruction 11.38.

Give Instruction 5.01, defining the word “recklessness.”

Use applicable bracketed material.

11.38
Issue In Reckless Conduct

To sustain the charge of reckless conduct, the State must prove the following proposition:

That the defendant recklessly performed an act which [(caused bodily harm to ____) (endangered the bodily safety of ____)].

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-5 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-5 (1991)).

Give Instruction 11.37.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.39
Definition Of Criminal Housing Management

A person commits the offense of criminal housing management when he, having [(personal management) (control)] of residential real estate, as a [(legal owner) (equitable owner) (managing agent)] of the residential real estate, knowingly permits by his gross [(carelessness) (neglect)] the [(physical condition) (facilities)] of the residential real estate to become or remain so deteriorated that the [(health) (safety)] of any inhabitant is endangered.

Committee Note

720 ILCS 5/12-5.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-5.1 (1991)).

Give Instruction 11.40.

Use applicable bracketed material.

11.40
Issues In Criminal Housing Management

To sustain the charge of criminal housing management, the State must prove the following propositions:

First Proposition: That the defendant had [(personal management) (control)] of the real estate as a [(legal owner) (equitable owner) (managing agent)]; and

Second Proposition: That the nature of the real estate at ____ was residential; and

Third Proposition: That the defendant knowingly, by his gross [(carelessness) (neglect)] permitted the real estate to become or remain so deteriorated that the [(health) (safety)] of an inhabitant was endangered.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-5.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-5.1 (1991)).

Give Instruction 11.39.

Insert in the blank the address of the real estate if alleged in the charge.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.41
Definition Of Intimidation

A person commits the offense of intimidation when he, with intent to cause another to [(perform) (omit the performance of)] any act, communicates to the other person a threat to, without lawful authority,

[1] inflict physical harm on [(the person threatened) (any other person) (property)].

[or]

[2] subject any person to physical [(confinement) (restraint)].

[or]

[3] commit any criminal offense.

[or]

[4] accuse any person of a criminal offense.

[or]

[5] expose any person to [(hatred) (contempt) (ridicule)].

[or]

[6] take action as a public official against [(anyone) (anything)].

[or]

[7] withhold official action as a public official.

[or]

[8] cause [(official action) (withholding of official action)] by a public official.

[or]

[9] bring about or continue a [(strike) (boycott) [other collective action]].

Committee Note

720 ILCS 5/12-6 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-6 (1991)).

Give Instruction 11.42.

The Committee has made the phrase "without lawful authority" applicable to each paragraph because here, unlike the battery statute, the phrase seems to be an integral part of the offense, and not a matter of defense. That is, the statute says: "... threat to perform without lawful authority any of the following acts . . . ." The Committee believes "without lawful authority" is part of the threat and is an element of the crime. See Ill.Ann.Stat. ch. 38, para. 12-6 (Smith-Hurd 1979) (Committee Comments). *But see* People v. Hubble, 81 Ill.App.3d 560, 401 N.E.2d 1282, 37 Ill.Dec. 189 (2d Dist.1980).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.41X
Definition Of Aggravated Intimidation

A person commits the offense of aggravated intimidation when he is a streetgang member and he commits the offense of intimidation in furtherance of the activities of an organized gang.

Committee Note

720 ILCS 5/12-6.2 (West 1997), added by P.A. 89-631, effective January 1, 1997.

Give Instruction 11.42X.

Give Instructions 11.41 and 11.42, the definitional instruction and the issues instruction for the offense of intimidation. See the Committee Notes to Instructions 11.41 and 11.42.

If the definition of the term “streetgang,” “streetgang member,” or “organized gang” becomes an issue, see Instructions 4.20 and 4.21 which define these terms. See 720 ILCS 12-6.2 (c) (West 1997).

11.42
Issues In Intimidation

To sustain the charge of intimidation, the State must prove the following propositions:

First Proposition: That the defendant communicated to ____ a threat to, without lawful authority,

[1] inflict physical harm on [(____) (any other person) (property)];

[or]

[2] subject [(____) (any person)] to physical [(confinement) (restraint)];

[or]

[3] commit any criminal offense;

[or]

[4] accuse [(____) (any person)] of an offense;

[or]

[5] expose [(____) (any person)] to [(hatred) (contempt) (ridicule)];

[or]

[6] take action as a public official against ____;

[or]

[7] withhold official action as a public official;

[or]

[8] cause the [(taking of action) (withholding of action)] by a public official;

[or]

[9] bring about or continue a [(strike) (boycott) [other collective action]];

and

Second Proposition: That the defendant then intended to cause ____ to [(perform) (omit the performance of)] an act.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-6 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-6 (1991)).

Give Instruction 11.41.

Insert in the appropriate blanks the name of the victim, person, or thing.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.42X
Issues In Aggravated Intimidation

To sustain the charge of intimidation, the State must prove the following propositions:

First Proposition: That the defendant was a streetgang member; and

Second Proposition: That the defendant committed the offense of intimidation, and

Third Proposition: That the defendant did so in furtherance of the activities of an organized gang.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-6.2 (West, 1997), added by P.A. 89-631, effective January 1, 1997.

Give Instruction 11.41X.

See the Committee Note to Instruction 11.41X.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.43
Definition Of Compelling Organization Membership Of Persons

A person commits the offense of compelling organization membership of persons when he, with intent to [(solicit or cause any person to join) (deter any person from leaving)] any organization or association, regardless of the nature of the organization or association,

[1] expressly or impliedly threatens to do bodily harm to an individual or that individual's family.

[or]

[2] does bodily harm to an individual or that individual's family.

[or]

[3] uses ____.

Committee Note

720 ILCS 5/12-6.1 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-6.1 (1991)); amended by P.A. 89-8, effective March 21, 1995.

Give Instruction 11.44.

Give this instruction for charges brought under the first paragraph of Section 12-6.1. Give Instruction 11.85 (Definition of Compelling a Person Under 18 Years of Age to Join an Organization or Association) for charges brought under the second paragraph of Section 12-6.1.

The third alternative paragraph, defined in the statute as “any criminally unlawful means” applies only to something other than threats to do bodily harm or the actual infliction of bodily harm. Insert in the blank the criminally unlawful means to which the information or indictment refers.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.44
Issues In Compelling Organization Membership Of Persons

To sustain the charge of compelling organization membership of persons, the State must prove the following propositions:

[1] *First Proposition:* That the defendant expressly or impliedly threatened to do bodily harm to ____ or ____'s family;

[or]

[2] *First Proposition:* That the defendant did bodily harm to ____ or ____'s family;

[or]

[3] *First Proposition:* That the defendant used ____;

and

Second Proposition: That the defendant did so with intent to [(solicit or cause any person to join) (deter any person from leaving)] an organization or association.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-6.1 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-6.1 (1991)); amended by P.A. 89-8, effective March 21, 1995.

Give Instruction 11.44.

Give this instruction for charges brought under the first paragraph of Section 12-6.1. Give Instruction 11.86 (Issues in Compelling a Person Under 18 Years of Age to Join an Organization or Membership) for charges brought under the second paragraph of Section 12-6.1.

Insert in the blank the appropriate name.

The bracketed numbers [1] through [3] correspond to the alternatives of the same number in Instruction 11.43, the definitional instruction for this offense. Select the corresponding alternative First Proposition to the alternative selected from the definitional instruction.

If the third alternative First Proposition is used, insert in the blank the “criminally unlawful means” to which the information or indictment refers.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.45
Definition Of Compelling Confession, Statement, Or Information By Force Or Threat

A person commits the offense of compelling a[n] [(confession) (statement) (information)] by force or threat when he, with the intent to obtain a[n] [(confession) (statement) (information)] regarding any offense [(inflicts) (threatens to inflict)] physical harm on [(the person threatened) (any other person)].

Committee Note

720 ILCS 5/12-7 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-7 (1991)).

Give Instruction 11.46.

Use applicable bracketed material.

11.46
Issues In Compelling Confession, Statement, Or Information By Force Or Threat

To sustain the charge of compelling a[n] [(confession) (statement) (information)] by force or threat, the State must prove the following propositions:

First Proposition: That the defendant [(inflicted) (threatened to inflict)] physical harm on [(____) (another person)]; and

Second Proposition: That the defendant then intended to obtain a[n] [(confession) (statement) (information)] regarding an offense.

If you find from consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-7 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-7 (1991)).

Give Instruction 11.45.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.47
Definition Of Hate Crime

A person commits the offense of hate crime when, by reason of the [(actual) (perceived)] [(race) (color) (creed) (religion) (ancestry) (gender) (sexual orientation) (physical disability) (mental disability) (national origin)] of another [(individual) (group of individuals)], he commits [(assault) (battery) (aggravated assault) (theft) (criminal trespass to residence) (criminal damage to property) (criminal trespass to vehicle) (criminal trespass to real property) (mob action) (disorderly conduct) (harassment by telephone)].

Committee Note

720 ILCS 5/12-7.1 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-7.1 (1991)), amended by P.A. 86-1418, effective January 1, 1991; P.A. 87-440, effective January 1, 1992; P.A. 87-1048, effective January 1, 1993; and P.A. 88-259, effective August 9, 1993.

Give Instruction 11.48.

When hate crime based on sexual orientation is alleged, give Instruction 11.47A, defining the term "sexual orientation."

Give one of the following instructions for the offense committed as part of the offense of hate crime in conformance with the charge: 11.01 (assault); 11.05 (battery); 11.03 (aggravated assault); 13.03, 13.07, 13.09, 13.11, or 13.13 (theft); 14.13 (criminal trespass to residence); 16.01 (criminal damage to property); 16.09 (criminal trespass to vehicle); 16.11 (criminal trespass to real property); 19.01, 19.03, or 19.05 (mob action); 19.07 (disorderly conduct); or 19.09 (harassment by telephone).

Use applicable bracketed material.

11.47A
Definition Of Sexual Orientation

The term "sexual orientation" means heterosexuality, homosexuality, or bisexuality.

Committee Note

720 ILCS 5/12-7.1(d) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-7.1(d) (1991)).

11.48
Issues In Hate Crime

To sustain the charge of hate crime, the State must prove the following propositions:

First Proposition: That the defendant committed the offense of [(assault) (battery) (aggravated assault) (theft) (criminal trespass to residence) (criminal damage to property) (criminal trespass to vehicle) (criminal trespass to real property) (mob action) (disorderly conduct) (harassment by telephone)]; and

Second Proposition: That the defendant did so by reason of the [(actual) (perceived)] [(race) (color) (creed) (religion) (ancestry) (gender) (sexual orientation) (physical disability) (mental disability) (national origin)] of another [(individual) (group of individuals)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-7.1 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-7.1 (1991)), amended by P.A. 86-1418, effective January 1, 1991; P.A. 87-440, effective January 1, 1992; P.A. 87-1048, effective January 1, 1993; and P.A. 88-259, effective August 9, 1993.

Give Instruction 11.47.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.49
Definition Of Threatening Public Officials; Human Service Providers

A person commits the offense of threatening a [(public official) (human service provider)] when he knowingly delivers or conveys, directly or indirectly, to a [(public official) (human service provider)] by any means a communication containing a threat

[1] that would place the [(public official) (human service provider)] [or a member of his immediate family] in reasonable apprehension of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)]

[or]

[2] that would place the [(public official) (human service provider)] [or a member of his immediate family] in reasonable apprehension that damage will occur to property in the custody, care, or control of the [(public official) (human service provider)] [or his immediate family];

and

[1] the threat was conveyed because of the performance or nonperformance of some [(public duty) (duty as a human service provider)].

[or]

[2] the threat was conveyed because of the hostility of the person making the threat toward the status or position of [(the public official) (human service provider)].

[or]

[3] the threat was conveyed because of any other factor relating to the official's public existence.

Committee Note

Instruction and Committee Note Approved May 2, 2014.

720 ILCS 5/12-9 (West 2013), amended by P.A. 91-335, effective January 1, 2000, adding a duly appointed assistant State's Attorney to the definition of "public official", amended by P.A. 91-387 effective January 1, 2000, substituting "by any means a communication" for "any telephone communication, letter, paper, writing, print, missive, or document containing a threat to take the life of or to inflict great bodily harm upon the public official or a member of his immediate family and", amended by P.A. 92-16 effective June 28, 2001, amended by P.A. 95-466 effective June 1, 2008, adding paragraph [a-5], amended by P.A. 96-1551 effective July 1, 2011, deleting "the offense of" and "and willfully" from paragraph [a] and adding assistant Attorney General and Appellate Prosecutor to the definition of "public official", amended by P.A. 97—1079 effective January 1, 2013, adding paragraph [a-6], amended by P.A. 98-529 effective January 1, 2014, adding "human service providers" as persons covered under the act and defining "human service provider".

Give Instruction 11.50

When applicable, give Instruction 11.49A, defining a "public official".

When applicable, give Instruction 11.49B, defining "human service provider".

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.49A
Definition Of Public Official And Immediate Family

A person [(holding the position of ____) (who has filed the required documents for nomination or election to the position of ____)] is a public official.

[When I use the term "required documents", I mean _____.]

[The term "immediate family" means a public official's [(spouse) (child) (children)].]

Committee Note

Instruction and Committee Note Approved May 2, 2014.

720 ILCS 5/12-9 (West 2013), amended by P.A. 87-238, effective January 1, 1992.

Section 12-9(b) provides the following definition:

> "Public official" means a person who is elected to office in accordance with a statute or who is appointed to an office which is established, and the qualifications and duties of which are prescribed, by statute, to discharge a public duty for the State or any of its political subdivisions or in the case of an elective office any person who has filed the required documents for nomination or election to such office. "Public official" includes a duly appointed assistant State's Attorney, assistant Attorney General, or Appellate Prosecutor; a sworn law enforcement or peace officer; a social worker, caseworker, or investigator employed by the Department of Healthcare and Family Services, the Department of Human Services, or the Department of Children and Family Services.

The Committee concluded that the nature of the office is a question of law to be decided by the court; whether the person allegedly threatened was such a public official is a question of fact for the jury. Insert in the blank the particular office held or filed for.

When applicable, insert in the blank in the first bracketed sentence the required documents that must be filed for nomination or election. The court should instruct the jury what the required documents are, and the jury need only decide if the documents were filed. The legal sufficiency of the documents is not an issue for the jury.

Use applicable bracketed material.

11.49B
Definition Of Human Service Provider And Immediate Family

A human service provider is a person who is a [(social worker) (case worker) (investigator)] employed by an agency or organization providing [(social work) (case work) (investigative services)] under a [(contract with) (grant from)] [(the Department of Human Services) (the Department of Children and Family Services) (the Department of Healthcare and Family Services) (the Department on Aging)].

[The term "immediate family" means a human service provider's [(spouse) (child) (children)].]

Committee Note

Instruction and Committee Note Approved May 2, 2014.

720 ILCS 5/12-9 (West 2013), amended by P.A. 98-529, effective January 1, 2014.

Section 12-9 provides the following definition:

"Human service provider means a social worker, case worker, or investigator employed by an agency or organization providing social work, case work, or investigative services under a contract with or a grant from the Department of Human Services, the Department of Children and Family Services, the Department of Healthcare and Family Services, or the Department on Aging."

The Committee concluded that the nature of the position is a question of fact to be decided by the jury.

Use applicable bracketed material.

11.50
Issues In Threatening Public Officials; Human Service Providers

To sustain the charge of threatening a [(public official) (human service provider)] the State must prove the following propositions:

First Proposition: That the defendant knowingly delivered or conveyed, directly or indirectly, to a [(public official) (human service provider)] by any means a communication containing a threat

[1] that would place the [(public official) (human service provider)] [or a member of his immediate family] in reasonable apprehension of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)];

[or]

[2] that would place the [(public official) (human service provider)] [or a member of his immediate family] in reasonable apprehension that damage will occur to property in the custody, care, or control of the [(public official) (human service provider)] [or his immediate family];

and

Second Proposition: That ____ was a [(public official) (human service provider)] at the time of the threat;

and

[1] *Third Proposition:* That the threat was conveyed because of the performance or nonperformance of some [(public duty) (duty as a human service provider)].

[or]

[2] *Third Proposition:* That the threat was conveyed because of the hostility of the person making the threat toward the status or position of the [(public official) (human service provider)].

[or]

[3] *Third Proposition:* That the threat was conveyed because of any other factor relating to the official's public existence.

and

Fourth Proposition: That when the defendant conveyed the threat, he knew ____ was then [(a public official) (human service provider)].

[and]

[*Fifth Proposition:* That the threat to a [(sworn law enforcement officer) (social worker) (caseworker) (investigator) (human service provider)] contained specific facts indicative of a unique threat to the [(sworn law enforcement officer) (social worker) (caseworker) (investigator) (human service provider) [(family) (property) of the (sworn law enforcement officer) (social worker) (caseworker) (investigator) (human service provider)]] and not a generalized threat of harm.]

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved May 2, 2014.

720 ILCS 5/12-9 (West 2013).

Give Instructions 11.49.

When applicable give 11.49A.

When applicable give 11.49B.

Insert in the blanks the name of the public official or human service provider.

Use the Fifth Proposition when the public official is a sworn law enforcement officer, social worker, caseworker, investigator or a human service provider.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

11.51
Definition Of Armed Violence (Until June 30, 1994)

A person commits armed violence when he commits [(the offense of ____) (either the offense of ____ or the offense of ____)] while armed with a dangerous weapon.

A person is considered armed with a dangerous weapon when he carries on or about his person or is otherwise armed with a ____. To be considered "otherwise armed," the person must have immediate access to or timely control over the weapon.

Committee Note

720 ILCS 5/33A-2 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §33A-2 (1991)).

Give Instruction 11.52. These instructions should *not* be used for any offense allegedly occurring *after* June 30, 1994.

Give the instruction defining the offense that is the subject of the armed violence.

When the aggravated version of armed violence is charged (see 720 ILCS 5/33A-3(a) (West Supp. 1993)), use Instructions 11.51X and 11.52X.

The judge shall determine whether the offense is a felony defined by Illinois law. However, the offense of armed violence cannot be predicated upon the following offenses: (1) first degree murder, second degree murder, or involuntary manslaughter (*see* People v. Hobbs, 249 Ill.App.3d 679, 683, 619 N.E.2d 258, 261, 188 Ill.Dec. 894, 897 (5th Dist. 1993)); (2) unlawful restraint (*see* People v. Murphy, 261 Ill.App.3d 1019, 1023, 635 N.E.2d 110, 113, 200 Ill.Dec. 9, 12 (2d Dist. 1994)); and (3) aggravated battery based upon the use of a deadly weapon (*see* People v. Haron, 85 Ill.2d 261, 278, 422 N.E.2d 627, 634, 52 Ill.Dec. 625, 632 (1981)).

If the defendant is charged with two or more counts of aggravated battery and armed violence, the armed violence instructions must clearly indicate that it is not predicated upon the offense of aggravated battery based upon the use of a deadly weapon. *See* People v. Hines, 257 Ill.App.3d 238, 244-45, 629 N.E.2d 540, 544, 195 Ill.Dec. 955, 959 (1st Dist. 1993). Accordingly, if the defendant is charged with armed violence and two or more counts of aggravated battery, one of which is aggravated battery based upon use of a deadly weapon, two separate sets of aggravated battery instructions should be given--one set for aggravated battery based upon use of a deadly weapon and the other set for all the other types of aggravated battery charged. See Instructions 11.15 and 11.16. The Committee believes that giving two sets of instructions will assist the jury in differentiating aggravated battery based upon use of a deadly weapon from the other type of aggravated battery charged.

For example, if the defendant is charged with aggravated battery based upon (1) use of a deadly weapon, (2) the victim of the battery being over 60 years of age, and (3) the defendant concealing his identity, two separate sets of Instructions 11.15 and 11.16 should be given. In one set, the phrase "based upon use of a deadly weapon" would be inserted after "A person commits the offense of aggravated battery" at the beginning of both Instructions 11.15 and 11.16. The second set of instructions should include the phrase "other than with the use of a deadly weapon" after the opening phrase. Two parallel sets of verdict forms should also be given. In the armed violence instructions, the phrase "aggravated battery other than with the use of a deadly weapon"

should be inserted in the first blank in Instruction 11.51 and the two blanks in Instruction 11.52.

A conviction for armed violence can be based either on the predicate charged offense or a lesser included offense of the predicate charged offense. Use the applicable bracketed material in the first paragraph. See People v. Simmons, 93 Ill.2d 94, 442 N.E.2d 891, 66 Ill.Dec. 330 (1982).

The Illinois Supreme Court has held that a person is "otherwise armed" for purposes of the armed violence statute only if the person has "immediate access to or timely control over the weapon." People v. Harre, 155 Ill.2d 392, 614 N.E.2d 1235, 185 Ill.Dec. 550 (1993); People v. Condon, 148 Ill.2d 96, 592 N.E.2d 951, 170 Ill.Dec. 271 (1992).

There may be cases were the category of weapon used is an essential element of the offense. If so, the defendant would be entitled to instructions and a jury finding on the category of weapon. *See* People v. Foust, 82 Ill.App.3d 516, 401 N.E.2d 1329, 37 Ill.Dec. 236 (4th Dist. 1980).

See 720 ILCS 5/33A-1 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §33A-1 (1991)), for the list of weapons that applies to this instruction.

Insert in the first blank the same of the "felony defined by Illinois law."

Insert in the second blank the same of the alleged dangerous weapon.

11.51X
Definition Of Aggravated Armed Violence (From July 1, 1994 Until December 31, 1994)

A person commits aggravated armed violence when he commits [(the offense of ____) (either the offense of ____ or the offense of ____)] in relation to the activities of an organized gang while armed with a [(pistol) (revolver) (rifle) (shotgun) (spring gun) (firearm) (sawed-off shotgun) (stun gun or taser) (knife with a blade of at least 3 inches in length) (dagger) (dirk) (switchblade knife) (stiletto)] [or any other deadly or dangerous weapon or instrument of like character], and while

[1] in a school.

[or]

[2] on the real property comprising a school.

[or]

[3] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[4] on the real property comprising a public park.

A person is considered armed with a dangerous weapon when he carries on or about his person or is otherwise armed with a ____. To be considered "otherwise armed," the person must have immediate access to or timely control over the weapon.

Committee Note

720 ILCS 5/33A-3(a) (West Supp. 1993) (formerly Ill.Rev.Stat. ch. 38, §33A-3(a) (1991)), amended by P.A. 88-467, effective July 1, 1994.

Give Instruction 11.52X. These instructions should be used *only* for offenses allegedly occurring between July 1, 1994 and December 31, 1994.

Give the instruction defining the offense that is the subject of the armed violence.

See the Committee Note to Instruction 11.51 regarding offenses which cannot be a predicate offense for armed violence. Also, see the Committee Note to Instruction 11.51 regarding use of this instruction when the predicate offense is aggravated battery.

Section 33A-3(a) provides an enhanced penalty for the violation of Section 33A-2 when committed with a category I weapon (see 720 ILCS 5/33A-1(b)) in relation to organized gang activities on the premises listed in the above alternative paragraphs [1] through [4]. The sentencing range for a violation of Section 33A-2 is enhanced under Section 33A-3(a). Select the alternative that corresponds to the location in the charge.

The Committee has created separate instructions for "aggravated" armed violence because the State must prove the existence of the enhancing factors beyond a reasonable doubt. *See* People v. Martin, 266 Ill.App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist. 1994).

Because the Committee believes that "simple" armed violence instructions will typically be given as a lesser included offense when "aggravated" armed violence is charged, the Committee titled this offense "aggravated armed violence" to distinguish it from "simple" armed violence. If only "aggravated" armed violence instructions are given to the jury, the term "aggravated" should be removed from the title as set out in the first sentence of this instruction and issues Instruction 11.52X.

A conviction for armed violence can be based either on the predicate charged offense or a lesser included offense of the predicate charged offense. Use the applicable bracketed material in the first paragraph. *See* People v. Simmons, 93 Ill.2d 94, 442 N.E.2d 891, 66 Ill.Dec. 330 (1982).

The Illinois Supreme Court has held that a person is "otherwise armed" for purposes of the armed violence statute only if the person has "immediate access to or timely control over the weapon." People v. Harre, 155 Ill.2d 392, 614 N.E.2d 1235, 185 Ill.Dec. 550 (1993); People v. Condon, 148 Ill.2d 96, 592 N.E.2d 951, 170 Ill.Dec. 271 (1992).

When applicable, give Instruction 18.35A (defining the term "switchblade knife"), Instruction 18.35E (defining the term "stun gun or taser"), Instruction 18.35F (defining the term "school"), and Instruction 18.35G (defining the term "firearm").

If the definition of "organized gang" becomes an issue, see Section 10 of the Streetgang Terrorism Omnibus Prevention Act (740 ILCS 147/10 (West Supp. 1993)) which defines this term. See 720 ILCS 33A-3(a) (West Supp. 1993).

Insert in the first blank the name of the "felony defined by Illinois law."

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

11.51Y
Definition Of Armed Violence (As Of January 1, 1995)

A person commits armed violence when he commits [(the offense of ____) (either the offense of ____ or the offense of ____)] while he carries on or about his person or is otherwise armed with a

[1] [(handgun) (sawed-off shotgun) (sawed-off rifle)] [or any other firearm small enough to be concealed upon his person].

[or]

[2] [(semiautomatic firearm) (machine gun)].

[or]

[3] [(rifle) (shotgun) (spring gun) (firearm) (stun gun or taser) (knife with a blade of at least 3 inches in length) (dagger) (dirk) (switchblade knife) (stiletto) (axe) (hatchet)] [or other deadly or dangerous weapon or instrument of like character].

A person is consider armed with a dangerous weapon when he carries on or about his person or is otherwise armed with a ____. To be considered "otherwise armed," the person must have immediate access to or timely control over the weapon.

Committee Note

720 ILCS 5/33A-3(a) and 3(a-5) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §33A-3(a) (1991)), amended by P.A. 8-680, effective January 1, 1995.

P.A. 88-680, effective January 1, 1995, substantively amended Section 33A-1 and 33A-3. As a result, *only* use this instruction for cases in which the alleged armed violence occurred on or after January 1, 1995. For armed violence offenses which occurred between July 1, 1994, and December 31, 1994, use Instruction 11.51X. See the Committee Note to Instruction 11.51X.

Give Instruction 11.52Y.

Give the instruction defining the offense that is the subject of the armed violence.

See the Committee Note to Instruction 11.51 regarding offenses which cannot be a predicate offense for armed violence. Also, see the Committee Note to Instruction 11.51 regarding use of this instruction when the predicate offense is aggravated battery.

Section 33A-3(a) and 3(a-5) provide an enhanced penalty for the violation of Section 33A-2 when committed with a category I or category II weapon (see 720 ILCS 5/33A-1(b)). The sentencing range for a violation of Section 33A-2 is enhanced under Section 33A-3(a) and 3(a-5). Alternatives [1] and [2] set forth the category I weapons, and alternative [3] sets forth the category II weapons. Select the alternative that corresponds to the weapon in the charge.

A conviction for armed violence can be based either on the predicate charged offense or a

lesser included offense of the predicate charged offense. Use the applicable bracketed material in the first paragraph. *See* People v. Simmons, 93 Ill.2d 94, 442 N.E.2d 891, 66 Ill.Dec. 330 (1982).

The Illinois Supreme Court has held that a person is "otherwise armed" for purposes of the armed violence statute only if the person has "immediate access to or timely control over the weapon." People v. Harre, 155 Ill.2d 392, 614 N.E.2d 1235, 185 Ill.Dec. 550 (1993); People v. Condon, 148 Ill.2d 96, 592 N.E.2d 951, 170 Ill.Dec. 271 (1992).

The Committee has created separate instructions for armed violence because the State must prove the existence of the enhancing factors beyond a reasonable doubt. *See* People v. Martin, 266 Ill.App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist. 1994).

When applicable, give Instruction 18.35A (defining the term "switchblade knife"), Instruction 18.35D (defining the term "machine gun"), Instruction 18.35E (defining the term "stun gun or taser"), Instruction 18.35G (defining the term "firearm"), Instruction 18.35I (defining the term "handgun"), and Instruction 18.35K (defining the term "semiautomatic firearm").

Insert in the first blank the name of the "felony defined by Illinois law."

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.52
Issues In Armed Violence (Until June 30, 1994)

To sustain the charge of armed violence, the State must prove the following propositions:

First Proposition: That the defendant committed [(the offense of ____) (either the offense of ____ or the offense of ____)]; and

Second Proposition: That when the defendant committed [(the offense of ____) (either the offense of ____ or the offense of ____)] he was armed with a dangerous weapon.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/33A-2 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §33A-2 (1991)).

Give Instruction 11.51, and see the Committee Note concerning category of weapons, the predicate felony offense charged, and the need for separate sets of instructions if the predicate offense is one type of aggravated battery and the defendant is also charged with aggravated battery based upon use of a deadly weapon. Instructions 11.51 and 11.52 should *not* be used for any offense allegedly occurring *after* June 30, 1994.

Insert in the appropriate blanks the name of the offense.

A conviction for armed violence can be based either on the predicate charged offense or a lesser included offense of the predicate charged offense. Use the applicable bracketed material in the first paragraph. *See* People v. Simmons, 93 Ill.2d 94, 442 N.E.2d 891, 66 Ill.Dec. 330 (1982).

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.52X
Issues In Aggravated Armed Violence (From July 1, 1994 Until December 31, 1994)

To sustain the charge of aggravated armed violence, the State must prove the following propositions:

First Proposition: That the defendant committed [(the offense of ____) (either the offense of ____ or the offense of ____)];

Second Proposition: That when the defendant committed [(the offense of ____) (either the offense of ____ or the offense of ____)], he was armed with a [(pistol) (revolver) (rifle) (shotgun) (spring gun) (firearm) (sawed-off shotgun) (stun gun or taser) (knife with a blade of at least 3 inches in length) (dagger) (dirk) (switchblade knife) (stiletto)] [or any other deadly or dangerous weapon or instrument of like character]; and

Third Proposition: That defendant committed this offense in relation to the activities of an organized gang; and

Fourth Proposition: That the defendant did so while

[1] in a school.

[or]

[2] on the real property comprising a school.

[or]

[3] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[4] on the real property comprising a public park.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/33A-3(a) (West Supp. 1993) (formerly Ill.Rev.Stat. ch. 38, §33A-3(a) (1991)), amended by P.A. 88-467, effective July 1, 1994.

Give Instruction 11.51X, and see the Committee Note concerning the category of weapon and the predicate felony offense charged. Instructions 11.51X and 11.52X should be used *only* for an offense allegedly occurring between July 1, 1994 and December 31, 1994.

See also the Committee Note to Instruction 11.51X concerning the need for definitional instructions and a discussion of sentencing enhancement under Section 33A-3(a).

A conviction for armed violence can be based either on the predicate charged offense or a lesser included offense of the predicate charged offense. Use the applicable bracketed material in the first paragraph. *See* People v. Simmons, 93 Ill.2d 94, 442 N.E.2d 891, 66 Ill.Dec. 330 (1982).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.52Y
Issues In Armed Violence (As Of January 1, 1995)

To sustain the charge of armed violence, the State must prove the following propositions:

First Proposition: That the defendant committed [(the offense of ____) (either the offense of ____ or the offense of ____)]; and

Second Proposition: That when the defendant committed [(the offense of ____) (either the offense of ____ or the offense of ____)], he was carrying on or about his person or was otherwise armed with a

[1] [(handgun) (sawed-off shotgun) (sawed-off rifle)] [or any other firearm small enough to be concealed upon his person].

[or]

[2] [(semiautomatic firearm) (machine gun)].

[or]

[3] [(rifle) (shotgun) (spring gun) (firearm) (stun gun or taser) (knife with a blade of at least 3 inches in length) (dagger) (dirk) (switchblade knife) (stiletto) (axe) (hatchet)] [or other deadly or dangerous weapon or instrument of like character].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/33A-3(a) and 3(a-5) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §33A-3(a) (1991)), amended by P.A. 88-680, effective January 1, 1995.

P.A. 88-680, effective January 1, 1995, substantively amended Section 33A-1 and 33A-3. As a result, *only* use this instruction for cases in which the alleged armed violence occurred on or after January 1, 1995. For armed violence offenses which occurred between July 1, 1994, and December 31, 1994, use Instruction 11.52X. See the Committee Note to Instruction 11.52X.

Give Instruction 11.51Y, and see the Committee Note concerning the category of weapon and the predicate felony offense charged.

See also the Committee Note to Instruction 11.51Y concerning the need for definitional instructions and a discussion of sentencing enhancement under Section 33A-3(a) and 3(a-5).

A conviction for armed violence can be based either on the predicate charged offense or a lesser included offense of the predicate charged offense. Use the applicable bracketed material in the first paragraph. *See* People v. Simmons, 93 Ill.2d 94, 442 N.E.2d 891, 66 Ill.Dec. 330 (1982).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.53
Definition Of Home Invasion

A person commits the offense of home invasion when he, [(not being a peace officer acting in the line of duty, without authority, knowingly enters the dwelling place of another) (falsely represents himself, including but not limited to, falsely represents himself to be a representative of any unit of government or a construction company or a telecommunications company or a utility company, for the purpose of gaining entry to the dwelling place of another)] [(when) (and remains in such dwelling place until)] he knows or has reason to know that one or more persons is present), and

[1] while armed with a dangerous weapon, other than a firearm, he uses force or threatens the imminent use of force upon any person or persons within the dwelling place whether or not injury occurs.

[or]

[2] intentionally causes any injury to any person within the dwelling place.

[or]

[3] while armed with a firearm uses force or threatens the imminent use of force upon any person or persons within the dwelling place whether or not injury occurs.

[or]

[4] uses force or threatens the imminent use of force upon any person or persons within the dwelling place whether or not injury occurs and during the commission of the offense personally discharges a firearm.

[or]

[5] personally discharges a firearm that proximately causes [(great bodily harm) (permanent disability) (permanent disfigurement) (death)] to another person within the dwelling place.

[or]

[6] commits, against any person or persons within that dwelling place, the offense of [(criminal sexual assault) (aggravated criminal sexual assault) (predatory criminal sexual assault of a child) (criminal sexual abuse) (aggravated criminal sexual abuse).

Committee Note

Instruction and Committee Note Approved May 13, 2015

720 ILCS 5/19-6 (West 2013), amended by P.A. 90-787, effective August 14, 1998 defining "dwelling place of another"; amended by P.A. 91-404, effective January 1, 2000, inserting "other than a firearm" and adding paragraphs [3], [4], and [5]; amended by P.A. 91-928, effective June 1, 2001, adding paragraph [6]; amended by P.A. 96-113, effective January 1, 2011, inserting "or who falsely represents himself or herself, including but not limited to, falsely representing himself or herself to be a representative of any unit of government or a construction, telecommunications, or utility company, for the purpose of gaining entry to the dwelling place of another when he or she knows or has reason to know that one or more persons are present"; amended by P.A. 97-1108, effective January 1,2013, renumbering this section which was formerly 720 ILCS 5/12-11.

Give Instruction 11.54.

When applicable, give Instruction 11.53A when an issue arises regarding the defendant's criminal intent when he entered the dwelling and whether this intent, or lack thereof, makes his entry into the dwelling "with authority" or "without authority". See the Committee Note to Instruction 11.53A.

When applicable, give Instruction 11.53B, defining "injury".

When applicable, give Instruction 11.53C, defining "dwelling place of another".

When applicable, give Instruction 11.55, defining "criminal sexual assault".

When applicable, give Instruction 11.57, defining "aggravated criminal sexual assault".

When applicable, give Instruction 11.103, defining "predatory criminal sexual assault of a child".

When applicable, give Instruction 11.59, defining "criminal sexual abuse".

When applicable, give Instruction 11.61, defining "aggravated criminal sexual abuse".

When the nature of the place is an issue, give Instruction 4.03, defining "dwelling place".

When applicable, give Instructions 24-25.25, "defense to home invasion" and 24-25-25A, "issue in defense to home invasion".

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

11.53A
Unauthorized Entry--Limited Authority Doctrine--Home Invasion And Residential Burglary

The defendant's entry into a dwelling of another is "without authority" if, at the time of entry into the dwelling, the defendant has an intent to commit a criminal act within the dwelling regardless of whether the defendant was initially invited into or received consent to enter the dwelling.

However, the defendant's entry into the dwelling is "with authority" if the defendant enters the dwelling without criminal intent and was initially invited into or received consent to enter the dwelling, regardless of what the defendant does after he enters.

Committee Note

This instruction should be given *only* when an issue arises regarding the defendant's criminal intent when he entered the dwelling, and whether this intent, or lack thereof, affects the status of his entry--"with authority" or "without authority". *See* People v. Bush, 157 Ill.2d 248, 253-54, 623 N.E.2d 1361, 1364, 191 Ill.Dec. 475, 478 (1993).

The Illinois Supreme Court specifically requested that the Committee write an instruction which conveys the "limited-authority" doctrine to the jury. *See Bush*, 157 Ill.2d at 257, 623 N.E.2d at 1365, 191 Ill.Dec. at 479 ("an instruction regarding the limited authority doctrine is necessary to augment the IPI instructions on home invasion"). The "limited-authority" doctrine provides that a defendant's authority to enter a private residence is limited only to the specific purpose for which he entered. Thus, the defendant's entry into a dwelling is unauthorized if prior to the defendant's entry into the dwelling, the defendant intends to commit a criminal act within the dwelling. When this is the case, the status of his entry is *not affected* by whether he was invited into the dwelling or received consent to enter the dwelling. As noted by the court in Bush,

> "No individual who is granted access to a dwelling can be said to be an authorized entrant if he intends to commit criminal acts therein, because, if such intentions had been communicated to the owner at the time of entry, it would have resulted in the individual's being barred from the premises *ab initio*." *Bush*, 157 Ill.2d at 253-54, 623 N.E.2d at 1364, 191 Ill.Dec. at 478.

However, if the defendant does not form his criminal intent until after he has entered the dwelling, then his invited or consented entry into the dwelling is authorized. *Bush*, 157 Ill.2d at 253-54, 623 N.E.2d at 1364, 191 Ill.Dec. at 478; *see also* People v. Peeples, 155 Ill.2d 422, 487-88, 616 N.E.2d 294, 325, 186 Ill.Dec. 341, 372 (1993).

In Bush, an issue arose whether the defendant had been invited into another's residence wherein an altercation had occurred. The trial court, over the defendant's objection, supplemented the home invasion instructions with a non-IPI instruction which discussed whether the defendant's entry was unauthorized. The Illinois Supreme Court held that an instruction setting forth the limited authority doctrine was appropriate in this case, but that the trial court's non-IPI instruction had misstated the doctrine. Accordingly, the supreme court stated that the defendant was entitled to a new trial with an instruction which correctly set forth the limited authority doctrine. People v. Bush, 157 Ill.2d 248, 257, 623 N.E.2d 1361, 1365, 191 Ill.Dec. 475, 479 (1993).

11.53B
Definition Of Injury

The term "injury" in the definition of home invasion may include physical injury. It also includes psychological or emotional trauma if that trauma was the result of some physical contact.

Committee Note

Give Instructions 11.53 and 11.54.

This instruction should be given when the evidence presents an issue as to whether or not the defendant caused an injury to a person within the dwelling place. The term "an injury" has been held not to require physical evidence of bodily harm, such as bruises, lacerations, etc. People v. Garrett, 281 Ill.App.3d 535, 667 N.E.2d 130, 217 Ill.Dec. 337 (5th Dist.1996). *See also* People v. Garza, 125 Ill.App.3d 182, 465 N.E.2d 595, 80 Ill.Dec. 483 (1st Dist.1984); People v. Ehrich, 165 Ill.App.3d 1060, 519 N.E.2d 1137, 116 Ill.Dec. 922 (4th Dist.1998).

11.53C
Definition Of Dwelling Place Of Another

The phrase "dwelling place of another" includes a dwelling place where the defendant maintains a tenancy interest but from which the defendant has been barred by a [(divorce decree) (judgment of dissolution of marriage) (order of protection) (_____)].

Committee Note

Instruction and Committee Note Approved May 13, 2015

720 ILCS 5/19-6(d) (West 2013), effective August 14, 1998.

Insert in the blank the "other court order" which bars the defendant from entry into the dwelling place.

11.54
Issues In Home Invasion

To sustain the charge of home invasion, the State must prove the following propositions:

First Proposition: That the defendant was not a peace officer acting in the line of duty; and

[or]

First Proposition: That the defendant falsely represented himself [to be a representative of (any unit of government) (a construction company) (a telecommunications company) (utility company) (_____)] for the purpose of gaining entry to the dwelling place of another; and

Second Proposition: That the defendant knowing and without authority entered the dwelling place of another; and

Third Proposition: That [(when the defendant entered the dwelling place) (the defendant remained in the dwelling place until)] he knew or had reason to know that one or more persons was present; and

Fourth Proposition: That the defendant was armed with a dangerous weapon other than a firearm; and

Fifth Proposition: That while armed with a dangerous weapon other than a firearm the defendant [(used force) (threatened the imminent use of force)] on _____, a person within the dwelling place.

[or]

First Proposition: That the defendant was not a peace officer acting in the line of duty; and

[or]

First Proposition: That the defendant falsely represented himself [to be a representative of (any unit of government) (a construction company) (a telecommunications company) (utility company) (_____)] for the purpose of gaining entry to the dwelling place of another; and

Second Proposition: That the defendant knowing and without authority entered the dwelling place of another; and

Third Proposition: That [(when the defendant entered the dwelling place) (the defendant remained in the dwelling place until)] he knew or had reason to know that one or more persons was present; and

Fourth Proposition: The defendant intentionally caused injury to _____, a person within the dwelling place.

[or]

First Proposition: That the defendant was not a peace officer acting in the line of duty; and

[or]

First Proposition: That the defendant falsely represented himself [to be a representative of (any unit of government) (a construction company) (a telecommunications company) (utility company) (_____)] for the purpose of gaining entry to the dwelling place of another; and

Second Proposition: That the defendant knowing and without authority entered the dwelling place of another; and

Third Proposition: That [(when the defendant entered the dwelling place) (the defendant remained in the dwelling place until)] he knew or had reason to know that one or more persons was present; and

Fourth Proposition: That the defendant was armed with a firearm; and

Fifth Proposition: That while armed with a firearm the defendant [(used force) (threatened the imminent use of force)] on _____, a person within the dwelling place.

[or]

First Proposition: That the defendant was not a peace officer acting in the line of duty; and

[or]

First Proposition: That the defendant falsely represented himself [to be a representative of (any unit of government) (a construction company) (a telecommunications company) (utility company) (_____)] for the purpose of gaining entry to the dwelling place of another; and

Second Proposition: That the defendant knowing and without authority entered the dwelling place of another; and

Third Proposition: That [(when the defendant entered the dwelling place) (the defendant remained in the dwelling place until)] he knew or had reason to know that one or more persons was present; and

Fourth Proposition: That the defendant [(used force) (threatened the imminent use of force)] on _____, a person within the dwelling place; and

Fifth Proposition: That the defendant personally discharged a firearm during the commission of the offense.

[or]

First Proposition: That the defendant was not a peace officer acting in the line of duty; and

[or]

First Proposition: That the defendant falsely represented himself [to be a representative of (any unit of government) (a construction company) (a telecommunications company) (utility company) (_____)] for the purpose of gaining entry to the dwelling place of another; and

Second Proposition: That the defendant knowing and without authority entered the dwelling place of another; and

Third Proposition: That [(when the defendant entered the dwelling place) (the defendant remained in the dwelling place until)] he knew or had reason to know that one or more persons was present; and

Fourth Proposition: That the defendant personally discharged a firearm during the commission of the offense which proximately caused [(great bodily harm) (permanent disability) (permanent disfigurement) (death)] to _____, a person within the dwelling place.

[or]

First Proposition: That the defendant was not a peace officer acting in the line of duty; and

[or]

First Proposition: That the defendant falsely represented himself [to be a representative of (any unit of government) (a construction company) (a telecommunications company) (utility company) (_____)] for the purpose of gaining entry to the dwelling place of another; and

Second Proposition: That the defendant knowing and without authority entered the dwelling place of another; and

Third Proposition: That [(when the defendant entered the dwelling place) (the defendant remained in the dwelling place until)] he knew or had reason to know that one or more persons was present; and

Fourth Proposition: That the defendant committed the offense of [(criminal sexual assault) (aggravated criminal sexual assault) (predatory criminal sexual assault of a child) (criminal sexual abuse) (aggravated criminal sexual abuse)] on _____, a person within the dwelling place.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved May 13, 2015

720 ILCS 5/19-6 (West 2013), amended by P.A. 90-787, effective August 14, 1998 defining "dwelling place of another"; amended by P.A. 91-404, effective January 1, 2000, inserting "other than a firearm" and adding paragraphs [3], [4], and [5]; amended by P.A. 91-928, effective June 1, 2001, adding paragraph [6]; amended by P.A. 96-113, effective January 1, 2011, inserting "or who falsely represents himself or herself, including but not limited to, falsely representing himself or herself to be a representative of any unit of government or a construction, telecommunications, or utility company, for the purpose of gaining entry to the dwelling place of another when he or she knows or has reason to know that one or more persons are present"; amended by P.A. 97-1108, effective January 1,2013, renumbering this section which was formerly 720 ILCS 5/12-11.

Give Instruction 11.53.

When applicable, give Instruction 11.53A when an issue arises regarding the defendant's criminal intent when he entered the dwelling and whether this intent, or lack thereof, makes his entry into the dwelling "with authority" or "without authority". See the Committee Note to Instruction 11.53A.

When applicable, give Instruction 11.53B, defining "injury".

When applicable, give Instruction 11.53C, defining "dwelling place of another".

When applicable, give Instruction 11.55, defining "criminal sexual assault".

When applicable, give Instruction 11.57, defining "aggravated criminal sexual assault".

When applicable, give Instruction 11.103, defining "predatory criminal sexual assault of a child".

When applicable, give Instruction 11.59, defining "criminal sexual abuse".

When applicable, give Instruction 11.61, defining "aggravated criminal sexual abuse".

When the nature of the place is an issue, give Instruction 4.03, defining "dwelling place".

When applicable, give Instructions 24-25.25, "defense to home invasion" and 24-25-25A, "issue in defense to home invasion".

Insert in the blanks the name of the victim in the applicable Fourth or Fifth Proposition.

Insert in the blank in the second alternative First Proposition the type of entity that the defendant falsely represented himself to be a representative of.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

11.55
Definition Of Criminal Sexual Assault

A person commits the offense of criminal sexual assault when he

[1] commits an act of sexual penetration upon the victim by the use of force or threat of force.

[or]

[2] commits an act of sexual penetration upon the victim knowing that the victim was unable to [(understand the nature of the act) (give knowing consent to the act)].

[or]

[3] is a [(family member) (person responsible for the child's welfare)] and commits an act of sexual penetration with the victim who was under 18 years of age when the act is committed.

[or]

[4] commits an act of sexual penetration with the victim who was at least 13 years of age but under 18 years of age when the act is committed, and he is 17 years of age or older and holds a position of trust, authority, or supervision in relation to the victim.

Committee Note

720 ILCS 5/12-13 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-13 (1991)), amended by P.A. 85-1030, effective July 1, 1988; P.A. 85-1209, effective August 30, 1988; and P.A. 85-1440, effective February 1, 1989.

Give Instruction 11.56.

Give Instruction 11.65E, defining the term “sexual penetration”.

In paragraph [3], the bracketed material concerning a person responsible for the child's welfare was added by P.A. 85-1209 and should be used only for offenses committed after the effective date of that Act and before the effective date of P.A. 85-1440 which deleted that element. When applicable, give Instruction 11.65B, defining the term “family member.” When applicable, give Instruction 11.65H, defining the phrase “a person responsible for the child's welfare.”

The offense defined in paragraph [4] was added by P.A. 85-1030, deleted by P.A. 85-1209, and re-added by P.A. 85-1440, and that portion of the instruction should be used only for offenses committed between the effective dates of P.A. 85-1030 and P.A. 85-1209, and after the effective date of P.A. 85-1440.

The Third District Appellate Court has held that the phrase “a position of trust, authority, or supervision” is not unconstitutionally vague and that the words should be understood in their ordinary dictionary meanings. People v. Secor, 279 Ill.App.3d 389, 664 N.E.2d 1054, 216 Ill.Dec. 126 (1996). *See also* People v. Reynolds, 294 Ill.App.3d 58, 689 N.E.2d 335, 228 Ill.Dec. 463 (1st Dist.1997).

In People v. Terrell, 132 Ill.2d 178, 547 N.E.2d 145, 138 Ill.Dec. 176 (1989), the supreme court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that in the legislature's silence a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill.2d at 210, 547 N.E.2d at 159, 138 Ill.Dec. at 190; see also Sections 4-3 through 4-6; Committee Notes to Instructions 5.01A and 5.01B. However, in People v. Burton, 201 Ill.App.3d 116, 558 N.E.2d 1369, 146 Ill.Dec. 1035 (4th Dist.1990), the court held that Terrell does not require the mental states to be included in the jury instruction. *See also* People v. Smith, 209 Ill.App.3d 1043, 568 N.E.2d 482, 154 Ill.Dec. 482 (4th Dist.1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault.

If the defendant is a physician, nurse, or other medical professional who claims to have been conducting a medical procedure consistent with reasonable medical standards, the State must prove “beyond a reasonable doubt what the reasonable medical standards were, that the physician intentionally transgressed those standards, and that the patient did not consent to the transgressions.” In such a case, modified instructions will be necessary. *See* People v. Burpo, 164 Ill.2d 261, 265, 647 N.E.2d 996, 998, 207 Ill.Dec. 503, 505 (1995).

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of this instruction, see Sample Set 27.03.

11.56
Issues In Criminal Sexual Assault

To sustain the charge of criminal sexual assault, the State must prove the following propositions:

[1] *First Proposition:* That the defendant committed an act of sexual penetration upon ____; and

Second Proposition: That the act was committed by the use of force or threat of force[; and

Third Proposition: That ____ did not consent to the act of sexual penetration].

[or]

[2] *First Proposition:* That the defendant committed an act of sexual penetration upon ____; and

Second Proposition: That the defendant knew that ____ was unable to [(understand the nature of the act) (give knowing consent to the act)].

[or]

[3] *First Proposition:* That the defendant committed an act of sexual penetration upon ____; and

Second Proposition: That ____ was under 18 years of age when the act was committed; and

Third Proposition: That the defendant was [(a family member) (a person responsible for the child's welfare)].

[or]

[4] *First Proposition:* That the defendant committed an act of sexual penetration upon ____; and

Second Proposition: That when the act was committed ____ was at least 13 years of age but under 18 years of age; and

Third Proposition: That when the act was committed the defendant was 17 years of age or over; and

Fourth Proposition: That when the act was committed the defendant held a position of trust, authority, or supervision in relation to the victim.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-13(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-13(a) (1991)).

Give Instruction 11.55.

See the Committee Note to Instruction 11.55 to distinguish recent additions to the statute.

The Third District Appellate Court has held that the phrase "a position of trust, authority, or supervision" is not unconstitutionally vague and that the words should be understood in their ordinary dictionary meanings. People v. Secor, 279 Ill.App.3d 389, 664 N.E.2d 1054, 216 Ill.Dec. 126 (1996). *See also* People v. Reynolds, 294 Ill.App.3d 58, 689 N.E.2d 335, 228 Ill.Dec. 463 (1st Dist.1997).

When force or the threat of force is an element of the offense and the defense of consent is raised by the evidence, it is necessary under People v. Coleman, 166 Ill.App.3d 242, 520 N.E.2d 55, 117 Ill.Dec. 65 (1st Dist.1987), to give the bracketed Third Proposition in the first set of propositions. Also give Instructions 11.63 and 11.63A. See Chapter 720, Section 12-17(a) and the Introduction to Chapter 24-25.00. However, for a contrary discussion, *see* People v. Roberts, 182 Ill.App.3d 313, 537 N.E.2d 1080, 130 Ill.Dec. 751 (1st Dist.1989), where the court held that it was not plain error to omit the instruction on consent because proof of force implicitly establishes lack of consent.

Insert in the blanks the name of the victim.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

For an example of the use of this instruction, see Sample Set 27.03.

11.57
Definition Of Aggravated Criminal Sexual Assault

[a] A person commits the offense of aggravated criminal sexual assault when he commits criminal sexual assault and

[1] [(displays) (threatens to use) (uses)] [(a dangerous weapon other than a firearm) (any object fashioned or utilized in such a manner as to lead the victim under the circumstances reasonably to believe it to be a dangerous weapon)].

[or]

[2] causes bodily harm to the victim.

[or]

[3] acts in such a manner as to threaten or endanger the life of [(the victim) (any other person)].

[or]

[4] the criminal sexual assault is perpetrated during the course of the [(commission) (attempted commission)] of the offense of ____.

[or]

[5] the victim is 60 years of age or over when the offense is committed.

[or]

[6] the victim is a physically handicapped person when the offense is committed.

[or]

[7] as part of the same course of conduct, delivers by [(injection) (inhalation) (ingestion) (transfer of possession) (any other means)] to the victim [(without his or her consent) (by threat or deception)], and for other than medical purposes, any controlled substance.

[or]

[8] is armed with a firearm.

[or]

[9] personally discharges a firearm during the commission of the offense.

[or]

[10] personally discharges a firearm during the commission of the offense that proximately causes [(great bodily harm) (permanent disability) (permanent disfigurement) (death)] to another person.

[or]

[b] A person commits the offense of aggravated criminal sexual assault when he is under 17 years of age and commits an act of sexual penetration with

[1] a victim who is under 9 years of age when the act is committed.

[or]

[2] a victim who is at least 9 years of age but under 13 years of age when the act is committed and the accused used [(force) (threat of force)] to commit the act.

[or]

[c] A person commits the offense of aggravated criminal sexual assault when he

[1] commits an act of sexual penetration with a victim and

[2] the victim is a severely or profoundly mentally retarded person at the time the act is committed.

Committee Note

720 ILCS 5/12-14 (West 2011) (formerly Ill.Rev.Stat. ch. 38, §12-14 (1991)), amended by P.A. 85-691, effective January 1, 1988; P.A. 85-1392, effective January 1, 1989; P.A. 89-428, effective December 13, 1995; P.A. 89-462, effective May 29, 1996; P.A. 90-396, effective January 1, 1998; P.A. 90-735, effective August 11, 1998; P.A. 91-404, effective January 1, 2000; P.A. 92-434, effective January 1, 2002; P.A. 92-502, effective December 19, 2001; P.A. 92-721, effective January 1, 2003.

Give Instruction 11.55.

When paragraph [a] or paragraph [c] is used, give appropriate set of propositions in Instruction 11.58.

Insert in the blank the name of the felony.

When the charge against defendant of criminal sexual assault is based on defendant's being a family member or person responsible for the child's welfare, aggravated by a factor listed in this instruction, give Instruction 11.58A.

When paragraph [b] is used give Instruction 11.58B.

In alternative [a] [6], the element concerning a victim who was physically handicapped was added by P.A. 85-691, and that portion of the instruction should be used only for offenses committed after the effective date of that Act.

In paragraph [c], the element concerning the mental disability of the victim was added by

P.A. 85-1392, and that portion of the instruction should be used only for offenses committed after the effective date of that Act. When applicable, give Instruction 11.65G, defining “institutionalized severely or profoundly mentally retarded person”.

In People v. Terrell, 132 Ill.2d 178, 547 N.E.2d 145 (1989), the supreme court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that in the legislature's silence a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill.2d at 210; *see* also 720 ILCS 5/43 through 4-6 (West 2010); Committee Notes to Instructions 5.01A and 5.01B. However, in People v. Burton, 201 Ill.App.3d 116, 558 N.E.2d 1369 (4th Dist.1990), the court held that Terrell does not require the mental states to be included in the jury instruction. *See also* People v. Smith, 209 Ill.App.3d 1043, 568 N.E.2d 482 (4th Dist.1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault. In People v. Simms, 192 Ill.2d 348, 736 N.E.2d 1092 (2000), the supreme court agreed with Burton that jury instructions on a specific mental state are not required for the offense of aggravated criminal sexual assault.

Alternative [a][7] was added by P.A.90-735, and that portion of the instruction should be used only for offenses committed after the effective date of that Act.

P.A. 91-404 added alternatives [a][8], [a][9] and [a][10] and added the element “other than a firearm” to [a][1]. These portions of the instruction should be used only for offenses committed after the effective date of that Act.

In paragraph [c], P.A. 92-434 deleted the element “institutionalized”.

Use applicable paragraphs, subparagraphs, and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

11.58
Issues In Aggravated Criminal Sexual Assault--Aggravation By Circumstances

To sustain the charge of aggravated criminal sexual assault, the State must prove the following propositions:

First Proposition: That the defendant committed an act of sexual penetration upon ____; and

Second Proposition: That the act was committed by the use of force or threat of force[, and that ____ did not consent to the act of sexual penetration]; and

[or]

Second Proposition: That the defendant knew that ____ was unable to [(understand the nature of the act) (give knowing consent)]; and

[1] *Third Proposition*: That the defendant [(displayed) (threatened to use) (used)] [(a dangerous weapon other than a firearm) (any object fashioned or utilized in such a manner as to lead the victim under the circumstances reasonably to believe it to be a dangerous weapon)].

[or]

[2] *Third Proposition*: That the defendant caused bodily harm to ____.

[or]

[3] *Third Proposition*: That the defendant acted in such a manner as to threaten or endanger the life of [(the victim) (any other person)].

[or]

[4] *Third Proposition*: That the act of sexual penetration was perpetrated during the course of the [(commission) (attempted commission)] of the offense of ____ by the defendant.

[or]

[5] *Third Proposition*: That ____ was 60 years of age or older when the act was committed.

[or]

[6] *Third Proposition*: That ____ was a physically handicapped person when the act was committed.

[or]

[7] *Third Proposition*: That the defendant, as part of the same course of conduct, delivered by [(injection) (inhalation) (ingestion) (transfer of possession) (any other means)] to the victim [(without his or her consent) (by threat or deception)], and for other than medical purposes, any controlled substance.

[or]

[8] *Third Proposition*: That the defendant was armed with a firearm.

[or]

[9] *Third Proposition*: That the defendant personally discharged a firearm during the commission of the offense.

[or]

[10] *Third Proposition*: That the defendant personally discharged a firearm during the commission of the offense that proximately caused [(great bodily harm) (permanent disability) (permanent disfigurement) (death)] to another person.

[or]

First Proposition: That the defendant committed an act of sexual penetration upon ____; and

Second Proposition: That ____ was a severely or profoundly mentally retarded person when the act was committed.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-13, 12-14 (West 2011) (formerly Ill.Rev.Stat. ch. 38, §§12-13, 12-14 (1991)).

Give Instruction 11.57.

Insert in the appropriate blanks the name of the victim and the name of the felony.

See the Committee Note to Instruction 11.57 to distinguish recent revisions to the statute.

When force or the threat of force is an element of the offense and the defense of consent is raised by the evidence, it is necessary under People v. Coleman, 166 Ill.App.3d 242, 520 N.E.2d 55, (1st Dist.1987), to give the bracketed portion of the first alternative Second Proposition. Also give Instructions 11.63 and 11.63A. *See* Section 12-17(a) of the Criminal Code of 1961 and the Introduction to Chapter 24-25.00. However, for a contrary discussion, *see* People v. Roberts, 182 Ill.App.3d 313, 537 N.E.2d 1080 (1st Dist.1989), where the court held that it was not plain error to omit the instruction on consent because proof of force implicitly establishes lack of consent.

With regard to paragraph [4] in the first set of propositions, the Committee recommends that the court give the instruction defining the felony offense said to have been committed or attempted.

It should be noted that, unlike the other choices in this instruction, there are only two elements in an aggravated sexual assault based on the mental disability of the victim. Subsection (c) of Section 12-14 defines the offense as "an act of sexual penetration with a victim who was an severely or profoundly mentally retarded person at the time the act was committed". 720 ILCS 5/12-14(c) (West 2010).

In People v. Terrell, 132 Ill.2d 178, 547 N.E.2d 145 (1989), the supreme court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that, in the legislature's silence, a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill.2d at 210; see also 720 ILCS 5/43 through 4-6 (West 2010); Committee Notes to Instructions 5.01A and 5.01B. However, in People v. Burton, 201 Ill.App.3d 116, 558 N.E.2d 1369 (4th Dist.1990), the court held that Terrell does not require the mental states to be included in the jury instruction. See also People v. Smith, 209 Ill.App.3d 1043, 568 N.E.2d 482 (4th Dist.1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault. In People v. Simms, 192 Ill.2d 348, 736 N.E.2d 1092 (2000), the supreme court agreed with Burton that jury instructions on a specific mental state are not required for the offense of aggravated criminal sexual assault.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. Give Instruction 5.03.

11.58A
Issues In Aggravated Criminal Sexual Assault--Aggravation By Circumstances When Defendant Is A Family Member

To sustain the charge of aggravated criminal sexual assault, the State must prove the following propositions:

First Proposition: That the defendant committed an act of sexual penetration upon __; and

Second Proposition: That __ was under 18 years of age when the act was committed; and

Third Proposition: That the defendant was a [(family member) (person responsible for the child's welfare)]; and

[1] *Fourth Proposition*: That the defendant [(displayed) (threatened to use) (used)] [(a dangerous weapon other than a firearm) (any object fashioned or utilized in such a manner as to lead the victim under the circumstances reasonably to believe it to be a dangerous weapon)].

[or]

[2] *Fourth Proposition*: That the defendant caused bodily harm to ____.

[or]

[3] *Fourth Proposition*: That the defendant acted in such a manner as to threaten or endanger the life of [(the victim) (any other person)].

[or]

[4] *Fourth Proposition*: That the act of sexual penetration was perpetrated during the course of the [(commission) (attempted commission)] of the offense of ____.

[or]

[6] *Fourth Proposition*: That ____ was a physically handicapped person when the act was committed.

[or]

[7] *Fourth Proposition*: That the defendant, as part of the same course of conduct, delivered by [(injection) (inhalation) (ingestion) (transfer of possession) (any other means)] to the victim [(without his or her consent) (by threat or deception)], and for other than medical purposes, any controlled substance.

[or]

[8] *Fourth Proposition*: That the defendant was armed with a firearm.

[or]

[9] *Fourth Proposition*: That the defendant personally discharged a firearm during the commission of the offense.

[or]

[10] *Fourth Proposition*: That the defendant personally discharged a firearm during the commission of the offense that proximately caused [(great bodily harm) (permanent disability) (permanent disfigurement) (death)] to another person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-14(a)(1) to (4), (a)(6) to (10), and 12-13(a)(3) (West 2011) (formerly Ill.Rev.Stat. ch. 38, §§12-14(a)(1) to (4), (a)(6), and 12-13(a)(3) (1991)).

Give Instructions 11.55 and 11.57.

When applicable, give Instruction 11.65B, defining “family member”.

When applicable, give Instruction 11.65H, defining “a person responsible for the child's welfare”.

Insert in the appropriate blanks the name of the victim and the name of the felony.

The element of the offense explained in the Third Proposition, concerning a person responsible for the child's welfare, was added to the offense of criminal sexual assault by P.A. 85-1209 and should be used only for offenses committed after the effective date of that Act and before the effective date of P.A. 85-1440 which deleted that element. See Committee Note to Instruction 11.55. The term “family member” is defined in Instruction 11.65B. The phrase “a person responsible for the child's welfare” is defined in Instruction 11.65H.

With regard to the fourth alternative Fourth Proposition, the Committee recommends that the court give the appropriate instruction defining the felony offense alleged as being committed or attempted.

There is no fifth alternative Fourth Proposition. Section 12-13(a)(3) applies to victims under age 18; therefore, section 12-14(a)(5), an aggravating circumstance applying to victims over age 60, cannot apply.

The element of the offense explained in the sixth alternative Fourth Proposition, concerning a victim who was physically handicapped, was added by P.A. 85-691, and that portion of the instruction should be used only for offenses committed after the effective date of that Act.

In People v. Terrell, 132 Ill.2d 178, 547 N.E.2d 145 (1989), the supreme court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that, in the legislature's silence, a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill.2d at 210; see also 720 ILCS 5/43 through 4-6 (West 2010); Committee Notes to Instructions 5.01A and 5.01B. However, in People v. Burton, 201 Ill.App.3d 116, 558 N.E.2d 1369 (4th Dist.1990), the court held that Terrell does not require the mental states to be included in the jury instruction. *See also* People v. Smith, 209 Ill.App.3d 1043, 568 N.E.2d 482 (4th Dist.1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault. In People v. Simms, 192 Ill.2d 348, 736 N.E.2d 1092 (2000), the supreme court agreed with Burton that jury instructions on a specific mental state are not required for the offense of aggravated criminal sexual assault.

The element of the offense explained in the seventh alternative Fourth Proposition, concerning delivery of a controlled substance to a victim, was added by P.A. 90-735, and that portion of the instruction should be used only for offenses committed after the effective date of that Act.

P.A. 91-404 added the eighth, ninth and tenth alternative Fourth Propositions and added the element “other than a firearm” to the first alternative Fourth Proposition. These portions of the instruction should be used only for offenses committed after the effective date of that Act.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

11.58B
Issues In Aggravated Criminal Sexual Assault--Aggravation By Age

To sustain the charge of aggravated criminal sexual assault, the State must prove the following propositions:

First Proposition: That the defendant committed an act of sexual penetration upon __; and

Second Proposition: That the defendant was under 17 years of age and that __ was under 9 years of age when the act was committed.

[or]

Second Proposition: That the defendant was under 17 years of age and that __ was at least 9 years of age but under 13 years of age when the act was committed; and

Third Proposition: That the defendant used force or threat of force to commit the act. If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty. If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty[.][;][and]

[*Fourth Proposition:* That ____ did not consent to the act of sexual penetration.]

Committee Note

720 ILCS 5/12-14(b) (West 2011) (formerly Ill.Rev.Stat. ch. 38, §12-14(b)(1) and (2) (1991)).

Give Instruction 11.57.

See the Committee Note to Instruction 11.57 to distinguish recent revisions to the statute.

Insert in the blanks the name of the victim.

Give the Fourth Proposition only when proof of force or threat of force is an element of the offense and the defense of consent is raised by the evidence. People v. Coleman, 166 Ill.App.3d 242, 520 N.E.2d 55 (1st Dist.1987).

Also give Instructions 11.63 and 11.63A. See Introduction to Chapter 24-25-00; 720 ILCS 5/12-17(a) (West 2010). However, for a contrary discussion, see People v. Roberts, 182 Ill.App.3d 313, 537 N.E.2d 1080 (1st Dist.1989), where the court held that it was not plain error to omit the instruction regarding consent because proof of force implicitly establishes lack of consent.

In People v. Terrell, 132 Ill.2d 178, 547 N.E.2d 145 (1989), the supreme court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that, in the legislature's silence, a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill.2d at 210; *see* also 720 ILCS 5/43 through 4-6 (West 2008); Committee Notes to Instructions

5.01A and 5.01B. However, in People v. Burton, 201 Ill.App.3d 116, 558 N.E.2d 1369 (4th Dist.1990), the court held that Terrell does not require the mental states to be included in the jury instruction. *See also* People v. Smith, 209 Ill.App.3d 1043, 568 N.E.2d 482 (4th Dist.1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault. In People v. Simms, 192 Ill.2d 348, 736 N.E.2d 1092 (2000), the supreme court agreed with Burton that jury instructions on a specific mental state are not required for the offense of aggravated criminal sexual assault.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03. However, do not insert that language in any of the Second Propositions of this instruction. *See* People v. Griffin, 247 Ill.App.3d 1, 616 N.E.2d 1242 (1st Dist.1993).

11.59
Definition Of Criminal Sexual Abuse

[1] A person commits the offense of criminal sexual abuse when he commits an act of sexual conduct [(by the use of force or threat of force) (and knows that the victim was unable to [(understand the nature of the act) (give knowing consent)])].

[or]

[2] A person commits the offense of criminal sexual abuse when he is 17 years of age or older and commits an act of [(sexual penetration) (sexual conduct)] with a victim who is at least 13 years of age but under 16 years of age when the act is committed.

[or]

[3] A person commits the offense of criminal sexual abuse when he is under 17 years of age and commits an act of [(sexual penetration) (sexual conduct)] with a victim who is at least 9 years of age but under 16 years of age when the act is committed.

[or]

[4] A person commits the offense of criminal sexual abuse when he is under 17 years of age and commits an act of [(sexual penetration) (sexual conduct)] with a victim who is at least 9 years of age but under 17 years of age when the act is committed.

[or]

[5] A person commits the offense of criminal sexual abuse when he commits an act of [(sexual penetration) (sexual conduct)] with a victim who is at least 13 years of age but under 17 years of age and he is less than 5 years older than the victim.

Committee Note

720 ILCS 5/12-15 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-15 (1991)).

Give Instruction 11.60.

When sexual conduct is charged, give Instruction 11.65D.

When sexual penetration is charged, give Instruction 11.65E.

The offenses defined in paragraphs [2] and [3] were in existence prior to the enactment of P.A. 85-651, and should be used only for offenses committed before the effective date of that Act. The offenses defined in paragraphs [4] and [5] were added by P.A. 85-651, and should be

used for offenses which occurred on or after January 1, 1988.

In People v. Terrell, 132 Ill.2d 178, 547 N.E.2d 145, 138 Ill.Dec. 176 (1989), the supreme court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that, in the legislature's silence, a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill.2d at 210, 547 N.E.2d at 159, 138 Ill.Dec. at 190; see also Chapter 720, pars. 4-3 through 4-6; Committee Notes to Instructions 5.01A and 5.01B. However, in People v. Burton, 201 Ill.App.3d 116, 558 N.E.2d 1369, 146 Ill.Dec. 1035 (4th Dist.1990), the court held that Terrell does not require the mental states to be included in the jury instruction. *See also* People v. Smith, 209 Ill.App.3d 1043, 568 N.E.2d 482, 154 Ill.Dec. 482 (4th Dist.1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.60
Issues In Criminal Sexual Abuse

To sustain the charge of criminal sexual abuse, the State must prove the following propositions:

[1] *First Proposition:* That the defendant committed an act of sexual conduct upon ____; and

Second Proposition: That the act was committed by force or threat of force[; and

Third Proposition: That ____ did not consent to the act of sexual conduct].

[or]

First Proposition: That the defendant committed an act of sexual conduct upon ____; and

Second Proposition: That the defendant knew that ____ was unable to [(understand the nature of the act) (give knowing consent to the act)].

[or]

[2] *First Proposition:* That the defendant committed an act of [(sexual penetration) (sexual conduct)] with ____; and

Second Proposition: That the defendant was 17 years of age or older; and

Third Proposition: That ____ was at least 13 years of age but under 16 years of age when the act was committed[; and

Fourth Proposition: That the defendant did not reasonably believe ____ to be 16 years of age or older].

[or]

[3] *First Proposition:* That the defendant committed an act of [(sexual penetration) (sexual conduct)] with ____; and

Second Proposition: That the defendant was under 17 years of age; and

Third Proposition: That ____ was at least 9 years of age but under 16 years of age when the act was committed[; and

Fourth Proposition: That the defendant did not reasonably believe ____ to be 16 years of age or older].

[or]

[4] *First Proposition:* That the defendant committed an act of [(sexual penetration) (sexual conduct)] upon ____; and

Second Proposition: That the defendant was under 17 years of age; and

Third Proposition: That ____ was at least 9 years of age but under 17 years of age when the act was committed[; and

Fourth Proposition: That the defendant did not reasonably believe ____ to be 17 years of

age or older].

[or]

[5] *First Proposition:* That the defendant committed an act of [(sexual penetration) (sexual conduct)] upon ____; and

Second Proposition: That ____ was at least 13 years of age but under 17 years of age when the act was committed; and

Third Proposition: That the defendant was less than 5 years older than ____[; and

Fourth Proposition: That the defendant did not reasonably believe ____ to be 17 years of age or older].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-15 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-15 (1991)).

Give Instruction 11.59.

See the Committee Note to Instruction 11.59 to distinguish recent additions to the statute.

When force or the threat of force is an element of the offense and the defense of consent is raised by the evidence, it is necessary under People v. Coleman, 166 Ill.App.3d 242, 520 N.E.2d 55, 117 Ill.Dec. 65 (1st Dist.1987), to give the bracketed proposition in the first set of propositions. Also give Instructions 11.41 and 11.42. See Chapter 720, Section 12-17(a) and the Introduction to Chapter 24-25.00. However, for a contrary discussion, *see* People v. Roberts, 182 Ill.App.3d 313, 537 N.E.2d 1080, 130 Ill.Dec. 751 (1st Dist.1989), where the court held that it was not plain error to omit the instruction on consent because proof of force implicitly establishes lack of consent.

When the offense is based in part on the age of the victim and there is evidence that the defendant reasonably believed the victim to be beyond the age classification, it is necessary for the State to prove that the defendant did not have a reasonable belief. Also give Instructions 4.13 and 11.64. See Chapter 720, Section 12-17(b) and the Introduction to Chapter 24-25.00.

In People v. Terrell, 132 Ill.2d 178, 547 N.E.2d 145, 138 Ill.Dec. 176 (1989), the supreme court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that, in the legislature's silence, a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill.2d at 210, 547 N.E.2d at 159, 138 Ill.Dec. at 190; see also Chapter 720, pars. 4-3 through 4-6; Committee Notes to Instructions 5.01A and 5.01B. However, in People v. Burton, 201 Ill.App.3d 116, 558 N.E.2d 1369, 146 Ill.Dec. 1035 (4th Dist.1990), the court held that Terrell does not require the mental states to be included in the jury instruction. *See also* People v. Smith, 209 Ill.App.3d 1043, 568 N.E.2d 482, 154 Ill.Dec. 482 (4th Dist.1991),

which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault.

Insert in the blanks the name of the victim.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.61
Definition Of Aggravated Criminal Sexual Abuse

[a] A person commits the offense of aggravated criminal sexual abuse when he commits criminal sexual abuse, and

[1] [(displays) (threatens to use) (uses)] [(a dangerous weapon) (any object fashioned or utilized in such a manner as to lead the victim under the circumstances reasonably to believe it to be a dangerous weapon)].

[or]

[2] causes bodily harm to the victim.

[or]

[3] the victim is 60 years of age or older when the act is committed.

[or]

[4] the victim is a physically handicapped person when the act is committed.

[or]

[b] A person commits the offense of aggravated criminal sexual abuse when he is a [(family member) (person responsible for the child's welfare)] and commits an act of sexual conduct with a victim who is under 18 years of age when the act is committed.

[or]

[c] A person commits the offense of aggravated criminal sexual abuse when he

[1] is 17 years of age or older and commits an act of sexual conduct with a victim who is under 13 years of age when the act is committed.

[or]

[2] is 17 years of age or older and commits an act of sexual conduct with a victim who is at least 13 years of age but under 17 years of age when the act is committed.

[or]

[3] is under 17 years of age and commits an act of sexual conduct with a victim

who is under 9 years of age when the act is committed.

[or]

[4] is under 17 years of age and commits an act of sexual conduct by force or threat of force upon a victim who is at least 9 years of age but under 13 years of age when the act is committed.

[or]

[5] is under 17 years of age and commits an act of sexual conduct by force or threat of force upon a victim who is at least 9 years of age but under 17 years of age when the act is committed.

[or]

[d] A person commits the offense of aggravated criminal sexual abuse when he

[1] commits an act of sexual penetration with a victim who is at least 13 years of age but under 16 years of age and he is at least 5 years older than the victim.

[or]

[2] commits an act of [(sexual penetration) (sexual conduct)] with a victim who is at least 13 years of age but under 17 years of age when the act is committed and he is at least 5 years older than the victim.

[or]

[e] A person commits the offense of aggravated criminal sexual abuse when he commits an act of sexual conduct with a victim who is an institutionalized severely or profoundly mentally retarded person when the act is committed.

[or]

[f] A person commits the offense of aggravated criminal sexual abuse when he commits an act of sexual conduct with a victim who is at least 13 years of age but under 18 years of age when the act is committed and he holds a position of trust, authority, or supervision in relation to the victim.

Committee Note

720 ILCS 5/12-16 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-16 (1991)), amended by P.A. 85-651, effective January 1, 1988; P.A. 85-692, effective January 1, 1988; P.A. 85-1030,

effective July 1, 1988; P.A. 85-1209, effective August 30, 1988; P.A. 85-1392, effective January 1, 1989; P.A. 85-1440, effective February 1, 1989; and P.A. 88-99, effective July 20, 1993.

Give Instruction 11.59.

When paragraph [a] or [e] is used, give the appropriate set of propositions in Instruction 11.62.

When paragraph [c] or [d] is used, give the appropriate set of propositions in Instruction 11.62A.

When paragraph [b] or [f] is used, give the appropriate set of propositions in Instruction 11.62B.

In the first series of definitions (paragraph [a]), the material in subparagraphs [3] and [4] were added by P.A. 85-691 and should be used only for offenses committed after the effective date of that Act.

In the second series of definitions (paragraph [b]), the bracketed material addressing a person responsible for the child's welfare was added by P.A. 85-1209 and should be used only for offenses committed after the effective date of that Act and before the effective date of P.A. 85-1440 which deleted that material.

In the third series of definitions (paragraph [c]), the material in subparagraphs [2] and [5] were added by P.A. 85-651 and should only be used for offenses committed after the effective date of that Act. The material in subparagraph [4] should only be used for offenses committed before the effective date of that Act.

In the fourth series of definitions (paragraph [d]), the material in subparagraph [2] was added by P.A. 85-651 and should only be used for offenses committed after the effective date of that Act. The material in subparagraph [1] should only be used for offenses committed before the effective date of that Act.

The fifth definition (paragraph [e]), concerning the mental disability of the victim, was added by P.A. 85-1392, and should be used only for offenses committed after the effective date of that Act. The phrase “an institutionalized severely or profoundly mentally retarded person” is defined in Instruction 11.68.

The sixth definition (paragraph [f]), which addresses an accused in a position of trust, authority, or supervision, was added by P.A. 85-1030, deleted by P.A. 85-1209, and re-added by P.A. 85-1440, and should be used only for offenses committed between the effective dates of P.A. 85-1030 and P.A. 85-1209, and after the effective date of P.A. 85-1440.

In People v. Terrell, 132 Ill.2d 178, 547 N.E.2d 145, 138 Ill.Dec. 176 (1989), the supreme court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that, in the legislature's silence, a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill.2d at 210, 547 N.E.2d at 159, 138 Ill.Dec. at 190; see also 720 ILCS

5/4-3 through 4-6 (formerly Ill.Rev.Stat. ch. 38, §§4-3 through 4-6 (1991)); Committee Notes to Instructions 5.01A and 5.01B. However, in People v. Burton, 201 Ill.App.3d 116, 558 N.E.2d 1369, 146 Ill.Dec. 1035 (4th Dist.1990), the court held that Terrell does not require the mental states to be included in the jury instruction. *See also* People v. Smith, 209 Ill.App.3d 1043, 568 N.E.2d 482, 154 Ill.Dec. 482 (4th Dist.1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault.

P.A. 88-99, effective July 20, 1993, amended Section 12-16(a)(2) to delete the requirement that the accused caused *great* bodily harm to the victim in order for aggravated criminal sexual abuse to be committed. As a result of this amendment, *bodily harm* now suffices to meet the definition of that offense.

Use applicable bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.03.

11.62
Issues In Aggravated Criminal Sexual Abuse--Aggravation By Circumstances

To sustain the charge of aggravated criminal sexual abuse, the State must prove the following propositions:

First Proposition: That the defendant committed an act of sexual conduct upon ____; and

Second Proposition: That the act was committed by force or threat of force;

[or]

Second Proposition: That the defendant knew that ____ was unable to [(understand the nature of the act) (give knowing consent)];

and

[1] *Third Proposition:* That the defendant [(displayed) (threatened to use) (used)] [(a dangerous weapon) (any object fashioned or utilized in such a manner as to lead the victim under the circumstances reasonably to believe it to be a dangerous weapon)]

[or]

[2] *Third Proposition:* That the defendant caused bodily harm to ____

[or]

[3] *Third Proposition:* That ____ was 60 years of age or older when the act was committed

[or]

[4] *Third Proposition:* That ____ was a physically handicapped person when the act was committed

[; and

Fourth Proposition: That ____ did not consent to the act of sexual conduct].

[or]

First Proposition: That the defendant committed an act of sexual conduct upon ____; and

Second Proposition: That ____ was an institutionalized severely or profoundly mentally

retarded person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-16(a)(1), (2), (3), and (4) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §§12-16(a)(1), (2), (3), and (4) (1991)), amended by P.A. 85-691, effective January 1, 1988; P.A. 85-1391, effective January 1, 1989; and P.A. 88-99, effective July 20, 1993.

Give Instruction 11.61.

See the Committee Note to Instruction 11.61 to distinguish recent additions to the statute.

When force or threat of force is an element of the offense and the defense of consent is raised by the evidence, it is necessary under People v. Coleman, 166 Ill.App.3d 242, 520 N.E.2d 55, 117 Ill.Dec. 65 (1st Dist.1987), to give the Fourth Proposition. Also give Instruction 11.63 and 11.63A. See Section 12-17(a) and the Introduction to Chapter 24-25.00. However, for a contrary discussion, *see* People v. Roberts, 182 Ill.App.3d 313, 537 N.E.2d 1080, 130 Ill.Dec. 751 (1st Dist.1989), where the court held that it was not plain error to omit the instruction on consent because proof of force implicitly establishes lack of consent.

P.A. 88-99, effective July 20, 1993, amended Section 12-16(a)(2) to delete the requirement that the accused caused *great* bodily harm to the victim in order for aggravated criminal sexual abuse to be committed. As a result of this amendment, *bodily harm* now suffices to meet the definition of that offense.

Use applicable bracketed material.

Insert in the blanks the name of the victim.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.62A
Issues In Aggravated Criminal Sexual Abuse--Aggravation By Age

To sustain the charge of aggravated criminal sexual abuse, the State must prove the following propositions:

First Proposition: That the defendant committed an act of sexual conduct with ____; and

[1] *Second Proposition:* That the defendant was 17 years of age or older; and

Third Proposition: That ____ was under 13 years of age when the act was committed.

[or]

[2] *Second Proposition:* That the defendant was 17 years of age or older; and

Third Proposition: That ____ was at least 13 years of age but under 17 years of age when the act was committed; and

Fourth Proposition: That the defendant used force or the threat of force to commit the act.

[or]

[3] *Second Proposition:* That the defendant was under 17 years of age; and

Third Proposition: That ____ was under 9 years of age when the act was committed.

[or]

[4] *Second Proposition:* That the defendant was under 17 years of age; and

Third Proposition: That ____ was at least 9 years of age but under 13 years of age when the act was committed; and

Fourth Proposition: That the defendant used force or the threat of force to commit the act.

[or]

[5] *Second Proposition:* That the defendant was under 17 years of age; and

Third Proposition: That ____ was at least 9 years of age but under 17 years of age when the act was committed; and

Fourth Proposition: That the defendant used force or the threat of force to commit the act.

[or]

First Proposition: That the defendant committed an act of sexual penetration upon ____; and

Second Proposition: That ____ was at least 13 years of age but under 16 years of age

when the act was committed; and

Third Proposition: That the defendant was at least 5 years older than ____.

[or]

First Proposition: That the defendant committed an act of [(sexual penetration) (sexual conduct)] upon ____; and

Second Proposition: That ____ was at least 13 years of age but under 17 years of age when the act was committed; and

Third Proposition: That the defendant was at least 5 years older than ____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-16(c) and (d) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-16(c) and (d) (1991)).

Give Instruction 11.61.

See the Committee Note to Instruction 11.61 to distinguish recent additions to the statute.

When force or the threat of force is an element of the offense and the defense of consent is raised by the evidence, it is necessary under People v. Coleman, 166 Ill.App.3d 242, 520 N.E.2d 55, 117 Ill.Dec. 65 (1st Dist.1987), to give the following instruction as the final proposition:

> "*Fifth Proposition:* That ____ did not consent to the act of sexual conduct."

Also give Instructions 11.63 and 11.63A. See Chapter 720, Section 12-17(a) and the Introduction to Chapter 24-25.00. However, for a contrary discussion, *see* People v. Roberts, 182 Ill.App.3d 313, 537 N.E.2d 1080, 130 Ill.Dec. 751 (1st Dist.1989), where the court held that it was not plain error to omit the instruction on consent because proof of force implicitly establishes lack of consent.

When the defendant is charged with aggravated criminal sexual abuse under Chapter 720, Section 12-16(d) (which, effective January 1, 1988, was amended to make the critical ages 13 to 17 years of age, and not 13 to 16 years of age) and the defense that the defendant reasonably believed the victim to be 17 or 16 years of age or older is raised by the evidence, give the following instruction as the final proposition:

> "*Fourth Proposition:* That the defendant did not reasonably believe ____ to be [(16) (17)] years of age or older."

Also give Instructions 4.13 and 11.64. See Chapter 720, Section 12-17(b) and the Introduction to Chapter 24-25.00.

In People v. Terrell, 132 Ill.2d 178, 547 N.E.2d 145, 138 Ill.Dec. 176 (1989), the supreme court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that, in the legislature's silence, a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill.2d at 210, 547 N.E.2d at 159, 138 Ill.Dec. at 190; see also Chapter 720, pars. 4-3 through 4-6; Committee Notes to Instructions 5.01A and 5.01B. However, in People v. Burton, 201 Ill.App.3d 116, 558 N.E.2d 1369, 146 Ill.Dec. 1035 (4th Dist.1990), the court held that Terrell does not require the mental states to be included in the jury instruction. *See also* People v. Smith, 209 Ill.App.3d 1043, 568 N.E.2d 482, 154 Ill.Dec. 482 (4th Dist.1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault.

Use applicable bracketed material.

Insert in the blanks the name of the victim.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

For an example of the use of this instruction, see Sample Set 27.03.

11.62B
Issues In Aggravated Criminal Sexual Abuse--Aggravation By Age When Defendant Is A Family Member Or In A Position Of Responsibility Or Trust

To sustain the charge of aggravated criminal sexual abuse, the State must prove the following propositions:

First Proposition: That the defendant committed an act of sexual conduct with ____; and

Second Proposition: That ____ was under 18 years of age when the act was committed; and

Third Proposition: That the defendant was a [(family member) (person responsible for the child's welfare)].

[or]

First Proposition: That the defendant committed an act of sexual conduct with ____; and

Second Proposition: That ____ was at least 13 years of age but under 18 years of age when the act was committed; and

Third Proposition: That the defendant was 17 years of age or older; and

Fourth Proposition: That the defendant held a position of trust, authority, or supervision in relation to ____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-16(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-16(b) (1991)).

Give Instruction 11.61.

See the Committee Note to Instruction 11.61 to distinguish recent additions to the statute.

The term “family member” is defined in Instruction 11.65B.

The phrase “person responsible for the child's welfare” is defined in Instruction 11.65H.

Insert in the blanks the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.63
Defense Of Consent

It is a defense to the charge of ____ that ____ consented.

Committee Note

720 ILCS 5/12-17(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-17(a) (1991)).

Give this Instruction when the defense of consent is raised in offenses where proof of force or threat of force is an element under Chapter 38, Sections 12-13 through 12-16 and the issue is raised by the evidence. See Introduction to Chapter 24-25.00.

Give Instruction 11.63A, defining the word "consent."

Insert in the appropriate blanks the name of the charged offense and the victim's name.

For an example of the use of this instruction, see Sample Set 27.03.

11.63A
Definition Of Consent

The word “consent” means a freely given agreement to the act of [(sexual penetration) (sexual conduct)] in question. Lack of verbal or physical resistance or submission by the victim resulting from the use of force or threat of force by the defendant [or the victim's manner of dress] shall not constitute consent.

Committee Note

720 ILCS 5/12-17(a) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-17(a) (1991)).

See Instruction 11.63.

The bracketed language referring to the victim's manner of dress was added as a result of P.A. 87-438, effective January 1, 1992, which amended Section 12-17(a).

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.03.

11.64
Defense To Criminal Sexual Abuse And Aggravated Criminal Sexual Abuse

It is a defense to the charge of [(criminal sexual abuse) (aggravated criminal sexual abuse)] that the defendant reasonably believed ____ to be [(16) (17)] years of age or older.

Committee Note

720 ILCS 5/12-17(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-17(b) (1991)).

Give this instruction when the defendant is charged with criminal sexual abuse under Chapter 720, Section 12-15(b), or with aggravated criminal sexual abuse under Chapter 720, Section 12-16(d), and the issue is raised by the evidence. The appropriate age to be chosen from within the brackets should be determined by when the offense occurred as the legislature has amended the underlying statutes by changing the applicable age classifications. See the Committee Notes to Instructions 11.59 and 11.61. Also give Instruction 4.13. See Introduction to Chapter 24-25.00.

Insert in the blank the name of the victim.

11.65
Definition Of Accused

The word "accused" means a person accused of the offense of [(criminal sexual assault) (aggravated criminal sexual assault) (criminal sexual abuse) (aggravated criminal sexual abuse)] [or a person for whose conduct he is legally responsible].

Committee Note

720 ILCS 5/12-12(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-12(a) (1991)).

Use applicable bracketed material.

11.65A
Definition Of Bodily Harm

The term "bodily harm" means physical harm and includes, but is not limited to, sexually transmitted disease, pregnancy, and impotence.

Committee Note

720 ILCS 5/12-12(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-12(b) (1991)).

11.65B
Definition Of Family Member

The term "family member" means a parent, grandparent, or child, whether by whole-blood, half-blood, or adoption and includes a step-grandparent, step-parent, or step-child.

[The term "family member" also means, where the victim is a child under 18 years of age, an accused who has resided in the household with such child continuously for at least one year.]

Committee Note

720 ILCS 5/12-12(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-12(c) (1991)).

Use applicable bracketed material.

11.65C
Definition Of Force Or Threat Of Force

The term "force or threat of force" means the use of force or violence or the threat of force or violence [including but not limited to [(when the accused threatens to use force or violence [(on the victim) (on any other person)] and the victim under the circumstances reasonably believed that the accused had the ability to execute that threat) (when the accused has overcome the victim by use of [(superior strength) (superior size) (physical restraint) (physical confinement)])].

Committee Note

720 ILCS 5/12-12(d) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-12(d) (1991)).

Use applicable bracketed material.

11.65D
Definition Of Sexual Conduct

The term "sexual conduct" means any intentional or knowing touching or fondling by [(the victim) (the accused)], either directly or through the clothing, of [(the sex organ) (anus) (breast)] of [(the victim) (the accused)] [any part of the body of a child under 13 years of age], for the purpose of sexual gratification or arousal of the victim or the accused.

Committee Note

720 ILCS 5/12-12(e) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-12(e) (1991)).

Sexual conduct with a victim requires actual physical contact between the victim and accused, not merely sexual conduct in the presence of the victim. People v. Gann, 141 Ill.App.3d 34, 489 N.E.2d 924, 95 Ill.Dec. 362 (3d Dist.1986).

Use applicable bracketed material.

11.65E
Definition Of Sexual Penetration

The term "sexual penetration" means any

[1] contact, however slight, between the sex organ or anus of one person and [(an object) (the [(sex organ) (mouth) (anus)] of another person)].

[or]

[2] intrusion, however slight, of any part of [(the body of one person) (any animal) (any object)] into the [(sex organ) (anus)] of another person[, including but not limited to [(cunnilingus) (fellatio) (anal penetration)]]. [Evidence of emission of semen is not required to prove sexual penetration.]

Committee Note

720 ILCS 5/12-12(f) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-12(f) (1991)), amended by P.A. 88-167, effective January 1, 1994.

The statutory definition of sexual penetration, unlike that of sexual conduct upon which most of the sexual abuse offenses are based, does not contain a mental state. Therefore, under People v. Terrell, 132 Ill.2d 178, 547 N.E.2d 145, 138 Ill.Dec. 176 (1989), the mental states of knowledge, intention, and recklessness are assigned to the offenses based on sexual penetration and, accordingly, those mental states are set out in the appropriate definitional and issues instructions. *See also* People v. Williams, 191 Ill.App.3d 269, 547 N.E.2d 608, 138 Ill.Dec. 441 (4th Dist.1989); see also 720 ILCS 5/4-3 through 4-6 (formerly Ill.Rev.Stat. ch. 38, §§4-3 through 4-6 (1991)), and the Committee Notes to Instructions 5.01A and 5.01B.

P.A. 88-167, effective January 1, 1994, amended 720 ILCS 5/12-12(f), defining "sexual penetration", by adding kinds of "contact", as described in bracketed paragraph [1] of this instruction.

A victim's finger can be an "object" within the statutory definition of sexual penetration. People v. Scott, 271 Ill.App.3d 307, 313, 648 N.E.2d 86, 89, 207 Ill.Dec. 630, 633 (1st Dist.1994).

People v. Scott also held that when only the defendant and the victim are involved in offenses based on sexual penetration, the defendant cannot be held liable under an accountability theory. *Scott*, 271 Ill.App.3d at 314, 648 N.E.2d at 90, 207 Ill.Dec. at 634.

Use applicable bracketed material.

11.65F
Definition Of Victim

The term "victim" means a person [(alleging) (alleged)] to have been subjected to the offense[s] of [(criminal sexual assault) (aggravated criminal sexual assault) (criminal sexual abuse) (aggravated criminal sexual abuse)].

Committee Note

720 ILCS 5/12-12(g) (West 1995) (formerly Ill.Rev.Stat. ch. 38, §12-12(g) (1991)).

Although Section 12-12(g) defines "victim" as a person "alleging" to have been sexually assaulted, the Committee believes the definition must include those "alleged" to have been sexually assaulted, such as infants or toddlers, who are not capable of making such allegations.

Use applicable bracketed material.

11.65G
Definition Of Institutionalized Severely Or Profoundly Mentally Retarded Person

The phrase "severely or profoundly intellectually disabled person" means a person

[1] whose intelligence quotient does not exceed 40.

[or]

[2] whose intelligence quotient does not exceed 55 and who suffers from significant mental illness to the extent that the person's ability to exercise rational judgment is impaired.

Committee Note

Instruction and Committee Note Approved May 24, 2013.

720 ILCS 5/2-10.1 (West 2013), effective January 1, 2012.

In P.A. 97-277, the Illinois General Assembly substituted the term "intellectually disabled person" for "mentally retarded person" in all statutes which use the term "mentally retarded". In doing so, the General Assembly declared that this substitution was done without any intent to change the substantive rights, responsibilities, coverage, eligibility, or definitions referred to in the amended provisions represented in P.A. 97-277. Accordingly, the Committee believes that the term "intellectually disabled" should be used in place of "mentally retarded" even where the offense occurred before the effective date of P.A. 97-277.

11.65H
Definition Of A Person Responsible For The Child's Welfare

The phrase "a person responsible for the child's welfare" means the child's guardian, foster parent, elementary or secondary school teacher, or any other person responsible for the child's care at the time the act was committed.

Committee Note

720 ILCS 5/12-13(a)(3) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-13(a)(3) (1991)).

See Instruction 11.55.

11.66
Statements Admitted Under Section 115-10 Of The Code Of Criminal Procedure

You have before you evidence that ____ made [(a statement) (statements)] concerning [(an) (the)] offense[s] charged in this case. It is for you to determine [whether the statement[s] [(was) (were)] made, and, if so,] what weight should be given to the statement[s]. In making that determination, you should consider the age and maturity of ____, the nature of the statement[s], [and] the circumstances under which [(a) (the)] statement[s] [(was) (were)] made[, and ____].

Committee Note

725 ILCS 5/115-10(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §115-10(c) (1991)).

P.A. 85-837, effective January 1, 1988, significantly changed Section 115-10 of the Code of Criminal Procedure. That Section provides for the admissibility under certain circumstances of out-of-court statements made by a child under the age of 13 who is the alleged victim of criminal sexual assault, aggravated criminal sexual assault, criminal sexual abuse, or aggravated criminal sexual abuse (Chapter 720, Sections 12-13 through 12-16).

As amended, Section 115-10(c) now provides that when such a statement is admitted under that Section, the jury "shall" be instructed as provided in this instruction.

The Committee takes no position on whether this instruction should be given orally to the jury at the time an out-of-court statement of the alleged victim is received in evidence.

Insert in the first two blanks the name of the child whose statement was received into evidence.

Insert in the last blank any other relevant factor concerning the weight and credibility of the statement.

Use applicable bracketed material.

11.67
Definition Of Criminal Transmission Of HIV (Human Immunodeficiency Virus)

A person commits the offense of criminal transmission of HIV when he, knowing that he is infected with HIV,

[1] engages in intimate contact with another.

[or]

[2] [(transfers) (donates) (provides)] his [(blood) (tissue) (semen) (organs) (potentially infectious body fluids)] for [(transfusion) (transplantation) (insemination) (administration)] to another.

[or]

[3] [(dispenses) (delivers) (exchanges) (sells) (transfers)] nonsterile [(intravenous) (intramuscular)] drug paraphernalia to another.

[It is not necessary that an infection with HIV actually result from that conduct.]

Committee Note

720 ILCS 5/12-16.2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-16.2 (1991)).

Give Instructions 11.67B and 11.68.

When applicable, give Instruction 11.67C, defining the phrase "intimate contact with another," and Instruction 11.67D, defining the phrase "intravenous or intramuscular drug paraphernalia."

Although the name of the offense implies otherwise, transmission of the disease is not an element of the crime. See Section 12-16.2(c). The last bracketed sentence of the instruction may be included when necessary to avoid confusion.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.67A
Affirmative Defense To Criminal Transmission Of HIV

It is a defense to the charge of criminal transmission of HIV that the person exposed to HIV consented to the ____ knowing that the defendant was infected with HIV and knowing that this conduct could result in an infection with HIV.

Committee Note

720 ILCS 5/12-16(d) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-16(d) (1991)).

Give this instruction when the issue is raised by the evidence. See Chapter 720, Section 3-2 and the Introduction to Chapter 24-25.00.

Insert in the blank a description of the conduct forming the basis of the charge. For example, if the defendant is charged with committing the offense by engaging in intimate contact with another, insert the phrase “intimate contact with the defendant” in the blank. If the defendant is charged with donating blood for transfusion to another, insert the phrase “donation of defendant's blood for transfusion” in the blank. If the defendant is charged with delivery of nonsterile intramuscular drug paraphernalia to another, insert the phrase “delivery of the nonsterile intramuscular drug paraphernalia” in the blank.

11.67B
Definition Of HIV

The term "HIV" means the human immunodeficiency virus or any other identified causative agent of acquired immunodeficiency syndrome.

Committee Note

720 ILCS 5/12-16.2(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-16.2(b) (1991)).

11.67C
Definition Of Intimate Contact With Another

The phrase "intimate contact with another" means the exposure of the body of one person to a bodily fluid of another person in a manner that could result in the transmission of HIV.

Committee Note

720 ILCS 5/12-16(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-16(b) (1991)).

11.67D
Definition Of Intravenous Or Intramuscular Drug Paraphernalia

The phrase "[(intravenous) (intramuscular)] drug paraphernalia" means any equipment, product, or material which is peculiar to and marketed for use in injecting a substance into the human body.

Committee Note

720 ILCS 5/12-16.2(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-16.2(b) (1991)).

11.68
Issues In Criminal Transmission Of HIV (Human Immunodeficiency Virus)

To sustain the charge of criminal transmission of HIV, the State must prove the following propositions:

First Proposition: That the defendant engaged in intimate contact with another;

[or]

First Proposition: That the defendant [(transferred) (donated) (provided)] his [(blood) (tissue) (semen) (organs) (potentially infectious body fluids)] for [(transfusion) (transplantation) (insemination) (administration)] to another;

[or]

First Proposition: That the defendant [(dispensed) (delivered) (exchanged) (sold) (transferred)] nonsterile [(intravenous) (intramuscular)] drug paraphernalia to another;

and

Second Proposition: That when the defendant did so, he knew he was infected with HIV[; and

Third Proposition: That ____ did not consent to the ____ knowing that the defendant was infected with HIV and knowing that this conduct could result in an infection with HIV].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-16.2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-16.2 (1991)).

Give Instructions 11.67 and 11.67B.

When applicable, give Instruction 11.67C, defining the phrase "intimate contact with another," and Instruction 11.67D, defining the phrase "intravenous or intramuscular drug paraphernalia."

Section 12-16.2(c) specifically provides that transmission of the disease is not an element of the offense.

Give the Third Proposition when the issue is raised by the evidence. When there is

sufficient evidence to raise the affirmative defense, the burden is on the State to overcome the defense beyond a reasonable doubt. See Chapter 720, Section 3-2 and the Introduction to Chapter 24-25.00.

Insert in the first blank in the Third Proposition the name of the person exposed to the HIV infection, and in the second blank a description of the conduct forming the basis of the charge. For examples, see the Committee Note to Instruction 11.67A.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.69
Definition Of Abuse Of A Long Term Care Facility Resident

A person commits the offense of abuse of a long term care facility resident when he [(knowingly) (intentionally)] [(causes any physical or mental injury to) (commits a sexual offense upon)] a long term care facility resident.

Committee Note

720 ILCS 5/12-19 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-19 (1991)).

Give Instructions 11.69A and 11.70.

When the defendant is charged with committing a sexual offense upon a long term care facility resident, the definition of the specific sexual offense charged must be given.

Section 12-19 contains certain exceptions to criminal liability. That section does not apply to a physician or nurse providing care within the scope of his or her professional judgment and within accepted standards of care. The section also does not apply to medical supervision or control of the care or treatment of residents of a facility operated for those who rely upon treatment by prayer or spiritual means. It will be necessary to give additional instructions if the defendant relies upon either of these exceptions.

Use applicable bracketed material.

11.69A
Definition Of Long Term Care Facility

The phrase "long term care facility" means a private home, institution, building, residence, or any other place, whether operated for profit or not, or a county home for the infirm and chronically ill or any similar institution operated by a political subdivision of the State of Illinois, which provides, through its ownership or management, personal care, sheltered care or nursing for three or more persons not related to the owner by blood or marriage.

Committee Note

720 ILCS 5/12-19(d)(7) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-19(d)(7) (1991)).

For a definition of the word "owner" of a long term care facility, see Chapter 720, Section 12-19(d)(5), and Chapter 210, Section 45/1-119.

11.70
Issues In Abuse Of A Long Term Care Facility Resident

To sustain the charge of abuse of a long term care facility resident, the State must prove the following propositions:

First Proposition: That [(victim)] was a long term care facility resident; and

Second Proposition: That the defendant [(knowingly) (intentionally)] caused [(physical harm) (mental injury)] to [(victim)].

[or]

Second Proposition: That the defendant [(knowingly) (intentionally)]committed that offense of [(sexual offense)] upon [(victim)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-19 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-19 (1991)).

Give Instruction 11.69.

Insert in the appropriate blanks the name of the victim, and when applicable, the type of sexual offense allegedly committed.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.71
Definition Of Gross Neglect Of A Long Term Care Facility Resident

A person commits the offense of gross neglect of a long term care facility resident when he recklessly fails to provide adequate [(medical) (personal)] [(care) (maintenance)] to a long term care facility resident and that failure results in [(physical injury) (mental injury) (the deterioration of a long term care facility resident's [(physical) (mental)] condition)].

Committee Note

720 ILCS 5/12-19 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-19 (1991)).

Give Instructions 11.72, 11.69A, and 5.01.

Section 12-19 contains certain exceptions to criminal liability. That section does not apply to a physician or nurse providing care within the scope of his or her professional judgment and within accepted standards of care. The section also does not apply to medical supervision or control of the care or treatment of residents of a facility operated for those who rely upon treatment by prayer or spiritual means. It will be necessary to give additional instructions if the defendant relies upon either of these exceptions.

Use applicable bracketed material.

11.72
Issues In Gross Neglect Of A Long Term Care Facility Resident

To sustain the charge of gross neglect of a long term care facility resident, the State must prove the following propositions:

First Proposition: That the defendant recklessly failed to provide adequate [(medical) (personal)] [(care) (maintenance)] to ____; and

Second Proposition: That the defendant's failure resulted in [(physical injury to ____) (mental injury to ____) (the deterioration of ____'s [(physical) (mental)] condition)]; and

Third Proposition: That ____ was a long term care facility resident.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your considerations of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-19 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-19 (1991)).

Give Instruction 11.71.

Insert in the blanks the name of the alleged victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.73
Definition Of Sale Of Body Parts

A person commits the offense of sale of body parts when he knowingly [(buys) (sells) (offers to buy) (offers to sell)] [(a human body) (any part of a human body)].

Committee Note

720 ILCS 5/12-20 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-20 (1991)).

Give Instruction 11.74.

Section 12-20(b) contains several exceptions to the offense of the sale of body parts. The statute does not prohibit: (1) an anatomical gift made pursuant to statute; (2) the removal and use of a human cornea pursuant to statute; (3) reimbursement of the actual expenses incurred by a living donor in donating an organ, tissue, or other body part; (4) payments provided under a plan of insurance or other health care coverage; (5) reimbursement of reasonable costs associated with the removal, storage, or transportation of a human body or body part donated for medical or scientific purposes; (6) purchase or sale of blood, plasma, blood products or derivatives, or other body fluids, or human hair; or (7) purchase or sale of drugs, reagents or other substances made from human bodies or body parts, for use in medical or scientific research, treatment, or diagnosis. If the defendant relies upon any of those exceptions, it will be necessary to give additional instructions.

Use applicable bracketed material.

11.74
Issue In Sale Of Body Parts

To sustain the charge of sale of body parts, the State must prove the following proposition:

That the defendant knowingly [(bought) (sold) (offered to buy) (offered to sell)] [(a human body part) (any part of a human body)].

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-20 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-20 (1991)).

Give Instruction 11.73.

Section 12-20 contains several exceptions to the offense of the sale of body parts, and additional instructions must be given when the defendant relies upon one or more of those exceptions. See Committee Note to Instruction 11.73.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.75
Definition Of Criminal Neglect Of An Elderly Or Disabled Person

A person commits the offense of criminal neglect of [(an elderly) (a disabled)] person when he is a caregiver and he knowingly

[1] performs acts which cause the [(elderly) (disabled)] person's life to be endangered, health to be injured, or pre-existing physical or mental condition to deteriorate.

[or]

[2] fails to perform acts which he knows or reasonably should know are necessary to maintain or preserve the life or health of the [(elderly) (disabled)] person and such failure causes the [(elderly) (disabled)] person's life to be endangered, health to be injured, or pre-existing physical or mental condition to deteriorate.

[or]

[3] abandons the [(elderly) (disabled)] person.

Committee Note

720 ILCS 5/12-21(a) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-21(a) (1991)), added by P.A. 86-153, effective January 1, 1990, amended by P.A. 86-1028, effective February 5, 1990, and P.A. 87-1072, effective January 1, 1993.

Give Instructions 11.75A and 11.76.

Give either Instruction 11.75B, defining the term “elderly person,” or 11.75C, defining the term “disabled person.”

When using the third alternative, give Instruction 11.75D, defining the term “abandon.”

Section 12-21(d) and (e) set forth exceptions to the offense of criminal neglect of an elderly or disabled person. The statute does not apply to a person who has made a good faith effort to provide for the health and personal care of an elderly or disabled person, but through no fault of his own has been unable to provide such care. The statute also does not prohibit a person from providing treatment by spiritual means through prayer alone and care consistent therewith in lieu of medical care and treatment in accordance with the tenets and practices of any church or religious denomination of which the elderly or disabled person is a member. It will be necessary to give additional instructions if the defendant relies upon either of those exceptions.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.75A
Definition Of Caregiver--Criminal Neglect

The word “caregiver” means a person who has a duty to provide for [(an elderly) (a disabled)] person's health and personal care, at such person's place of residence, including but not limited to, food and nutrition, shelter, hygiene, prescribed medication, and mental care and treatment, and includes

[1] a [(parent) (spouse) (adult child) (relative by blood or marriage)] who [(resides) (resides in the same building)] with and regularly visits the [(elderly) (disabled)] person and knows or reasonably should know of such person's physical or mental impairment, and knows or should know that such person is unable to adequately provide for his own health and personal care.

[or]

[2] a person who is employed by the [(elderly) (disabled)] person or by another to reside with or regularly visit the [(elderly) (disabled)] person and provide for such person's health and personal care.

[or]

[3] a person who has agreed for consideration to reside with or regularly visit the [(elderly) (disabled)] person and provide for such person's health and personal care.

[or]

[4] a person who has been appointed by a private or public agency or by a court of competent jurisdiction to provide for the [(elderly) (disabled)] person's health and personal care.

Committee Note

720 ILCS 5/12-21(b)(3) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-21(b)(3) (1991)).

Section 12-21(b)(3) sets forth an exception to the offense of criminal neglect of an elderly or disabled person. The statute does not apply to a long-term care facility licensed or certified under the Nursing Home Care Act (Chapter 210, Section 45/1-119), or any administrative, medical, or other personnel of such a facility, or health care provider who is licensed under the Medical Practice Act (Chapter 225, Section 60/1) and who renders care in the ordinary course of his profession. It will be necessary to give additional instructions if the defendant relies on this exception.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and

should not be included in the instruction submitted to the jury.

11.75B
Definition Of Elderly Person--Criminal Neglect

The term "elderly person" means a person 60 years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by physical, mental, or emotional dysfunctioning to the extent that such person is incapable of adequately providing for his own health and personal care.

Committee Note

720 ILCS 5/12-21(b)(1) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-21(b)(1) (1991)).

11.75C
Definition Of Disabled Person--Criminal Neglect

The term "disabled person" means a person who suffers from a permanent physical or mental impairment, resulting from disease, injury, functional disorder, or congenital condition, which renders such person incapable of adequately providing for his own health and personal care.

Committee Note

720 ILCS 5/12-21(b)(2) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-21(b)(2) (1991)).

11.75D
Definition Of Abandon--Criminal Neglect

The term "abandons" means to desert or knowingly forsake [(an elderly) (a disabled)] person under circumstances in which a reasonable person would continue to provide care and custody.

Committee Note

720 ILCS 5/12-21(b)(4) (West 1992), added by P.A. 87-1072, effective January 1, 1993.

Use applicable bracketed material.

11.76
Issues In Criminal Neglect Of An Elderly Or Disabled Person

To sustain the charge of criminal neglect of [(an elderly) (a disabled)] person, the State must prove the following propositions:

First Proposition: That the defendant was a caregiver; and

[1] *Second Proposition*: That the defendant knowingly performed acts which caused the [(elderly) (disabled)] person's life to be endangered, health to be injured, or pre-existing physical or mental condition to deteriorate.

[or]

[2] *Second Proposition*: That the defendant knowingly failed to perform acts which he knew or should have known were necessary to maintain or preserve the life or health of the [(elderly) (disabled)] person and such failure caused the [(elderly) (disabled)] person's life to be endangered, health to be injured, or pre-existing physical or mental condition to deteriorate.

[or]

[3] *Second Proposition*: That the defendant knowingly abandoned the [(elderly) (disabled)] person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-21(a) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-21(a) (1991)), added by P.A. 86-153, effective January 1, 1990; amended by P.A. 86-1028, effective February 5, 1990; and P.A. 87-1072, effective January 1, 1993.

Give Instruction 11.75.

Use the applicable Second Proposition and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.77
Definition Of Violation Of Order Of Protection

A person commits the offense of violation of an order of protection when, having been served notice of the contents of an order of protection, or otherwise having acquired actual knowledge of the contents of the order, he [(commits an act which was prohibited by a court) (fails to commit an act which was ordered by a court)] in an order of protection.

Committee Note

720 ILCS 5/12-30 (West 2011) (formerly Ill.Rev.Stat. ch. 38, §12-3- (1991)). See also Domestic Violence Act, Chapter 750, section 60/101 *et seq.*, as amended by P.A. 86-542, effective January 1, 1990.

When applicable, give Instruction 5.01C, defining "actual knowledge".

Give Instruction 11.78.

Section 12-30 proscribes acts committed in violation of a "remedy" in a valid order of protection. The Domestic Violence Act (Chapter 750, section 60/214) defines the phrase "remedy in an order of protection" by listing all of the types of directives that can be included in an order of protection. While that definition presumably limits the types of orders that can be entered under the Domestic Violence Act, the Committee believes that the court, and not the jury, is to determine whether an order of protection is valid or whether a particular directive of such an order falls within the definition of remedy and that the jury should not be instructed on the extensive definition of remedy. Without its technical definition, the word "remedy" could be confusing to the jury, and has, therefore, been omitted in defining the offense. Moreover, since the court and not the jury will determine whether an order of protection is valid, the word "valid" has been omitted from instructions on this offense.

Use applicable bracketed material.

The brackets are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.78
Issues In Violation Of Order Of Protection

To sustain the charge of violation of an order of protection, the State must prove the following propositions:

First Proposition: That the defendant _____; and

Second Proposition: That an order of protection prohibited the defendant from performing *[(that act) (those acts)]*;

[(or)]

Second Proposition: That an order of protection directed the defendant to perform *[(that act) (those acts)]*;

and

Third Proposition: That the order of protection was in effect at the time the defendant ____; and

Fourth Proposition: That at the time the defendant ____, he had been served notice of the contents of an order of protection or otherwise had acquired actual knowledge of the contents of the order.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-30 (West 2011) (formerly Ill.Rev.Stat. ch. 38, §12-3- (1991)). See also Domestic Violence Act, Chapter 750, section 60/101 *et seq.*, as amended by P.A. 86-542, effective January 1, 1990.

When applicable, give Instruction 5.01C, defining "actual knowledge".

Give Instruction 11.77.

Insert in the blanks the specific act or failure to act alleged in the charging instrument.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. Give Instruction 5.03.

Use applicable bracketed material.

The brackets are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.78A
Definition Of Family Or Household Member--Violation Of Order Of Protection

The phrase "family or household member" means spouses, former spouses, parents, children, stepchildren, and other persons related by blood or marriage, persons who share or formerly shared a common dwelling, and persons who have or allegedly have a child in common. [In the case of high-risk adult with disabilities, the phrase "family or household member" also includes any person who has the responsibility for a high-risk adult as a result of a family relationship or who has assumed responsibility for all or a portion of the care of a high-risk adult with disabilities voluntarily, or by express or implied contract, or by court order.]

Committee Note

750 ILCS 60/103(5), amended by P.A. 86-542, effective January 1, 1990.

Give this instruction when the phrase "family or household member" is used either in the description of the act or failure to act which has been inserted in Instruction 11.78 or in the portion of the order of protection allegedly violated.

Use the bracketed language only when the case involves an order of protection entered to protect a high-risk adult with disabilities, and in such a case, give Instruction 11.78B, defining the phrase "high-risk adult with disabilities."

See Instruction 11.78.

11.78B
Definition Of High-Risk Adult With Disabilities--Violation Of Order Of Protection

The phrase "high-risk adult with disabilities" means a person of age 18 or over whose physical or mental disability impairs his ability to seek or obtain protection from abuse, neglect, or exploitation.

Committee Note

750 ILCS 60/103(8), amended by P.A. 86-542, effective January 1, 1990.

Give this instruction when the phrase "high-risk adult with disabilities" is used either in the description of the act or failure to act which has been inserted in Instruction 11.78, or in the portion of the order of protection allegedly violated.

See Instruction 11.78.

11.78C
Definition Of Abuse--Violation Of Order Of Protection

The word "abuse" means [(physical abuse) (harassment) (intimidation of a dependent) (interference with personal liberty) (wilful deprivation)] [but does not include reasonable direction of a minor child by a parent or person acting in the place of a parent].

Committee Note

750 ILCS 60/103(1), amended by P.A. 86-542, effective January 1, 1990.

Give this instruction when the word "abuse" is used either in the description of the act or failure to act which has been inserted in Instruction 11.78, in the portion of the order of protection allegedly violated, or in another definition. See, e.g., Instruction 11.78B, defining the phrase "high-risk adult with disabilities."

Give Instructions 11.78E, 11.78F, 11.78G, 11.78I, and 11.78J, whenever the terms defined in those instructions are included in this instruction.

See Instruction 11.78.

Use applicable bracketed material.

11.78D
Definition Of Exploitation--Violation Of Order Of Protection

The word "exploitation" means the illegal[, including tortious,] [(use of a high-risk adult with disabilities) (use of the assets or resources of a high-risk adult with disabilities)], including

[1] the misappropriation of assets or resources of a high-risk adult with disabilities [(by undue influence) (by breach of a fiduciary relationship) (by fraud) (by deception) (by extortion)].

[or]

[2] the use of the assets or resources of a high-risk adult with disabilities in a manner contrary to law.

Committee Note

750 ILCS 60/103(5), amended by P.A. 86-542, effective January 1, 1990.

Give Instruction 11.78B, defining the phrase "high-risk adult with disabilities."

Give this instruction when the word "exploitation" is used either in the description of the act or failure to act which has been inserted in Instruction 11.78 or in the portion of the order of protection allegedly violated.

See Instruction 11.78.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.78E
Definition Of Harassment--Violation Of Order Of Protection

The word "harassment" means knowing conduct which would cause a reasonable person emotional distress, which does cause emotional distress to the petitioner, and which is not necessary to accomplish a purpose that is reasonable under the circumstances.

Committee Note

750 ILCS 60/103(8), amended by P.A. 86-542, effective January 1, 1990.

Give this instruction when the word "harassment" is used either in the description of the act or failure to act which has been inserted in Instruction 11.78 or in the portion of the order of protection allegedly violated.

In addition to the above definition, the Domestic Violence Act creates a mandatory presumption, to be rebutted by a preponderance of the evidence, that certain types of conduct cause emotional distress. See Chapter 40, Section 2311-3(6). Because of constitutional difficulties that would arise if that presumption were applied in criminal cases, the Committee believes that no instruction on the presumption should be given in a criminal prosecution for violation of an order of protection. *See* Mullaney v. Wilbur, 421 U.S. 684, 95 S.Ct. 1881, 44 L.Ed.2d 508 (1975); County Court v. Allen, 442 U.S. 140, 99 S.Ct. 2213, 60 L.Ed.2d 777 (1979); Sandstrom v. Montana, 442 U.S. 510, 99 S.Ct. 2450, 61 L.Ed.2d 39 (1979).

See Instruction 11.78.

11.78F
Definition Of Interference With Personal Liberty--Violation Of Order Of Protection

The phrase "interference with personal liberty" means committing or threatening physical abuse, harassment, intimidation, or wilful deprivation so as to compel another [(to engage in conduct from which he has a right to abstain) (to refrain from conduct in which he has a right to engage)].

Committee Note

750 ILCS 60/103(9), amended by P.A. 86-542, effective January 1, 1990.

Give this instruction when the phrase "interference with personal liberty" is used either in the description of the act or failure to act which has been inserted in Instruction 11.78 or in the portion of the order of protection allegedly violated.

See Instruction 11.78.

Use applicable bracketed material.

See People v. Marquis, 54 Ill.App.3d 209, 369 N.E.2d 372, 11 Ill.Dec. 918 (4th Dist.1977), concerning the required mental state of wilfulness; see also Chapter 38, Section 4-5.

11.78G
Definition Of Intimidation Of A Dependent--Violation Of Order Of Protection

The phrase "intimidation of a dependent" means subjecting a person who is dependent because of age, health, or disability to [(participate in) (witness)] [(physical force against another) (physical confinement or restraint of another which constitutes physical abuse)].

Committee Note

750 ILCS 60/103(10), amended by P.A. 86-542, effective January 1, 1990.

Give this instruction when the phrase "intimidation of a dependent" is used either in the description of the act or failure to act which has been inserted in Instruction 11.78 or in the portion of the order of protection allegedly violated.

Give Instruction 11.78I, defining the term "physical abuse" when the jury is instructed on physical confinement or restraint constituting physical abuse.

See Instruction 11.78.

Use applicable bracketed material.

11.78H
Definition Of Neglect--Violation Of Order Of Protection

The word "neglect" means the failure to exercise that degree of care toward a high-risk adult with disabilities which a reasonable person would exercise under the circumstances and includes

[1] the failure to take reasonable steps to protect a high-risk adult with disabilities from acts of abuse.

[or]

[2] the repeated, careless imposition of unreasonable confinement.

[or]

[3] the failure to provide food, shelter, clothing, and personal hygiene to a high-risk adult with disabilities who requires such assistance.

[or]

[4] the failure to provide medical and rehabilitative care for the physical and mental health needs of a high-risk adult with disabilities.

[or]

[5] the failure to protect a high-risk adult with disabilities from health and safety hazards.

Committee Note

750 ILCS 60/103(11), amended by P.A. 86-542, effective January 1, 1990.

Give Instruction 11.78B, defining the phrase "high-risk adult with disabilities."

Give this instruction when the word "neglect" is used either in the description of the act or failure to act which has been inserted in Instruction 11.78 or in the portion of the order of protection allegedly violated.

See Instruction 11.78.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.78I
Definition Of Physical Abuse--Violation Of Order Of Protection

The term "physical abuse" [includes sexual abuse and] means
[1] knowing or reckless use of physical force, confinement, or restraint.

[or]

[2] knowing, repeated, and unnecessary sleep deprivation.

[or]

[3] knowing or reckless conduct which creates an immediate risk of physical harm.

Committee Note

750 ILCS 60/103(14), amended by P.A. 86-542, effective January 1, 1990.

Give this instruction when the term "physical abuse" is used either in the description of the act or failure to act which has been inserted in Instruction 11.78, in the portion of the order of protection allegedly violated, or in another definition upon which the jury is to be instructed. See, e.g., Instructions 11.78C, 11.78F, and 11.78G.

See Instruction 11.78.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.78J
Definition Of Wilful Deprivation--Violation Of Order Of Protection

The term "wilful deprivation" means wilfully denying a person who, because of [(age) (health) (disability)], requires [(medication) (medical care) (shelter) (food) (a therapeutic device) (____)], and the denial exposes that person to the risk of physical, mental, or emotional harm, except with regard to medical care or treatment when the dependent person has expressed an intent to forego such medical care or treatment.

Committee Note

750 ILCS 60/103(15), amended by P.A. 86-542, effective January 1, 1990.

Give this instruction whenever the term "wilful deprivation" is used either in the description of the act or failure to act which has been inserted in Instruction 11.78 or in the portion of the order of protection allegedly violated.

See Instruction 11.78.

Insert in the blank any other type of physical assistance required by the person who allegedly has been deprived.

Use applicable bracketed material.

11.79
Definition Of Inducement To Commit Suicide--Coercing A Suicide

A person commits the offense of inducement to commit suicide when he coerces another to commit suicide and that person [(commits) (attempts to commit)] suicide as a direct result of the coercion, and the defendant exercises substantial control over that person through [(control of that person's physical location or circumstances) (use of psychological pressure) (use of actual or ostensible religious, political, social, philosophical, or other principles)].

Committee Note

720 ILCS 5/12-31(a)(1) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-31 (1991)), added by P.A. 86-980, effective July 1, 1990, and amended by P.A. 87-1167, effective January 1, 1993. P.A. 87-1167 added the phrase "or attempts to commit" suicide to Section 12-31.

Give Instruction 11.80.

If the phrase "attempts to commit suicide" is used, then give Instruction 11.79A, defining that phrase.

P.A. 88-392, effective August 20, 1993, added a new subsection to this offense (Section 12-31(a)(2)) that, while retaining the name of inducement to commit suicide, is essentially an entirely new offense, focusing on acts which assist a person in committing suicide. Thus, the Committee decided to provide separate definitional and issues instructions for that new offense, Instructions 11.79X and 11.80X, and to call that new offense "Inducement To Commit Suicide--Providing the Means or Participating in a Physical Act." Similarly, the Committee modified the title of this instruction by adding the phrase "--Coercing a Suicide."

Use applicable bracketed material.

11.79A
Definition Of Attempts To Commit Suicide--Inducement To Commit Suicide

The phrase "attempts to commit suicide" means any act done with the intent to commit suicide that constitutes a substantial step toward commission of suicide.

Committee Note

720 ILCS 5/12-31 (West Supp.1993), amended by P.A. 87-1167, effective January 1, 1993. P.A. 87-1167 added the phrase "or attempts to commit" suicide to Section 12-31.

Because Section 12-31, which contains this definition, states that "attempts to commit suicide" has the above meaning "[f]or the purposes of Section [12-31]" the Committee cautions that this definition may not apply to prosecutions other than for inducement to commit suicide.

11.79X
Definition Of Inducement To Commit Suicide--Providing The Means Or Participating In A Physical Act

A person commits the offense of inducement to commit suicide when, with knowledge that another person intends to [(commit) (attempt to commit)] suicide, he intentionally [(offers and provides the physical means) (participates in a physical act)] by which another person [(commits) (attempts to commit)] suicide.

Committee Note

720 ILCS 5/12-31(a)(2) (West Supp.1993), added by P.A. 88-392, effective August 20, 1993.

Give Instruction 11.80X.

If the phrase "attempts to commit suicide" is used, then give Instruction 11.79A, defining that phrase.

P.A. 88-392, effective August 20, 1993, added a new subsection to Section 12-31 that, while retaining the name of inducement to commit suicide, is essentially an entirely new offense, focusing on acts which assist a person in committing suicide. Thus, the Committee decided to provide these separate definitional and issues instructions for this new offense called "Inducement To Commit Suicide--Providing the Means or Participating in a Physical Act." Similarly, the Committee modified the title of Instructions 11.79 and 11.80 by adding the phrase "--Coercing a Suicide."

Use applicable bracketed material.

11.80
Issues In Inducement To Commit Suicide--Coercing A Suicide

To sustain the charge of inducement to commit suicide, the State must prove the following propositions:

First Proposition: That the defendant coerced ____ to commit suicide; and

Second Proposition: That ____[(committed) (attempted to commit)] suicide as a direct result of the defendant's coercion; and

Third Proposition: That the defendant exercised substantial control over ____ through

[1] control of the physical location or circumstances of ____.

[or]

[2] use of psychological pressure.

[or]

[3] use of actual or ostensible religious, political, social, philosophical, or other principles.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-31(a)(1) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-31 (1991)), added by P.A. 86-980, effective July 1, 1990, and amended by P.A. 87-1167, effective January 1, 1993. P.A. 87-1167 added the phrase “or attempts to commit” suicide to Section 12-31.

Give Instruction 11.79.

If the phrase “attempts to commit suicide” is used, then give Instruction 11.79A, defining that phrase.

Insert in the blank the name of the victim.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.80X
Issues In Inducement To Commit Suicide--Providing The Means Or Participating In A Physical Act

To sustain the charge of inducement to commit suicide, the State must prove the following propositions:

First Proposition: That the defendant intentionally [(offered and provided the physical means) (participated in a physical act)] by which ____[(committed) (attempted to commit)] suicide; and

Second Proposition: That the defendant knew that ____ intended to [(commit) (attempt to commit)] suicide.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-31(a)(2) (West Supp.1993), added by P.A. 88-392, effective August 20, 1993.

Give Instruction 11.79X.

If the phrase “attempts to commit suicide” is used, then give Instruction 11.79A, defining that phrase.

Insert in the blank the name of the victim.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.81
Ritual Mutilation

A person commits the offense of ritual mutilation when he [(intentionally) (knowingly) (recklessly)] mutilates, dismembers, or tortures another person as part of a ceremony, rite, initiation, observance, performance, or practice,

[1] and the victim did not consent.

[or]

[2] under such circumstances that the defendant knew or should have known that the victim was unable to render effective consent.

Committee Note

720 ILCS 5/12-32 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-32 (1991)).

Give Instruction 11.82.

Use the mental state that conforms to the allegation in the charge. *See* People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

The offense of ritual mutilation does not include the practice of circumcision or a ceremony, rite, initiation, observance, or performance related thereto. See Section 12-32(c).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

11.82
Issues In Ritual Mutilation

To sustain the charge of ritual mutilation, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] mutilated, dismembered, or tortured ____; and

Second Proposition: That the mutilation, dismemberment, or torture occurred as part of a ceremony, rite, initiation, observance, performance, or practice; and

Third Proposition: That ____ did not consent to the mutilation, dismemberment, or torture.

[or]

Third Proposition: That defendant knew or should have known that under the circumstances present, ____ was unable to render effective consent to the mutilation, dismemberment, or torture.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-32 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-32 (1991)), added by P.A. 86-864, effective January 1, 1990.

Give Instruction 11.81.

Use the mental state that conforms to the allegation in the charge. *See* People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Insert in the blank the name of the victim.

Use the applicable Third Proposition.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.83
Definition Of Cemetery Vandalism

A person commits the offense of cemetery vandalism when he[, without proper legal authority,] wilfully and knowingly

[1] [(destroys) (damages)] the remains of a deceased human being.

[or]

[2] removes any portion of the remains of a deceased human being from a [(burial ground where skeletal remains are buried) (grave) (crypt) (vault) (mausoleum) (repository of human remains)].

[or]

[3] desecrates human remains.

[or]

[4] [(obliterates) (vandalizes) (desecrates)]

[a] a [(burial ground where skeletal remains are buried) (grave) (crypt) (vault) (mausoleum) (repository of human remains)] and the amount of damage is [(less than $500) (at least $500 and less than $10,000) (at least $10,000 and less than $100,000) ($100,000 or more)].

[or]

[b] a park or other area clearly designated to preserve and perpetuate the memory of a deceased person or group of persons and the amount of damage is [(less than $500) (at least $500 and less than $10,000) (at least $10,000 and less than $100,000) ($100,000 or more)].

[or]

[c] [(plants) (trees) (shrubs) (flowers)] located upon or around a repository for human remains or within a human graveyard or cemetery and the amount of damage is [(less than $500) (at least $500 and less than $10,000) (at least $10,000 and less than $100,000) ($100,000 or more)].

[or]

[d] [(fence) (rail) (curb) [or structure of a similar nature]] intended for the

protection or ornamentation of any [(tomb) (monument) (gravestone) [or other structure of like character]] and the amount of damage is [(less than $500) (at least $500 and less than $10,000) (at least $10,000 and less than $100,000) ($100,000 or more)].

[or]

[5] [(defaces) (vandalizes) (injures) (removes)] a [(gravestone or other memorial) (monument) (marker commemorating a deceased person [or group of persons])] [whether located within or outside of a recognized [(cemetery) (memorial park) (battlefield)]] and damages [(at least one but no more than 4 gravestones) (at least 5 but no more than 10 gravestones) (more than 10 gravestones)].

Committee Note

765 ILCS 835/1(a) and (b) (West 1992) (formerly Ill.Rev.Stat. ch. 21, §§15(a) and (b) (1991)), amended by P.A. 87-527, effective September 16, 1991; and P.A. 89-36, effective January 1, 1996.

Give Instruction 11.84.

Use paragraphs [1] through [3] for charges brought under Section 1(a), and paragraphs [4] or [5] for charges brought under Section 1(b).

Use the phrase “without proper legal authority” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 1961 (720 ILCS 5/7-1 through 5/7-14).

Section 1(c) of the statute excludes from the statute's provisions “the removal or unavoidable breakage or injury by a cemetery authority of anything placed in or upon any portion of its cemetery in violation of any of the rules and regulations of the cemetery authority, [or] the removal of anything placed in the cemetery by or with the consent of the cemetery authority that in the judgment of the cemetery authority has become wrecked, unsightly, or dilapidated.”

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

See People v. Marquis, 54 Ill.App.3d 209, 369 N.E.2d 372, 11 Ill.Dec. 918 (4th Dist.1977), concerning the required mental state of wilfulness; see also 720 ILCS 5/4-5 (1992) (formerly Ill.Rev.Stat. ch. 38, §4-5 (1991)).

11.84
ISSUES IN CEMETERY VANDALISM

To sustain the charge of cemetery vandalism, the State must prove the following proposition:

[1] That the defendant[, without proper legal authority,] wilfully and knowingly [(destroyed) (damaged)] the remains of a deceased human being.

[or]

[2] That the defendant[, without proper legal authority,] wilfully and knowingly removed any portion of the remains of a deceased human being from a [(burial ground where skeletal remains are buried) (grave) (crypt) (vault) (mausoleum) (repository of human remains)].

[or]

[3] That the defendant[, without proper legal authority,] wilfully and knowingly desecrated human remains.

[or]

[4] That the defendant[, without proper legal authority,] wilfully and knowingly [(obliterated) (vandalized) (desecrated)]

[a] a [(burial ground where skeletal remains are buried) (grave) (crypt) (vault) (mausoleum) (repository of human remains)] and the amount of damage was [(less than $500) (at least $500 and less than $10,000) (at least $10,000 and less than $100,000) ($100,000 or more)].

[b] a park or other area clearly designated to preserve and perpetuate the memory of a deceased person or group of persons and the amount of damage was [(less than $500) (at least $500 and less than $10,000) (at least $10,000 and less than $100,000) ($100,000 or more)].

[or]

[c] [(plants) (trees) (shrubs) (flowers)] located upon or around a repository for human remains or within a human graveyard or cemetery and the amount of damage was [(less than $500) (at least $500 and less than $10,000) (at least $10,000 and less than $100,000) ($100,000 or more)].

[or]

[d] [(fence) (rail) (curb) [or structure of a similar nature]] intended for the protection or ornamentation of any [(tomb) (monument) (gravestone) [or other

structure of like character]] and the amount of damage was [(less than $500) (at least $500 and less than $10,000) (at least $10,000 and less than $100,000) ($100,000 or more)].

[or]

[5] That the defendant[, without proper legal authority,] wilfully and knowingly [(defaced) (vandalized) (injured) (removed)] a [(gravestone or other memorial) (monument) (marker commemorating a deceased person [or group of persons])] [whether located within or outside of a recognized [(cemetery) (memorial park) (battlefield)]] and damaged [(at least one but no more than 4 gravestones) (at least 5 but no more than 10 gravestones) (more than 10 gravestones)].

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

765 ILCS 835/1(a) and (b) (West 1992) (formerly Ill.Rev.Stat. ch. 21, §§15(a) and (b) (1991)), amended by P.A. 87-527, effective September 16, 1991; and P.A. 89-36, effective January 1, 1996.

Give Instruction 11.83.

See the Committee Note to Instruction 11.83 to distinguish separate sections of the statute.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase "without proper legal authority" in Instruction 11.83 (see Committee Note to Instruction 11.83), and this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Since the additional proposition or propositions that will thereby be included require the jury to find that the defendant acted without proper legal authority, the Committee has concluded that the phrase "without proper legal authority" need not be used in this issues instruction.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

See People v. Marquis, 54 Ill.App.3d 209, 369 N.E.2d 372, 11 Ill.Dec. 918 (4th Dist.1977), concerning the required mental state of wilfulness; see also 720 ILCS 5/4-5 (1992) (formerly Ill.Rev.Stat. ch. 38, §4-5 (1991)).

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.85
Definition Of Compelling A Person Under 18 Years Of Age To Join An Organization Or Association

A person commits the offense of compelling a person under 18 years of age to join an organization or association when he, being 18 years of age or older, [(expressly or impliedly threatens to do bodily harm to a person under 18 years of age) (does bodily harm to a person under 18 years of age) (uses ____)] with the intent to [(solicit or cause any person under 18 years of age to join) (deter any person under 18 years of age from leaving)] any organization or association, regardless of the nature of such organization or association.

Committee Note

720 ILCS 5/12-6.1 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §12-6.1 (1991)); amended by P.A. 89-8, effective March 21, 1995.

Give Instruction 11.86.

Give this instruction for charges brought under the second paragraph of Section 12-6.1. Use Instruction 11.43 (Definition of Compelling Organization Membership of Persons) for charges brought under the first paragraph of Section 12-6.1.

The third alternative means of compelling organization membership--”any criminally unlawful means”--applies only to something other than threats to do bodily harm or actually inflicting bodily harm. Insert in the blank the “criminally unlawful means” to which the information or indictment refers.

Use applicable bracketed material.

11.86
Issues In Compelling A Person Under 18 Years Of Age To Join An Organization Or Association

To sustain the charge of compelling a person under 18 years of age to join an organization or association, the State must prove the following propositions:

First Proposition: That the defendant [(expressly or impliedly threatened to do bodily harm to a person under 18 years of age) (did bodily harm to a person under 18 years of age (used ____)]; and

Second Proposition: That the defendant did so with the intent to [(solicit or cause a person under 18 years of age to join) (deter a person under 18 years of age from leaving)] any organization or association; and

Third Proposition: That when the defendant did so, he was 18 years of age or older.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-6.1 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-6.1 (1991)); amended by P.A. 89-8; effective March 21, 1995.

Give Instruction 11.85.

Give this instruction only for charges brought under the second paragraph of Section 12-6.1 Use Instruction 11.44 (Issues in Compelling Organization Membership of Persons) for charges brought under the first paragraph of Section 12-6.1.

If at issue, insert in the blank the criminally unlawful means. See Committee Note to Instruction 11.85.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.87
Definition Of Stalking (Until August 20, 1993)

A person commits the offense of stalking when he transmits a threat to another person with the intent to place that person in reasonable apprehension of [(death) (bodily harm) (sexual assault) (confinement) (restraint)], and in furtherance of that threat does [any one or more of] the following act[s] on at least two separate occasions:

[1] knowingly follows the person, other than within the residence of the defendant.

[or]

[2] knowingly places the person under surveillance by remaining present outside [(the person's school) (the person's place of employment) (the person's vehicle) (any place occupied by the person) (the person's residence other than the residence of the defendant)].

Committee Note

P.A. 88-402, effective August 20, 1993, substantially redefined the offense of stalking. Thus, this instruction may be used *only* in cases in which the alleged stalking occurred before August 20, 1993.

720 ILCS 5/12-7.3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-7.3 (1991)), added by P.A. 87-870 and P.A. 87-871, effective July 12, 1992.

Give Instruction 11.88.

Section 12-7.3(c) exempts picketing occurring at the workplace that is otherwise lawful and arises out of a *bona fide* labor dispute from the offense of stalking. The defendant bears the burden of proving this exception by a preponderance of the evidence. *See* People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978); People v. Foster, 195 Ill.App.3d 926, 552 N.E.2d 1112, 142 Ill.Dec. 371 (5th Dist.1990); People v. McQueen, 241 Ill.App.3d 509, 608 N.E.2d 1333, 181 Ill.Dec. 859 (4th Dist.1993).

Use the bracketed phrase “any one or more of” when instructing the jury on both paragraphs [1] and [2].

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.87A
Definition Of Follows Another Person

The phrase "follows another person" means [(to move in relative proximity to a person as that person moves from place to place) (to remain in relative proximity to a person who is stationary or whose movements are confined to a small area)].

[The phrase "follows another person" does not include a following within the residence of the defendant.]

Committee Note

720 ILCS 5/12-7.3(e) (West 1994), amended by P.A. 89-377, effective August 18, 1995.

Give this instruction when the phrase "follows another person" is at issue.

Use applicable bracketed material.

11.87B
Definition Of *Bona Fide* Labor Dispute

The phrase "*bona fide* labor dispute" means any controversy concerning wages, salaries, hours, working conditions, or benefits, including health and welfare, sick leave, insurance, and pension or retirement provisions, the making or maintaining of collective bargaining agreements, and the terms to be included in those agreements.

Committee Note

720 ILCS 5/12-7.3(f) (West 1994), added by P.A. 89-377, effective August 18, 1995.

Give this instruction when the phrase "*bona fide* labor dispute" is at issue.

11.87C
Definition Of Places A Person Under Surveillance

The phrase "places a person under surveillance" means that the defendant remained present outside [(the school of ____) (the place of employment of ____) (the vehicle of ____) (any place occupied by ____) (a residence other than the residence of the defendant)].

Committee Note

720 ILCS 5/12-7.3(d) (West 1994).

Give this instruction when the phrase "places a person under surveillance" is at issue.

Insert in the blanks the name of the alleged victim. The name of only one person should appear in each of the blanks of this instruction, and it should be the same name throughout.

This instruction used to be bracketed paragraph [3] in Instruction 11.87X.

11.87X
Definition Of Stalking (As Of August 20, 1993)

A person commits the offense of stalking when he knowingly [without lawful justification] on at least 2 separate occasions [(follows another person) (places another person under surveillance) (follows another person or places another person under surveillance)] and

[1] at any time knowingly transmits a threat to that person of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)].

[or]

[2] places that person in reasonable apprehension of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)].

Committee Note

720 ILCS 5/12-7.3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-7.3 (1991)), added by P.A. 87-870 and P.A. 87-871, effective July 12, 1992, and amended by P.A. 88-402, effective August 20, 1993.

Note that this instruction may be used *only* in cases in which the alleged stalking occurred on or after August 20, 1993, the effective date of P.A. 88-402, which substantially rewrote the definition of stalking. For cases involving stalking that allegedly occurred before August 20, 1993, use Instruction 11.87.

Give Instruction 11.88X.

When the phrase "follows another person" is at issue, give Instruction 11.87A, defining that phrase and explaining what it does not include.

When the phrase "places a person under surveillance" is at issue, give Instruction 11.87C, defining that phrase.

Section 12-7.3(c) provides that picketing occurring at the workplace that is otherwise lawful and arises out of a *bona fide* labor dispute does not come within the definition of stalking. When a *bona fide* labor dispute is at issue, give Instruction 11.87B, defining that phrase. P.A. 88-402, effective August 20, 1993, added that "any exercise of the right of free speech or assembly that is otherwise lawful" similarly does not come within the definition of stalking. See 720 ILCS 5/12-7.3(c) (West 1994). The defendant bears the burden of proving these exceptions by a preponderance of the evidence. *See* People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978); People v. Foster, 195 Ill.App.3d 926, 552 N.E.2d 1112, 142 Ill.Dec. 371 (5th Dist.1990); People v. McQueen, 241 Ill.App.3d 509, 608 N.E.2d 1333, 181 Ill.Dec. 859 (4th Dist.1993).

Use applicable bracketed material.

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 1961 (720 ILCS 5/7-1 *et seq.*). *See* People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.88
Issues In Stalking (Until August 20, 1993)

To sustain the charge of stalking, the State must prove the following propositions:

First Proposition: That the defendant transmitted a threat to ____; and

Second Proposition: That the defendant did so with the intent to place ____ in reasonable apprehension of [(death) (bodily harm) (sexual assault) (confinement) (restraint)]; and

Third Proposition: That the defendant, in furtherance of that threat, did [any one or more of] the following act[s] on at least two separate occasions:

[1] knowingly followed ____, other than within the residence of the defendant.

[or]

[2] knowingly placed ____ under surveillance by remaining present outside [(the school of ____) (the place of employment of ____) (the vehicle of ____) (any place occupied by ____) (the residence of ____ other than the residence of the defendant)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

P.A. 88-402, effective August 20, 1993, substantially redefined the offense of stalking. Thus, this instruction may be used *only* in cases in which the alleged stalking occurred before August 20, 1993.

720 ILCS 5/12-7.3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-7.3 (1991)), added by P.A. 87-870 and P.A. 87-871, effective July 12, 1992.

Give Instruction 11.87.

Use the bracketed phrase “any one or more of” when instructing the jury on both paragraphs [1] and [2].

Insert in the blanks the name of the alleged victim. The name of only one person should appear in each of the blanks of this instruction, and it should be the same name throughout.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.88X
Issues In Stalking (As Of August 20, 1993)

To sustain the charge of stalking, the State must prove the following propositions:

First Proposition: That the defendant on at least two separate occasions knowingly [without lawful justification] [(followed ____) (placed ____ under surveillance) (followed or placed ____ under surveillance)]; and

[1] *Second Proposition*: That the defendant at any time knowingly transmitted a threat to ____ of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)].

[or]

[2] *Second Proposition*: That the defendant knowingly placed ____ in reasonable apprehension of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-7.3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-7.3 (1991)), added by P.A. 87-870 and P.A. 87-871, effective July 12, 1992, and amended by P.A. 88-402, effective August 20, 1993.

Note that this instruction may be used *only* in cases in which the alleged stalking occurred on or after August 20, 1993, the effective date of P.A. 88-402, which substantially rewrote the definition of stalking. For cases involving stalking that allegedly occurred before August 20, 1993, use Instruction 11.88.

Give Instruction 11.87X.

Insert in the blanks the name of the alleged victim. The name of only one person should appear in each of the blanks of this instruction, and it should be the same name throughout.

Use applicable bracketed material.

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 1961 (720 ILCS 5/7-1 *et seq.*). *See* People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.89
Definition Of Aggravated Stalking--Bodily Harm, Confinement, Or Restraint

A person commits the offense of aggravated stalking when, in conjunction with committing the offense of stalking, he [(intentionally) (knowingly) (recklessly)] [(causes bodily harm to) (confines or restrains)] the victim.

Committee Note

720 ILCS 5/12-7.4(a)(1) and (a)(2) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-7.4(a)(1) and (a)(2) (1991)), added by P.A. 87-870 and P.A. 87-871, effective July 12, 1992.

Give Instruction 11.87.

Give Instruction 11.90.

Section 12-7.4(c) provides that picketing occurring at the workplace that is otherwise lawful and arises out of a *bona fide* labor dispute does not come within the definition of stalking. P.A. 88-402, effective August 20, 1993, added that "any exercise of the right of free speech or assembly that is otherwise lawful" similarly does not come within the definition of aggravated stalking. See 720 ILCS 5/12-7.4(c) (West 1994). The defendant bears the burden of proving these exceptions by a preponderance of the evidence. *See* People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978); People v. Foster, 195 Ill.App.3d 926, 552 N.E.2d 1112, 142 Ill.Dec. 371 (5th Dist.1990); People v. McQueen, 241 Ill.App.3d 509, 608 N.E.2d 1333, 181 Ill.Dec. 859 (4th Dist.1993).

Based on People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), the Committee believes that one of the three bracketed mental states must describe a defendant's mental state when he allegedly caused bodily harm to, confined, or restrained the victim. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used 720 ILCS 5/4-3(b) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

The Committee decided to divide the offense of aggravated stalking into two separate sets of definitional and issues instructions--aggravated stalking based on bodily harm, confinement, or restraint (Instructions 11.89 and 11.90), and aggravated stalking based on the violation of a court order (Instructions 11.91 and 11.92)--because the Committee believed one set of definitional and issues instructions for this offense might prove unnecessarily complicated.

P.A. 88-402, effective August 20, 1993, also substantially redefined the offense of stalking and required the Committee to prepare Instructions 11.87X, 11.88X, 11.90X, and 11.92X to address this statutory change. However, because this instruction merely refers by name to the offense of stalking, the Committee had no need to modify it.

Use applicable bracketed material.

11.90
Issues In Aggravated Stalking--Bodily Harm, Confinement, Or Restraint (Until August 20, 1993)

To sustain the charge of aggravated stalking, the State must first prove that the defendant committed the offense of stalking. To sustain the charge of stalking, the State must prove the following propositions:

First Proposition: That the defendant transmitted a threat to ____; and

Second Proposition: That the defendant did so with the intent to place ____ in reasonable apprehension of [(death) (bodily harm) (sexual assault) (confinement) (restraint)]; and

Third Proposition: That the defendant, in furtherance of that threat, did [any one or more of] the following act[s] on at least two separate occasions:

[1] knowingly followed ____, other than within the residence of the defendant;

[or]

[2] knowingly placed ____ under surveillance by remaining present outside [(the school of ____) (the place of employment of ____) (the vehicle of ____) (any place occupied by ____) (the residence of ____ other than the residence of the defendant)].

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations on these charges should end and you should return a verdict of not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you have concluded that the defendant committed the offense of stalking. You should now go on with your deliberations to decide whether the defendant is guilty of aggravated stalking.

To sustain the charge of aggravated stalking, the State must prove the following additional proposition:

Fourth Proposition: That, in conjunction with committing the offense of stalking, the defendant [(intentionally) (knowingly) (recklessly)] [(caused bodily harm to ____) (confined or restrained ____)].

If you find from your consideration of all the evidence that this Fourth Proposition has also been proved beyond a reasonable doubt, you should find the defendant guilty of aggravated stalking.

If you find from your consideration of all the evidence that this Fourth Proposition has not been proved beyond a reasonable doubt, then you should find the defendant not guilty of aggravated stalking [and guilty of stalking].

Committee Note

P.A. 88-402, effective August 20, 1993, substantially redefined the offense of stalking. Thus, this instruction may be used *only* in cases in which the alleged aggravated stalking occurred before August 20, 1993.

720 ILCS 5/12-7.4(a)(1) and (a)(2) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §§12-7.4(a)(1) and (a)(2) (1991)), added by P.A. 87-870 and P.A. 87-871, effective July 12, 1992.

Give Instruction 11.89.

Use the bracketed phrase “any one or more of” when instructing the jury on both paragraphs [1] and [2].

After considerable discussion, the Committee decided to have the jury first instructed on the elements of stalking and then on the aggravating factor that changes stalking to aggravated stalking. The Committee chose to do so because of the difficulty in otherwise addressing in jury instructions the phrase “in *conjunction with committing* the offense of stalking” (emphasis added), a phrase that does not appear anywhere else in Illinois criminal law.

Insert in the blanks the name of the victim. The name of only one person should appear in each of the blanks of this instruction, and it should be the same name throughout.

Based on People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), the Committee believes that one of the three bracketed mental states must describe a defendant's mental state when he allegedly caused bodily harm to, confined, or restrained the victim. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used 720 ILCS 5/4-3(b) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.90X
Issues In Aggravated Stalking--Bodily Harm, Confinement, Or Restraint (As Of August 20, 1993)

To sustain the charge of aggravated stalking, the State must first prove that the defendant committed the offense of stalking. To sustain the charge of stalking, the State must prove the following propositions:

First Proposition: That the defendant on at least two separate occasions knowingly [(followed ____) (placed ____ under surveillance) (followed or placed ____ under surveillance)]; and

[1] *Second Proposition:* That the defendant at any time knowingly transmitted a threat to ____ of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)].

[or]

[2] *Second Proposition:* That the defendant knowingly placed ____ in reasonable apprehension of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)].

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations on these charges should end and you should return a verdict of not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you have concluded that the defendant committed the offense of stalking. You should now go on with your deliberations to decide whether the defendant is guilty of aggravated stalking.

To sustain the charge of aggravated stalking, the State must prove the following additional proposition:

Third Proposition: That, in conjunction with committing the offense of stalking, the defendant [(intentionally) (knowingly) (recklessly)] [(caused bodily harm to ____) (confined or restrained ____)].

If you find from your consideration of all the evidence that this Third Proposition has also been proved beyond a reasonable doubt, you should find the defendant guilty of aggravated stalking.

If you find from your consideration of all the evidence that this Third Proposition has not been proved beyond a reasonable doubt, then you should find the defendant not guilty of aggravated stalking [and guilty of stalking].

Committee Note

720 ILCS 5/12-7.4(a)(1) and (a)(2) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §§12-7.4(a)(1) and (a)(2) (1991)), added by P.A. 87-870 and P.A. 87-871, effective July 12, 1992, and amended by P.A. 88-402, effective August 20, 1993.

Note that this instruction may be used *only* in cases in which the alleged stalking occurred on or after August 20, 1993, the effective date of P.A. 88-402, which substantially rewrote the definition of stalking. For cases involving aggravated stalking that allegedly occurred before August 20, 1993, use Instruction 11.90.

Give Instruction 11.89.

Insert in the blanks the name of the victim. The name of only one person should appear in each of the blanks of this instruction, and it should be the same name throughout.

After considerable discussion, the Committee decided to have the jury first instructed on the elements of stalking and then on the aggravating factor that changes stalking to aggravated stalking. The Committee chose to do so because of the difficulty in otherwise addressing in jury instructions the phrase "in *conjunction with committing* the offense of stalking" (emphasis added), a phrase that does not appear anywhere else in Illinois criminal law.

Based on People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), the Committee believes that one of the three bracketed mental states must describe a defendant's mental state when he allegedly caused bodily harm to, confined, or restrained the victim. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used 720 ILCS 5/4-3(b) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.91
Definition Of Aggravated Stalking--Violation Of A Court Order

A person commits the offense of aggravated stalking when, in conjunction with committing the offense of stalking, he [(intentionally) (knowingly) (recklessly)] violates [(a temporary restraining order) (an order of protection) (an injunction)] prohibiting the [(harassment) (interference with personal liberty) (physical abuse) (willful deprivation) (neglect) (exploitation) (intimidation of a dependent)] of the victim.

The term [("harassment") ("interference with personal liberty") ("physical abuse") ("willful deprivation") ("neglect") ("exploitation") ("intimidation of a dependent")] means ____.

Committee Note

720 ILCS 5/12-7.4(a)(3) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-7.4(a)(3) (1991)), added by P.A. 87-870 and 87-871, effective July 12, 1992.

Give Instruction 11.87.

Give Instruction 11.90.

Section 12-7.4(c) provides that picketing occurring at the workplace that is otherwise lawful and arises out of a *bona fide* labor dispute does not come within the definition of stalking. P.A. 88-402, effective August 20, 1993, added that "any exercise of the right of free speech or assembly that is otherwise lawful" similarly does not come within the definition of aggravated stalking. See 720 ILCS 5/12-7.4(c) (West 1994). The defendant bears the burden of proving these exceptions by a preponderance of the evidence. *See* People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978); People v. Foster, 195 Ill.App.3d 926, 552 N.E.2d 1112, 142 Ill.Dec. 371 (5th Dist.1990); People v. McQueen, 241 Ill.App.3d 509, 608 N.E.2d 1333, 181 Ill.Dec. 859 (4th Dist.1993).

Based on People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), the Committee believes that one of the three bracketed mental states must describe a defendant's mental state when he allegedly violated the temporary restraining order, order of protection, or injunction at issue. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used 720 ILCS 5/4-3(b) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

The Committee decided to divide the offense of aggravated stalking into two separate sets of definitional and issues instructions--aggravated stalking based on bodily harm, confinement, or restraint (Instructions 11.89 and 11.90), and aggravated stalking based on the violation of a court order (Instructions 11.91 and 11.92)--because the Committee believed one set of definitional and issues instructions for this offense might prove too complicated.

Section 12-7.4(a)(3), which defines this form of aggravated stalking, incorporates the provisions of 750 ILCS 60/214(b)(1) (West 1992) (formerly Ill.Rev.Stat. ch. 40, §2312-14(b)(1) (1991)) by specific reference. The behavior specified in this instruction, which raises the offense of stalking (a Class 4 felony) to aggravated stalking (a Class 3 felony), is thus derived from 750 ILCS 60/214(b)(1).

P.A. 88-402, effective August 20, 1993, also substantially redefined the offense of stalking and required the Committee to prepare Instructions 11.87X, 11.88X, 11.90X, and 11.92X to address this statutory change. However, because this instruction merely refers by name to the offense of stalking, the Committee had no need to modify it.

Insert in the blank the definition of the term that is used in the last bracketed alternative in the first paragraph of this instruction. Give the definition for this term as set forth in Section 103 of the Illinois Domestic Violence Act (750 ILCS 60/103 (West 1992) (formerly Ill.Rev.Stat. ch. 40, §2311-3 (1991))).

Use applicable bracketed material.

11.92
Issues In Aggravated Stalking--Violation Of A Court Order (Until August 20, 1993)

To sustain the charge of aggravated stalking, the State must first prove that the defendant committed the offense of stalking. To sustain the charge of stalking, the State must prove the following propositions:

First Proposition: That the defendant transmitted a threat to ____; and

Second Proposition: That the defendant did so with the intent to place ____ in reasonable apprehension of [(death) (bodily harm) (sexual assault) (confinement) (restraint)]; and

Third Proposition: That the defendant, in furtherance of that threat, did [any one or more of] the following act[s] on at least two separate occasions:

[1] knowingly followed ____, other than within the residence of the defendant;

[or]

[2] knowingly placed ____ under surveillance by remaining present outside [(the school of ____) (the place of employment of ____) (the vehicle of ____) (any place occupied by ____) (the residence of ____ other than the residence of the defendant)];

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations on these charges should end and you should return a verdict of not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you have concluded that the defendant committed the offense of stalking. You should now go on with your deliberations to decide whether the defendant is guilty of aggravated stalking.

To sustain the charge of aggravated stalking, the State must prove the following additional proposition:

Fourth Proposition: That, in conjunction with committing the offense of stalking, the defendant [(intentionally) (knowingly) (recklessly)] violated [(a temporary restraining order) (an order of protection) (an injunction)] prohibiting the [(harassment) (interference with personal liberty) (physical abuse) (willful deprivation) (neglect) (exploitation) (intimidation of a dependent)] of ____.

If you find from your consideration of all the evidence that this Fourth Proposition has also been proved beyond a reasonable doubt, you should find the defendant guilty of aggravated stalking.

If you find from your consideration of all the evidence that this Fourth Proposition has not been proved beyond a reasonable doubt, then you should find the defendant not guilty of aggravated stalking [and guilty of stalking].

Committee Note

P.A. 88-402, effective August 20, 1993, substantially redefined the offense of stalking. Thus, this instruction may be used *only* in cases in which the alleged stalking occurred before August 20, 1993.

720 ILCS 5/12-7.4(a)(3) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-7.4(a)(3) (1991)), added by P.A. 87-870 and P.A. 87-871, effective July 12, 1992.

Give Instruction 11.91.

Use the bracketed phrase “any one or more of” when instructing the jury on both paragraphs [1] and [2].

Insert in the blanks the name of the alleged victim. The name of only one person should appear in each of the blanks of this instruction, and it should be the same name throughout.

Based on People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), the Committee believes that one of the three bracketed mental states must describe a defendant's mental state when he allegedly violated the temporary restraining order, order of protection, or injunction at issue. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used 720 ILCS 5/4-3(b) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

After considerable discussion, the Committee decided to have the jury first instructed on the elements of stalking and then on the aggravating factor that changes stalking to aggravated stalking. The Committee chose to do so because of the difficulty in otherwise addressing in jury instructions the phrase “in *conjunction with committing* the offense of stalking” (emphasis added), a phrase that does not appear anywhere else in Illinois criminal law.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.92X
Issues In Aggravated Stalking--Violation Of A Court Order (As Of August 20, 1993)

To sustain the charge of aggravated stalking, the State must first prove that the defendant committed the offense of stalking. To sustain the charge of stalking, the State must prove the following propositions:

First Proposition: That the defendant on at least two separate occasions knowingly [(followed ____) (placed ____ under surveillance) (followed or placed ____ under surveillance)]; and

[1] *Second Proposition:* That the defendant at any time knowingly transmitted a threat to ____ of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)].

[or]

[2] *Second Proposition:* That the defendant knowingly placed ____ in reasonable apprehension of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)].

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations on these charges should end and you should return a verdict of not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you have concluded that the defendant committed the offense of stalking. You should now go on with your deliberations to decide whether the defendant is guilty of aggravated stalking.

To sustain the charge of aggravated stalking, the State must prove the following additional proposition:

Third Proposition: That, in conjunction with committing the offense of stalking, the defendant [(intentionally) (knowingly) (recklessly)] violated [(a temporary restraining order) (an order of protection) (an injunction)] prohibiting the [(harassment) (interference with personal liberty) (physical abuse) (willful deprivation) (neglect) (exploitation) (intimidation of a dependent)] of ____.

If you find from your consideration of all the evidence that this Third Proposition has also been proved beyond a reasonable doubt, you should find the defendant guilty of aggravated stalking.

If you find from your consideration of all the evidence that this Third Proposition has not been proved beyond a reasonable doubt, then you should find the defendant not guilty of aggravated stalking [and guilty of stalking].

Committee Note

720 ILCS 5/12-7.4(a)(3) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-7.4(a)(3) (1991)), added by P.A. 87-870 and P.A. 87-871, effective July 12, 1992, and amended by P.A. 88-402, effective August 20, 1993.

Note that this instruction may be used *only* in cases in which the alleged stalking occurred on or after August 20, 1993, the effective date of P.A. 88-402, which substantially rewrote the definition of stalking. For cases involving aggravated stalking that allegedly occurred before August 20, 1993, use Instruction 11.92.

Give Instruction 11.91.

Insert in the blanks the name of the victim. The name of only one person should appear in each of the blanks of this instruction, and it should be the same name throughout.

After considerable discussion, the Committee decided to have the jury first instructed on the elements of stalking and then on the aggravating factor that changes stalking to aggravated stalking. The Committee chose to do so because of the difficulty in otherwise addressing in jury instructions the phrase "in *conjunction with committing* the offense of stalking" (emphasis added), a phrase that does not appear anywhere else in Illinois criminal law.

Based on People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), the Committee believes that one of the three bracketed mental states must describe a defendant's mental state when he allegedly violated the temporary restraining order, order of protection, or injunction at issue. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used 720 ILCS 5/4-3(b) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.93
Definition Of Vehicular Invasion

A person commits the offense of vehicular invasion when he knowingly, by force [and without lawful justification], [(enters) (reaches into)] the interior of a motor vehicle while the motor vehicle is occupied by another person, with the intent to commit therein [(a theft) (the offense of ____)].

Committee Note

720 ILCS 5/12-11.1(a) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-11.1(a) (1991)), added by P.A. 86-1392, effective January 1, 1991.

Give Instruction 11.94.

Give the definition of the offense (theft or the specified felony) that is alleged as the objective of the vehicular invasion.

Give Instruction 23.43B, defining the term "motor vehicle", if there is an issue as to whether the object of entry or penetration is a motor vehicle.

Use the phrase "and without lawful justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 1961 (720 ILCS 5/7-1 *et seq.*).

Insert in the blank the intended offense alleged in the charge.

Use applicable bracketed material.

11.94
Issues In Vehicular Invasion

To sustain the charge of vehicular invasion, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(entered) (reached into)] the interior of a motor vehicle; and

Second Proposition: That the defendant did so by force; and

Third Proposition: That the motor vehicle was occupied by another person; and

Fourth Proposition: That the defendant did so with the intent to commit therein [(a theft) (the offense of ____)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-11.1(a) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-11.1(a) (1991)), added by P.A. 86-1392, effective January 1, 1991.

Give Instruction 11.93.

Give the definition of the offense (theft or the specified felony) that is alleged as the objective of the vehicular invasion.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase "and without lawful justification" in Instruction 11.93 (see Committee Note to Instruction 11.93), and this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without lawful justification, the Committee has concluded that the phrase "and without lawful justification" need not be used in this issues instruction.

Insert in the blank the intended offense alleged in the charge.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.95
Definition Of Ritualized Abuse Of A Child

A person commits the offense of ritualized abuse of a child when he [(intentionally) (knowingly) (recklessly)] commits [any of] the following act[s] [(with) (upon) (in the presence of)] a child under 18 years of age as part of a ceremony, rite, or any similar observance:

[1] actually or in simulation, tortures, mutilates, or sacrifices any warm-blooded animal or human being.

[or]

[2] forces ingestion, injection, or other application of any narcotic, drug, hallucinogen, or anesthetic for the purpose of dulling sensitivity, cognition, recollection of, or resistance to, any criminal activity.

[or]

[3] forces ingestion, or external application, of human or animal urine, feces, flesh, blood, bones, body secretions, nonprescribed drugs, or chemical compounds.

[or]

[4] involves the child in a mock, unauthorized or unlawful marriage ceremony with another person or representation of any force or deity, followed by sexual contact with the child.

[or]

[5] places the living child into a coffin or open grave containing a human corpse or remains.

[or]

[6] threatens death or serious harm to the child, the child's parents, family, pets, or friends that instills a well-founded fear in the child that the threat will be carried out.

[or]

[7] unlawfully dissects, mutilates, or incinerates a human corpse.

Committee Note

720 ILCS 5/12-33 (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, §12-33 (1992)).

Give Instruction 11.96.

Because Section 12-33 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

11.96
Issues In Ritualized Abuse Of A Child

To sustain the charge of ritualized abuse of a child, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] committed [any of] the following act[s] [(with) (upon) (in the presence of)] a child under 18 years of age:

[1] actually or in simulation, tortures, mutilates, or sacrifices any warm-blooded animal or human being; and

[or]

[2] forces ingestion, injection, or other application of any narcotic, drug, hallucinogen, or anesthetic for the purpose of dulling sensitivity, cognition, recollection of, or resistance to any criminal activity; and

[or]

[3] forces ingestion, or external application, of human or animal urine, feces, flesh, blood, bones, body secretions, nonprescribed drugs, or chemical compounds; and

[or]

[4] involves the child in a mock, unauthorized or unlawful marriage ceremony with another person or representation of any force or deity, followed by sexual contact with the child; and

[or]

[5] places the living child into a coffin or open grave containing a human corpse or remains; and

[or]

[6] threatens death or serious harm to the child, the child's parents, family, pets, or friends that instills a well-founded fear in the child that the threat will be carried out; and

[or]

[7] unlawfully dissects, mutilates, or incinerates a human corpse; and

Second Proposition: That the defendant did so as part of a ceremony, rite, or any similar observance.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-33 (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, §12-33 (1992)).

Give Instruction 11.95.

Because Section 12-33 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.97
Definition Of Vehicular Endangerment

A person commits the offense of vehicular endangerment when he, with the intent to strike a motor vehicle, causes by any means an object to fall from an overpass in the direction of a moving motor vehicle traveling upon any highway, and that object strikes a motor vehicle [resulting in death].

Committee Note

720 ILCS 5/12-2.5 (West Supp.1993), added by P.A. 88-467, effective July 1, 1994.

Give Instruction 11.98.

Use the bracketed language "[resulting in death]" only in cases in which the State alleged that death resulted, thereby raising the offense from a Class 2 felony to a Class 1 felony. See Section 12-2.5(b).

Give Instruction 11.97A, defining the terms "object" and "overpass", if either term is at issue.

Give Instruction 23.43B, defining the term "motor vehicle", if there is an issue whether the vehicle on the highway is a motor vehicle.

Give Instruction 11.97B, defining the term "highway", if there is an issue whether the location of the motor vehicle is a highway.

Use applicable bracketed material.

11.97A
Definitions Of Object And Overpass

[The term “object” means any object or substance that by its size, weight, or consistency is likely to cause great bodily harm to any occupant of a motor vehicle.]

[The term “overpass” means any structure that passes over a highway.]

Committee Note

720 ILCS 5/12-2.5(c) (West Supp.1993), added by P.A. 88-467, effective July 1, 1994.

Use applicable bracketed material.

11.97B
Definition Of Highway

The term "highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

Committee Note

625 ILCS 5/1-126 (West 1992); see also 720 ILCS 5/12-2.5(c) (West Supp.1993), added by P.A. 88-467, effective July 1, 1994.

11.98
Issues In Vehicular Endangerment

To sustain the charge of vehicular endangerment, the State must prove the following propositions:

First Proposition: That the defendant caused by any means an object to fall from an overpass; and

Second Proposition: That the defendant did so with the intent to strike a motor vehicle; and

Third Proposition: That the defendant caused the object to fall in the direction of a moving motor vehicle traveling upon any highway; and

Fourth Proposition: That the object struck a motor vehicle[(.) (; and)]

[*Fifth Proposition:* That death resulted.]

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-2.5 (West Supp.1993), added by P.A. 88-467, effective July 1, 1994.

Give Instruction 11.97.

Use the bracketed Fifth Proposition only in cases in which the State alleged that death resulted, thereby raising the offense from a Class 2 felony to a Class 1 felony. See Section 12-2.5(b).

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.99
Definition Of Permitting The Sexual Abuse Of A Child

A person commits the offense of permitting the sexual abuse of a child when he is a [(parent) (step-parent) (legal guardian) (person having custody)] of a child and he knowingly

[1] allows or permits an act of [(criminal sexual abuse) (aggravated criminal sexual abuse) (criminal sexual assault) (aggravated criminal sexual assault)] upon the child and fails to take reasonable steps to prevent the commission of the act [or future occurrences of such acts].

[or]

[2] [(permits) (induces) (promotes) (arranges for)] the child to engage in prostitution and fails to take reasonable steps to prevent the commission of the act [or future occurrences of such acts].

The word "child" means a person under 17 years of age.

Committee Note

720 ILCS 150/5.1 (West 1992) (formerly Ill.Rev.Stat. ch. 23, §2355.1 (1991)), amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 11.100.

Give the definitional instructions for the appropriate underlying offense: criminal sexual abuse--Instruction 11.59; aggravated criminal sexual abuse--Instruction 11.61; criminal sexual assault--Instruction 11.55; aggravated criminal sexual assault--Instruction 11.57; or prostitution--Instruction 9.09.

Use the bracketed phrase "[or future occurrences of such acts]" when appropriate.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

11.100
Issues In Permitting The Sexual Abuse Of A Child

To sustain the charge of permitting the sexual abuse of a child, the State must prove the following propositions:

First Proposition: That the defendant was the [(parent) (step-parent) (legal guardian) (person having custody)] of ____; and

Second Proposition: That ____ was under 17 years of age; and

[1] *Third Proposition:* That the defendant knowingly allowed or permitted an act of [(criminal sexual abuse) (aggravated criminal sexual abuse) (criminal sexual assault) (aggravated criminal sexual assault)] upon ____; and

[or]

[2] *Third Proposition:* That the defendant knowingly [(permitted) (induced) (promoted) (arranged for)] ____ to engage in prostitution; and

Fourth Proposition: That the defendant failed to take reasonable steps to prevent the commission of the act [or future occurrences of such acts].

Committee Note

720 ILCS 150/5.1 (West 1992) (formerly Ill.Rev.Stat. ch. 23, §2355.1 (1991)), amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 11.99.

Insert in the blanks the name of the child.

The bracketed alternatives [1] and [2] of the Second Proposition correspond to the alternatives of the same number in Instruction 11.99, the definitional instruction for this offense. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Use the bracketed phrase “[or future occurrences of such acts]” when appropriate.

Use applicable paragraphs and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.101
Definition Of Hazing

A person commits the offense of hazing when he knowingly requires a student or other person in [(a school) (a college) (a university) (an educational institution)] of this State to perform any act for the purpose of induction or admission into a [(group) (organization) (society)] associated or connected with that institution and the act is not [(sanctioned) (authorized)] by that educational institution and the act results in [(bodily harm) (great bodily harm) (death)] to any person.

Committee Note

720 ILCS 120/5, added by P.A. 89-292, effective January 1, 1996.

Give Instruction 11.102.

Select the bracketed alternative so that the instruction is no broader than the charging instrument. Hazing is a Class A misdemeanor, except hazing that results in death or great bodily harm is a Class 4 felony. 720 ILCS 120/10, added by P.A. 89-292, effective January 1, 1996.

Use applicable bracketed material.

11.102
Issues In Hazing

To sustain the charge of hazing, the State must prove the following propositions:

First Proposition: That the defendant knowingly required a student or other person in [(a school) (a college) (a university) (an educational institution)] of this State to perform an act; and

Second Proposition: That the act was for the purpose of induction or admission into a [(group) (organization) (society)] associated or connected with that educational institution; and

Third Proposition: That the act was not [(sanctioned) (authorized)] by that educational institution; and

Fourth Proposition: That the act resulted in [bodily harm] [(great bodily harm) (death)] to a person.

Committee Note

720 ILCS 120/5, added by P.A. 89-292, effective January 1, 1996.

Give Instruction 11.101.

Select the bracketed alternative so that the instruction is no broader than the charging instrument. Hazing is a Class A misdemeanor, except hazing that results in death or great bodily harm is a Class 4 felony. 720 ILCS 120/10, added by P.A. 89-292, effective January 1, 1996.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.103
Definition Of Predatory Criminal Sexual Assault Of A Child

A person commits the offense of predatory criminal sexual assault of a child when he [(intentionally) (knowingly) (recklessly)] commits an act of sexual penetration when he is 17 years of age or older and the victim is under 13 years of age when the act is committed.

Committee Note

720 ILCS 5/12-14.1(a)(1), added by P.A. 89-462, effective May 29, 1996.

Give Instruction 11.104.

When great bodily harm is alleged as set forth in section 12-14.1(a)(2), see Instruction 11.105. Section 12-14.1(b) specifies an enhanced sentencing range when Section 12-14.1(a)(2) is violated.

Section 12-14.1(a) sets forth an offense which formerly was set forth as aggravated criminal sexual assault under Section 12-14(b)(1) (720 ILCS 5/12-14(b)(1)). P.A. 89-462, effective May 29, 1996, deleted Section 12-14(b)(1) and made this section a part of the new offense of predatory criminal sexual assault of a child.

In People v. Terrell, 132 Ill.2d 178, 547 N.E.2d 145, 138 Ill.Dec. 176 (1989), the Illinois Supreme Court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that in the legislature's silence a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill.2d at 210, 547 N.E.2d at 159, 138 Ill.Dec. at 190. In People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), the supreme court held that even though the criminal hazing statute listed no mental state, 720 ILCS 5/4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*See also* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982), for cases in which the supreme court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) In accordance with Anderson, the Committee has decided to provide three alternative mental states pursuant to Section 4-3(b) because Section 12-14.1(a)(1) does not include a mental state. Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental state may be included in the instruction.

The Committee acknowledges that the appellate court in People v. Burton, 201 Ill.App.3d 116, 558 N.E.2d 1369, 146 Ill.Dec. 1035 (4th Dist.1990), held that Terrell does not require the mental states to be included in the jury instruction for aggravated criminal sexual assault (720 ILCS 5/12-14). *See also* People v. Smith, 209 Ill.App.3d 1043, 568 N.E.2d 482, 154 Ill.Dec. 482 (4th Dist.1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault. However, because of the mandate expressed by the supreme court in Anderson and Gean, the Committee believes that mental states are required and must be proved by the State for this offense of predatory criminal sexual assault

of a child. *See also* People v. Nunn, 77 Ill.2d 243, 32 Ill.Dec. 914, 396 N.E.2d 27 (1979), and People v. Valley Steel Products, 71 Ill.2d 408, 17 Ill.Dec. 13, 375 N.E.2d 1297 (1978).

11.104
Issues In Predatory Criminal Sexual Assault Of A Child

To sustain the charge of predatory criminal sexual assault of a child, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] committed an act of sexual penetration with ____; and

Second Proposition: That the defendant was 17 years of age or older when the act was committed; and

Third Proposition: That ____ was under 13 years of age when the act was committed.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-14.1(a) (1), added by P.A. 89-462, effective May 29, 1996.

Give Instruction 11.103.

See Committee Note to Instruction 11.103 regarding the use of mental states in this instruction.

Insert in the blanks the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.105
Definition Of Predatory Criminal Sexual Assault Of A Child--Great Bodily Harm

A person commits the offense of predatory criminal sexual assault of a child resulting in great bodily harm when he [(intentionally) (knowingly) (recklessly)] commits an act of sexual penetration when he is 17 years of age or older and the victim is under 13 years of age when the act is committed and he causes great bodily harm to the victim that [(resulted in permanent disability) (was life threatening)].

Committee Note

720 ILCS 5/12-14.1(a)(2), added by P.A. 89-462, effective May 29, 1996.

Give Instruction 11-106.

See the Committee Note for Instruction 11.103 regarding the relationship between this new offense of predatory criminal sexual assault of a child as set forth in Section 12-14.1(a) and the offense of aggravated criminal sexual assault formerly set forth in Section 12-14(b)(1) (720 ILCS 5/12-14(b)(1)).

In People v. Terrell, 132 Ill.2d 178, 547 N.E.2d 145, 138 Ill.Dec. 176 (1989), the Illinois Supreme Court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that in the legislature's silence a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill.2d at 210, 547 N.E.2d at 159, 138 Ill.Dec. at 190. In People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), the supreme court held that even though the criminal hazing statute listed no mental state, 720 ILCS 5/4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*See also* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982), for cases in which the supreme court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) In accordance with Anderson, the Committee has decided to provide three alternative mental states pursuant to Section 4-3(b) because Section 12-14.1(a)(1) does not include a mental state. Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental state may be included in the instruction.

The Committee acknowledges that the appellate court in People v. Burton, 201 Ill.App.3d 116, 558 N.E.2d 1369, 146 Ill.Dec. 1035 (4th Dist.1990), held that Terrell does not require the mental states to be included in the jury instruction for aggravated criminal sexual assault (720 ILCS 5/12-14). *See also* People v. Smith, 209 Ill.App.3d 1043, 568 N.E.2d 482, 154 Ill.Dec. 482 (4th Dist.1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault. However, because of the mandate expressed by the supreme court in Anderson *and* Gean, the Committee believes that mental states are required and must be proved by the State for this offense of predatory criminal sexual assault of a child. *See also* People v. Nunn, 77 Ill.2d 243, 32 Ill.Dec. 914, 396 N.E.2d 27 (1979), and People v. Valley Steel Products, 71 Ill.2d 408, 17 Ill.Dec. 13, 375 N.E.2d 1297 (1978).

11.106
Issues In Predatory Criminal Sexual Assault Of A Child--Great Bodily Harm

To sustain the charge of predatory criminal sexual assault of a child resulting in great bodily harm, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] committed an act of sexual penetration with ____; and

Second Proposition: That the defendant was 17 years of age or older when the act was committed; and

Third Proposition: That ____ was under 13 years of age when the act was committed; and

Fourth Proposition: That the defendant caused great bodily harm to ____ that [(resulted in permanent disability) (was life threatening)].

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5 /12-14.1(a)(2), added by P.A. 89-462, effective May 29, 1996.

Give Instruction 11.105.

See Committee Note to Instruction 11.105 regarding the use of mental states in this instruction.

Insert in the blanks the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.107 Definition Of Aggravated Battery -- Based On Injury

A person commits the offense of aggravated battery when he knowingly [without legal justification] and by any means, other than by the discharge of a firearm, [(causes bodily harm) (makes physical contact of an insulting or provoking nature)]; and

(1) causes [(great bodily harm) (permanent disability) (permanent disfigurement)] to an individual.

[or]

(2) causes [(severe and permanent disability) (great bodily harm) (disfigurement)] to another by means of a [(caustic substance) (flammable substance) (poisonous gas) (deadly [(biological) (chemical)] [(contaminant) (agent)]) (radioactive substance) (bomb) (explosive compound).

[or]

(3) causes [(great bodily harm) (permanent disability) (disfigurement)] to an individual whom the person knows to be a [(peace officer) (community policing volunteer) (fireman) (private security officer) (correctional institution employee) (Department of Human Services employee [(supervising) (controlling)] sexually [(dangerous) (violent)] persons)] [(performing his official duties) (battered to prevent performance of his official duties) (battered in retaliation for performing his official duties)].

[or]

(4) causes [(great bodily harm) (permanent disability) (disfigurement)] to an individual 60 years of age or older.

[or]

(5) strangles another individual.

Committee Note
Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(a) (West 2016), amended and renumbered by P.A. 96-1551 effective July 1, 2011, amended by P.A.s 97-313, 97-467, 97-597 effective January 1, 2012, amended by P.A. 97-1109 effective January 1, 2013, and P.A.s 98-369, 98-385 effective January 1, 2014.

The current aggravated battery statute, 720 ILCS 5/12-3.05, has seven separate categories: (1) Offense based on injury; (2) Offense based on injury to a child or person with an intellectual disability; (3) Offense based on location or conduct; (4) Offense based on status of victim; (5) Offense based on use of firearm; (6) Offense based on use of a weapon or device; and, (7) Offense based on certain conduct. There are separate sets of jury instructions for each category.

Give Instruction 11.107 when the defendant is charged under 720 ILCS 5/12-3.05(a).

Give Instruction 11.108.

When applicable, give Instruction 11.107A defining the word “strangle”.

When applicable, give Instruction 4.26, defining “correctional institutional employee”.

When the defendant is charged with causing great bodily harm under 720 ILCS 5/12-3.05(a)(1), (2), (3), or (4), it is not necessary to include the bracketed material alleging the defendant also caused bodily harm or made contact of an insulting or provoking nature. See the Committee Comment after Instruction 11.108.

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 2012 (720 ILCS 5/7-1 *et seq.*). See *People v. Worsham*, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

The definition of aggravated battery under Section 12-3.05 includes various legislative amendments that have occurred over several years. These amendments have added a number of designations of individuals who are to receive special protection. Court and counsel should ensure that a particular category of persons mentioned in a charge under this Section was in fact included within the statute when the alleged criminal behavior occurred.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.107A Definition Of Strangle

The word “strangle” means intentionally impeding the normal breathing or circulation of the blood of an individual by applying pressure on the throat or neck of that individual or by blocking the nose or mouth of that individual.

Committee Note
Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(i) (West 2016).

11.108 Issues In Aggravated Battery--Based on Injury

To sustain the charge of aggravated battery, the State must prove the following proposition(s):

[1] *First Proposition*: That the defendant knowingly caused great bodily harm, other than by the discharge of a firearm, to _____ [(.) (, and)]

Second Proposition: That the defendant did so by means of a [(caustic substance) (flammable substance) (poisonous gas) (deadly [(biological) (chemical)] [(contaminant) (agent)]) (radioactive substance) (bomb) (explosive compound).

[or]

Second Proposition: That the defendant knew _____ to be a [(peace officer) (community policing volunteer) (fireman) (private security officer) (correctional institution employee)]; and

Third Proposition: That the defendant [(knew _____ was performing) (battered _____ to prevent performance of) (battered _____ in retaliation for performing)] his official duties.

[or]

Second Proposition: That at the time the defendant did so, he knew _____ to be a Department of Human Services employee; and

Third Proposition: That at the time the defendant did so, he knew that _____ was [(supervising) (controlling)] sexually [(dangerous) (violent)] persons); and

Fourth Proposition: That the defendant [(knew that _____ was performing) (battered _____ to prevent performance of) (battered _____ in retaliation for performing)] his official duties.

[or]

Second Proposition: That at the time the defendant did so, _____ was 60 years of age or older.

[or]

[2] *First Proposition*: That the defendant knowingly [(caused bodily harm) (made physical contact of an insulting or provoking nature)], other than by the discharge of a firearm, with _____; and

Second Proposition: That the defendant caused [(permanent disability) (permanent disfigurement)] to _____.

[or]

Second Proposition: That the defendant caused [(severe and permanent disability) (disfigurement)] to _____; and

Third Proposition: That the defendant did so by means of [(a caustic substance) (a flammable substance) (a poisonous gas) (a deadly [(biological) (chemical)] [(contaminant) (agent)]) (a radioactive substance) (a bomb) (an explosive compound).

[or]

Second Proposition: That the defendant caused [(permanent disability) (disfigurement)] to _____; and

Third Proposition: That at the time the defendant did so, he knew _____ to be a [(peace officer) (community policing volunteer) (fireman) (private security officer) (correctional institution employee)]; and

Fourth Proposition: That the defendant [(knew _____ was performing) (battered _____ to prevent performance of) (battered _____ in retaliation for performing)] his official duties.

[or]

Second Proposition: That at the time the defendant did so, he knew _____ to be a Department of Human Services employee; and

Third Proposition: That at the time the defendant did so, he knew that _____ was [(supervising) (controlling)] sexually [(dangerous) (violent)] persons); and

Fourth Proposition: That the defendant [(knew that _____ was performing) (battered _____ to prevent performance of) (battered _____ in retaliation for performing)] his official duties.

[or]

Second Proposition: The defendant caused (permanent disability) (disfigurement)] to _____; and

Third Proposition: That at the time the defendant did so, _____ was 60 years of age or older.

[or]

Second Proposition: That the defendant strangled _____.

If you find from your consideration of all the evidence that [(each one of these propositions) (this proposition)] has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that [(any one of these propositions) (this proposition)] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note
Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(a) (West 2016), amended and renumbered by P.A. 96-1551 effective July 1, 2011, and amended by P.A.s 97-313, 97-467, 97-597 effective January 1, 2012, P.A. 97-1109 effective January 1, 2013, and P.A.s 98-369, 98-385 effective January 1, 2014.

Give Instruction 11.107.

Insert in the blank(s) the name of the victim.

When the defendant is charged with causing great bodily harm under section (a) (1), (2), (3) or (4) of 720 ILCS 5/12-3.05, it is not necessary to include the bracketed material alleging the defendant caused bodily harm or made contact of an insulting or provoking nature. If the defendant is charged with causing great bodily harm, use the instructions in the first set of propositions, bracketed "[1]". If the defendant is charged with causing permanent disability, severe and permanent disability, or disfigurement, use the second set of propositions, bracketed "[2]". Because "great bodily harm" necessarily includes "bodily harm", the Committee believes it is not necessary for the jury to separately find that the defendant committed a battery. The second set of propositions contain the predicate allegations of battery as otherwise required by the statutory language i.e., "when, in committing a battery".

Whenever the jury is to be instructed on an affirmative defense, this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction, although it does need to be included in Instruction 11.107 (see the Committee Note to Instruction 11.107).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.109 Definition Of Aggravated Battery--Based On Injury To A Child Or Person With An Intellectual Disability

A person commits the offense of aggravated battery of a [(child) (person with an intellectual disability)] when he, being a person of the age of 18 years or more, knowingly [without legal justification] by any means, [(causes [great] bodily harm to) (makes physical contact of an insulting or provoking nature with)] [(any child under the age of 13 years) (any severely or profoundly intellectually disabled person)] and causes [(disability) (disfigurement) (permanent disability) (permanent disfigurement)] to that [(child) or (severely or profoundly intellectually disabled person)].

Committee Note
Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(b) (West 2016), amended by P.A. 96-1551, effective July 1, 2011. (P.A. 96-1551 also added to this Section a crime for "bodily harm" (as opposed to "great bodily harm") and "disability or disfigurement" (as opposed to "permanent disability or disfigurement").

The current aggravated battery statute, 720 ILCS 5/12-3.05 has seven separate categories: (1) Offense based on injury; (2) Offense based on injury to a child or person with an intellectual disability; (3) Offense based on location or conduct; (4) Offense based on status of victim; (5) Offense based on use of firearm; (6) Offense based on use of a weapon or device; and, (7) Offense based on certain conduct. There are separate sets of jury instructions for each category.

Give Instruction 11.109 when the defendant is charged under 720 ILCS 5/12-3.05(b).

Give Instruction 11.110.

When the defendant is charged with causing great bodily harm under 720 ILCS 5/12-3.05(b), it is not necessary to include the bracketed material alleging the defendant also caused bodily harm or made contact of an insulting or provoking nature. See the Committee Comment after Instruction 11.108.

Give Instruction 11.65G when the alleged victim is an intellectually disabled person.

The definition of aggravated battery under Section 12-3.05 includes various legislative amendments that have occurred over several years. These amendments have added a number of designations of individuals who are to receive special protection. Court and counsel should ensure that a particular category of persons mentioned in a charge under this Section was in fact included within the statute when the allegedly criminal behavior occurred.

Use the phrase "without legal justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 1961 (720 ILCS 5/7-1 et seq.). See *People v. Worsham*, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Use applicable bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.110 Issues In Aggravated Battery--Based On Injury To A Child Or Person With An Intellectual Disability

To sustain the charge of aggravated battery of a [(child) (person with an intellectual disability)], the State must prove the following propositions:

[1] *First Proposition*: That the defendant knowingly by any means caused [great] bodily harm to _____; and

Second Proposition: At the time of the act, the defendant was at least 18 years of age; and

Third Proposition: At the time of the act, _____ was a [(child under 13 years of age) (severely or profoundly intellectually disabled person)].

[or]

[2] *First Proposition*: That the defendant knowingly by any means [(caused bodily harm) (made physical contact of an insulting or provoking nature)] with _____; and

Second Proposition: That the defendant caused [(permanent disability) (permanent disfigurement)] to _____; and

Third Proposition: That when the defendant did so, the defendant was at least 18 years of age; and

Fourth Proposition: That when the defendant did so, _____ was a [(child under 13 years of age) (severely or profoundly intellectually disabled person)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note
Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(b) (West 2016), amended by P.A.96-1551, effective July 1, 2011.

When the defendant is charged with causing bodily harm or great bodily harm under 720 ILCS 5/12-3.05(b), it is not necessary to include the predicate allegations of battery as otherwise required by the statutory language ("when, in committing a battery). In that situation, use the first set of propositions, bracketed "[1]". If the defendant is charged with causing disability, permanent disability, disfigurement or permanent disfigurement, use the second set of propositions, bracketed "[2]".

Insert in the blanks the name of the victim.

Whenever the jury is to be instructed on an affirmative defense, this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction, although it does need to be included in Instruction 11.109 (see the Committee Note to Instruction 11.109).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.111 Definition Of Aggravated Battery --Based On Location Of Conduct

A person commits the offense of aggravated battery when he knowingly [without legal justification] and by any means, other than by the discharge of a firearm, [(causes bodily harm) (makes physical contact of an insulting or provoking nature)] with an individual and in doing so, [(he) (the other person)] is on or about [(a public way) (public property) (a public place of accommodation) (a public place of amusement) (a sports venue) (a domestic violence shelter)].

Committee Note
Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(c) (West 2016), amended by P.A. 96-1551, effective July 1, 2011.

The current aggravated battery statute, 720 ILCS 5/12-3.05 has seven separate categories: (1) Offense based on injury; (2) Offense based on injury to a child or person with an intellectual disability; (3) Offense based on location or conduct; (4) Offense based on status of victim; (5) Offense based on use of firearm; (6) Offense based on use of a weapon or device; and, (7) Offense based on certain conduct. There are separate sets of jury instructions for each category.

Give Instruction 11.111 when the defendant is charged under 720 ILCS 5/12-3.05(c).

Give Instruction 11.112. [P1]

When applicable, give Instruction 4.27 defining "sports venue".

When applicable, give Instruction 4.28 defining "domestic violence shelter".

Use the phrase "without legal justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 2012 (720 ILCS 5/7-1 et seq.). See *People v. Worsham*, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Use applicable bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.112 Issues In Aggravated Battery--Based on Location Of Conduct

To sustain the charge of aggravated battery, the State must prove the following propositions:

First Proposition: That the defendant knowingly by any means, other than by the discharge of a firearm, [(caused bodily harm) (made physical contact of an insulting or provoking nature)] with _____; and

Second Proposition: That when the defendant did so, [(he) (_____)] was on or about [(a public way) (public property) (a public place of accommodation) (a public place of amusement) (a sports venue) (a domestic violence shelter)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note
Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(c) (West 2016), amended by P.A. 96-1551, effective July 1, 2011.

Give Instruction 11.111.

When applicable, give Instruction 4.27 defining "sports venue".

When applicable, give Instruction 4.28 defining "domestic violence shelter".

Insert in the blank(s) the name of the victim.

Whenever the jury is to be instructed on an affirmative defense, this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction, although it does need to be included in Instruction 11.111 (see the Committee Note to Instruction 11.111).

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.113. Definition Of Aggravated Battery--Based On Status Of Victim

A person commits the offense of aggravated battery when he knowingly [without legal justification] and by any means, other than by the discharge of a firearm, [(causes bodily harm to) (makes physical contact of an insulting or provoking nature with)] another person, and in doing so, he knows the individual harmed to be

[1] 60 years of age or older.

[or]

[2] pregnant.

[or]

[3] a person who has a physically disability. [P1]

[or]

[4] a [(teacher) (school employee)] [(upon school grounds) (upon grounds adjacent to a school) (in any part of a building used for school purposes)].

[or]

[5] a [(peace officer) (community policing volunteer) (fireman) (private security officer) (correctional institution employee) (Department of Human Services employee [(supervising) (controlling)] sexually [(dangerous) (violent)] persons)] [(performing his official duties) (battered to prevent performance of his official duties) (battered in retaliation for performing his official duties)].

[or]

[6] a [(judge) (emergency management worker) (emergency medical technician) (utility worker)] [(performing his official duties) (battered to prevent performance of his official duties) (battered in retaliation for performing his official duties)].

[or]

[7] an [(officer) (employee)] of [(the State of Illinois) (a unit of local government) (a school district)] while performing his official duties.

[or]

[8] a transit employee performing his official duties.

[or]

[9] a transit passenger.

[or]

[10] a taxi driver on duty.

[or]

[11] a merchant who detains the person for an alleged commission of retail theft.

[or]

[12] a [(person authorized to serve process) (special process server appointed by the circuit court)] in the performance of his duties as a process server.

[or]

[13] a nurse in the performance of his duties as a nurse.

Committee Note
Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(d) (West 2016) amended by P.A 96-1551, effective July 1, 2011.

The current aggravated battery statute, 720 ILCS 5/12-3.05 has seven separate categories: (1) Offense based on injury; (2) Offense based on injury to a child or person with an intellectual disability; (3) Offense based on location or conduct; (4) Offense based on status of victim; (5) Offense based on use of firearm; (6) Offense based on use of a weapon or device; and, (7) Offense based on certain conduct. There are separate sets of jury instructions for each category.

Give Instruction 11.113 when the defendant is charged under 720 ILCS 5/12-3.05(d).

Give Instruction 11.114.

When applicable, give Instruction 4.29 defining “physically handicapped person”.

When applicable, give Instruction 4.26 defining “correctional institution employee”.

When applicable, give Instruction 4.30 defining “emergency medical technician”.

When applicable, give Instruction 4.31 defining “utility worker”.

When applicable, give Instruction 4.32 defining “transit employee”.

When applicable, give Instruction 4.33 defining “transit passenger”.

When applicable, give Instruction 13.46B defining "merchant"[JY2].

The definition of aggravated battery under Section 12-3.05 includes various legislative amendments that have occurred over several years. These amendments have added a number of designations of individuals who are to receive special protection. Court and counsel should ensure that a particular category of persons mentioned in a charge under this Section was in fact included within the statute when the allegedly criminal behavior occurred.

Use the phrase "without legal justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 2012 (720 ILCS 5/7-1 et seq.). See *People v. Worsham*, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist. 1975).

Use applicable paragraphs and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.114 Issues In Aggravated Battery --Based On Status Of Victims

To sustain the charge of aggravated battery, the State must prove the following propositions:

First Proposition: That the defendant knowingly, by any means, other than by the discharge of a firearm, [(caused bodily harm to _____) (made physical contact of an insulting or provoking nature with _____)]; and

[1] *Second Proposition*: That at the time the defendant did so, he knew _____ to be

[a] 60 years of age or older.

[or]

[b] pregnant.

[or]

[c] a person who has a physically disability.

[or]

[2] *Second Proposition*: That at the time the defendant did so, he knew _____ to be a [(teacher)(school employee)]; and

Third Proposition: That at the time the defendant did so, he knew _____ was [(upon the grounds of a school) (upon grounds adjacent to a school) (in any part of a building used for school purposes)].

[or]

[3] *Second Proposition*: That at the time the defendant did so, he knew _____ to be a [(peace officer) (community policing volunteer) (fireman) (private security officer) (correctional institution employee)]; and

Third Proposition: That the defendant [(knew that _____ was performing) (battered _____ to prevent performance of) (battered _____ in retaliation for performing)] his official duties.

[or]

[4] *Second Proposition*: That at the time the defendant did so, he knew _____ to be a Department of Human Services employee; and

Third Proposition: That at the time the defendant did so, he knew that _____ was [(supervising) (controlling)] sexually [(dangerous) (violent)] persons; and

Fourth Proposition: That the defendant [(knew that _____ was performing) (battered _____ to prevent performance of) (battered _____ in retaliation for performing)] his official duties.

[or]

[5] *Second Proposition*: That at the time the defendant did so, he knew _____ to be [(a judge) (an emergency management worker) (an emergency medical technician) (a utility worker)]; and

Third Proposition: That the defendant [(knew that _____ was performing) (battered _____ to prevent performance of) (battered _____ in retaliation for performing)] his official duties.

[or]

[6] *Second Proposition*: That at the time the defendant did so, he knew _____ to be an [(officer) (employee)] of [(the State of Illinois) (a unit of local government) (a school district)], and

Third Proposition: That the defendant knew _____ was performing his official duties.

[or]

[7] *Second Proposition*: That at the time the defendant did so, he knew _____ to be a transit employee; and

Third Proposition: That the defendant knew _____ was performing his official duties.

[or]

[8] *Second Proposition*: That at the time the defendant did so, he knew _____ to be a transit passenger.

[or]

[9] *Second Proposition*: That at the time the defendant did so, he knew _____ to be a taxi driver; and

Third Proposition: That the defendant knew _____ was on duty.

[or]

[10] *Second Proposition*: That at the time the defendant did so, he knew _____ to be a merchant; and

Third Proposition: That the defendant knew _____ was detaining the defendant for an alleged commission of retail theft.

[or]

[11] *Second Proposition*: That at the time the defendant did so, he knew _____ to be a [(person authorized to serve process) (special process server appointed by the circuit court)]; and

Third Proposition: That the defendant knew _____ to be in the performance of his official duties as a process server.

[or]

[12] *Second Proposition*: That at the time the defendant did so, he knew _____ to be a nurse; and

Third Proposition: That the defendant knew _____ to be in the performance of his official duties.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(d) (West 2016), amended by P.A. 96-1551, effective July 1, 2011.

Give Instruction 11.113.

Whenever the jury is to be instructed on an affirmative defense, this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction, although it does need to be included in Instruction 11.113 (see the Committee Note to Instruction 11.113).

Insert in the blanks the name of the victim.

Use applicable paragraphs, subparagraphs, and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.115 Definition Of Aggravated Battery -- Based On Use Of A Firearm

A person commits the offense of aggravated battery when he knowingly [without legal justification] and by any means, [(causes bodily harm to) (makes physical contact of an insulting or provoking nature with)] another person, and

[1] discharges a firearm, other than a machine gun or a firearm equipped with a silencer, and causes any injury to another person.

[or]

[2] discharges a firearm, other than a machine gun or a firearm equipped with a silencer, and causes any injury to a person he knows to be [(a peace officer) (a community policing volunteer) (a person summoned by a peace officer) (a fireman) (a private security officer) (a correctional institution employee) (an emergency management worker)] [(performing his official duties) (battered to prevent performance of his official duties) (battered in retaliation for performing his official duties)].

[or]

[3] discharges a firearm, other than a machine gun or a firearm equipped with a silencer, and causes any injury to a person he knows to be an emergency medical technician employed by a [(municipality) (governmental unit)] [(performing his official duties) (battered to prevent performance of his official duties) (battered in retaliation for performing his official duties)].

[or]

[4] discharges a firearm and causes any injury to a person he knows to be a [(teacher) (student in a school) (school employee)] and such [(teacher) (student) (school employee)] is [(on the grounds of a school) (on the grounds adjacent to a school) (in any part of a building used for school purposes)].

[or]

[5] discharges a machine gun or a firearm equipped with a silencer, and causes any injury to another person.

[or]

[6] discharges a [(machine gun) (firearm equipped with a silencer)], and causes any injury to a person he knows to be [(a peace officer) (a community policing volunteer) (a person summoned by a peace officer) (a fireman) (a private security officer) (a correctional institution employee) (an emergency management worker)] [(performing his official duties) (battered to prevent performance of his official duties) (battered in retaliation for performing his official duties)].

[or]

[7] discharges a [(machine gun) (firearm equipped with a silencer)], and causes any injury to a person he knows to be an emergency medical technician employed by a [(municipality) (governmental unit)] [(performing his official duties) (battered to prevent performance of his official duties) (battered in retaliation for performing his official duties)].

[or]

[8] discharges a [(machine gun) (firearm equipped with a silencer)], and causes any injury to a person he knows to be a [(teacher) (student in a school) (school employee)] and such [(teacher) (student) (school employee)] is [(on the grounds of a school) (on the grounds adjacent to a school) (in any part of a building used for school purposes)].

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(e) (West 2016), amended by P.A. 96-1551, effective July 1, 2011.

The current aggravated battery statute, 720 ILCS 5/12-3.05 has seven separate categories: (1) Offense based on injury; (2) Offense based on injury to a child or person with an intellectual disability; (3) Offense based on location or conduct; (4) Offense based on status of victim; (5) Offense based on use of firearm; (6) Offense based on use of a weapon or device; and, (7) Offense based on certain conduct. There are separate sets of jury instructions for each category.

Give Instruction 11.115 when the defendant is charged under 720 ILCS 5/12-3.05(e).

Give Instruction 11.116.

When applicable, give Instruction 11.23A defining “firearm”.

When applicable, give Instruction 11.115A defining “machine gun”.

When applicable, give Instruction 4.26 defining “correctional institution employee”.

When applicable, give Instruction 4.30 defining “emergency medical technician”.

When applicable, give Instruction 4.31 defining “utility worker”.

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 2012 (720 ILCS 5/7-1 *et seq*.). See *People v. Worsham*, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

11.116 Issues In Aggravated Battery--Based On Use Of A Firearm

To sustain the charge of aggravated battery the State must prove the following propositions:

First Proposition: That the defendant knowingly discharged a [(firearm) (machine gun) (firearm equipped with a silencer)]; and

Second Proposition: That, in discharging the [(firearm) (machine gun) (firearm equipped with a silencer)], the defendant caused any injury to _____ [(.) (; and)]

[[1] *Third Proposition*: That the defendant knew that _____ was [(a peace officer) (community policing volunteer) (a person summoned by a peace officer) (a fireman) (a private security officer) (a correctional institution employee) (an emergency management worker)]; and

Fourth Proposition: That the defendant [(knew that _____ was performing) (battered _____ to prevent performance of) (battered _____ in retaliation for performing)] his official duties.]

[or]

[[2] *Third Proposition*: That the defendant knew that _____ was an emergency medical technician; and

Fourth Proposition: That _____ was employed by a [(municipality) (governmental unit)], and

Fifth Proposition: That the defendant [(knew that _____ was performing) (battered _____ to prevent performance of) (battered _____ in retaliation for performing)] his official duties.]

[or]

[[3] *Third Proposition*: That the defendant knew that _____ was a [(teacher) (student in school) (school employee)]; and

Fourth Proposition: That _____ was [(on the grounds of a school) (on grounds adjacent to a school) (in any part of a building used for school purposes)].]

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(e) (West 2016) amended by P.A. 96-1551, effective July 1, 2011.

Give Instruction 11.115.

When the defendant is charged with injuring a person not in one of the specifically stated statutory designations, use only the First and Second Propositions. When the defendant is charged with injuring a peace officer, community policing volunteer, a person summoned by a peace officer, a fireman, a private security officer, a correctional institution employee, an emergency management worker, or an emergency medical technician, and the other statutory requirements are met (while performing his official duties, etc.), use the first set of the Third and Fourth Propositions, bracketed [1]. If the defendant is charged with injuring a teacher, student or school employee, use the second set of the Third and Fourth Propositions bracketed [2].

Whenever the jury is to be instructed on an affirmative defense, this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction, although it does need to be included in Instruction 11.115 (see the Committee Note to Instruction 11.115).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.117 Definition Of Aggravated Battery--Based On Use Of A Weapon Or Device

A person commits the offense of aggravated battery when he knowingly [without legal justification] and by any means, [(causes bodily harm to) (makes physical contact of an insulting or provoking nature with)] another person, and

[1] in doing so, he uses [(a deadly weapon other than by the discharge of a firearm) (an air rifle)].

[or]

[2] in doing so, he wears a hood, robe, or mask to conceal his identity.

[or]

[3] knowingly shines or flashes a [(laser gunsight) (laser device)] [(attached to a firearm) (used in concert with a firearm)] so that the laser beam strikes upon or against another person.

[or]

[4] knowingly video or audio records the offense with the intent to disseminate the recording.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(f) (West 2016) amended by P.A. 96-1551, effective July 1, 2011. The current aggravated battery statute, 720 ILCS 5/12-3.05 has seven separate categories: (1) Offense based on injury; (2) Offense based on injury to a child or person with an intellectual disability; (3) Offense based on location or conduct; (4) Offense based on status of victim; (5) Offense based on use of firearm; (6) Offense based on use of a weapon or device; and, (7) Offense based on certain conduct. There are separate sets of jury instructions for each category.

Give Instruction 11.117 when the defendant is charged under 720 ILCS 5/12-3.05(f).

Give Instruction 11.118.

When applicable, give Instruction 4.35 defining “air rifle”.

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 2012 (720 ILCS 5/7-1 *et seq*.). See People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Use applicable paragraphs and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.118 Issues In Aggravated Battery--Based On Use Of A Weapon Or Device

To sustain the charge of aggravated battery, the State must prove the following propositions:

First Proposition: That the defendant knowingly and by any means [(caused bodily harm to _____) (made physical contact of an insulting or provoking nature with _____)]; and

[1] *Second Proposition*: That the defendant used [(a deadly weapon other than by the discharge of a firearm) (an air rifle)].

[or]

[2] *Second Proposition*: That the defendant wore a [(hood) (robe) (mask)] to conceal his identity.

[or]

[3] *Second Proposition*: That the defendant knowingly [(shined) (flashed)] a [(laser gunsight) (laser device)] [(attached to a firearm) (used in concert with a firearm)] so that the laser beam struck upon or against _____.

[or]

[4] *Second Proposition*: That the defendant knowingly [(video) (audio)] recorded the offense with the intent to disseminate the recording.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note
Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(f) (West 2016) (formerly 720 ILCS 5/12-4.2 (West 1992)).

Give Instruction 11.117.

When applicable, give Instruction 4.35 defining the term “air rifle”.

Insert in the blanks the name of the victim.

Whenever the jury is to be instructed on an affirmative defense, this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Because the additional

proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction, although it does need to be included in Instruction 11.117 (see the Committee Note to Instruction 11.117).

Use applicable subparagraphs, and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.119 Definition Of Aggravated Battery--Based On Certain Conduct

A person commits the offense of aggravated battery , other than by discharge of a firearm, when he

[1] knowingly, other than as authorized by the Illinois Controlled Substances Act, delivers a controlled substance to another and any person experiences [(great bodily harm) (permanent disability)] as a result of the [(injection) (inhalation) (ingestion)] of any amount of that controlled substance.

[or]

[2] knowingly [(administers to an individual) (causes an individual to take)] [(without the individual's consent) (by threat) (by deception)] for other than medical purposes, any [(intoxicating) (poisonous) (stupefying) (narcotic) (anesthetic) (controlled)] substance.

[or]

[3] knowingly, for other than medical purposes, gives to another person any food that contains any [(substance) (object)] that is intended to cause physical injury if eaten.

[or]

[4] knowingly [(causes) (attempts to cause)] a [(correctional institutional) (Department of Human Services)] employee to come into contact with [(blood) (seminal fluid) (urine) (feces)] by [(throwing) (tossing) (expelling)] the [(fluid) (material)] and the defendant is [(an inmate of a penal institution) ([a sexually (violent) (dangerous) person] in the custody of the Department of Human Services)].

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(g) (West 2016) amended by P.A. 96-1551, effective July 1, 2011.

The current aggravated battery statute, 720 ILCS 5/12-3.05 has seven separate categories: (1) Offense based on injury; (2) Offense based on injury to a child or person with an intellectual disability; (3) Offense based on location or conduct; (4) Offense based on status of victim; (5) Offense based on use of firearm; (6) Offense based on use of a weapon or device; and, (7) Offense based on certain conduct. There are separate sets of jury instructions for each category.

Give Instruction 11.119 when the defendant is charged under paragraph (g) of 720 ILCS 5/12-3.05.

Give Instruction 11.120.

When applicable, give Instruction 4.26 defining “correctional institution employee”.

When the Aggravated Battery statute was reorganized by P.A. 96-1551, two then-existing sections of Aggravated Battery and two new offenses were placed in this Section720 ILCS 5/12-3.05(g) – Aggravated Battery Based On Certain Conduct. For offenses contained in [2] or [3] which occurred prior to the new Aggravated Battery statute’s effective date of July 1, 2011, refer to IPI’s 11.17-11.20 that were in effect prior to July 1, 2011.

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 2012 (720 ILCS 5/7-1 *et seq*.). See *People v. Worsham*, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Use applicable paragraphs and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.120 Issues In Aggravated Battery--Based On Certain Conduct

To sustain the charge of aggravated battery, the State must prove the following propositions:

[1] *First Proposition*: That the defendant knowingly delivered a controlled substance to _____; and

Second Proposition: That the defendant was not authorized under the Illinois Controlled Substances Act to deliver the controlled substance to _____; and

Third Proposition: That _____ experienced [(great bodily harm) (permanent disability)] as a result of the [(injection) (inhalation) (ingestion)] of any amount of the controlled substance.

[or]

[2] *First Proposition*: That the defendant knowingly [(administered to _____) (caused _____ to take)] [(an intoxicating) (a poisonous) (a stupefying) (a narcotic) (an anesthetic) (a controlled)] substance; and

Second Proposition: That _____ [(did not consent) (was threatened by the defendant) (was deceived by the defendant)]; and

Third Proposition: That the defendant acted for other than medical purposes.

[or]

[3] *First Proposition*: That the defendant knowingly gave food to another person; and

Second Proposition: That the food contained any [(substance) (object)] intended to cause physical injury if eaten; and

Third Proposition: That the defendant knew the food contained such [(a substance) (an object)].

[or]

[4] *First Proposition*: That the defendant knew _____ to be [(correctional institutional) (Department of Human Services)], and

Second Proposition: That the defendant knowingly [(caused) (attempted to cause)] _____to come into contact with [(blood) (seminal fluid) (urine) (feces)], and

Third Proposition: That the defendant did so by [(throwing) (tossing) (expelling)] the [(fluid) (material)]; and

Fourth Proposition: That the defendant is [(an inmate of a penal institution) ([a sexually (violent) (dangerous)] person in the custody of the Department of Human Services)].

If you find from your consideration of all the evidence that the State has proved each one of these propositions beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that the State has not proved any one of these propositions beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(g) (West 2016) amended by P.A. 96-1551, effective July 1, 2011.

Give Instruction 11.119.

When applicable, give Instruction 4.26 defining "correctional institution employee".

In the first set of propositions, bracketed [1], the person that received the controlled substance from the defendant does not necessarily have to be the same person that experienced great bodily harm or permanent disability from using the controlled substance. Insert in the blanks in the First Proposition and the Second Proposition of the first set of propositions the name of the person receiving the controlled substance from the defendant. In the Third Proposition of the first set of propositions, insert the name of the person who experienced the great bodily harm or permanent disability. In the second, third, and fourth sets of propositions, insert in the blanks the name of the victim.

Whenever the jury is to be instructed on an affirmative defense, this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction, although it does need to be included in Instruction 11.119 (see the Committee Note to Instruction 11.119).

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

12.00
EAVESDROPPING

12.01
Definition Of Eavesdropping--Use Of Eavesdropping Device (Until December 15, 1994)

A person commits the offense of eavesdropping by use of an eavesdropping device when he uses an eavesdropping device to hear or record all or any part of any conversation without the consent of all parties to the conversation and is not a party to the conversation or known by the parties to be present during the conversation and the parties intend their conversation to be private under circumstances justifying that expectation.

Committee Note

720 ILCS 5/14-2(a) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §14-2(a) (1991)), amended by P.A. 85-1203, effective January 1, 1989.

Because the legislature substantially modified the eavesdropping statute in P.A. 88-677, effective December 15, 1994, do not use this instruction for offenses occurring on or after that date. Instead use Instruction 12.01X. See Committee Note to Instruction 12.01X.

Give Instruction 12.02.

Give Instructions 12.05, defining the term "eavesdropping device," and 12.05A, defining the phrase "known by the parties to be present."

This instruction has been substantially modified to conform to the interpretation of the eavesdropping statute by the Illinois Supreme Court in People v. Beardsley, 115 Ill.2d 47, 503 N.E.2d 346, 104 Ill.Dec. 789 (1986). In Beardsley, the court held that the primary factors in determining whether a violation of the statute occurred were whether the parties intended their conversation to be private and whether there were circumstances justifying that expectation. Under this test, the court found no statutory prohibition against the surreptitious recording of a conversation by a party to that conversation or one known by the parties to be present during the conversation. The court reasoned that since a person could repeat from memory what he heard during the conversation there could be no invasion of an "expectation of privacy" by that person merely preserving an accurate account of the conversation by use of a recording device. See Bender v. Board of Fire and Police Comm'rs of Village of Dolton, 183 Ill.App.3d 562, 539 N.E.2d 234, 131 Ill.Dec. 881 (1st Dist.1989); Smith v. Associated Bureaus, Inc., 177 Ill.App.3d 286, 532 N.E.2d 301, 126 Ill.Dec. 616 (1st Dist.1988).

Thus, in addition to the two elements of the offense appearing on the face of the eavesdropping statute, namely, (1) the use of an eavesdropping device to hear or record a conversation, and (2) the absence of consent of all parties to the conversation, the court found implicit in the statute three additional elements. These additional elements are: (3) an intention that the conversation be private, (4) circumstances justifying the privacy expectation, and (5) the absence of the defendant from the conversation as a party or otherwise. All five elements have been incorporated into this instruction.

Beardsley does not address the situation where a defendant is equipped with a transmitter instead of a recorder thereby allowing the conversation to be overheard or intercepted by a third person. See *Beardsley,* 115 Ill.2d at 59, 503 N.E.2d at 352, 104 Ill.Dec. at 795. The Committee takes no position regarding instructions to be given in such cases.

Law enforcement officers are exempt from the provisions of the eavesdropping statute (1) in certain emergency situations enumerated in Chapter 720, Section 14-3(g), and (2) when the officers are acting under the authority of Chapter 720, Article 108A. Officers are also exempt when acting pursuant to Chapter 720, Article 108B, P.A. 85-1203, effective January 1, 1989, unless they intercept a "privileged communication" as that term is defined in Section 108B-1(q). See Section 108B-6.

If charged with "interception of a privileged communication," the officer may interpose the good faith affirmative defense established in Section 14-2(c). When instructing on this affirmative defense, it will be necessary to define certain terms appearing in the statute establishing the defense in accordance with the definitions provided in Section 108B-1(a) through (q).

12.01X
Definition Of Eavesdropping--Use Of Eavesdropping Device (As Of December 15, 1994)

A person commits the offense of eavesdropping by use of an eavesdropping device when he uses an eavesdropping device to hear or record all or any part of any conversation without the consent of all the parties to the conversation.

Committee Note

720 ILCS 5/14-2(a) (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §14-2(a) (1991)), amended by P.A. 88-677, effective December 15, 1994.

Give Instruction 12.02X.

Give Instruction 12.05, defining the term "eavesdropping device," and Instruction 12.05B, defining the word "conversation."

The Committee believes that P.A. 88-677, effective December 15, 1994, was intended to broaden the coverage of the eavesdropping statute, contrary to the interpretation the supreme court gave to an earlier version of that statute in People v. Beardsley, 115 Ill.2d 47, 53, 503 N.E.2d 346, 349-50, 104 Ill.Dec. 789, 792-93 (1986). The definition of the word "conversation" added to the statute by P.A. 88-677 includes "any oral communication *** regardless of whether [any] of the parties expected their communication to be of a private nature ***." This definition conflicts with Beardsley's holding that the parties must have intended their conversation to be private. Accordingly, this instruction should be used for all eavesdropping charges arising on or after December 15, 1994.

12.02
Issues In Eavesdropping--Use Of Eavesdropping Device (Until December 15, 1994)

To sustain the charge of eavesdropping by use of an eavesdropping device, the State must prove the following propositions:

First Proposition: That the defendant knowingly used an eavesdropping device to [(hear) (record)] all or any part of a conversation; and

Second Proposition: That the defendant did so without the consent of all the parties to the conversation; and

Third Proposition: That the defendant was not a party to the conversation; and

Fourth Proposition: That the defendant was not known by the parties to be present during the conversation; and

Fifth Proposition: That the parties to the conversation intended the conversation to be private; and

Sixth Proposition: That the circumstances surrounding the conversation justified the parties' expectation that the conversation would be private.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/14-2(a) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §14-2(a) (1991)).

<us>Because the legislature substantially modified the eavesdropping statute in P.A. 88-677, effective December 15, 1994, do not use this instruction for offenses occurring on or after that date. Instead use Instruction 12.01X. See Committee Note to Instruction 12.02X.</us>

Give Instruction 12.01.

This instruction has been substantially modified to conform to the interpretation of the eavesdropping statute by the Illinois Supreme Court in People v. Beardsley, 115 Ill.2d 47, 503 N.E.2d 346, 104 Ill.Dec. 789 (1986). See Committee Note to Instruction 12.01.

See Instruction 12.05A, defining the term “known by the parties to be present.”

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

12.02X
Issues In Eavesdropping--Use Of Eavesdropping Device (As Of December 15, 1994)

To sustain the charge of eavesdropping by use of an eavesdropping device, the State must prove the following propositions:

First Proposition: That the defendant knowingly used an eavesdropping device to hear or record all or any part of a conversation; and

Second Proposition: That the defendant did so without the consent of all parties to the conversation.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/14-2(a) (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §14-2(a) (1991)), amended by P.A. 88-677, effective December 15, 1994.

Give Instruction 12.01X.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

12.03
Definition Of Eavesdropping--Use Or Divulgence Of Information (Until December 15, 1994)

A person commits the offense of eavesdropping by use or divulgence of information when he uses or divulges any information which he knows or reasonably should know was obtained through use of an eavesdropping device without consent of all parties to the conversation by a person not a party to the conversation or known by the parties to be present during the conversation and the parties intended their conversation to be private under circumstances justifying that expectation.

Committee Note

720 ILCS 5/14-2(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §14-2(b) (1991)), amended by P.A. 85-1203, effective January 1, 1989.

<us>Because the legislature substantially modified the eavesdropping statute in P.A. 88-677, effective December 15, 1994, do not use this instruction for offenses occurring on or after that date. Instead use Instruction 12.03X. See Committee Note to Instruction 12.01X.</us>

Give Instruction 12.04.

Give Instruction 12.05, defining the term "eavesdropping device," and 12.05A, defining the term "known by the parties to be present."

This instruction has been substantially modified to conform to the interpretation of the eavesdropping statute by the Illinois Supreme Court in People v. Beardsley, 115 Ill.2d 47, 503 N.E.2d 346, 104 Ill.Dec. 789 (1986). For a discussion of the issues raised in Beardsley, see the Committee Note to Instruction 12.01.

Law enforcement officers are exempt from the provisions of the eavesdropping statute (1) in certain emergency situations enumerated in Section 14-3(g), and (2) when the officers are acting under the authority of Article 108A. Officers are also exempt when acting pursuant to Chapter 38, Article 108B, P.A. 85-1203, effective January 1, 1989, unless they intercept a "privileged communication" as that term is defined in Section 108B-1(q). See Section 108B-6.

If charged with "interception of a privileged communication," the officer may interpose the good faith affirmative defense established in Section 14-2(c). When instructing on this affirmative defense, it will be necessary to define certain terms appearing in the statute establishing the defense in accordance with the definitions provided in Section 108B-1(a) through (q).

12.03X
Definition Of Eavesdropping--Use Or Divulgence Of Information (As Of December 15, 1994)

A person commits the offense of eavesdropping by use or divulgence of information when he uses or divulges any information which he knows or reasonably should know was obtained through the use of an eavesdropping device without the consent of all parties to the conversation.

Committee Note

720 ILCS 5/14-2(b) (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §14-2(b) (1991)), amended by P.A. 88-677, effective December 15, 1994.

Give Instruction 12.04X.

Give Instruction 12.05, defining the term "eavesdropping device," and Instruction 12.05B, defining the word "conversation."

The Committee believes that P.A. 88-677, effective December 15, 1994, was intended to broaden the coverage of the eavesdropping statute, contrary to the interpretation the supreme court gave to an earlier version of that statute in People v. Beardsley, 115 Ill.2d 47, 53, 503 N.E.2d 346, 349-50, 104 Ill.Dec. 789, 792-93 (1986). The definition of the word "conversation" added to the statute by P.A. 88-677 includes "any oral communication *** regardless of whether [any] of the parties expected their communication to be of a private nature ***." This definition conflicts with Beardsley's holding that the parties must have intended their conversation to be private. Accordingly, this instruction should be used for all eavesdropping charges arising on or after December 15, 1994.

12.04
Issues In Eavesdropping--Use Or Divulgence Of Information (Until December 15, 1994)

To sustain the charge of eavesdropping by use or divulgence of information, the State must prove the following propositions:

First Proposition: That the defendant used or divulged information which was obtained through use of an eavesdropping device to [(hear) (record)] all or any part of a conversation; and

Second Proposition: That, when he did so, the defendant knew or reasonably should have known that the information was obtained through the use of an eavesdropping device without the consent of all parties to the conversation; and

Third Proposition: That when he did so, the defendant knew or reasonably should have known that the information was obtained by a person not a party to the conversation; and

Fourth Proposition: That when he did so, the defendant knew or reasonably should have known that the information was obtained by a person not known by the parties to be present during the conversation; and

Fifth Proposition: That when he did so, the defendant knew or reasonably should have known that the parties to the conversation intended the conversation to be private; and

Sixth Proposition: That when he did so, the defendant knew or reasonably should have known that the circumstances surrounding the conversation justified the parties' expectation that the conversation would be private.

If you find from your consideration of all evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/14-2(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §14-2(b) (1991)).

<us>Because the legislature substantially modified the eavesdropping statute in P.A. 88-677, effective December 15, 1994, do not use this instruction for offenses occurring on or after that date. Instead use Instruction 12.04X. See Committee Note to Instruction 12.01X.</us>

Give Instruction 12.03.

This instruction has been substantially modified to conform to the interpretation of the eavesdropping statute by the Illinois Supreme Court in People v. Beardsley, 115 Ill.2d 47, 503 N.E.2d 346, 104 Ill.Dec. 789 (1986). See Committee Note to Instruction 12.01.

See Instruction 12.05A, defining the phrase “known by the parties to be present.”

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

12.04X
Issues In Eavesdropping--Use Or Divulgence Of Information (As Of December 15, 1994)

To sustain the charge of eavesdropping by use or divulgence of information, the State must prove the following propositions:

First Proposition: That the defendant used or divulged any information obtained from a conversation; and

Second Proposition: That the defendant did so without the consent of all parties to that conversation; and

Third Proposition: That the defendant knew or reasonably should have known that this information was obtained through the use of an eavesdropping device.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/14-2(b) (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §14-2(b) (1991)), amended by P.A. 88-677, effective December 15, 1994.

Give Instruction 12.03X.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

12.05
Definition Of Eavesdropping Device

The term "eavesdropping device" means any device capable of being used to hear or record a conversation, whether such conversation is conducted in person, by telephone, or by any other means.

Committee Note

720 ILCS 5/14-1(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §14-1(a) (1991)).

This statutory definition is slightly different from the definition of eavesdropping device found in Chapter 725, Section 108B-1(h), P.A. 85-1203, effective January 1, 1989. It may be necessary to use the definition found in Section 108B-1(h) when the jury is to be instructed on the offense of "interception of a privileged communication" pursuant to Chapter 720, Sections 14-2(a) and (c) and Chapter 725, Section 108B-1(q). See Committee Note to Instruction 12.01.

For a discussion of extension telephones as eavesdropping devices, see People v. Shinkle, 128 Ill.2d 480, 539 N.E.2d 1238, 132 Ill.Dec. 432 (1989).

12.05A
Definition Of Known By The Parties To Be Present

The phrase "known by the parties to be present" means that the parties to the conversation are aware that the defendant is in such proximity to one or more of them that he reasonably could be expected to hear the words spoken during the conversation.

Committee Note

This instruction should be given when the evidence presents an issue as to whether or not the defendant was known to be present during the conversation.

This definition is consistent with the underlying purpose of the eavesdropping statute to protect the parties' privacy when they act under circumstances that entitle them to believe that the conversation is private and cannot be heard by others acting in a lawful manner. See People v. Beardsley, 115 Ill.2d 47, 53, 503 N.E.2d 346, 349-50, 104 Ill.Dec. 789, 792-93 (1986).

12.05B
Definition Of Conversation

The word "conversation" means any oral communication between two or more persons [regardless of whether one or more of the parties intended their communication to be of a private nature under circumstances justifying that expectation].

Committee Note

720 ILCS 5/14-1(d) (West, 1994), added by P.A. 88-677, effective December 15, 1994.

The bracketed language appears in new subsection (d) of Section 14-2. However, because the Committee believes that cases might arise in which the bracketed language might be confusing and redundant to the jury, the Committee decided to put this language in brackets and leave the question of whether to use it to the sound discretion of the trial court.

13.00
THEFT

13.01
Definition Of Theft By Unauthorized Control Of Property Not Exceeding $300 In Value

A person commits the offense of theft when he knowingly [(obtains) (exerts)] unauthorized control over property and

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefit.

Committee Note

720 ILCS 5/16-1(a)(1)(A), (B), and (C) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(1)(A), (B), and (C) (1991)).

Give Instruction 13.02.

Bracketed alternatives should be selected so that the instruction is no broader than the charging document. If an information charges “obtains” rather than “exerts,” then only “obtains” should be utilized. When the pleading is stated in the alternative (e.g. “obtains or exerts”), the instruction should be in the alternative unless the evidence fails to justify a particular alternative. The Committee takes no position on whether alternative pleading is proper under Chapter 720, Section 16-1.

When defendant is not also charged with theft of property exceeding $300 in value, there is no need to mention the value of the property in this instruction, the issues instruction (Instruction 13.02), the concluding instruction (Instruction 26.01), or the verdict forms (Instructions 26.02 and 26.05). However, when the defendant is also charged with theft of property exceeding $300 in value, this instruction and each of the others specified in this paragraph should be modified by identifying this charge as “theft of property not exceeding $300 in value,” instead of as simply “theft.”

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.02
Issues In Theft By Unauthorized Control Of Property Not Exceeding $300 In Value

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That ____ was the owner of the property in question; and

Second Proposition: That the defendant knowingly [(obtained) (exerted)] unauthorized control over the property in question; and

Third Proposition: That the defendant intended to deprive the owner thereof permanently of the use or benefit of that property.

[or]

Third Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner thereof permanently of the use or benefit of that property.

[or]

Third Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner thereof permanently of the use or benefit of that property.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16-1(a)(1)(A), (B), and (C) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(1)(A), (B), and (C) (1991)).

Give Instruction 13.01.

Choose from among the three options for the Third Proposition that option which is reflective of the charge against the defendant.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

Insert in the blank the name of the owner.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.03
Definition Of Theft By Unauthorized Control Of Property Exceeding $300 In Value

A person commits the offense of theft of property exceeding $300 in value when that person [(obtains) (exerts)] unauthorized control over property exceeding $300 in value and

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefit.

Committee Note

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(1)(A), (B), and (C), and 16-1(c) (1991)).

Give Instruction 13.04.

Effective January 1, 1988, Section 16-1 was amended to provide that when a charge of theft of property exceeding $300 in value is brought, the value of the property involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding $300. See P.A. 85-691, P.A. 85-1030, and P.A. 85-1440.

See Committee Note to Instruction 13.01.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.04
Issues In Theft By Unauthorized Control Of Property Exceeding $300 In Value

To sustain the charge of theft of property exceeding $300 in value, the State must prove the following propositions:

First Proposition: That ____ was the owner of the property in question; and

Second Proposition: That the defendant knowingly [(obtained) (exerted)] unauthorized control over the property in question; and

Third Proposition: That the defendant intended to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Third Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Third Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner thereof permanently of the use or benefit of that property;

and

Fourth Proposition: That the property in question exceeded $300 in value.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(1)(A), (B), and (C), and 16-1(c) (1991)).

Give Instruction 13.03.

Choose from among the three options for the Third Proposition that option which is reflective of the charge against the defendant.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

Insert in the blank the name of the owner.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.05
Definition Of Subsequent Theft Offense

Committee Note

Effective January 1, 1988, Chapter 38, Section 16-1(b)(2), was amended to provide that a prior conviction used to enhance the offense of theft of property not exceeding $300 in value from a Class A misdemeanor to a Class 4 felony is not an element of that offense and should not be disclosed to the jury unless otherwise permitted by issues properly raised during trial. Accordingly, this instruction has been rescinded, and Instruction 13.01 should be used instead. See P.A. 85-691 and P.A. 85-1030.

13.06
Issues In Subsequent Theft Offense

Committee Note

This instruction has been rescinded. See Committee Note to Instruction 13.05. Give Instruction 13.02.

13.07
Definition Of Theft Of A Firearm

A person commits the offense of theft of a firearm when he knowingly [(obtains) (exerts)] unauthorized control over a firearm, and

[1] intends to deprive the owner permanently of the use or benefit of the firearm.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the firearm in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the firearm knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefit.

Committee Note

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(b)(3) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(1)(A), (B), and (C), and 16-1(b)(3) (1991)).

Give Instruction 13.08.

Theft of a firearm is a Class 4 felony. A second theft of a firearm is a Class 3 felony. The Committee has not prepared instructions for "Second Theft of a Firearm." Such a charge is too rare to justify inclusion in these Pattern Instructions. The Committee takes no position on whether the prosecution must prove as an element of the Class 3 felony the prior conviction of theft of a firearm.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.08
Issues In Theft Of A Firearm

To sustain the charge of theft of a firearm, the State must prove the following propositions:

First Proposition: That ____ was the owner of the property in question; and

Second Proposition: That the defendant knowingly [(obtained) (exerted)] unauthorized control over the property in question; and

Third Proposition: That the defendant intended to deprive the owner permanently of the use or benefit of the property in question;

[or]

Third Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner permanently of such use or benefit;

[or]

Third Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that the owner will thereby probably be deprived permanently of its use or benefit;

and

Fourth Proposition: That the property in question was a firearm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(b)(3) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(1)(A), (B), and (C), and 16-1(b)(3) (1991)).

Give Instruction 13.07.

Give the definition in Chapter 720, Section 83-1.1 when there is a question as to whether a firearm was involved.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

Insert in the blank the name of the owner.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.09
Definition Of Theft From The Person

A person commits the offense of theft from the person when he knowingly [(obtains) (exerts)] unauthorized control over the property by taking said property from the person of another and

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefit.

Committee Note

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(b)(4) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(1)(A), (B), and (C), and 16-1(b)(4) (1991)).

Give Instruction 13.10.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.10
Issues In Theft From The Person

To sustain the charge of theft from the person, the State must prove the following propositions:

First Proposition: That ____ was the owner of the property in question; and

Second Proposition: That the defendant knowingly [(obtained) (exerted)] unauthorized control over the property in question; and

Third Proposition: That the defendant intended to deprive the owner permanently of the use or benefit of the property in question;

[or]

Third Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner thereof permanently of such use or benefit;

and

Fourth Proposition: That the defendant took the property in question from the person of ____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(b)(4) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(1)(A), (B), and (C), and 16-1(b)(4) (1991)).

Give Instruction 13.09.

Insert in the blanks the name of the owner.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.11
Definition Of Theft By Unauthorized Control Of Property Exceeding $10,000 In Value

A person commits the offense of theft of property exceeding $10,000 in value when that person [(obtains) (exerts)] unauthorized control over property exceeding $10,000 in value and

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefit.

Committee Note

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(b)(5) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(1)(A), (B), and (C), and 16-1(b)(5) (1991)).

Give Instruction 13.12.

See Committee Note to Instruction 13.01.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

P.A. 85-1030, effective July 1, 1988, amended Section 16-1 to provide that theft of property exceeding $10,000 in value and not exceeding $100,000 in value is a Class 2 felony. See also P.A. 85-1440.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.12
Issues In Theft By Unauthorized Control Of Property Exceeding $10,000 In Value

To sustain the charge of theft of property exceeding $10,000 in value, the State must prove the following propositions:

First Proposition: That ____ was the owner of the property in question; and

Second Proposition: That the defendant knowingly [(obtained) (exerted)] unauthorized control over the property in question; and

Third Proposition: That the defendant intended to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Third Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Third Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner thereof permanently of the use or benefit of that property;

and

Fourth Proposition: That the property in question exceeded $10,000 in value.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(b)(5) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(1)(A), (B), and (C), and 16-1(b)(5) (1991)).

Give Instruction 13.11.

Choose from among the three options for the Third Proposition that option which is reflective of the charge against the defendant.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

Insert in the blank the name of the owner.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.13
Definition Of Theft By Unauthorized Control Of Property Exceeding $100,000 In Value

A person commits the offense of theft of property exceeding $100,000 in value when that person [(obtains) (exerts)] unauthorized control over property exceeding $100,000 in value and

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefit.

Committee Note

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(b)(6) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(1)(A), (B), and (C), and 16-1(b)(6) (1991)).

Give Instruction 13.14.

See Committee Note to Instruction 13.01.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

P.A. 85-1030, effective July 1, 1988, amended Section 16-1 to provide that theft of property exceeding $100,000 in value is a Class 1 felony. See also P.A. 85-1440.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.14
Issues In Theft By Unauthorized Control Of Property Exceeding $100,000 In Value

To sustain the charge of theft of property exceeding $100,000 in value, the State must prove the following propositions:

First Proposition: That ____ was the owner of the property in question; and

Second Proposition: That the defendant knowingly [(obtained) (exerted)] unauthorized control over the property in question; and

Third Proposition: That the defendant intended to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Third Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Third Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner thereof permanently of the use or benefit of that property;

and

Fourth Proposition: That the property in question exceeded $100,000 in value.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(b)(6) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(1)(A), (B), and (C), and 16-1(b)(6) (1991)).

Give Instruction 13.13.

Choose from among the three options for the Third Proposition that option which is reflective of the charge against the defendant.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

Insert in the blank the name of the owner.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.15
Definition Of Theft By Deception Of Property Not Exceeding $300 In Value

A person commits the offense of theft when he by deception knowingly obtains control over property and

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefit.

Committee Note

720 ILCS 5/16-1(a)(2)(A), (B), and (C) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(2)(A), (B), and (C) (1991)).

Give Instruction 13.16.

When the defendant is not also charged with theft of property exceeding $300 in value, there is no need to mention the value of the property in this instruction, the issues instruction (Instruction 13.16), the concluding instruction (Instruction 26.01), or the verdict forms (Instructions 26.02 and 26.05). However, when the defendant is also charged with theft of property exceeding $300 in value, this instruction and each of the others specified in this paragraph should be modified by identifying this charge as “theft of property not exceeding $300 in value,” instead of as simply “theft.”

Other definitions may be appropriate. See Instructions 13.33 through 13.33E.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.16
Issues In Theft By Deception Of Property Not Exceeding $300 In Value

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That ____ was the owner of the property in question; and

Second Proposition: That the defendant by deception knowingly obtained control over the property in question; and

Third Proposition: That the defendant intended to deprive the owner thereof permanently of the use or benefit of that property.

[or]

Third Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner thereof permanently of the use or benefit of that property.

[or]

Third Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner thereof permanently of the use or benefit of that property.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16-1(a)(2)(A), (B), and (C) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(2)(A), (B), and (C) (1991)).

Give Instruction 13.15.

Choose from among the three options for the Third Proposition that option which is reflective of the charge against the defendant.

When the defendant is not also charged with theft of property exceeding $300 in value, there is no need to mention the value of the property in the definitional instruction (Instruction 13.15), this instruction, the concluding instruction (Instruction 26.01), or the verdict forms (Instructions 26.02 and 26.05). However, when the defendant is also charged with theft of property exceeding $300 in value, this instruction and each of the others specified in this paragraph should be modified by identifying this charge as “theft of property not exceeding $300 in value,” instead of as simply “theft.”

Insert in the blank the name of the owner.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.17
Definition Of Theft By Deception Of Property Exceeding $300 In Value

A person commits the offense of theft when he by deception knowingly obtains control over property exceeding $300 in value and

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefits.

Committee Note

720 ILCS 5/16-1(a)(2)(A), (B), and (C), and 16-1(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(2)(A), (B), and (C), and 16-1(c) (1991)).

Give Instruction 13.18.

P.A. 85-691, effective January 1, 1988, amended Section 16-1 to provide that when a charge of theft of property exceeding $300 in value is brought, the value of the property involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding $300. See P.A. 85-1440.

Other definitions may be appropriate. See Instructions 13.33 through 13.33E.

See Committee Note to Instruction 13.01.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.18
Issues In Theft By Deception Of Property Exceeding $300 In Value

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That ____ was the owner of the property in question; and

Second Proposition: That the defendant by deception knowingly obtained control over the property in question; and

Third Proposition: That the defendant intended to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Third Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Third Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner thereof permanently of the use or benefit of that property;

and

Fourth Proposition: That the property in question exceeded $300 in value.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16-1(a)(2)(A), (B), and (C), and 16-1(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(2)(A), (B), and (C), and 16-1(c) (1991)).

Give Instruction 13.17.

Choose from among the three options for the Third Proposition that option which is reflective of the charge against the defendant.

Other definitions may be appropriate. See Instructions 13.33 through 13.33E.

Insert in the blank the name of the owner.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.19
Definition Of Theft By Deception Of Property Having A Value Of $5,000 Or More From A Victim 60 Years Of Age Or Older

A person commits the offense of theft when he by deception knowingly obtains control over property having a value of $5,000 or more from a person sixty years of age or older and

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefit.

Committee Note

720 ILCS 5/16-1(a)(2)(A), (B), and (C), and 16-1(b)(7) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(2)(A), (B), and (C), and 16-1(b)(7) (1991)).

Give Instruction 13.20.

P.A. 85-753, effective January 1, 1988, amended Chapter 720, Section 16-1 to provide that theft by deception of property valued at $5,000 or more from a victim 60 years of age or older is a Class 2 felony, instead of a Class 3 felony.

Even though the Committee decided to include this instruction, the Committee takes no position on the question of whether either of these enhancing factors is an issue to be resolved by the jury. See People v. Hicks, 119 Ill.2d 29, 518 N.E.2d 148, 115 Ill.Dec. 623 (1987); People v. Mays, 80 Ill.App.3d 340, 399 N.E.2d 718, 35 Ill.Dec. 652 (3d Dist.1980).

Other definitions may be appropriate. See Instruction 13.33 through 13.33E.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.20
Issues In Theft By Deception Of Property Having A Value Of $5,000 Or More From A Victim 60 Years Of Age Or Older

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That ____ was the owner of the property in question; and

Second Proposition: That the defendant by deception knowingly obtained control over the property in question; and

Third Proposition: That the defendant intended to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Third Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Third Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner thereof permanently of the use or benefit of that property;

and

Fourth Proposition: That the property in question had a value of $5,000 or more; and

Fifth Proposition: That ____ was 60 years of age or older.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16-1(a)(2)(A), (B), and (C), and 16-1(b)(7) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(2)(A), (B), and (C), and 16-1(b)(7) (1991)).

Give Instruction 13.19.

Insert in the blanks the name of the owner.

Use applicable bracketed material.

13.21
Definition Of Theft By Threat--Misdemeanor

A person commits the offense of theft when he by threat knowingly obtains control over property of the owner and

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such a manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that the owner will thereby probably be permanently deprived of its use or benefit.

Committee Note

720 ILCS 5/16-1(a)(3)(A), (B), and (C) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(3)(A), (B), and (C) (1991)).

Give Instruction 13.22.

Theft by threat can be a felony if the value of the property exceeds $300 or if the defendant has previously been convicted of theft. Effective January 1, 1988, Section 16-1 was amended to provide that when a charge of theft of property exceeding $300 in value is brought, the value of the property involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding $300. See P.A. 85-691, P.A. 85-1030, and P.A. 85-1440. Therefore, if the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $300, then this instruction would begin "A person commits the offense of theft of property in excess of $300 when he by threat knowingly obtains control over property of the owner and . . . ."

Other definitions may be appropriate. See Instructions 13.33 through 13.33D and Instruction 13.33F.

Use applicable paragraphs and bracketed material.

See Committee Note to Instruction 13.01.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.22
Issues In Theft By Threat--Misdemeanor

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That ____ was the owner of the ____ in question; and

Second Proposition: That the defendant by threat knowingly obtained control over the ____; and

Third Proposition: That the defendant intended to deprive ____ permanently of the use or benefit of the ____.

[or]

Third Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the ____ in such manner as to deprive the owner permanently of such use or benefit.

[or]

Third Proposition: That the defendant [(used) (concealed) (abandoned)] the ____ knowing that ____ will thereby probably be deprived permanently of its use or benefit.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16-1(a)(3)(A), (B), and (C) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(3)(A), (B), and (C) (1991)).

Give Instruction 13.21.

Theft by threat can be a felony if the value of the property exceeds $300 or if the defendant has previously been convicted of theft. Effective January 1, 1988, Section 16-1 was amended to provide that when a charge of theft of property exceeding $300 in value is brought, the value of the property involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding $300. See P.A. 85-691, P.A. 85-1030, and P.A. 85-1440. Therefore, if the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $300, then this instruction would begin "To sustain the charge of theft of property in excess of $300, the State must prove . . . ."

See Committee Note to Instruction 13.01.

Insert in the appropriate blanks the name of the owner and the property description.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.23
Definition Of Theft By Obtaining Control Over Stolen Property--Misdemeanor

A person commits the offense of theft when he knowingly obtains control over stolen property [(knowing the property to have been stolen) (under such circumstances as would reasonably induce him to believe the property was stolen)], and he

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that the owner will thereby probably be permanently deprived of its use or benefit.

Committee Note

720 ILCS 5/16-1(a)(4)(A), (B), and (C) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(4)(A), (B), and (C) (1991)).

Give Instruction 13.24.

Theft by obtaining control over stolen property can be a felony if the value of the property exceeds $300 or if the defendant has previously been convicted of theft. Effective January 1, 1988, Section 16-1 was amended to provide that when a charge of theft of property exceeding $300 in value is brought, the value of the property involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding $300. See P.A. 85-691, P.A. 85-1030, and P.A. 85-1440. Therefore, if the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $300, then this instruction would begin "A person commits the offense of theft of property in excess of $300 when he . . . ."

See Committee Note to Instruction 13.01.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D and Instruction 13.33G.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and

should not be included in the instruction submitted to the jury.

13.24
Issues In Theft By Obtaining Control Over Stolen Property--Misdemeanor

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That ____ was the owner of the ____ in question; and

Second Proposition: That the defendant knowingly obtained control over the ____ in question; and

Third Proposition: That the defendant knew the ____ had been stolen by another;

[or]

Third Proposition: That the defendant obtained control under such circumstances as would reasonably induce him to believe the ____ was stolen;

and

Fourth Proposition: That the defendant intended to deprive the owner permanently of the use or benefit of ____.

[or]

Fourth Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the ____ in such manner as to deprive ____ permanently of the use or benefit.

[or]

Fourth Proposition: That the defendant [(used) (concealed) (abandoned)] the ____ knowing that the owner will thereby probably be deprived permanently of its use or benefit.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16-1(a)(4)(A), (B), and (C) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(4)(A), (B), and (C) (1991)).

Give Instruction 13.23.

Theft by obtaining control over stolen property can be a felony if the value of the property exceeds $300 or if the defendant has previously been convicted of theft. Effective January 1, 1988, Section 16-1 was amended to provide that when a charge of theft of property exceeding $300 in value is brought, the value of the property involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding $300. See P.A. 85-

691, P.A. 85-1030, and P.A. 85-1440. Therefore, if the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $300, then this instruction would begin "To sustain the charge of theft of property in excess of $300, the State must prove . . . ."

Insert in the appropriate blanks the name of the owner and the property description.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

13.25
Definition Of Theft Of Lost Or Mislaid Property

A person commits the offense of theft of lost or mislaid property when he obtains control over lost or mislaid property, and

[1] [([(knows) (learns)] the identity of the owner) ([(knows) (is aware) (learns)] of a reasonable means of identifying the owner)]; and

[2] fails to take reasonable measures to restore the property to the owner; and

[3] intends to deprive the owner permanently of the use or benefit of the property.

Committee Note

720 ILCS 5/16-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-2 (1991)).

Give Instruction 13.26.

See Committee Note to Instruction 13.01.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.26
Issues In Theft Of Lost Or Mislaid Property

To sustain the charge of theft, the State must prove the following propositions:
First Proposition: That ____ was the owner of the ____ in question; and
Second Proposition: That the ____ was lost or mislaid; and
Third Proposition: That the defendant obtained control over the ____; and
Fourth Proposition: That the defendant [(knew) (learned)] the identity of the owner;

[or]

Fourth Proposition: That the defendant [(knew) (was aware) (learned)] of a reasonable means of identifying the owner;

and

Fifth Proposition: That the defendant failed to take reasonable measures to restore the ____ to ____; and
Sixth Proposition: That the defendant intended to deprive ____ permanently of the use or benefit of the ____.
If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.
If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-2 (1991)).

Give Instruction 13.25.

See Committee Note to Instruction 13.01.

Insert in the appropriate blanks the name of the owner and the property description.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.27
Definition Of Theft Of Labor, Services, Or Use Of Property

A person commits the offense of theft when he obtains the temporary use of [(property) (labor) (services)] of another available only for hire

[1] by means of [(threat) (deception)].

[or]

[2] knowing that such use is without the consent of the person providing the [(property) (labor) (services)].

Committee Note

720 ILCS 5/16-3(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-3(a) (1991)).

Give Instruction 13.28.

See Committee Note to Instruction 13.01.

Other definitions may be appropriate. See Instructions 13.33, 13.33A, and 13.33C through 13.33F.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.28
Issues In Theft Of Labor, Services, Or Use Of Property

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That ____ was the owner of the [(property) (labor) (services)] in question; and

Second Proposition: That the [(property) (labor) (services)] [(was) (were)] available only for hire; and

Third Proposition: That the defendant obtained temporary use by means of [(threat) (deception)] of the [(property) (labor) (services)] in question.

[or]

Third Proposition: That the defendant knew that such use was without the consent of the person providing the [(property) (labor) (services)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16-3(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-3(a) (1991)).

Give Instruction 13.27.

This instruction has been altered in substance from that contained in the original volume of these instructions. The Committee believes that the State must prove, in addition to the first two propositions, either that the property, labor, or services were obtained by threat or deception, *or* that the defendant knew that his use was without consent. If knowledge of non-consent existed, threat or deception need not be proved. Theft of services frequently does not involve either deception or threat.

See Committee Notes to Instructions 13.01 and 13.27.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.29
Definition Of Theft Of Rented Or Leased Personal Property

A person commits the offense of theft when he [(rents or leases [(a motor vehicle) (a ____ exceeding $500 in value)]) (obtains a motor vehicle through a "driveaway" service mode of transportation)] under an agreement in writing which provides for the return of the [(vehicle) (____)] to a particular place at a particular time, and thereafter, without good cause, wilfully fails to return the [(vehicle) (____)] to that place within the time specified, and is thereafter served or sent a written demand mailed to the last known address, made by certified mail return receipt requested, to return such [(vehicle) (____)] within 3 days from the mailing of the written demand, and who, without good cause, wilfully fails to return the [(vehicle) (____)] to any place of business of the lessor within such period.

Committee Note

720 ILCS 5/16-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §16-3(b) (1991)), amended by P.A. 82-288, effective August 1, 1981; P.A. 83-1048, effective July 1, 1984; and P.A. 84-800, effective January 1, 1986.

Give Instruction 13.30.

Use applicable bracketed material.

Insert in the blank the type of personal property if other than a motor vehicle.

See Committee Note to Instruction 13.01.

Give Instruction 23.43B, defining "motor vehicle", when there is a question as to whether the object leased was a motor vehicle if the charging document alleges only that the defendant obtained and did not return a motor vehicle.

13.30
Issues In Theft Of Rented Or Leased Personal Property

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That the defendant [(rented or leased [(a motor vehicle) (a ____ exceeding $500 in value)]) (obtained a motor vehicle through a "driveaway" mode of transportation)] under an agreement in writing which provided for the return of the [(vehicle) (____)] to a particular place at a particular time; and

Second Proposition: That the defendant without good cause wilfully failed to return the [(vehicle) (____)] to that place within the time specified; and

Third Proposition: That the defendant thereafter was served or sent a written demand mailed to the last known address, made by certified mail return receipt requested, to return such [(vehicle) (____)] within 3 days from the mailing of the written demand; and

Fourth Proposition: That the defendant without good cause wilfully failed to return the [(vehicle) (____)] to any place of business of the lessor within such period.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16-3(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-3(b) (1991)).

Give Instruction 13.29.

See Committee Notes to Instructions 13.01 and 13.29.

Insert in the blank the type of personal property if other than a motor vehicle.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

13.31
Definition Of Unlawful Subleasing Of A Motor Vehicle

A person commits the offense of unlawful subleasing of a motor vehicle when he [(intentionally) (knowingly) (recklessly)]

[1] [(obtains) (exercises control over)] a motor vehicle and then [(sells) (transfers) (assigns) (leases)] the motor vehicle to another person without first obtaining written authorization from the [(secured creditor) (lessor) (lienholder)] for the [(sale) (transfer) (assignment) (lease)] and receives [(compensation) (consideration)] for the [(sale) (transfer) (assignment) (lease)] of the motor vehicle when he is not a party to a [(lease contract) (conditional sale contract) (security agreement)] which transfers any right of interest in the motor vehicle.

[or]

[2] [(assists) (causes) (arranges)] the [(actual) (purported)] [(sale) (transfer) (assignment) (lease)] of a motor vehicle to another person without first obtaining written authorization from the [(secured creditor) (lessor) (lienholder)] for the [(sale) (transfer) (assignment) (lease)] and receives [(compensation) (consideration)] for [(assisting) (causing) (arranging)] the [(sale) (transfer) (assignment) (lease)] of the motor vehicle when he is not a party to a [(lease contract) (conditional sale contract) (security agreement)] which transfers any right of interest in the motor vehicle.

Committee Note

625 ILCS 5/6-305.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, §6-305.1 (1991)), added by P.A. 86-748, effective July 1, 1990.

Give Instruction 13.32.

Use the mental state that conforms to the allegation in the charge. See People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Section 6-305.1 sets forth an exception to the offense of unlawful subleasing of a motor vehicle. The statute does not apply when the defendant is acting upon the request of his employer. If the defendant relies upon this exception, it will be necessary to give additional instructions.

13.32
Issues In Unlawful Subleasing Of A Motor Vehicle

To sustain the charge of unlawful subleasing of a motor vehicle, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] [(obtained) (exercised control)] over a motor vehicle; and

Second Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] [(sold) (transferred) (assigned) (leased)] the motor vehicle to another person; and

Third Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] did not obtain written authorization from the [(secured creditor) (lessor) (lienholder)] for the [(sale) (transfer) (assignment) (lease)]; and

Fourth Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] received [(compensation) (consideration)] for the [(sale) (transfer) (assignment) (lease)] of the motor vehicle; and

Fifth Proposition: That the defendant was not a party to a [(lease contract) (conditional sale contract) (security agreement)] which transferred any right of interest in the motor vehicle.

[or]

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] [(assisted) (caused) (arranged)] the [(actual) (purported)] [(sale) (transfer) (assignment) (lease)] of a motor vehicle to another person; and

Second Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] did not obtain written authorization from the [(secured creditor) (lessor) (lienholder)] for the [(sale) (transfer) (assignment) (lease)]; and

Third Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] received [(compensation) (consideration)] for [(assisting) (causing) (arranging)] the [(sale) (transfer) (assignment) (lease)] of the motor vehicle; and

Fourth Proposition: That the defendant was not a party to a [(lease contract) (conditional sale contract) (security agreement)] which transfers any right of interest in the motor vehicle.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/6-305.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, §6-305.1 (1991)), added by P.A. 86-748, effective July 1, 1990.

Give Instruction 13.31.

Use the first set of propositions if this offense is charged under paragraph (1) of Section 6-305.1(a); use the second set of propositions if this offense is charged under paragraph (2) of Section 6-305.1(a).

Use the mental state that conforms to the allegation in the charge. See People v. Grant,

101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Section 6-305.1 sets forth an exception to the offense of unlawful subleasing of a motor vehicle. The statute does not apply when the defendant is acting upon the request of his employer. If the defendant relies on this exception, it will be necessary to give additional instructions.

13.33
Definition Of Property

The word "property" means anything of value. Property includes ____.

Committee Note

720 ILCS 5/15-1, 16D-2(d) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §15-1, 16D-2(d) (1991)).

Insert in the blank the applicable item from Chapter 720, Section 15-1 or Chapter 720, Section 16D-2(d).

13.33A
Definition Of Owner

The word "owner" means a person, other than the defendant, who has possession of or any other interest in the property involved [even though such interest or possession is unlawful], and without whose consent the defendant has no authority to exert control over the property.

Committee Note

720 ILCS 5/15-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §15-2 (1991)).

Use bracketed material when an issue arises relating to whether the person from whom the property was taken had lawful possession of the property.

13.33B
Definition Of Permanently Deprive

The phrase "permanently deprive" means to
[1] defeat all recovery of the property by the owner.

[or]

[2] deprive the owner permanently of the beneficial use of the property.

[or]

[3] retain the property with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return.

[or]

[4] sell, give, pledge, or otherwise transfer any interest in the property or subject it to the claim of a person other than the owner.

Committee Note

720 ILCS 5/15-3 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §15-3 (1991)).

Use applicable paragraphs.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.33C
Definition Of Obtain

The word "obtain" means

[1] to bring about a transfer of interest or possession in property to [(the defendant) (another)].

[or]

[2] to secure the performance of labor or services.

Committee Note

720 ILCS 5/15-7 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §15-7 (1991)).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.33D
Definition Of Obtains Or Exerts Control

The phrase "[(obtains) (exerts)] control" includes, but is not limited to, the [(taking of) (carrying away of) (sale of) (conveyance of) (transfer of title to) (interest in) (possession of)] property.

Committee Note

720 ILCS 5/15-8 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §15-8 (1991)).

Use applicable bracketed material.

13.33E
Definition Of Deception

The word “deception” means to knowingly

[1] create or confirm another's impression which is false and which the defendant does not believe to be true.

[or]

[2] fail to correct a false impression which the defendant previously has created or confirmed.

[or]

[3] prevent another from acquiring information pertinent to the disposition of the property involved.

[or]

[4] sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not valid, or is or is not a matter of official record.

[or]

[5] promise performance which the defendant does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the owner did not intend to perform.

[or]

[6] misrepresents or conceals a material fact relating to the terms of a contract or agreement entered into with [(an elderly) (a disabled)] person or the existing or pre-existing condition of any of the property involved in such contract or agreement.

[or]

[7] uses or employs any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit [(an elderly) (a disabled)] person to enter into a contract or agreement.

Committee Note

720 ILCS 5/15-4 and 16-1.3(b)(4) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §15-4 and 16-1.3(b)(4) (1991)), added by P.A. 86-153, effective January 1, 1990.

Although paragraphs [1] through [7] can be used whenever financial exploitation of an elderly or disabled person is charged under Section 16-1.3(a), paragraphs [6] and [7] can be used *only* for financial exploitation of an elderly or disabled person.

See Instructions 13.35 and 13.36.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.33F
Definition Of Threat

The word "threat" means a menace, however communicated, to
[1] inflict physical harm on the person threatened or any other person or on property.

[or]

[2] subject any person to physical confinement or restraint.

[or]

[3] commit any criminal offense.

[or]

[4] accuse any person of a criminal offense.

[or]

[5] expose any person to hatred, contempt, or ridicule.

[or]

[6] harm the credit or business repute of any person.

[or]

[7] reveal any information sought to be concealed by the person threatened.

[or]

[8] take action as an official against anyone or anything, or withhold official action, or cause such action or withholding.

[or]

[9] bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the group which the person making the threat purports to represent.

[or]

[10] testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

Committee Note

720 ILCS 5/15-5 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §15-5 (1991)).

Paragraphs [1] through [10] are not all-inclusive. If the subject of the threat is other than that described, prepare an appropriate description. See Chapter 720, Section 15-5(k).

Use applicable paragraphs.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.33G
Definition Of Stolen Property

The term "stolen property" means property over which control has been obtained by theft.

Committee Note

720 ILCS 5/15-6 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §15-6 (1991)).

13.34
Inference Arising From Exclusive Possession Of Recently Stolen Property

Committee Note

In preparing this Fourth Edition, the Committee reexamined the instruction on this subject included in the Second Edition, and the Committee continues to recommend, as it did in the Committee Note in the Second Edition and again in the Third Edition, that no instruction be given on this subject, either in a theft case or elsewhere. The Committee believes that particular types of evidence should not be singled out, but should be left to the argument of counsel. Instruction 1.03 tells the jury that attorneys may argue reasonable inferences from the evidence. The Committee believes that any possible benefit from giving this instruction is outweighed by problems resulting from its use.

13.34A
Part Interest In Property No Defense

It is not a defense to the charge of theft that the defendant has an interest in the property when another person also has an interest in the same property to which the defendant is not entitled.

Committee Note

720 ILCS 5/16-4(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-4(a) (1991)).

Give this instruction when a defendant claims an interest in the property.

13.35
Definition Of Financial Exploitation Of An Elderly Or Disabled Person

A person commits the offense of financial exploitation of [(an elderly) (a disabled)] person when he stands in a position of trust and confidence with the [(elderly) (disabled)] person, and he knowingly and by [(deception) (intimidation)] obtains control over the [(elderly) (disabled)] person's property with the intent to permanently deprive the [(elderly) (disabled)] person of the use, benefit, or possession of his property[, and the value of the property is [(more than $300) ($5,000 or more) ($100,000 or more)]].

Committee Note

720 ILCS 5/16-1.3(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1.3(a) (1991)), added by P.A. 86-153, effective January 1, 1990.

Give Instructions 13.36 and 13.35D.

Also give either Instruction 13.35A or 13.35B.

Also give either Instruction 13.33E or 13.35C.

The Committee has included the value of the property as an issue to be resolved by the jury because Section 16-1.3(a) sets forth different penalties depending on the value of the property in question. Accordingly, the Committee has included the bracketed material at the end of the paragraph which should be given when the value of the property exceeds $300.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $300, then this instruction would begin “A person commits the offense of financial exploitation of a disabled person in excess of $300 when he . . . .”

Use applicable bracketed material.

13.35A
Definition Of Elderly Person--Offense Of Financial Exploitation

The term "elderly person" means a person 60 years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by physical, mental, or emotional dysfunctioning to the extent that such person is incapable of avoiding or preventing the commission of the offense.

Committee Note

720 ILCS 5/16-1.3(b)(1) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1.3(b)(1) (1991)), added by P.A. 86-153, effective January 1, 1990.

Use this definition only when the offense of financial exploitation of an elderly person is charged.

13.35B
Definition Of Disabled Person--Offense Of Financial Exploitation

The term "disabled person" means a person who suffers from a permanent physical or mental impairment resulting from disease, injury, functional disorder, or congenital condition which renders such person incapable of avoiding or preventing the commission of the offense.

Committee Note

720 ILCS 5/16-1.3(b)(2) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1.3(b)(2) (1991)), added by P.A. 86-153, effective January 1, 1990.

Use this definition only when the offense of financial exploitation of a disabled person is charged.

13.35C
Definition Of Intimidation--Offense Of Financial Exploitation

The word "intimidation" means the communication to [(an elderly) (a disabled)] person that he shall be deprived of food and nutrition, shelter, prescribed medication, or medical care and treatment.

Committee Note

720 ILCS 5/16-1.3(b)(3) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1.3(b)(3) (1991)), added by P.A. 86-153, effective January 1, 1990.

Use this definition only when the offense of financial exploitation of an elderly or disabled person is charged.

Use applicable bracketed material.

13.35D
Definition Of Trust And Confidence--Offense Of Financial Exploitation

A person stands in a position of trust and confidence with [(an elderly) (a disabled)] person when he

[1] is a parent, spouse, adult child, or other relative by blood or marriage of the elderly or disabled person.

[or]

[2] is a joint tenant or tenant in common with the [(elderly) (disabled)] person.

[or]

[3] has a legal or fiduciary relationship with the [(elderly) (disabled)] person.

Committee Note

720 ILCS 5/16-1.3(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1.3(c) (1991)), added by P.A. 86-153, effective January 1, 1990.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.36
Issues In Financial Exploitation Of An Elderly Or Disabled Person

To sustain the charge of financial exploitation of [(an elderly) (a disabled)] person, the State must prove the following propositions:

First Proposition: That the defendant was in a position of trust and confidence with ____; and

Second Proposition: That ____ was [(an elderly) (a disabled)] person; and

Third Proposition: That the defendant knowingly and by [(deception) (intimidation)] obtained control over the property of ____; and

Fourth Proposition: That the defendant intended to permanently deprive ____ of the use, benefit, or possession of that property[; and

Fifth Proposition: That the value of the property was [(more than $300) ($5,000 or more) ($100,000 or more)]].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16-1.3(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1.3(a) (1991)), added by P.A. 86-153, effective January 1, 1990.

Give Instruction 13.35.

The Committee has included the value of the property as an issue to be resolved by the jury because Section 16-1.3(a) sets forth different penalties depending on the value of the property in question. Accordingly, the Committee has included the Fifth Proposition which should be given when the value of the property exceeds $300.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $300, then this instruction would begin "To sustain the charge of financial exploitation of a disabled person in excess of $300, the State must prove . . . ."

Insert in the blanks the name of the elderly or disabled person.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

13.37
Definition Of Deceptive Practices

A person commits the offense of deceptive practices when he, with intent to defraud,

[1] causes another, by [(deception) (threat)] to execute a document [(disposing of property) (by which a pecuniary obligation is incurred)].

[or]

[2] being [(an officer) (a manager) (a person participating in the direction)] of a financial institution, knowingly [(receives) (permits the receipt of)] [(a deposit) (an investment)], knowing that the institution is insolvent.

[or]

[3] knowingly [(makes) (directs another to make)] a false or deceptive statement addressed to the public for the purpose of promoting the sale of [(property) (services)].

[or]

[4] with intent [(to obtain control over property) (to pay for [(property) (labor) (services)] of another) (to satisfy an obligation for payment of tax under the Retailers' Occupation Tax Act [or any other tax due to the State of Illinois])], [(issues) (delivers)] [(a check) (an order)] upon a [(real) (fictitious)] depository for the payment of money, knowing that it will not be paid by the depository.

[or]

[5] issues or delivers a check or other order upon a real or fictitious depository in an amount exceeding $150 in payment of [(an amount owed on any credit transaction for [(property) (labor) (services)]) (the entire amount owed on any credit transaction for [(property) (labor) (services)]), knowing that it will not be paid by the depository, and thereafter fails to provide funds or credit with the depository in the face amount of the check or order within seven days of receiving actual notice from the depository or payee of the dishonor of the check or order.

Committee Note

720 ILCS 5/17-1(B) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §17-1(B) (1991)), as amended by P.A. 84-897, effective September 23, 1985.

Give Instruction 13.38.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.38
Issues In Deceptive Practices

To sustain the charge of deceptive practices, the State must prove the following propositions:

First Proposition: That the defendant caused ____ to execute a ____[(which disposed of property) (by which a pecuniary obligation was incurred)]; and

Second Proposition: That the defendant did so by [(deception) (threat)]; and

Third Proposition: That the defendant did so with intent to defraud.

[or]

First Proposition: That the defendant was [(an officer) (a manager) (a person participating in the direction)] of a ____; and

Second Proposition: That the defendant knowingly [(received) (permitted the receipt of)] [(a deposit) (an investment)]; and

Third Proposition: That the ____ was then insolvent; and

Fourth Proposition: That the defendant then knew that the ____ was insolvent; and

Fifth Proposition: That the defendant did so with the intent to defraud.

[or]

First Proposition: That the defendant knowingly [(made) (directed another to make)] a statement addressed to the public for the purpose of promoting the sale of ____; and

Second Proposition: That the defendant did so with the intent to defraud; and

Third Proposition: That the statement was false or deceptive; and

Fourth Proposition: That the defendant knew the statement was false or deceptive.

[or]

First Proposition: That the defendant, with intent [(to obtain control over property) (to pay for [(property) (labor) (services)] of ____) (to satisfy a tax due to the State of Illinois)] [(issued) (delivered)] [(a check) (an order)] upon a [(real) (fictitious)] depository; and

Second Proposition: That the defendant knew that the [(check) (order)] would not be paid; and

Third Proposition: That the defendant did so with the intent to defraud.

[or]

First Proposition: That the defendant [(issued) (delivered)] [(a check) (an order)] upon a [(real) (fictitious)] depository; and

Second Proposition: That such [(check) (order)] was in an amount exceeding $150 [(in payment of an amount owed on any credit transaction for [(property) (labor) (services)]) (in payment of the entire amount owed on any credit transaction for [(property) (labor) (services)])]; and

Third Proposition: That the defendant knew that the [(check) (order)] would not be paid by the depository; and

Fourth Proposition: That the defendant thereafter failed to provide funds or credit with the depository in the face amount of the [(check) (order)] within seven days of receiving actual notice from the depository or payee of the dishonor of the [(check) (order)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/17-1(B) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §17-1(B) (1991)), as amended by P.A. 84-897, effective September 23, 1985.

Give Instruction 13.37.

In the first alternative set of propositions, insert in the appropriate blank the name of the victim and the document as charged.

In the second alternative set of propositions, insert in the blank a description of the financial institution as charged.

In the third alternative set of propositions, insert in the blank a description of the property or services being promoted as charged.

In the fourth alternative set of propositions, insert in the blank the name of the victim.

Use applicable paragraphs and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.38A
Inference Arising From Insufficient Funds

Committee Note

See 720 ILCS 5/17-1(B)(d) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §17-1(B)(d) (1991)), as amended by P.A. 84-897, effective September 23, 1985.

Dictum in People v. Gray, 99 Ill.App.3d 851, 426 N.E.2d 290, 55 Ill.Dec. 315 (5th Dist.1981), supports the view that the legislature's use of the term "*prima facie*" is a direction to the court on when to submit the evidence to the jury and should not be translated into a jury instruction. Gray holds that the jury should not be instructed in the language of the statute about the "*prima facie*" effect of certain evidence. The term is a legal one which, according to Gray, might be read by a jury as creating a type of presumption that is constitutionally impermissible in criminal cases.

13.39
Definition Of Forgery

Use For Cases Where The Offense Is Alleged To Have Occurred Before January 1, 2012

A person commits the offense of forgery when he, with intent to defraud, knowingly

[1] [(makes) (alters)] a _____apparently capable of defrauding another so that it appears to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)].

[or]

[2] [(issues) (delivers)] a _____apparently capable of defrauding another which he knows has been made or altered so that it appears to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)].

[or]

[3] possesses, with intent to [(issue) (deliver)], a _____ apparently capable of defrauding another which he knows has been made or altered so that it appears to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)].

[or]

[4] unlawfully uses the digital signature of another.

[or]

[5] unlawfully uses the signature device of another to create an electronic signature of that other person.

Committee Note

720 ILCS 5/17-3 (West 2015), amended by P.A. 90-575, effective March 20, 1998, which added subsection (a)(4), amended by P.A. 90-759, effective July 1, 1999, which added subsection (a)(5).

Give Instruction 13.40.

When applicable, give Instruction 13.42, defining “document”.

When applicable, give Instruction 5.12, defining “digital signature”.

When applicable, give Instruction 5.13, defining “electronic signature”.

When applicable, give Instruction 5.14, defining “signature device”.

In *People v. Kent*, 40 Ill. App.3d 256, 260 350 N.E.2d 890 (5th Dist. 1976), the appellate court found that a check was apparently capable of defrauding another where it was complete in every respect except its genuineness.

Insert in the blanks the appropriate descriptions of the documents involved, e.g. check, note, mortgage.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.39A
Definition Of Forgery

Use For Cases Where The Offense Is Alleged To Have Occurred After December 31, 2011

A person commits the offense of forgery when he, with intent to defraud, knowingly

[1] [makes a false document] [or] [alters any document to make it false] apparently capable of defrauding another so that it appears to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)].

[or]

[2] [issues] [or] [delivers] a _____apparently capable of defrauding another which he knows has been made or altered so that it appears to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)].

[or]

[3] possesses, with intent to [(issue) (deliver)], a _____ apparently capable of defrauding another which he knows has been made or altered so that it appears to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)].

[or]

[4] unlawfully uses the digital signature of another.

[or]

[5] unlawfully uses the signature device of another to create an electronic signature of that other person.

Committee Note

720 ILCS 5/17-3 (West 2015), amended by P.A. 90-575, effective March 20, 1998, which added subsection (a)(4), amended by P.A. 90-759, effective July 1, 1999, which added subsection (a)(5); amended by P.A. 97-231, changing the language of subsection (a)(1) and adding the definition of "false document or document that is false".

Give Instruction 13.40.

When applicable, give Instruction 13.42, defining "document".

When applicable, give Instruction 5.12, defining "digital signature".

When applicable, give Instruction 5.13, defining "electronic signature".

When applicable, give Instruction 5.14, defining "signature device".

When applicable, give Instruction 5.15, defining “false document” or “document that is false”.

In *People v. Kent*, 40 Ill. App.3d 256, 260, 350 N.E.2d 890 (5th Dist. 1976), the appellate court found that a check was apparently capable of defrauding another where it was complete in every respect except its genuineness.

Insert in the blanks the appropriate descriptions of the documents involved, *e.g.* check, note, mortgage.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.40
Issues In Forgery

Use For Cases Where The Offense Is Alleged To Have Occurred Before January 1, 2012

To sustain the charge of forgery, the State must prove the following propositions:

[1] *First Proposition*: That the defendant knowingly [(made) (altered)] a _____so that it appeared to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)]; and

[or]

[2] *First Proposition*: That the defendant knowingly [(issued) (delivered)] a _____which he knew had been made or altered so that it appeared to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)]; and

[or]

[3] *First Proposition*: That the defendant knowingly possessed, with intent to issue or deliver a _____, which he knew had been made or altered so that it appeared to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)]; and

[or]

[4] *First Proposition*: That the defendant knowingly and unlawfully used the digital signature of another; and

[or]

[5] *First Proposition*: That the defendant knowingly and unlawfully used the signature device of another to create an electronic signature of that other person; and

Second Proposition: That the defendant did so with an intent to defraud; and

Third Proposition: That the _____was apparently capable of defrauding another.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/17-3 (West 2015), amended by P.A. 90-575, effective March 20, 1998, which added subsection (a)(4), amended by P.A. 90-759, effective July 1, 1999, which added subsection (a)(5).

Give Instruction 13.39.

When applicable, give Instruction 13.42, defining "document".

When applicable, give Instruction 5.12, defining "digital signature".

When applicable, give Instruction 5.13, defining "electronic signature".

When applicable, give Instruction 5.14, defining "signature device".

In *People v. Smith*, 259 Ill. App.3d 492, 500-01, 631 N.E.2d 738 (4th Dist. 1994), the appellate court concluded that the State is not required to prove that anyone was actually defrauded by the defendant's conduct, and accordingly held that the State need not allege or prove the identity of the victim whom the defendant intended to defraud. *See also People v. Crouch*, 29 Ill.2d 485, 486-87, 194 N.E.2d 248 (1963). Because this instruction formerly required the inclusion of the victim's identity, the appellate court held that it misstated the law. In light of *Smith*, the Committee has deleted the victim's identity previously required in the Second Proposition.

The bracketed numbers [1] through [5] correspond to the alternatives of the same number in Instruction 13.39, the definitional instruction for this offense. Select the alternative First Proposition that corresponds to the alternative selected from the definitional instruction.

Insert in the blanks the appropriate descriptions of the documents involved, e.g. check, note, mortgage.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. Give Instruction 5.03.

13.40A
Issues In Forgery

Use For Cases Where The Offense Is Alleged To Have Occurred After December 31, 2011

To sustain the charge of forgery, the State must prove the following propositions:

[1] *First Proposition*: That the defendant knowingly [(made a false document) (altered any document to make it false)] a _____so that it appeared to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)]; and

[or]

[2] *First Proposition*: That the defendant knowingly [(issued) (delivered)] a _____which he knew had been made or altered so that it appeared to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)]; and

[or]

[3] *First Proposition*: That the defendant knowingly possessed, with intent to issue or deliver a _____, which he knew had been made or altered so that it appeared to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)]; and

[or]

[4] *First Proposition*: That the defendant knowingly and unlawfully used the digital signature of another; and

[or]

[5] *First Proposition*: That the defendant knowingly and unlawfully used the signature device of another to create an electronic signature of that other person; and

Second Proposition: That the defendant did so with an intent to defraud; and

Third Proposition: That the _____was apparently capable of defrauding another.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/17-3 (West 2013), amended by P.A. 90-575, effective March 20, 1998, which added subsection (a)(4), amended by P.A. 90-759, effective July 1, 1999, which added subsection (a)(5).

Give Instruction 13.39.

When applicable, give Instruction 13.42, defining "document".

When applicable, give Instruction 5.12, defining "digital signature".

When applicable, give Instruction 5.13, defining "electronic signature".

When applicable, give Instruction 5.14, defining "signature device".

When applicable, give Instruction 5.15, defining "false document" or "document that is false".

In *People v. Smith*, 259 Ill. App.3d 492, 500-01, 631 N.E.2d (4th Dist. 1994), the appellate court concluded that the State is not required to prove that anyone was actually defrauded by the defendant's conduct, and accordingly held that the State need not allege or prove the identity of the victim whom the defendant intended to defraud. *See also People v. Crouch*, 29 Ill.2d 485, 486-87, 194 N.E.2d 248 (1963). Because this instruction formerly required the inclusion of the victim's identity, the appellate court held that it misstated the law. In light of *Smith*, the Committee has deleted the victim's identity previously required in the Second Proposition.

The bracketed numbers [1] through [5] correspond to the alternatives of the same number in Instruction 13.39, the definitional instruction for this offense. Select the alternative First Proposition that corresponds to the alternative selected from the definitional instruction.

Insert in the blanks the appropriate descriptions of the documents involved, *e.g.* check, note, mortgage.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. Give Instruction 5.03.

13.41
Definition Of Value--Commercial Or Written Instrument

The word "value" of property consisting of any commercial instrument or any written instrument representing or embodying rights concerning anything of value, labor, or services or otherwise of value to the owner means

[1] the "market value" of such instrument if such instrument is negotiable and has a market value; and

[2] the "actual value" of such instrument if such instrument is not negotiable or is otherwise without a market value. [For the purpose of establishing such "actual value," the interest of any owner or owners entitled to part or all of the property represented by such instrument, by reason of such instrument, may be shown, even if another "owner" may be named in the complaint, information, or indictment.]

Committee Note

720 ILCS 5/15-9 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §15-9 (1991)).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.41A
Definition Of Value--Theft

The word "value" means the fair cash market value of the property at the time of the incident in question.

Fair cash market value is what a willing buyer would pay to a willing seller in cash for the property at the time and place of the alleged theft.

Committee Note

Where there is an issue on value and the value can make a difference between a felony and a misdemeanor, it is best for the jury to decide the issue. It is necessary, therefore, to include a definition of value.

When theft of a commercial instrument is involved, do not use this instruction. Use Instruction 13.41 instead. When the value of damaged property is involved, do not use this instruction. Instead, use Instruction 13.41B.

See People v. Cobetto, 66 Ill.2d 488, 363 N.E.2d 854, 6 Ill.Dec. 907 (1977).

13.41B
Definition Of Value--Damage

In considering whether the damage to the property alleged to have been damaged exceeds ____, you may consider the cost of repair or replacement cost of the property. When the repair or replacement cost exceeds the fair cash market value, then it is the fair cash market value of the goods you are to consider in deciding the amount of damages in this case. [Fair cash market value is what a willing buyer would pay to a willing seller in cash for the property at the time and place of the alleged damage.]

Committee Note

An amendment to 720 ILCS 5/21-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §21-1 (1991)), effective January 1, 1990, provides that in cases involving felony damage to property in excess of $300, whether the damage exceeds the statutory amount is to be resolved by the trier of fact.

Ordinarily, the damage is measured by cost of repair, but it has been held not to be a fair measure where the property value did not exceed the cost of repair. In those cases, the fair cash market value is the test. People v. Carraro, 67 Ill.App.3d 81, 384 N.E.2d 581, 23 Ill.Dec. 787 (4th Dist.1979).

Insert in the blank the applicable statutory amount.

Use applicable bracketed material.

13.42
Definition Of Document—Forgery

The phrase "document capable of defrauding another" includes, but is not limited to, one by which any right, obligation or power with reference to any person or property may be created, transferred, altered or terminated. [The phrase also includes information that is inscribed, stored, or otherwise fixed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.] [The phrase also includes a Universal Price Code label or coin.].

Committee Note

720 ILCS 5/17-3(c) (West 2015); 5 ILCS 175/5-105 (West 2015).

13.43
Definition Of Retail Theft

A person commits the offense of retail theft when he knowingly

[1] [(takes possession of) (carries away) (transfers) (causes to be carried away) (causes to be transferred)] any merchandise [(displayed) (held) (stored) (offered for sale)] in a retail mercantile establishment with the intention of [(retaining such merchandise) (depriving the merchant permanently of the possession, use, or benefit of such merchandise)] without paying the full retail value of such merchandise[(.) (; and)]

[or]

[2] [(alters) (transfers) (removes)] any [(label) (price tag) (indicia of value) (marking which aids in determining value)] affixed to any merchandise [(held) (stored) (offered for sale)] in a retail mercantile establishment and attempts to purchase such merchandise personally or in consort with another at less than the full retail value with the intention of depriving the merchant of the full retail value of such merchandise[(.) (; and)]

[or]

[3] transfers any merchandise [(displayed) (held) (stored) (offered)] for sale in a retail mercantile establishment from the container [(in) (on)] which such merchandise is displayed to any other container with the intention of depriving the merchant of the full retail value of such merchandise[(.) (; and)]

[or]

[4] under-rings with the intention of depriving the merchant of the full retail value of the merchandise[(.) (; and)]

[or]

[5] removes a shopping cart from the premises of a retail mercantile establishment without the consent of the merchant given at the time of such removal with the intention of depriving the merchant permanently of the [(possession) (use) (benefit)] of such cart[(.) (; and)]

[or]

[6] represents to a merchant that he or another is the lawful owner of property, knowing that such representation is false, and [(conveys) (attempts to convey)] that property to a merchant who is the owner of the property in exchange for [(money) (merchandise) (credit) (other property of the merchant)] [(.) (; and)]

[or]

[7] [(uses) (possesses)] any [(theft detection shielding device) (theft detection device remover)] with the intention of using such device to deprive the merchant permanently of the [(possession) (use) (benefit)] of any merchandise [(displayed) (held) (stored) (offered for sale)] in a retail mercantile establishment without paying the full retail value of such merchandise[(.) (; and)]

[or]

[8] [(obtains) (exerts unauthorized control over)] property of the owner and thereby intends to deprive the owner permanently of the [(use) (benefit)] of the property when a lessee of the personal property of another fails to return it to the owner, or if the lessee fails to pay the full retail value of such property to the lessor in satisfaction of any contractual provision requiring such, within 30 days after written demand from the owner for its return[(.) (; and)]

[9] the value of the property exceeds $150.

Committee Note

720 ILCS 5/16A-3 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-3 (1991)), as amended by P.A. 86-356, effective January 1, 1990, and 720 ILCS 5/16A-10.

When paragraph [1] is used, give Instruction 13.44. When paragraph [2] is used, give Instruction 13.44A. When paragraph [3] is used, give Instruction 13.44B. When paragraph [4] is used, give Instruction 13.44C. When paragraph [5] is used, give Instruction 13.44D. When paragraph [6] is used, give Instruction 13.44E. When paragraph [7] is used, give Instruction 13.44F. When paragraph [8] is used, give Instruction 13.44G.

Give Instructions 13.46 through 13.46I as applicable.

When the charge of retail theft exceeding $150 is brought, the statute specifically states that the value of the property is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding $150. See Chapter 720, Section 16A-10. Accordingly, the Committee has included paragraph [9] which should be given when the value of the property exceeds $150.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater offense and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $150, then this instruction would begin “A person commits the offense of retail theft in excess of $150 when he . . . .”

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.44
Issues In Retail Theft By Taking Possession--Value Of $150 Or Less--Value Exceeding $150

To sustain the charge of retail theft, the State must prove the following propositions:

First Proposition: That ____ was a merchant; and

Second Proposition: That the merchandise was [(displayed) (held) (stored) (offered)] for sale in a retail mercantile establishment; and

Third Proposition: That the defendant knowingly [(took possession of the merchandise) (carried away the merchandise) (transferred the merchandise) (caused the merchandise to be carried away) (caused the merchandise to be transferred)]; and

Fourth Proposition: That when he did so, the defendant intended to deprive the merchant permanently of the [(possession of) (use of) (benefit of)] the merchandise without paying the full retail value of the merchandise[; and

Fifth Proposition: That the full retail value of the merchandise exceeded $150].

[or]

Fourth Proposition: That the defendant intended to retain the merchandise[; and

Fifth Proposition: That the full retail value of the merchandise exceeded $150].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16A-3(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-3(a) (1991)), as amended by P.A. 86-356, effective January 1, 1990.

Give Instruction 13.43, paragraph [1].

Give Instructions 13.46 through 13.46C.

When the State charges that the merchandise had a full retail value which exceeded $150, use the bracketed Fifth Proposition. See Chapter 720, Section 16A-10.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $150, then this instruction would begin "To sustain the charge of retail theft in excess of $150, the State must prove . . . ."

Insert in the blank the name of the merchant.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.44A
Issues In Retail Theft By Altering, Transferring, Removing Price Indicia--Value $150 Or Less--Value Exceeding $150

To sustain the charge of retail theft, the State must prove the following propositions:

First Proposition: That ____ was a merchant; and

Second Proposition: That the merchandise was [(displayed) (held) (stored) (offered)] for sale in a retail mercantile establishment; and

Third Proposition: That the defendant knowingly [(altered) (transferred) (removed)] any [(label) (price tag) (indicia of value) (marking which aids in determining value)] affixed to the merchandise; and

Fourth Proposition: That the defendant attempted to purchase personally or in consort with another the merchandise at less than the full retail value; and

Fifth Proposition: That the defendant intended to deprive the merchant of the full retail value of the merchandise[; and

Sixth Proposition: That the full retail value of the merchandise exceeded $150].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16A-3(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-3(b) (1991)), as amended by P.A. 86-356, effective January 1, 1990.

Give Instruction 13.43, paragraph [2].

Give Instructions 13.46 through 13.46C.

When the State charges that the merchandise had a full retail value which exceeded $150, use the bracketed Sixth Proposition. See Chapter 720, Section 16A-10.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $150, then this instruction would begin "To sustain the charge of retail theft in excess of $150, the State must prove . . . ."

Insert in the blank the name of the merchant.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

13.44B
Issues In Retail Theft By Transferring--Value Of $150 Or Less--Value Exceeding $150

To sustain the charge of retail theft, the State must prove the following propositions:

First Proposition: That ____ was a merchant; and

Second Proposition: That the merchandise was [(displayed) (held) (stored) (offered)] for sale in a retail mercantile establishment; and

Third Proposition: That the defendant knowingly transferred the merchandise from the container [(in) (on)] which the merchandise was displayed to any other container; and

Fourth Proposition: That when he did so, the defendant intended to deprive the merchant of the full retail value of the merchandise[; and

Fifth Proposition: That the full retail value of the merchandise exceeded $150].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16A-3(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-3(c) (1991)), as amended by P.A. 86-356, effective January 1, 1990.

Give Instruction 13.43, paragraph [3].

Give Instructions 13.46 through 13.46C.

When the State charges that the merchandise had a full retail value which exceeded $150, use the bracketed Fifth Proposition. See Chapter 720, Section 16A-10.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $150, then this instruction would begin "To sustain the charge of retail theft in excess of $150, the State must prove . . . ."

Insert in the blank the name of the merchant.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

13.44C
Issues In Retail Theft By Under-Rings--Value Of $150 Or Less--Value Exceeding $150

To sustain the charge of retail theft, the State must prove the following propositions:

First Proposition: That ____ was a merchant; and

Second Proposition: That the defendant knowingly under-rang intending to deprive the merchant of the full retail value of the merchandise[; and

Third Proposition: That the full retail value of the merchandise exceeded $150].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16A-3(d) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-3(d) (1991)), as amended by P.A. 86-356, effective January 1, 1990.

Give Instruction 13.43, paragraph [4].

Give Instructions 13.46 through 13.46B, and 13.46E.

When the State charges that the merchandise had a full retail value which exceeded $150, use the bracketed Fifth Proposition. See Chapter 720, Section 16A-10.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $150, then this instruction would begin "To sustain the charge of retail theft in excess of $150, the State must prove . . . ."

Insert in the blank the name of the merchant.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

13.44D
Issues In Retail Theft Of Shopping Cart--Value Of $150 Or Less--Value Exceeding $150

To sustain the charge of retail theft, the State must prove the following propositions:

First Proposition: That ____ was a merchant; and

Second Proposition: That the defendant removed a shopping cart from the premises of the retail mercantile establishment without the consent of the merchant given at the time of such removal; and

Third Proposition: That the defendant intended to deprive the merchant permanently of the [(possession of) (use of) (benefit of)] that cart[; and

Fourth Proposition: That the full retail value of the shopping cart exceeded $150].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16A-3(e) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-3(e) (1991)), as amended by P.A. 86-356, effective January 1, 1990.

Give Instruction 13.43, paragraph [5].

Give Instruction 13.46, Instructions 13.46B through 13.46D, and Instruction 13.46F.

When the State charges that the shopping cart had a full retail value which exceeded $150, use the bracketed Fourth Proposition. See Chapter 720, Section 16A-10.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $150, then this instruction would begin "To sustain the charge of retail theft in excess of $150, the State must prove . . . ."

Insert in the blank the name of the merchant.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

13.44E
Issues In Retail Theft By False Representation--Value Of $150 Or Less--Value Exceeding $150

To sustain the charge of retail theft, the State must prove the following propositions:

First Proposition: That ____ was a merchant; and

Second Proposition: That the defendant represented to the merchant that he was the lawful owner of the property; and

Third Proposition: That the defendant knew such representation was false; and

Fourth Proposition: That the defendant [(conveyed) (attempted to convey)] the property to the merchant in exchange for [(money) (credit) (other property of the merchant)] [; and

Fifth Proposition: That the full retail value of the property exceeded $150].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16A-3(f) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-3(f) (1991)), as amended by P.A. 86-356, effective January 1, 1990.

Give Instruction 13.43, paragraph [6].

Give Instructions 13.46 and 13.46B.

When the State charges that the property had a full retail value which exceeded $150, use the bracketed Fifth Proposition. See Chapter 720, Section 16A-10.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $150, then this instruction would begin "To sustain the charge of retail theft in excess of $150, the State must prove . . . ."

Insert in the blank the name of the merchant.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

13.44F
Issues In Retail Theft By Theft Detection Shielding Device Or Device Remover--Value Of $150 Or Less--Value Exceeding $150

To sustain the charge of retail theft, the State must prove the following propositions:

First Proposition: That ____ was a merchant; and

Second Proposition: That the merchandise was [(displayed) (held) (stored) (offered)] for sale in a retail mercantile establishment; and

Third Proposition: That the defendant knowingly [(used) (possessed)] a [(theft detection shielding device) (theft detection device remover)]; and

Fourth Proposition: That the defendant intended to use such [(device) (device remover)] to permanently deprive the merchant of the [(possession of) (use of) (benefit of)] the merchandise without paying the full retail value of the merchandise[; and

Fifth Proposition: That the full retail value of the merchandise exceeded $150].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16A-3(g) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-3(g) (1991)), as amended by P.A. 86-356, effective January 1, 1990.

Give Instruction 13.43, paragraph [7].

Give Instructions 13.46 through 13.46C, 13.46G, and 13.46H.

When the State charges that the property had a full retail value which exceeded $150, use the bracketed Fifth Proposition. See Chapter 720, Section 16A-10.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $150, then this instruction would begin "To sustain the charge of retail theft in excess of $150, the State must prove . . . ."

Insert in the blank the name of the merchant.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

13.44G
Issues In Retail Theft--Lessee

To sustain the charge of retail theft, the State must prove the following propositions:

First Proposition: That ____ was the owner of property; and

Second Proposition: That the defendant leased the property from the owner; and

Third Proposition: That the defendant knowingly [(obtained) (exerted)] unauthorized control over that property by knowingly failing to return that property to the owner while intending to deprive the owner permanently of the [(use of) (benefit of)] that property by knowingly failing to return that property to the owner;

[or]

Third Proposition: That the defendant [(obtained) (exerted)] unauthorized control over that property by knowingly failing to pay the full retail value of that property pursuant to a lease contracted while intending to deprive the owner permanently of the [(use of) (benefit of)] that property by knowingly failing to pay the full retail value of that property pursuant to a contractual provision;

and

Fourth Proposition: That 30 days or more expired after the owner gave written demand to the defendant to return the property[; and

Fifth Proposition: That the full retail value of the property exceeded $150].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16A-3(h) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-3(h) (1991)), as amended by P.A. 86-356, effective January 1, 1990.

Give Instruction 13.43, paragraph [8].

Give Instruction 13.46.

When the State charges that the property has a full retail value which exceeded $150, use the bracketed Fifth Proposition. See Chapter 720, Section 16A-10.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $150, then this

instruction would begin "To sustain the charge of retail theft in excess of $150, the State must prove . . . ."

The Committee points out that the statute provides that a notice in writing, by registered mail, to the lessee at the address given by lessee and shown on the leasing agreement constitutes proper demand. The Committee takes no position on whether or not personal service on the lessee of the demand or a different type of mailing of the demand constitutes proper demand.

Insert in the blank the name of the owner.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

13.45
Presumption Arising From Concealed Merchandise

If you find beyond a reasonable doubt that the defendant concealed upon his person or among his belongings, unpurchased merchandise displayed, held, stored, or offered for sale in a retail mercantile establishment, and that the defendant removed that merchandise beyond the last known station for receiving payments for that merchandise in the retail mercantile establishment, you may presume that the defendant acted with the intention of retaining that merchandise or with the intention of depriving the merchant permanently of the possession, use, or benefit of that merchandise without paying the full retail value of that merchandise.

You are never required to make this presumption. It is for the jury to determine whether the presumption should be made.

Concealment of merchandise upon the defendant's person may be reasonably explained by the facts and circumstances in evidence.

Removal of merchandise beyond the last known station for receiving payments may be reasonably explained by the facts and circumstances in evidence.

[In considering whether concealment of merchandise upon the defendant's person or removal of merchandise beyond the last known station for receiving payments in the retail mercantile establishment has been reasonably explained, you are reminded that the accused need not testify nor produce evidence.]

Committee Note

720 ILCS 5/16A-4 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-4 (1991)).

The Committee recommends that no instruction be given on this subject for the reasons set forth in People v. Killings, 103 Ill.App.3d 1074, 431 N.E.2d 1387, 59 Ill.Dec. 630 (4th Dist.1982).

If for some reason the court determines that the instruction should be given, the judge should first determine as a matter of law whether the jury could find concealment or removal.

The last bracketed paragraph should be given only at the request of the defendant.

13.45A
Definition Of Conceal Merchandise

The term "conceal merchandise" means that, although there may be some notice of its presence, that merchandise is not visible through ordinary observation.

Committee Note

720 ILCS 5/16A-2.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-2.1 (1991)).

13.46
Definition Of Full Retail Value

The phrase “full retail value” means the merchant's stated or advertised price of the merchandise.

Committee Note

720 ILCS 5/16A-2.2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-2.2 (1991)).

13.46A
Definition Of Merchandise

The word “merchandise” means any item of tangible personal property.

Committee Note

720 ILCS 5/16A-2.3 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-2.3 (1991)).

13.46B
Definition Of Merchant

The word "merchant" means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchise, or independent contractor of such owner or operator.

Committee Note

720 ILCS 5/16A-2.4 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-2.4 (1991)).

13.46C
Definition Of Retail Mercantile Establishment

The phrase "retail mercantile establishment" means any place where merchandise is displayed, held, stored, or offered for sale to the public.

Committee Note

720 ILCS 5/16A-2.9 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-2.9 (1991)).

13.46D
Definition Of Premises Of A Retail Mercantile Establishment

The phrase "premises of a retail mercantile establishment" includes, but is not limited to, the retail mercantile establishment, any common use areas in shopping centers, and all parking areas set aside by a merchant or on behalf of a merchant for parking of vehicles for the convenience of the patrons of such retail mercantile establishment.

Committee Note

720 ILCS 5/16A-2.8 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-2.8 (1991)).

13.46E
Definition Of Under-Ring

The word “under-ring” means to cause the cash register or other sales recording device to reflect less than the full retail value of the merchandise.

Committee Note

720 ILCS 5/16A-2.11 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-2.11 (1991)).

13.46F
Definition Of Shopping Cart

The term "shopping cart" means those push carts of the type or types which are commonly provided by grocery stores, drug stores, or other retail mercantile establishments for the use of the public in transporting commodities in the stores and markets and, incidentally, from the stores to a place outside the store.

Committee Note

720 ILCS 5/16A-2.10 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-2.10 (1991)).

13.46G
Definition Of Theft Detection Shielding Device

The phrase "theft detection shielding device" means any laminated or coated bag or device designed and intended to shield merchandise from detection by an electronic or magnetic theft alarm sensor.

Committee Note

720 ILCS 5/16A-2.12 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-2.12 (1991)).

13.46H
Definition Of Theft Detection Device Remover

The phrase "theft detection device remover" means any tool or device specifically designed and intended to be used to remove any theft detection device from any merchandise.

Committee Note

720 ILCS 5/16A-2.13 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-2.13 (1991)).

13.46I
Definition Of Person

The word “person” means any natural person or individual.

Committee Note

720 ILCS 5/16A-2.6 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-2.6 (1991)).

13.47
Definition Of Unauthorized Possession Of Identification Document

A person commits the offense of unauthorized possession of identification document when he possesses for an unlawful purpose another person's identification document issued by the Illinois Department of Public Aid.

Committee Note

305 ILCS 5/8A-5A (West, 1999) (formerly Ill.Rev.Stat. ch. 23, §8A-5A (1991)), added by P.A. 86-1012, effective July 1, 1990.

Give Instructions 13.47A and 13.48.

13.47A
Definition Of Identification Document

The term "identification document" includes, but is not limited to, an authorization to participate in the federal food stamp program or the federal surplus food commodities program, or a card or other document which identifies a person as being entitled to public aid under the Illinois Public Aid Code.

Committee Note

305 ILCS 5/8A-5A (West, 1999) (formerly Ill.Rev.Stat. ch. 23, §8A-5A (1991)), added by P.A. 86-1012, effective July 1, 1990.

13.48
Issues In Unauthorized Possession Of Identification Document

To sustain the charge of unauthorized possession of identification document, the State must prove the following propositions:

First Proposition: That the defendant possessed an identification document issued by the Illinois Department of Public Aid; and

Second Proposition: That the identification document in question was another person's identification document; and

Third Proposition: That the defendant possessed this identification document for an unlawful purpose, namely ____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all of the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

305 ILCS 5/8A-5A (West, 1999) (formerly Ill.Rev.Stat. ch. 23, §8A-5A (1991)), added by P.A. 86-1012, effective July 1, 1990.

Give Instructions 13.47 and 13.47A.

Insert in the blank the alleged unlawful purpose.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.49
Definition Of Computer Tampering

A person commits the offense of computer tampering when he knowingly and [(without the authorization of a computer's owner) (in excess of the authority granted to him by the computer's owner)]

[1] [(accesses a computer or any part of a computer) (causes a computer or any part of a computer to be accessed) (accesses a program) (causes a program to be accessed) (accesses data) (causes data to be accessed)].

[or]

[2] [(accesses a computer or any part of a computer) (causes a computer or any part of a computer to be accessed) (accesses a program) (causes a program to be accessed) (accesses data) (causes data to be accessed)], and obtains [(data) (services)].

[or]

[3] [(accesses a computer or any part of a computer) (causes a computer or any part of a computer to be accessed) (accesses a program) (causes a program to be accessed) (accesses data) (causes data to be accessed)], and [(damages the computer) (destroys the computer) (alters a computer program) (deletes a computer program) (removes a computer program) (alters data) (deletes data) (removes data)].

[or]

[4] [(inserts) (attempts to insert)] a program into a [(computer) (computer program)] [(knowing) (having reason to believe)] that such program contains information or commands that [(will) (may)] [(damage that computer or any other computer subsequently accessing or being accessed by that computer) (destroy that computer or any other computer subsequently accessing or being accessed by that computer) (alter a computer program or data from that computer or any other computer program or data in a computer subsequently accessing or being accessed by that computer) (delete a computer program or data from that computer, or any other computer program or data in a computer subsequently accessing or being accessed by that computer) (remove a computer program or data from that computer, or any other computer program or data in a computer subsequently accessing or being accessed by that computer) (cause loss to the users of that computer or the users of a computer which accesses or which is accessed by such program)].

Committee Note

720 ILCS 5/16D-3 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-3 (1991)), as amended by P.A. 86-762, effective January 1, 1990.

Give Instructions 13.55 through 13.55D when appropriate.

When the first paragraph is used, give Instruction 13.50 (Issues in Computer Tampering--Accessing). When the second paragraph is used, give Instruction 13.50A (Issues in Computer Tampering--Obtaining Data or Services). When the third paragraph is used, give Instruction 13.50B (Issues in Computer Tampering--Damage). When the fourth paragraph is used, give Instruction 13.50C (Issues in Computer Tampering--Inserting a Program).

The Committee notes the use of quotation marks around the word "program" in Chapter 720, Section 16-D-3(a)(4), when an unauthorized "program" is inserted into a computer or a computer program or an attempt is made to insert an unauthorized "program" into a computer or a computer program. The Committee suggests the use of neutral terminology when instructing on the unauthorized "program."

The word "owner" is defined in Instruction 13.33A.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.50
Issues In Computer Tampering--Accessing

To sustain the charge of computer tampering, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(accessed a computer or any part of a computer) (caused a computer or any part of a computer to be accessed) (accessed a program) (caused a program to be accessed) (accessed data) (caused data to be accessed)]; and

Second Proposition: That the defendant acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)]; and

Third Proposition: That the defendant knew that he acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16D-3(a)(1) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-3(a)(1) (1991)), as amended by P.A. 86-762, effective January 1, 1990.

Give Instruction 13.49, paragraph [1].

Give Instructions 13.55 through 13.55C.

The Committee discussed the *mens rea* required for computer tampering and agreed that the defendant must know that he is accessing, and he must know that he is without or in excess of authority. See Chapter 720, Section 4-3(b).

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.50A
Issues In Computer Tampering--Obtaining Data Or Services

To sustain the charge of computer tampering, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(accessed a computer or any part of a computer) (caused a computer or any part of a computer to be accessed) (accessed a program) (caused a program to be accessed) (accessed data) (caused data to be accessed)]; and

Second Proposition: That the defendant obtained [(data) (services)]; and

Third Proposition: That the defendant acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)]; and

Fourth Proposition: That the defendant knew that he acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16D-3(a)(2) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-3(a)(2) (1991)), as amended by P.A. 86-762, effective January 1, 1990.

Give Instruction 13.49, paragraph [2].

Give Instructions 13.55 through 13.55D.

The Committee discussed the *mens rea* required for computer tampering and agreed that the defendant must know that he is accessing, and he must know that he is without or in excess of authority. See Chapter 720, Section 4-3(b).

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.50B
Issues In Computer Tampering--Damage

To sustain the charge of computer tampering, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(accessed a computer or any part of a computer) (caused a computer or any part of a computer to be accessed) (accessed a program) (caused a program to be accessed) (accessed data) (caused data to be accessed)]; and

Second Proposition: That the defendant [(damaged the computer) (destroyed the computer) (altered a computer program) (altered data) (deleted a computer program) (deleted data) (removed a computer program) (removed data)]; and

Third Proposition: That the defendant knew that he acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)]; and

Fourth Proposition: That the defendant knew that he acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16D-3(a)(3) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-3(a)(3) (1991)), as amended by P.A. 86-762, effective January 1, 1990.

Give Instruction 13.49, paragraph [3].

Give Instructions 13.55 through 13.55D.

The Committee discussed the *mens rea* required for computer tampering and agreed that the defendant must know that he is accessing, and he must know that he is without or in excess of authority. See Chapter 720, Section 4-3(b).

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.50C
Issues In Computer Tampering--Inserting A Program

To sustain the charge of computer tampering, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(inserted) (attempted to insert)] a program into a [(computer) (computer program)]; and

Second Proposition: That the defendant [(knew) (had reason to believe)] that the program which he [(inserted) (attempted to insert)] contained information or commands that [(would) (might)] [(damage that computer or any other computer subsequently accessing or being accessed by that computer) (destroy that computer or any other computer subsequently accessing or being accessed by that computer) (alter a computer program or data from that computer or any other computer program or data in a computer subsequently accessing or being accessed by that computer) (delete a computer program or data from that computer or any other computer program or data in a computer subsequently accessing or being accessed by that computer) (remove a computer program or data from that computer or any other computer program or data in a computer subsequently accessing or being accessed by that computer) (cause loss to the users of that computer or the users of a computer which accesses or which is accessed by such program)]; and

Third Proposition: That the defendant acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)]; and

Fourth Proposition: That the defendant knew that he acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16D-3(a)(4) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-3(a)(4) (1991)), as amended by P.A. 86-762, effective January 1, 1990.

Give Instruction 13.49, paragraph [4].

Give Instructions 13.55 through 13.55D.

The Committee discussed the *mens rea* required for computer tampering and agreed that the defendant must know that he is inserting or attempting to insert a program, and he must know that he is without or in excess of authority. See Chapter 720, Section 4-3(b).

See Committee Note to Instruction 13.49, regarding the word “program.”

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.51
Definition Of Aggravated Computer Tampering

A person commits the offense of aggravated computer tampering when he, in committing computer tampering, knowingly

[1] causes [(disruption of) (interference with)] vital [(services of) (operations of)] [(state government) (local government) (a public utility)].

[or]

[2] creates a strong probability of death or great bodily harm to one or more individuals.

Committee Note

720 ILCS 5/16D-4 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-4 (1991)), as amended by P.A. 86-820, effective September 7, 1989.

Give Instructions 13.49 and 13.52.

Give Instructions 13.55 through 13.55E.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.52
Issues In Aggravated Computer Tampering

To sustain the charge of aggravated computer tampering, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(accessed a computer or any part of a computer) (caused a computer or any part of a computer to be accessed) (caused a computer program or data to be accessed)]; and

Second Proposition: That in doing so, the defendant [(damaged a computer) (destroyed a computer) (altered a computer program or data) (deleted a computer program or data) (removed a computer program or data)]; and

Third Proposition: That the defendant acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)]; and

Fourth Proposition: That the defendant knew that he acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)]; and

Fifth Proposition: That the defendant knowingly caused [(deception of) (interference with)] vital [(services of) (operations of)] [(state government) (local government) (a public utility)].

[or]

Fifth Proposition: That the defendant knowingly created a strong probability of death or great bodily harm to one or more individuals.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16D-4 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-4 (1991)), as amended by P.A. 86-820, effective September 7, 1989.

Give Instruction 13.51.

Give Instructions 13.55 through 13.55E.

The Committee discussed the *mens rea* required for aggravated computer tampering and agreed that the defendant must know that he is accessing, and he must know that he is without or in excess of authority. See Chapter 720, Section 4-3(b).

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.53
Definition Of Computer Fraud

A person commits the offense of computer fraud when he knowingly

[1] [(accesses a computer or any part of a computer) (causes a computer or any part of a computer to be accessed) (accesses a program) (causes a program to be accessed) (accesses data) (causes data to be accessed)] and he does so [(for the purpose of [(devising) (executing)] any [(scheme to defraud) (artifice to defraud)]) (as part of a deception)].

[or]

[2] [(obtains use of a computer or any part of a computer) (damages a computer or any part of a computer) (destroys a computer or any part of a computer) (alters any data contained in a computer) (alters any program contained in a computer) (deletes any program contained in a computer) (deletes any data contained in a computer) (removes any data contained in a computer) (removes any program contained in a computer)] [(in connection with a scheme to defraud) (in connection with an artifice to defraud) (as part of a deception)].

[or]

[3] [(accesses a computer) (accesses any part of a computer) (accesses a program) (accesses data) (causes a computer to be accessed) (causes any part of a computer to be accessed) (causes a program to be accessed) (causes data to be accessed)] and obtains [(money) (control over money) (property) (services of another)] [(in connection with any scheme to defraud) (in connection with any artifice to defraud) (as part of a deception)][, and the value of the [(money) (property) (services)] is [(more than $1,000) ($50,000 or more)]].

Committee Note

720 ILCS 5/16D-5 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-5 (1991)).

When paragraph [1] is used, give Instruction 13.54 (Issues in Computer Fraud by Access). When paragraph [2] is used, give Instruction 13.54A (Issues in Computer Fraud by Damage). When paragraph [3] is used, give Instruction 13.54B (Issues in Computer Fraud by Access for Money).

Give Instructions 13.55 through 13.55D, when appropriate.

The Committee, after a long discussion, decided that for the statute to apply, the purpose of any scheme addressed in this instruction must be to defraud, so although the statute reads "... in connection with any scheme ...", the Committee has drafted this instruction accordingly.

The Committee has included the value of the money, property, or services as an issue to be resolved by the jury because Section 16D- 5(b)(3) sets forth different penalties depending on the value of the money, property, or services in question. Accordingly, the Committee has included the bracketed material at the end of paragraph [3] which should be given when the value of the property exceeds $1,000.

If the value of the money, property, or services is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the money, property, or services exceeds $1,000, then this instruction would begin "A person commits the offense of computer fraud in excess of $1,000 when he . . . ."

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.54
Issues In Computer Fraud By Access

To sustain the charge of computer fraud, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(accessed a computer or any part of a computer) (caused a computer or any part of a computer to be accessed) (accessed data) (caused data to be accessed) (accessed a program) (caused a program to be accessed)]; and

Second Proposition: That the defendant acted [(for the purpose of [(devising) (executing)] [(a scheme to defraud) (an artifice to defraud)]) (as part of a deception)]; and

Third Proposition: That the defendant knew that he acted [(for the purpose of [(devising) (executing)] [(a scheme to defraud) (an artifice to defraud)]) (as part of a deception)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16D-5(a)(1) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-5(a)(1) (1991)).

Give Instruction 13.53, paragraph [1].

Give Instructions 13.55 through 13.55D.

The Committee discussed the *mens rea* required for computer fraud and agreed that the defendant must know that he is accessing, and he must know that he is acting for the purpose of defrauding or as part of a deception. See Chapter 720, Section 4-3(b).

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.54A
Issues In Computer Fraud By Damage

To sustain the charge of computer fraud, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(obtained use of a computer or any part of a computer) (damaged a computer or any part of a computer) (destroyed a computer or any part of a computer) (altered any data contained in a computer) (altered any program contained in a computer) (deleted any data contained in a computer) (deleted any program contained in a computer) (removed any data contained in a computer) (removed any program contained in a computer)]; and

Second Proposition: That the defendant acted [(in connection with any scheme to defraud) (in connection with any artifice to defraud) (as part of a deception)]; and

Third Proposition: That the defendant knew he acted [(in connection with any scheme to defraud) (in connection with any artifice to defraud) (as part of a deception)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16D-5(a)(2) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-5(a)(2) (1991)).

Give Instruction 13.53, paragraph [2].

Give Instructions 13.55 through 13.55B.

The Committee discussed the *mens rea* required for computer fraud and agreed that the defendant must know that he is damaging, and he must know that he is acting for the purpose of defrauding or as a part of a deception.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.54B
Issues In Computer Fraud By Access For Money

To sustain the charge of computer fraud, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(accessed a computer or any part of a computer) (caused a computer or any part of a computer to be accessed) (accessed data) (caused data to be accessed) (accessed a program) (caused a program to be accessed)]; and

Second Proposition: That the defendant obtained [(money) (control over money) (property) (services of another)]; and

Third Proposition: That the defendant acted [(in connection with any scheme to defraud) (in connection with any artifice to defraud) (as part of a deception)]; and

Fourth Proposition: That the defendant knew that he acted [(in connection with any artifice to defraud) (as part of a deception)][; and

Fifth Proposition: That the value of the [(money) (property) (services)] was [(more than $1,000) ($50,000 or more)]].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16D-5(a)(3) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-5(a)(3) (1991)).

Give Instruction 13.53, paragraph [3].

Give Instructions 13.33, and 13.55 through 13.55D.

The Committee discussed the *mens rea* required for computer fraud and agreed that the defendant must know that he is accessing, and he must know that he is acting for the purpose of defrauding or as part of a deception.

The Committee has included the value of the money, property, or services as an issue to be resolved by the jury because Section 16D- 5(b)(3) sets forth different penalties depending on the damage to the property in question. Accordingly, the Committee has included the Fifth Proposition which should be given when the value of the property exceeds $1,000.

If the value of the money, property, or services is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the money, property, or services exceeds $1,000, then this instruction would begin "To sustain the charge of computer fraud in excess of $1,000, the State must prove . . . ."

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.55
Definition Of Computer

The word “computer” means a device that accepts, processes, stores, retrieves, or outputs data, and includes, but is not limited to, auxiliary storage and telecommunications devices connected to computers.

Committee Note

720 ILCS 5/16D-2(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-2(a) (1991)).

13.55A
Definition Of Computer Program Or Program

The term “computer program” or the word “program” means a series of coded instructions of statements in a form acceptable to a computer which causes the computer to process data and supply the results of the data processing.

Committee Note

720 ILCS 5/16D-2(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-2(b) (1991)).

13.55B
Definition Of Data

The word “data” means a representation of information, knowledge, facts, concepts, or instructions, including program documentation, which is prepared in a formalized manner and is stored or processed in or transmitted by a computer. Data shall be considered property and may be in any form including, but not limited to, printouts, magnetic or optical storage media, punch cards, or data stored internally in the memory of the computer.

Committee Note

720 ILCS 5/16D-2(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-2(c) (1991)).

13.55C
Definition Of Access

The word “access” means to use, instruct, communicate with, store data in, retrieve, or intercept data from, or otherwise utilize any services of a computer.

Committee Note

720 ILCS 5/16D-2(e) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-2(e) (1991)).

13.55D
Definition Of Services

The word “services” includes, but is not limited to, computer time, data manipulation, or storage functions.

Committee Note

720 ILCS 5/16D-2(f) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-2(f) (1991)).

13.55E
Definition Of Vital Services Or Operations

The phrase "vital services or operations" means those services or operations required to provide, operate, maintain, and repair network cabling, transmission, distribution, or computer facilities necessary to ensure or protect the public health, safety, or welfare. Public health, safety, or welfare include, but are not limited to, services provided by medical personnel or institutions, fire departments, emergency service agencies, national defense contractors, armed forces or militia personnel, private and public utility companies, or law enforcement agencies.

Committee Note

720 ILCS 5/16D-2(g) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-2(g) (1991)).

13.56
Definition Of Insurance Fraud

A person commits the offense of insurance fraud [involving property valued at [($300 or less) (more than $300 but not more than $10,000) (more than $10,000 but not more than 100,000) ($100,000 or more)]] when he knowingly and by deception [(obtains control) (attempts to obtain control) (causes control to be obtained)] over the property of an insurance company by making a false claim on any insurance policy issued by an insurance company and intends to permanently deprive the insurance company of the use and benefit of that property, and the property is valued at [($300 or less) (more than $300 but not more than $10,000) (more than $10,000 but not more than $100,000) ($100,000 or more)].

Committee Note

720 ILCS 5/46-1 (West, 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993. P.A. 87-1134 originally added insurance fraud crimes as Article 45 of the Criminal Code, even though the legislature had already defined Article 45 as "Disclosing Location of Domestic Violence Victims." P.A. 88-45 renumbered the insurance fraud crimes to Article 46 without making any substantive changes.

Give Instruction 13.57.

Give Instruction 13.56A, defining the word "value", when the value of the defrauded property is an issue.

Ordinarily, the instruction sent to the jury need not contain the phrase "... but not more than $10,000" or the phrase "... but not more than $100,000," unless the jury will receive instructions on a lesser-included insurance fraud offense when the range of the disputed value of the defrauded property extends across the incremental values listed in Section 46-1(b).

Use applicable bracketed material.

13.56A
Definition Of Value--Insurance Fraud

Where the exact value of property [(obtained) (attempted to be obtained)] is either not asserted by the defendant or not specifically set by the terms of the insurance policy, then the value of the property shall be [both] [(the fair market replacement value of the property claimed to be lost) [and] (the reasonable costs of reimbursing a vendor or other claimant for services to be rendered)].

[The pertinent value of the defrauded property in insurance fraud is the value of the property [(obtained) (attempted to be obtained) (caused to be obtained)] from the insurance company, which will not necessarily be the same as the value of the property covered under the insurance policy.]

Committee Note

720 ILCS 5/46-1(c) (West, 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993.

Give this instruction when the value of the defrauded property is an issue.

Use the final bracketed paragraph when the value of the property obtained, attempted to be obtained, or caused to be obtained from the insurance company differs from the value of the property covered under the insurance policy. For instance, if the defendant submits a $300 dollar fraudulent claim to an insurance company under a policy covering a $500,000 home, then the value of the insurance fraud is $300, not $500,000. In such a situation, use the final bracketed paragraph.

This definition directly applies only to the offense of insurance fraud. See 720 ILCS 5/46-1(c).

Use applicable bracketed material.

13.57
Issues In Insurance Fraud

To sustain the charge of insurance fraud [involving property valued at [($300 or less) (more than $300 but not more than $10,000) (more than $10,000 but not more than $100,000) ($100,000 or more)]], the State must prove the following propositions:

First Proposition: That the defendant knowingly made a claim to an insurance company under any insurance policy issued by an insurance company; and

Second Proposition: That the defendant knew that this claim was false; and

Third Proposition: That the defendant knowingly and by deception [(obtained control) (attempted to obtain control) (caused control to be obtained)] over the property of an insurance company by making the false claim; and

Fourth Proposition: That the defendant intended to permanently deprive the insurance company of the use and benefit of this property; and

Fifth Proposition: That this property of the insurance company was valued at [($300 or less) (more than $300 but not more than $10,000) (more than $10,000 but not more than $100,000) ($100,000 or more)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/46-1 (West, 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993. P.A. 87-1134 originally added insurance fraud crimes as Article 45 of the Criminal Code, even though the legislature had already defined Article 45 as "Disclosing Location of Domestic Violence Victims." P.A. 88-45 thus renumbered the insurance fraud crimes to Article 46 without making any substantive changes.

Give Instruction 13.56.

See the Committee Note to Instruction 13.56 regarding how to instruct the jury when the range of the disputed value of the defrauded property extends across the incremental values in Section 46-1(b).

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

13.58
Definition Of Aggravated Insurance Fraud

A person commits the offense of aggravated insurance fraud when, within an 18 month period, he knowingly and by deception [(obtains control) (attempts to obtain control) (causes control to be obtained)] over the property of [(an insurance company) (insurance companies)] by making three or more false claims under any [(policy) (policies)] issued by an insurance company, and intends to permanently deprive the insurance [(company) (companies)] of the use and benefit of that property. [The three or more claims must also arise out of separate [(incidents) (transactions)].]

Committee Note

720 ILCS 5/46-2 (West, 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993. P.A. 87-1134 originally added insurance fraud crimes as Article 45 of the Criminal Code, even though the legislature had already defined Article 45 as "Disclosing Location of Domestic Violence Victims." P.A. 88-45 thus renumbered the insurance fraud crimes to Article 46 without making any substantive changes.

Give Instruction 13.59.

Use applicable bracketed material.

13.59
Issues In Aggravated Insurance Fraud

To sustain the charge of aggravated insurance fraud, the State must prove the following propositions:

First Proposition: That the defendant knowingly made three or more claims to [(an insurance company) (insurance companies)] under any insurance [(policy) (policies)] issued by any insurance [(company) (companies)]; and

Second Proposition: That the defendant knew that all these claims were false; and

Third Proposition: That each claim allegedly arose out of a separate [(incident) (transaction)]; and

Fourth Proposition: That the defendant knowingly and by deception [(obtained control) (attempted to obtain control) (caused control to be obtained)] over the property of any insurance [(company) (companies)] three times or more by making these false claims; and

Fifth Proposition: That the defendant did so within a period of 18 months; and

Sixth Proposition: That the defendant at all three or more times intended to permanently deprive the insurance company of the use and benefit of the property.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/46-2 (West, 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993. P.A. 87-1134 originally added insurance fraud crimes as Article 45 of the Criminal Code, even though the legislature had already defined Article 45 as "Disclosing Location of Domestic Violence Victims." P.A. 88-45 thus renumbered the insurance fraud crimes to Article 46 without making any substantive changes.

Give Instruction 13.58.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

13.60
Definition Of Insurance Fraud Conspiracy

A defendant commits the offense of insurance fraud conspiracy when, with the intent that the offense of [(insurance fraud) (aggravated insurance fraud)] be committed, he [(knowingly) (intentionally) (recklessly)] agrees with another to commit [(insurance fraud) (aggravated insurance fraud)], he or the other person has done an overt act or acts in furtherance of the agreement, and he is a part of a common scheme or plan to engage in the unlawful activity.

An agreement may be implied from the conduct of the parties even though they acted separately or by different means and did not come together into an express agreement.

To constitute the offense of insurance fraud conspiracy, it is not necessary that the conspirators succeeded in obtaining or exerting control over the insurance company's property.

[The person or persons with whom the defendant agrees to commit aggravated insurance fraud need not be the same for each instance of fraud. That is, the defendant may conspire with different co-conspirators in each of the three or more instances of fraud and still commit insurance fraud conspiracy.]

Committee Note

720 ILCS 5/46-3 (West, 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993. P.A. 87-1134 originally added insurance fraud crimes as Article 45 of the Criminal Code, even though the legislature had already defined Article 45 as "Disclosing Location of Domestic Violence Victims." P.A. 88-45 thus renumbered the insurance fraud crimes to Article 46 without making any substantive changes.

Give Instruction 13.61.

Give either Instruction 13.56 (Definition of Insurance Fraud) or Instruction 13.58 (Definition of Aggravated Insurance Fraud), depending on which predicate offense the prosecution accuses defendant of committing.

Use the final bracketed paragraph when the defendant has allegedly agreed to commit aggravated insurance fraud with different co-conspirators on the three or more claimed occasions of fraud.

Because Section 46-3 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

See Instruction 13.60A regarding purported defenses that the statute has excluded.

Use applicable bracketed material.

13.60A
Precluded Defenses To Insurance Fraud Conspiracy

It is not a defense to insurance fraud conspiracy that the person or persons with whom the defendant has allegedly conspired [(have not been prosecuted or convicted) (have been convicted of other offenses) (were not amenable to justice) (have been acquitted) (lacked the capacity to commit an offense)].

Committee Note

720 ILCS 5/46-3(b) and (c) (West, 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993.

Give this instruction when any of the purported defenses are at issue.

Use applicable bracketed material.

13.61
Issues In Insurance Fraud Conspiracy

To sustain the charge of insurance fraud conspiracy, the State must prove the following propositions:

First Proposition: That the defendant [(knowingly) (intentionally) (recklessly)] agreed with another to commit [(insurance fraud) (aggravated insurance fraud)]; and

Second Proposition: That the defendant did so with the intent that the [(insurance fraud) (aggravated insurance fraud)] would be committed; and

Third Proposition: That [(the defendant) (a co-conspirator)] committed an overt act or acts in furtherance of committing [(insurance fraud) (aggravated insurance fraud)]; and

Fourth Proposition: That the defendant was a part of a common scheme or plan to engage in the unlawful activity.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/46-3 (West, 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993. P.A. 87-1134 originally added insurance fraud crimes as Article 45 of the Criminal Code, even though the legislature had already defined Article 45 as "Disclosing Location of Domestic Violence Victims." P.A. 88-45 thus renumbered the insurance fraud crimes to Article 46 without making any substantive changes.

Give Instruction 13.60.

See Committee Note to Instruction 13.60 regarding the applicable mental states.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

13.62
Definition Of Organizing An Aggravated Insurance Fraud Conspiracy

A person commits the offense of organizing an insurance fraud conspiracy when, with the intent that aggravated insurance fraud be committed, he [(knowingly) (intentionally) (recklessly)] agrees with another to commit aggravated insurance fraud, occupies a position as [(an organizer) (a supervisor) (a financier) [or another position of management]], [(he) (another co-conspirator)] commits an overt act in furtherance of the agreement, and he is a part of a common scheme or plan to engage in the unlawful activity.

An agreement may be implied from the conduct of the parties even though they acted separately or by different means and did not come together into an express agreement.

To constitute the offense of insurance fraud conspiracy, it is not necessary that the conspirators succeed in committing the offense of [(insurance fraud) (aggravated insurance fraud)].

[The person or persons with whom the defendant agrees to commit aggravated insurance fraud need not be the same for each instance of fraud. That is, the defendant may conspire with different co-conspirators in each of the three or more instances of fraud and still commit insurance fraud conspiracy.]

Committee Note

720 ILCS 5/46-4 (West, 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993. P.A. 87-1134 originally added insurance fraud crimes as Article 45 of the Criminal Code, even though the legislature had already defined Article 45 as "Disclosing Location of Domestic Violence Victims." P.A. 88-45 thus renumbered the insurance fraud crimes to Article 46 without making any substantive changes.

Give Instruction 13.63.

Give Instruction 13.58 (Definition of Aggravated Insurance Fraud).

Use the final bracketed paragraph when the defendant has allegedly agreed to commit aggravated insurance fraud with different co-conspirators on the three or more claimed occasions of fraud.

When using the phrase "or another position of management," also use all the other alternatives in that bracket separated by commas to illustrate that phrase.

Because Section 46-4 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument

alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

See Instruction 13.62A regarding purported defenses that the statute has excluded.

Use applicable bracketed material.

13.62A
Precluded Defenses To Organizing An Aggravated Insurance Fraud Conspiracy

It is not a defense to organizing an insurance fraud conspiracy that the person or persons with whom the defendant has allegedly conspired [(have not been prosecuted or convicted) (have been convicted of other offenses) (were not amenable to justice) (have been acquitted) (lacked the capacity to commit an offense)].

Committee Note

720 ILCS 5/46-4(b) and (c) (West, 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993.

Give this instruction when any of these purported defenses are at issue.

Use applicable bracketed material.

13.63
Issues In Organizing An Aggravated Insurance Fraud Conspiracy

To sustain the charge of organizing an insurance fraud conspiracy, the State must prove the following propositions:

First Proposition: That the defendant [(knowingly) (intentionally) (recklessly)] agreed with another to commit aggravated insurance fraud; and

Second Proposition: That the defendant did so with the intent that the aggravated insurance fraud be committed; and

Third Proposition: That [(the defendant) (another co-conspirator)] committed an overt act in furtherance of the agreement; and

Fourth Proposition: That the defendant held a position as [(an organizer) (a supervisor) (a financier) [or another position of management]] with respect to the other person[s] within the conspiracy; and

Fifth Proposition: That the defendant was a part of a common scheme or plan to engage in the unlawful activity.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/46-4 (West, 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993. P.A. 87-1134 originally added insurance fraud crimes as Article 45 of the Criminal Code, even though the legislature had already defined Article 45 as "Disclosing Location of Domestic Violence Victims." P.A. 88-45 thus renumbered the insurance fraud crimes to Article 46 without making any substantive changes.

Give Instruction 13.62 and see the Committee Note to that instruction.

When using the phrase "or another position of management," also use all the other alternatives in that bracket separated by commas to illustrate that phrase.

See the Committee Note to Instruction 13.62 regarding the applicable mental states.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

13.64
Definition Of Home Repair Fraud--Agreement Or Contract

A person commits the offense of home repair fraud when he knowingly enters into [(an agreement) (a contract)] [for an amount exceeding $1000] with a person for home repair, and he knowingly

[1] misrepresents a material fact relating to [(the terms of the [(agreement) (contract)]) (the preexisting or existing condition of any portion of the property involved)].

[or]

[2] [(creates) (confirms)] another's impression which is false and which he does not believe to be true.

[or]

[3] promises performance which he does not intend to perform or knows will not be performed.

[or]

[4] uses or employs any [(deception) (false pretense) (false promises)] in order to induce, encourage, or solicit such person to enter into any [(agreement) (contract)].

[In determining the amount of the [(agreement) (contract)], add the amounts of two or more [(agreements) (contracts)] together if they are entered into with the same person by the defendant as part of or in furtherance of a common fraudulent scheme, design, or intention.]

[[(An agreement) (A contract)] may be written or oral.]

Committee Note

815 ILCS 515/3(a)(1), (a)(2), and 4(a) (West, 1992) (formerly Ill.Rev.Stat. ch. 1211/2, §§1603(a)(1), (a)(2), and 1604(a) (1991)).

Give Instruction 13.65.

When applicable, give Instruction 13.64A, defining the term “home repair.”

Section 4(a) enhances the penalty for the violation of Section 3(a)(1) or 3(a)(2) from a Class A misdemeanor to a Class 4 felony when the contract or agreement exceeds $1,000. Thus, the Committee has included a bracketed option in the opening paragraph (“[for an amount exceeding $1,000]”) to be given when the amount of the contract or agreement is an issue. When the amount of the contract or agreement is an issue, it should be resolved by the jury. See People v. Mays, 80 Ill.App.3d 340, 399 N.E.2d 718, 35 Ill.Dec. 652 (3d Dist.1980).

Section 4(a) also enhances the penalty if the defendant's conviction is a subsequent offense. However, 720 ILCS 5/111-3(c) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §111-3(c)

(1991)), added by P.A. 86-964, effective July 1, 1990, provides that a prior conviction when used to increase the classification of an offense is not an element of the crime and may not be disclosed to the jury unless otherwise permitted by the issues.

When more than one contract or agreement provides the basis for the amount at issue to exceed $1,000, give the bracketed paragraph following the four bracketed alternatives.

When an issue arises whether a contract or agreement must be written, give the bracketed last paragraph.

If the amount of the agreement or contract is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the contract exceeds $1,000, then this instruction would begin "A person commits the offense of home repair fraud in excess of $1,000 when he ...."

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.64A
Definition Of Home Repair

The term "home repair" means the fixing, replacing, altering, converting, modernizing, improving of, or the making of an addition to any real property primarily designed or used as a residence.

[Home repair includes the [(construction) (installation) (replacement) (improvement)] of [(driveways) (swimming pools) (porches) (kitchens) (chimneys) (chimney liners) (garages) (fences) (fallout shelters) (central air conditioning) (central heating) (boilers) (furnaces) (hot water heaters) (electrical wiring) (sewers) (plumbing fixtures) (storm doors) (storm windows) (awnings) [and other improvements to structures within the residence or upon the land adjacent thereto]].]

Committee Note

815 ILCS 515/2(a) (West, 1992) (formerly Ill.Rev.Stat. ch. 1211/2, §1602(a) (1991)).

See Section 2(b) for services excluded from the definition of home repair.

Use applicable bracketed material.

13.64B
Definition Of Residence

The word "residence" means a single or multiple family dwelling, including but not limited to [(a single family home) (an apartment building) (a condominium) (a duplex) (a townhouse)] which is used or intended to be used by its occupants as their dwelling place.

Committee Note

815 ILCS 515/2(c) (West, 1992) (formerly Ill.Rev.Stat. ch. 1211/2, §1602(c) (1991)).

Use applicable bracketed material.

13.64C
Deleted

13.65
Issues In Home Repair Fraud--Agreement Or Contract

To sustain the charge of home repair fraud, the State must prove the following propositions:

First Proposition: That the defendant knowingly entered into [(an agreement) (a contract)] with a person for home repair; and

[1] *Second Proposition:* That the defendant knowingly misrepresented a material fact relating to [(the terms of the [(agreement) (contract)]) (the preexisting or existing condition of any portion of the property involved)] [(.) (; and)]

[or]

[2] *Second Proposition:* That the defendant knowingly [(created) (confirmed)] another's impression which was false and which he did not believe to be true[(.) (; and)]

[or]

[3] *Second Proposition:* That the defendant knowingly promised performance which he did not intend to perform or knew would not be performed[(.) (; and)]

[or]

[4] *Second Proposition:* That the defendant knowingly used or employed any [(deception) (false pretense) (false promises)] in order to induce, encourage, or solicit such person to enter into any [(agreement) (contract)] [(.) (; and)]

[*Third Proposition:* That the amount of the [(agreement[s]) (contract[s])] exceeded $1,000[(.) (; and)]]

[*Fourth Proposition:* That the defendant entered into such [(agreement[s]) (contract[s])] as part of or in furtherance of a common fraudulent scheme, design, or intention.]

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

815 ILCS 515/3(a)(1), (a)(2), and 4(a) (West, 1992) (formerly Ill.Rev.Stat. ch. 1211/2, §§1603(a)(1), (a)(2), and 1604(a) (1991)).

Give Instruction 13.64.

Give the Third Proposition only when the issue arises whether the amount of the contract (or contracts) or agreement (or agreements) exceeded $1,000. See the Committee Note for Instruction 13.64.

Give the Fourth Proposition only when multiple contracts or agreements are in issue. See the Committee Note for Instruction 13.64. The Third Proposition must be given when the Fourth Proposition is given.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.66
Definition Of Home Repair Fraud--Unconscionable Agreement Or Contract

A person commits the offense of home repair fraud when he knowingly enters into an unconscionable [(agreement) (contract)] with a person for home repair, requiring payment to the contractor [(of at least $4,000) (of at least $4,000 but not more than $10,000) (more than $10,000)].

[[(An agreement) (A contract)] may be written or oral.]

Committee Note

815 ILCS 515/3(a)(3) and 4(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 1211/2, §§1603(a)(3) and 1604(b) (1991)).

Give Instructions 13.66A and 13.67.

When applicable, give Instruction 13.64A, defining the term "home repair."

Section 4(b) enhances the penalty for the violation of Section 3(a)(3) from a Class 4 to a Class 3 felony when the contract or agreement exceeds $10,000. Thus, the Committee has included a bracketed alternative covering the amount of the contract or agreement. Use the second alternative ("at least $4,000 but not more than $10,000") only when the amount of the contract or agreement is an issue. When the amount of the contract or agreement is an issue, it should be resolved by the jury. See People v. Mays, 80 Ill.App.3d 340, 399 N.E.2d 718, 35 Ill.Dec. 652 (3d Dist.1980).

When an issue arises whether a contract or agreement must be written, give the bracketed last paragraph.

If the amount of the agreement or contract is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the contract exceeds $10,000, then this instruction would begin "A person commits the offense of home repair fraud in excess of $10,000 when he ...."

Use applicable bracketed material.

13.66A
Definition Of Unconscionable

A contract is unconscionable when an unreasonable difference exists between the value of the services, materials, and work to be performed, and the amount charged for those services, materials, and work.

Committee Note

815 ILCS 515/3(a)(3) (West, 1992) (formerly Ill.Rev.Stat. ch. 1211/2, §1603(a)(3) (1991)).

Section 3(a)(3) discusses when *prima facie* evidence exists that a contract or agreement is unconscionable. However, People v. Gray, 99 Ill.App.3d 851, 426 N.E.2d 290, 55 Ill.Dec. 315 (5th Dist.1981), holds that the jury should not be instructed in the language of the statute about the *prima facie* effect of certain evidence. According to Gray, the legislature's use of the term "*prima facie*" is a direction to the court on when to submit evidence to the jury and should not be translated into a jury instruction. Also, Gray states that this is a legal term which a jury might read as creating a type of presumption that is constitutionally impermissible in criminal cases.

13.67
Issues In Home Repair Fraud--Unconscionable Agreement Or Contract

To sustain the charge of home repair fraud, the State must prove the following propositions:

First Proposition: That the defendant knowingly entered into [(an agreement) (a contract)] with a person for home repair; and

Second Proposition: That the [(agreement) (contract)] required payment to the contractor [(of at least $4,000) (of at least $4,000 but not more than $10,000) (more than $10,000)]; and

Third Proposition: That the defendant knowingly entered into an unconscionable [(agreement) (contract)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

815 ILCS 515/3(a)(3) and 4(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 1211/2, §§1603(a)(3) and 1604(b) (1991)).

Give Instruction 13.66.

See the Committee Note to Instruction 13.66 regarding the bracketed alternative covering the amount of the contract or agreement in the Second Proposition.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.68
Definition Of Home Repair Fraud--Assumed Business Name Act

A person commits the offense of home repair fraud when he knowingly enters into [(an agreement) (a contract)] [for an amount more than $1,000] with a person for home repair, and knowingly ____ and [(misrepresents) (conceals)] [(his real name) (the name of his business) (his business address)].

[In determining the amount of the [(agreement) (contract)], the amounts of two or more [(agreements) (contracts)] should be added together if they are entered into with the same victim by the defendant as part of or in furtherance of a common fraudulent scheme, design, or intention.]

[[(An agreement) (A contract)] may be written or oral.]

Committee Note

815 ILCS 515/3(a)(4) and 4(c) (West, 1992) (formerly Ill.Rev.Stat. ch. 1211/2, §§1603(a)(4) and 1604(c) (1991)).

Give Instruction 13.69.

When applicable, give Instruction 13.64, defining the term "home repair."

This instruction applies when the defendant fails to comply with the provisions of the Assumed Business Name Act, 805 ILCS 405/4 (formerly Ill.Rev.Stat. ch. 96, §4 (1991)). Insert in the blank the alleged violation of the Assumed Business Name Act.

Section 4(c) enhances the penalty for the violation of Section 3(a)(4) from a Class A misdemeanor to a Class 4 felony when the contract or agreement exceeds $1,000. Thus, the Committee has included a bracketed option in the opening paragraph ("[for an amount exceeding $1,000]") to be given when the amount of the contract or agreement is an issue. When the amount of the contract or agreement is an issue, it should be resolved by the jury. See People v. Mays, 80 Ill.App.3d 340, 399 N.E.2d 718, 35 Ill.Dec. 652 (3d Dist.1980).

Section 4(c) also enhances the penalty if the defendant's conviction is a subsequent offense. However, 720 ILCS 5/111-3(c) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §111-3(c) (1991)), added by P.A. 86-964, effective July 1, 1990, provides that a prior conviction when used to increase the classification of an offense is not an element of the crime and may not be disclosed to the jury unless otherwise permitted by the issues.

When more than one contract or agreement provides the basis for the amount at issue to exceed $1,000, give the bracketed second paragraph.

When an issue arises whether a contract or agreement must be written, give the bracketed last paragraph.

If the amount of the agreement or contract is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be

expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the contract exceeds $1,000, then this instruction would begin "A person commits the offense of home repair fraud in excess of $1,000 when he ...."

Use applicable bracketed material.

13.69
Issues In Home Repair Fraud--Assumed Business Name Act

To sustain the charge of home repair fraud, the State must prove the following propositions:

First Proposition: That the defendant knowingly entered into [(an agreement) (a contract)] with a person for home repair; and

Second Proposition: That the defendant ____; and

Third Proposition: That the defendant [(misrepresented) (concealed)] [(his real name) (the name of his business) (his business address)] [(.) (; and)]

[*Fourth Proposition:* That the amount of the [(agreement[s]) (contract[s])] was more than $1,000[(.) (; and)]]

[*Fifth Proposition:* That the defendant entered into such [(agreement[s]) (contract[s])] as part of or in furtherance of a common fraudulent scheme, design, or intention.]

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

815 ILCS 515/3(a)(4) and 4(c) (West, 1992) (formerly Ill.Rev.Stat. ch. 1211/2, §§1603(a)(4) and 1604(c) (1991)).

Give Instruction 13.68.

Insert in the blank the violation of the Assumed Business Name Act.

Give the fourth proposition only when the issue arises whether the amount of the contract (or contracts) or agreement (or agreements) exceeded $1,000. See the Committee Note for Instruction 13.68.

Give the fifth proposition only when multiple contracts or agreements are in issue. See the Committee Note for Instruction 13.68. The fourth proposition must be given when the fifth proposition is given.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.70
Definition Of Home Repair Fraud--Property Damage Or Noncontracting Misrepresentation

A person commits the offense of home repair fraud when he knowingly

[1] damages the property of a person with the intent to enter into [(an agreement) (a contract)] for home repair.

[or]

[2] misrepresents himself [or another] to be an [(employee) (agent)] of [(any unit of [(federal) (State) (municipal)] government) (any governmental unit) (any public utility)] with the intent to cause a person to enter into, with himself or another, any [(agreement) (contract)] for home repair.

Committee Note

815 ILCS 515/3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 1211/2, §1603(b) (1991)).

Give Instruction 13.71.

When applicable, give Instruction 13.64A, defining the term "home repair."

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.71
Issues In Home Repair Fraud--Property Damage Or Noncontracting Misrepresentation

To sustain the charge of home repair fraud, the State must prove the following propositions:

First Proposition: That the defendant knowingly damaged the property of a person; and

Second Proposition: That the defendant did so with the intent to enter into [(an agreement) (a contract)] for home repair.

[or]

First Proposition: That the defendant misrepresented himself [or another] to be an [(employee) (agent)] of [(any unit of [(federal) (State) (municipal)] government) (any governmental unit) (any public utility)]; and

Second Proposition: That the defendant did so with the intent to cause a person to enter into, with the defendant or another, any [(agreement) (contract)] for home repair.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

815 ILCS 515/3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 1211/2, §1603(b) (1991)).

Give Instruction 13.70.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.72
Definition Of Aggravated Home Repair Fraud

A person commits the offense of aggravated home repair fraud when he commits the offense of home repair fraud against [(a person 60 years of age or older) (a disabled person)].

Committee Note

815 ILCS 515/5(a) (West, 1992) (formerly Ill.Rev.Stat. 1211/2, §1605(a) (1991)), as amended by P.A. 87-490, effective January 1, 1992.

Give Instruction 13.73.

Give the definitional instruction for the underlying home repair fraud that corresponds to the offense in the charge--Instruction 13.64, 13.66, 13.68, or 13.70. Also, see the Committee Note to that definitional instruction.

When applicable, give Instruction 13.35B, defining the term “disabled person.”

Sections 5(a), 5(b), and 5(c) enhance the penalty when the contracts or agreements involved exceed a specified dollar amount. See 815 ILCS 515/5(a), 5(b), and 5(c) (West, 1992) (formerly Ill.Rev.Stat. ch. 1211/2, §§1605(a), 1605(b), and 1605(c) (1991)). Thus, the definitional instruction for the underlying home repair fraud offense should be modified as necessary to reflect the amount that is at issue. See the Committee Notes to Instruction 13.64, 13.66, or 13.68 for guidance.

Sections 5(a) and 5(c) also enhance the penalty if the defendant's conviction is a subsequent offense. However, 720 ILCS 5/111-3(c) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §111-3(c) (1991)), added by P.A. 86-964, effective July 1, 1990, provides that a prior conviction when used to increase the classification of an offense is not an element of the crime and may not be disclosed to the jury unless otherwise permitted by the issues.

Use applicable bracketed material.

13.73
Issues In Aggravated Home Repair Fraud

To sustain the charge of aggravated home repair fraud, the State must prove the following propositions:

First Proposition: That the defendant committed the offense of home repair fraud against ____; and

Second Proposition: That ____ was [(60 years of age or older) (a disabled person)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

815 ILCS 515/5(a) (West, 1992) (formerly Ill.Rev.Stat. ch. 1211/2, §1605(a) (1991)), as amended by P.A. 87-490, effective January 1, 1992.

Give Instruction 13.72.

Give the issues instruction for the underlying home repair fraud that corresponds to the definitional instruction given for the underlying home repair offense in the charge--Instruction 13.65, 13.67, 13.69, or 13.71. See the Committee Note to that issues instruction. Also, see the Committee Note to Instruction 13.72.

When the amount of the contracts or agreements is at issue, modify the issues instruction for the underlying home repair fraud offense to correspond to the definitional instruction for the underlying home repair fraud offense. See the Committee Notes to Instruction 13.65, 13.67, or 13.69 for guidance.

Insert in the blanks the name of the alleged victim of home repair fraud.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.74
Definition Of Theft By Control Of Property Represented As Stolen

A person commits the offense of theft when he knowingly [(obtains) (exerts)] control over property in the custody of a law enforcement agency which is explicitly represented to him by [(a law enforcement officer) (an individual acting in behalf of a law enforcement agency)] as being stolen, and he

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that the owner will thereby probably be permanently deprived of its use or benefit.

Committee Note

720 ILCS 5/16-1(a)(5) (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §16-1 (1991)), amended by P.A. 85-1296, effective January 1, 1989; and P.A. 89-377, effective August 18, 1995.

Give Instruction 13.75.

Theft by obtaining or exerting control over property represented as stolen can be a felony if the value of the property exceeds $300 or if the defendant has previously been convicted of theft. Effective January 1, 1988, Section 16-1 was amended to provide that when a charge of theft of property exceeding $300 in value is brought, the value of the property involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the $300. See P.A. 85-691, P.A. 85-1030, and P.A. 85-1440. Therefore, if the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $300, then this instruction would begin "A person commits the offense of theft of property in excess of $300 when he ...."

Select the bracketed alternatives so that the instruction is no broader than the charging instrument. If a charging instrument charges "obtains" rather than "exerts," then only "obtains" should be utilized. When the pleading is stated in the alternative (e.g. "obtains or exerts"), the instruction should be in the alternative unless the evidence fails to justify a particular alternative. The Committee takes no position on whether alternative pleading is proper under 720 ILCS 5/16-1.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.75
Issues In Theft By Control Of Property Represented As Stolen

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That a law enforcement agency had custody of the property in question; and

Second Proposition: That the defendant knowingly [(obtained) (exerted)] control over the property in question; and

Third Proposition: That [(a law enforcement officer) (an individual acting in behalf of a law enforcement agency)] explicitly represented to the defendant that the property in question was stolen; and

Fourth Proposition: That the defendant intended to deprive the owner permanently of the use or benefit of the property in question.

[or]

Fourth Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner permanently of the use or benefit.

[or]

Fourth Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that the owner will thereby probably be deprived permanently of its use or benefit.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16-1(a)(5) (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §16-1 (1991)), amended by P.A. 85-1296, effective January 1, 1989; and P.A. 89-377, effective August 18, 1995.

Give Instruction 13.74.

Theft by obtaining or exerting control over property represented as stolen can be a felony if the value of the property exceeds $300 or if the defendant has previously been convicted of theft. Effective January 1, 1988, Section 16-1 was amended to provide that when a charge of theft of property exceeding $300 in value is brought, the value of the property involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the $300. See P.A. 85-691, P.A. 85-1030, and P.A. 85-1440. Therefore, if the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction,

and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $300, then this instruction would begin “To sustain the charge of theft of property in excess of $300, the State must prove ....”

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.77
Definition Of Identity Theft

A person commits the offense of identity theft when he knowingly

[1] uses any personal identifying information or personal identification document of another person to fraudulently obtain [(credit) (money) (goods) (services) (property)].

[or]

[2] uses any personal identification information or personal identification document of another with intent to commit any felony.

[or]

[3] [(obtains) (records) (possesses) (sells) (transfers) (purchases) (manufactures)] any personal identification information or personal identification document of another with intent to commit any felony.

[or]

[4] [(uses) (obtains) (records) (possesses) (sells) (transfers) (purchases) (manufactures)] any personal identification information or personal identification document of another knowing that such personal identification information or personal identification documents were stolen or produced without lawful authority.

[or]

[5] [(uses) (transfers) (possesses)] document-making implements to produce false identification or false documents with knowledge that they will be used by the person or another to commit any felony.

[or]

[6] uses any personal identification information or personal identification document of another to portray [(himself) (herself)] as that person, or otherwise, for the purpose of gaining access to any personal identification information or personal identification document of that person, without the prior express permission of that person.

[or]

[7] uses any personal identification information or personal identification document of another for the purpose of gaining access to any record of [(the actions taken) (communications made or received) (activities or transactions)] of that person, without the prior express permission of that person.

[8] [(uses) (possesses) (transfers)] a radio frequency identification device capable of obtaining or processing personal identifying information from a radio frequency identification (RFID) tag or transponder with knowledge that the device will be used by the person or another to commit a felony violation of State law or any violation of this Article.

[or]

[9] in the course of applying for a building permit with a unit of local government, provides the license number of a [(roofing) (fire sprinkler)] contractor whom he or she does not intend to have perform the work on the [(roofing) (fire sprinkler)] portion of the project.

Committee Note

Instruction and Committee Note Approved July 18, 2014

720 ILCS 5/16-30 (West 2013), effective January 1, 2012.

Give Instruction 13.78.

Give Instruction 5.01B, defining "knowledge".

When applicable, give Instruction 13.81, "affirmative defense to identity theft".

When applicable, give Instruction 4.51 defining "personal identification document".

When applicable, give Instruction 4.52 defining "personal identifying information".

In *People v. Sanchez*, 2013 IL App (2d) 120445, the appellate court interpreted the phrase "knowingly used personal identifying information of another" to mean that the State must prove that the defendant knew that the personal identifying information belonged to another person. *See also People v. Hernandez*, 2012 IL App (1st) 928841.

Use applicable bracketed paragraphs and material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.78
Issues In Identity Theft

To sustain the charge of identity theft, the State must prove the following propositions:

First Proposition: That the defendant knowingly used any [(personal identifying information) (personal identification document)] of another person to fraudulently obtain [(credit) (money) (goods) (services) (property)].

[or]

First Proposition: That the defendant knowingly used [(personal identification) (personal identification document)] of another with the intent to commit the offense of _____.

[or]

First Proposition: That the defendant knowingly [(obtained) (recorded) (possessed) (sold) (transferred) (purchased) (manufactured)] any [(personal identification information) (personal identification document)] of another with the intent to commit the offense of _____.

[or]

First Proposition: That the defendant knowingly [(used) (obtained) (recorded) (possessed) (sold) (transferred) (purchased) (manufactured)] any [(personal identification information) (personal identification document)] of another knowing that such [(personal identification information) (personal identification document)] was [(stolen) (produced without lawful authority)].

[or]

First Proposition: That the defendant knowingly [(used) (transferred) (possessed)] document-making implements to produce [(false identification) (false documents)] with knowledge that they will be used by the person or another to commit _____.

[or]

First Proposition: That the defendant knowingly used any [(personal identification information) (personal identification document)] of another to portray [(himself) (herself)] as that person, or otherwise, for the purpose of gaining access to any [(personal identification information) (personal identification document)] of that person, without the prior express permission of that person.

[or]

First Proposition: That the defendant knowingly used any [(personal identification information) (personal identification document)] of another for the purpose of gaining access to [(any record of the actions taken) (communications made or received) (activities or transactions of that person)], without the prior express permission of that person.

[or]

First Proposition: That the defendant knowingly [(used) (possessed) (transferred)] a radio frequency identification device capable of obtaining or processing personal identifying information from a radio frequency identification (RFID) tag or transponder with knowledge that the device will be used by the defendant or another to commit _____.

[or]

First Proposition: That the defendant, in the course of applying for a building permit with a unit of local government, knowingly provides the license number of a [(roofing) (fire sprinkler)] contractor whom he does not intend to have perform the work on the [(roofing) (fire sprinkler)] portion of the project.

[_____ *Proposition*: That the value of the [(credit) (money) (goods) (services) (property)] [(did not exceed $300 in value) (exceeded $300 in value but did not exceed $2,000 in value) (exceeded $2,000 in value but did not exceed $10,000 in value) (exceeded $10,000 in value but did not exceed $100,000 in value) (exceeded $100,000 in value)].]

[_____ *Proposition*: That the victim of the identity theft was an active duty member of the [(Armed Services or Reserve Forces of the United States) (Illinois National Guard)] serving in a foreign country.]

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved July 18, 2014

720 ILCS 5/16-30 (West 2013), effective January 1, 2012, as amended by P.A. 97-1109, effective January 1, 2013. The amendment in P.A. 97-1109 added the eighth First Proposition.

Give Instruction 13.77.

Give Instruction 5.01B, defining “knowledge”.

When applicable, give Instruction 13.81, “affirmative defense to identity theft”.

When applicable, give Instruction 4.51 defining “personal identification document”.
When applicable, give Instruction 4.52 defining “personal identifying information”.

Insert in the blanks in the First Proposition the name of the felony.

Give the first additional Proposition only when the defendant has been charged under section 16-30(a)(1).

Give the second additional Proposition only when there is evidence that the victim was a member of the Armed Services or Reserve Forces of the United States or Illinois National Guard serving in a foreign country at the time of the offense.

In *People v. Sanchez*, 2013 IL App (2d) 120445, the appellate court interpreted the phrase "knowingly used personal identifying information of another" to mean that the State must prove that the defendant knew that the personal identifying information belonged to another person. *See also People v. Hernandez*, 2012 IL App (1st) 928841.

Use applicable bracketed paragraphs and material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. Give Instruction 5.03.

13.79
Definition Of Tattoo

The word "tattoo" means to insert pigment under the surface of the skin of a human being, by pricking with a needle or otherwise, so as to produce an indelible mark or figure visible through the skin.

Committee Note

Instruction and Committee Note Approved April 4, 2014.

720 ILCS 5/12C-35 (West 2013), formerly 720 ILCS 5/12-10 (West 2006), amended and renumbered as § 12C-35 by P.A. 97-1109, § 1-5, effective January 1, 2013.

13.80
Definition Of Pierce

The word “pierce” means to make a hole in the body in order to insert or allow the insertion of any ring, hoop, stud, or other object for the purpose of ornamentation of the body. The word “body” includes the oral cavity.

Committee Note

Instruction and Committee Note Approved April 4, 2014.

720 ILCS 5/12C-40 (West 2013), formerly 720 ILCS 5/12-10.1 (West 2006), amended and renumbered as § 12C-40 by P.A. 97-1109, § 1-5, effective January 1, 2013.

13.81
Affirmative Defense To Identity Theft

It is a defense to the charge of identity theft that the building permit applicant promptly informed the unit of local government that issued the building permit of any change in the [(roofing) (fire sprinkler)] contractor.

Committee Note

Instruction and Committee Note Approved July 18, 2014

720 ILCS 5/16-30 (West 2013), effective January 1, 2012.

Give Instruction 13.77.

Give Instruction 13.78.

Give this Instruction when the defense is raised by the evidence. See 720 ILCS 5/16-30(8) (West 2013).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

14.00
ROBBERY AND BURGLARY

14.01
Definition Of Robbery

A person commits the offense of robbery when he [(intentionally) (knowingly) (recklessly)] takes property from the person or the presence of another by the use of force or by threatening the imminent use of force.

Committee Note

720 ILCS 5/18-1 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §18-1 (1991)).

Give Instruction 14.02.

In People v. Jones, 149 Ill.2d 288, 297, 595 N.E.2d 1071, 1075, 172 Ill.Dec. 401, 405 (1992), the Illinois Supreme Court held that "either intent, knowledge or recklessness is an element of robbery even though the statutory definition of robbery does not expressly set forth a mental state." Accordingly, the Committee has modified this instruction to include those three mental states as alternative elements of this offense.

Specific intent to permanently deprive is not an element of the offense of robbery. People v. Banks, 75 Ill.2d 383, 388 N.E.2d 1244, 27 Ill.Dec. 195 (1979).

Use applicable bracketed material.

14.02
Issues In Robbery

To sustain the charge of robbery, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] took property from the person or presence of ____; and

Second Proposition: That the defendant did so by the use of force or by threatening the imminent use of force.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/18-1 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §18-1 (1991)).

Give Instruction 14.01.

In People v. Jones, 149 Ill.2d 288, 297, 595 N.E.2d 1071, 1075, 172 Ill.Dec. 401, 405 (1992), the Illinois Supreme Court held that "either intent, knowledge or recklessness is an element of robbery even though the statutory definition of robbery does not expressly set forth a mental state." Accordingly, the Committee has modified this instruction to include those three mental states as alternative elements of this offense.

The Committee no longer believes that it is necessary to identify in the instruction the specific property alleged to have been taken from the victim.

Insert in the blank the name of the victim.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

14.03
Definition Of Robbery Of A Victim Who Is 60 Years Of Age Or Over Or Who Is Physically Handicapped

A person commits the offense of robbery of a victim [(60 years of age or over) (who is physically handicapped)] when he [(intentionally) (knowingly) (recklessly)] takes property from the person or presence of another who is [(60 years of age or over) (a physically handicapped person)] by the use of force or by threatening the imminent use of force.

Committee Note

720 ILCS 5/18-1(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §18-1(b) (1991)).

Give Instruction 14.04.

P.A. 85-691, effective January 1, 1988, amended Section 18-1, to provide that robbery is raised from a Class 2 felony to a Class 1 felony if the victim is 60 years of age or over or is a physically handicapped person.

In People v. White, 241 Ill.App.3d 291, 301, 608 N.E.2d 1220, 1228, 181 Ill.Dec. 746, 754 (2d Dist.1993), the court agreed with the Committee's determination that the State must plead and prove each of the circumstances set forth in Section 18-1(b) that it is relying on to enhance this offense from a Class 2 to a Class 1 felony. However, the defendant does not have to *know* that the victim is 60 years of age or older or physically handicapped in order to be convicted under Section 18-1(b). See *White*, 241 Ill.App.3d at 302, 608 N.E.2d at 1229, 181 Ill.Dec. at 755.

If the alleged victim is a physically handicapped person, give Instruction 4.10A defining that term.

In People v. Jones, 149 Ill.2d 288, 297, 595 N.E.2d 1071, 1075, 172 Ill.Dec. 401, 405 (1992), the Illinois Supreme Court held that “either intent, knowledge or recklessness is an element of robbery even though the statutory definition of robbery does not expressly set forth a mental state.” Accordingly, the Committee has modified this instruction to include those three mental states as alternative elements of this offense.

Specific intent to deprive permanently is not an element of the offense of robbery. People v. Banks, 75 Ill.2d 383, 388 N.E.2d 1244, 27 Ill.Dec. 195 (1979).

Use applicable bracketed material.

14.04
Issues In Robbery Of A Victim Who Is 60 Years Of Age Or Over Or Who Is Physically Handicapped

To sustain the charge of robbery of a victim [(60 years of age or over) (who is physically handicapped)], the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] took property from the person or presence of ____; and

Second Proposition: That the defendant did so by the use of force or by threatening the imminent use of force; and

Third Proposition: That the person from whom the defendant took property was

[(60 years of age or over) (a physically handicapped person)].

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/18-1(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §18-1(b) (1991)).

Give Instruction 14.03.

In People v. Jones, 149 Ill.2d 288, 297, 595 N.E.2d 1071, 1075, 172 Ill.Dec. 401, 405 (1992), the Illinois Supreme Court held that "either intent, knowledge or recklessness is an element of robbery even though the statutory definition of robbery does not expressly set forth a mental state." Accordingly, the Committee has modified this instruction to include those three mental states as alternative elements of this offense.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

14.05
Definition Of Armed Robbery

A person commits the offense of armed robbery when he, [while carrying on or about his person, or is otherwise armed with (a dangerous weapon other than a firearm) (a firearm),] [during the commission of the offense (personally discharges a firearm) (personally discharges a firearm that proximately causes (great bodily harm) (permanent disability) (permanent disfigurement) (death) to another person)], and] knowingly takes property from the person or presence of another by the use of force or by threatening the imminent use of force.

Committee Note

Committee Note and Instruction Approved January 24, 2014

720 ILCS 5/18-2 (West 2013), amended by P.A. 91-404, effective January 1, 2000, by inserting the subsection (a)(1) designation, and inserting "other than a firearm" following "dangerous weapon" in subsection (a)(1); adding subsections (a)(2) through (a)(4); and in subsection (b) inserting "in violation of subsection (a)(1)" in the first sentence, and adding the second, third, and fourth sentences.

Give Instruction 14.06.

When the alleged weapon in question is not inherently dangerous, give Instruction 4.17. *See People v. Skelton*, 83 Ill.2d 58, 414 N.E.2d 455 (1980).

Specific intent to permanently deprive is not an element of the offense of robbery. *People v. Banks*, 75 Ill.2d 383, 388 N.E.2d 1244 (1979).

Use applicable bracketed material.

14.06
Issues In Armed Robbery

To sustain the charge of armed robbery, the State must prove the following propositions:

First Proposition: That the defendant knowingly took property from the person or presence of _____; and

Second Proposition: That the defendant did so by the use of force or by threatening the imminent use of force; and

Third Proposition: That the defendant carried on or about his person, or was otherwise armed with [(a dangerous weapon other than a firearm) (a firearm)] at the time of the taking.

[or]

Third Proposition: That the defendant, during the commission of the offense, personally discharged a firearm [that proximately caused (great bodily harm) (permanent disability) (permanent disfigurement) (death) to another person].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Committee Note and Instruction Approved January 24, 2014

720 ILCS 5/18-2 (West 2013), amended by P.A. 91-404, effective January 1, 2000, by inserting the subsection (a)(1) designation, and inserting "other than a firearm" following "dangerous weapon" in subsection (a)(1); adding subsections (a)(2) through (a)(4); and in subsection (b) inserting "in violation of subsection (a)(1)" in the first sentence, and adding the second, third, and fourth sentences.

Give Instruction 14.05.

When the alleged weapon in question is not inherently dangerous, give Instruction 4.17. *See People v. Skelton*, 83 Ill.2d 58, 414 N.E.2d 455 (1980).

Specific intent to permanently deprive is not an element of the offense of robbery. *People v. Banks*, 75 Ill.2d 383, 388 N.E.2d 1244 (1979).

The Committee no longer believes that it is necessary to identify in the instruction the specific property alleged to have been taken from the victim.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. Give Instruction 5.03.

14.07
Definition Of Burglary--Unauthorized Entry

A person commits the offense of burglary when he, without authority, knowingly enters a[n] [(building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle)] [or any part thereof] with intent to commit therein the offense of ____.

Committee Note

720 ILCS 5/19-1 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §19-1 (1991)).

Give Instruction 14.08.

Give Instruction 23.43B, defining the term "motor vehicle", if the information or indictment alleges that the object entered was a motor vehicle and if there is an issue as to whether the object of entry was a motor vehicle.

Give Instruction 14.07A when an issue arises regarding the defendant's criminal intent when he entered the building, house trailer, watercraft, aircraft, railroad car, or motor vehicle and whether this intent, or lack thereof, makes his entry "with authority" or "without authority". See the Committee Note to Instruction 14.07A.

This instruction and Instructions 14.08, 14.09, and 14.10 are based upon People v. Tinkler, 85 Ill.App.3d 528, 407 N.E.2d 985, 41 Ill.Dec. 487 (3d Dist.1980); People v. Green, 83 Ill.App.3d 982, 404 N.E.2d 930, 39 Ill.Dec. 339 (3d Dist.1980); and People v. Vallero, 61 Ill.App.3d 413, 378 N.E.2d 549, 19 Ill.Dec. 48 (3d Dist.1978). They hold that a burglary conviction based on remaining within will not stand upon proof that the defendant entered without authority, whether the defendant formed his intent to steal before or after his entry. See also People v. Boone, 217 Ill.App.3d 532, 577 N.E.2d 788, 160 Ill.Dec. 463 (3d Dist.1991).

The Committee recommends that, at the request of either party, or *sua sponte*, the court define the offense (theft or the specified felony) alleged as the objective of the burglary.

Insert in the blank the intended offense alleged in the charge.

Use applicable bracketed material.

14.07A
Unauthorized Entry--Limited Authority Doctrine--Burglary

The defendant's entry into a[n] [(building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle)] is "without authority" if, at the time of entry, the defendant has an intent to commit a criminal act within the [(building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle)] regardless of whether the defendant was initially invited in or received consent to enter.

However, the defendant's entry into the [(building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle)] is "with authority" if the defendant enters without criminal intent and was initially invited in or received consent to enter, regardless of what the defendant does after he enters.

Committee Note

This instruction should be given *only* when an issue arises regarding the defendant's criminal intent when he entered the building, house trailer, watercraft, aircraft, railroad car, or motor vehicle, and whether this intent, or lack thereof, affects the status of his entry--"with authority" or "without authority". See People v. Bush, 157 Ill.2d 248, 253-54, 623 N.E.2d 1361, 1364, 191 Ill.Dec. 475, 478 (1993). In People v. Smith, 264 Ill.App.3d 82, 91, 637 N.E.2d 1128, 1134, 202 Ill.Dec. 392, 398 (3d Dist.1994), the court approved use of an instruction setting forth the limited authority doctrine to the jury in a case where the defendant had been charged with burglary.

The "limited-authority" doctrine provides that a defendant's authority to enter a building, house trailer, watercraft, aircraft, railroad car, or motor vehicle is limited only to the specific purpose for which he entered. Thus, the defendant's entry is "without authority" if prior to entering, the defendant intends to commit a criminal act within the building, house trailer, watercraft, aircraft, railroad car, or motor vehicle. When this is the case, the status of his entry is *not affected* by whether he was invited into or received consent to enter the building, house trailer, watercraft, aircraft, railroad car, or motor vehicle. As noted by the court in Bush,

> "No individual who is granted access to a dwelling can be said to be an authorized entrant if he intends to commit criminal acts therein, because, if such intentions had been communicated to the owner at the time of entry, it would have resulted in the individual's being barred from the premises *ab initio.*" *Bush,* 157 Ill.2d at 253-54, 623 N.E.2d at 1364, 191 Ill.Dec. at 478.

However, if the defendant does not form his criminal intent until after entering, then his invited or consented entry is "with authority". *Bush,* 157 Ill.2d at 253-54, 623 N.E.2d at 1364, 191 Ill.Dec. at 478; People v. Bailey, 188 Ill.App.3d 278, 284-87, 543 N.E.2d 1338, 1341-43, 135 Ill.Dec. 591, 594-96 (5th Dist.1989).

In Bush, the Illinois Supreme Court specifically requested that the Committee write an instruction which conveys the "limited-authority" doctrine to the jury when the defendant is charged with the offense of home invasion. *Bush,* 157 Ill.2d at 257, 623 N.E.2d at 1365, 191 Ill.Dec. at 479 ("an instruction regarding the limited authority doctrine is necessary to augment the IPI instructions on home invasion"); see Instruction 11.53A. In Bush, the court also approvingly cited People v. Hudson, 113 Ill.App.3d 1041, 1045, 448 N.E.2d 178, 181, 69

Ill.Dec. 718, 721 (5th Dist.1983), which stated that the “without authority” language in the home invasion statute and the burglary statute should be construed consistently. *Bush*, 157 Ill.2d at 254, 623 N.E.2d at 1364, 191 Ill.Dec. at 478. Thus, the Committee believes that the supreme court's analysis in Bush extends to the offense of burglary because of its similar use of the phrase “without authority”, and has accordingly provided this instruction. See also *Smith*, 264 Ill.App.3d at 91, 637 N.E.2d at 1133-34, 202 Ill.Dec. at 397-98.

In Bush, an issue arose whether the defendant had been invited into another's residence wherein an altercation had ensued. The trial court, over the defendant's objection, supplemented the home invasion instructions with a non-IPI instruction which discussed whether the defendant's entry was unauthorized. The Illinois Supreme Court held that an instruction setting forth the limited authority doctrine was appropriate in this case, but that the trial court's non-IPI instruction had misstated the doctrine. Accordingly, the supreme court stated that the defendant was entitled to a new trial with an instruction which correctly set forth the limited authority doctrine. People v. Bush, 157 Ill.2d 248, 257, 623 N.E.2d 1361, 1365, 191 Ill.Dec. 475, 479 (1993).

14.08
Issues In Burglary--Unauthorized Entry

To sustain the charge of burglary by unauthorized entry, the State must prove the following propositions:

First Proposition: That the defendant knowingly entered a[n] [(building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle)] [or any part thereof]; and

Second Proposition: That the defendant did so without authority; and

Third Proposition: That the defendant did so with intent to commit therein the offense of ____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/19-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §19-1 (1991)).

Give Instruction 14.07.

This instruction and Instructions 14.07, 14.09, and 14.10 are based upon People v. Tinkler, 85 Ill.App.3d 528, 407 N.E.2d 985, 41 Ill.Dec. 487 (3d Dist.1980), People v. Green, 83 Ill.App.3d 982, 404 N.E.2d 930, 39 Ill.Dec. 339 (3d Dist.1980), and People v. Vallero, 61 Ill.App.3d 413, 378 N.E.2d 549, 19 Ill.Dec. 48 (3d Dist.1978). They hold that a burglary conviction based on remaining within will not stand upon proof that defendant entered without authority, whether defendant formed his intent to steal before or after his entry.

Insert in the blank the intended offense alleged in the charge.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

14.09
Definition Of Burglary--Authorized Entry But Unauthorized Remaining Within

A person commits the offense of burglary when he knowingly enters with authority a[n] [(building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle)] [or any part thereof] and thereafter without authority remains within that [(building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle)] [or any part thereof] with intent to commit therein the offense of ____.

Committee Note

720 ILCS 5/19-1 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §19-1 (1991)).

Give Instruction 14.10.

Give Instruction 23.43B, defining the term "motor vehicle", if the information or indictment alleges that the object entered was a motor vehicle and if there is an issue as to whether the object of entry was a motor vehicle.

This instruction and Instructions 14.07, 14.08, and 14.10 are based upon People v. Tinkler, 85 Ill.App.3d 528, 407 N.E.2d 985, 41 Ill.Dec. 487 (3d Dist.1980); People v. Green, 83 Ill.App.3d 982, 404 N.E.2d 930, 39 Ill.Dec. 339 (3d Dist.1980); and People v. Vallero, 61 Ill.App.3d 413, 378 N.E.2d 549, 19 Ill.Dec. 48 (3d Dist.1978). They hold that a burglary conviction based on remaining within will not stand upon proof that the defendant entered without authority, whether the defendant formed his intent to steal before or after his entry. See also People v. Boone, 217 Ill.App.3d 532, 577 N.E.2d 788, 160 Ill.Dec. 463 (3d Dist.1991).

The Committee recommends that, at the request of either party, or *sua sponte*, the court define the offense (theft or the specified felony) alleged as the objective of the burglary.

Insert in the blank the intended offense alleged in the charge.

Use applicable bracketed material.

14.10
Issues In Burglary--Authorized Entry But Unauthorized Remaining Within

To sustain the charge of burglary by remaining within a[n] [(building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle)], the State must prove the following propositions:

First Proposition: That the defendant knowingly entered a[n] [(building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle)] [or any part thereof]; and

Second Proposition: That the defendant did so with authority; and

Third Proposition: That the defendant thereafter, without authority, knowingly remained within that [(building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle)]; and

Fourth Proposition: That the defendant remained within that [(building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle)] with the intent to commit therein the offense of ____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/19-1 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §19-1 (1991)).

Give Instruction 14.09.

This instruction and Instructions 14.07, 14.08, and 14.09 are based upon People v. Tinkler, 85 Ill.App.3d 528, 407 N.E.2d 985, 41 Ill.Dec. 487 (3d Dist.1980); People v. Green, 83 Ill.App.3d 982, 404 N.E.2d 930, 39 Ill.Dec. 339 (3d Dist.1980); and People v. Vallero, 61 Ill.App.3d 413, 378 N.E.2d 549, 19 Ill.Dec. 48 (3d Dist.1978). They hold that a burglary conviction based on remaining within will not stand upon proof that the defendant entered without authority, whether the defendant formed his intent to steal before or after his entry. See also People v. Boone, 217 Ill.App.3d 532, 577 N.E.2d 788, 160 Ill.Dec. 463 (3d Dist.1991).

Insert in the blank the intended offense alleged in the charge.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

14.11
Definition Of Possession Of Burglary Tools

A person commits the offense of possession of burglary tools when he knowingly possesses any [(key) (tool) (instrument) (device) (explosive)] suitable for use in breaking into a[n] [(building) (housetrailer) (watercraft) (aircraft) (motor vehicle) (railroad car) (depository designed for the safekeeping of property)] [or any part thereof] with intent to enter any such place and with intent to commit therein the offense of ____.

Committee Note

720 ILCS 5/19-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §19-2 (1991)).

When possession is the essence of the crime, it must be "knowingly." Chapter 720, Section 4-2; People v. Smith, 20 Ill.2d 345, 169 N.E.2d 777 (1960). Give Instruction 4.16.

The insertion in the specific intent clause at the conclusion of the instruction should be taken from the information or indictment. It should be either theft or the particular felony specified in the indictment or the information as the object of the intended entry. See Committee Note to Instruction 14.05.

It is not necessary to prove that the defendant possessed the burglary tools with specific intent to break and enter into a particular building. See People v. Taranto, 2 Ill.2d 476, 119 N.E.2d 221 (1954); People v. Matthews, 122 Ill.App.2d 264, 258 N.E.2d 378 (2d Dist.1970).

Use applicable bracketed material.

14.12
Issues In Possession Of Burglary Tools

To sustain the charge of possession of burglary tools, the State must prove the following propositions:

First Proposition: That the defendant knowingly possessed a[n] [(key) (tool) (instrument) (device) (explosive)] suitable for use in breaking into a[n] [(building) (housetrailer) (watercraft) (aircraft) (motor vehicle) (railroad car) (depository designed for the safekeeping of property)] [or any part thereof]; and

Second Proposition: That the defendant intended to enter such a place; and

Third Proposition: That the defendant intended to commit therein the offense of ____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all of the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/19-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §19-2 (1991)).

Give Instruction 14.11.

See Committee Note to Instructions 14.07 and 14.11, concerning selection of the appropriate offense for use at the conclusion of the Third Proposition.

The Committee recommends that, at the request of either party, or *sua sponte*, the court define the offense (theft or the specified felony) alleged as the object of the intended entry.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

14.12A
Definition Of Unlawful Sale Of Burglary Tools

A person commits the offense of unlawful sale of burglary tools when he knowingly [(sells) (transfers)] [(any key) (any key, including a key designed for lock bumping,) (a lock pick)] specifically manufactured or altered for use in breaking into [(a building) (a housetrailer) (a watercraft) (an aircraft) (a motor vehicle) (a railroad car) (any depository designed for the safekeeping of property)] [or any part of that property].

Committee Note

Instruction and Committee Note Approved January 24, 2014.

720 ILCS 5/19-2.5 (West 2013), added by P.A. 96-1307, § 5, effective January 1, 2011.

Give Instruction 14.12B.

When applicable, give Instruction 14.12C, defining “lock bumping”.

When applicable, give Instruction 23.43B, defining “motor vehicle”.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

Section 19-2.5 sets forth an exception to the offense of unlawful sale of burglary tools. The statute does not apply to the sale or transfer of any key or lock pick described in this instruction to any peace officer or other employee of a law enforcement agency, or to any person or agency licensed as a locksmith pursuant to statute, or to any person engaged in the business of towing vehicles, or to any person engaged in the business of lawful repossession of property who possesses a valid Repossessor-ICC Authorization Card. If the defendant relies on this exception, it will be necessary to give additional instructions.

14.12B
Issues In Unlawful Sale Of Burglary Tools

To sustain the charge of unlawful sale of burglary tools, the State must prove the following proposition:

That the defendant knowingly [(sold) (transferred)] [(any key) (any key, including a key designed for lock bumping,) (a lock pick)] specifically manufactured or altered for use in breaking into [(a building) (a housetrailer) (a watercraft) (an aircraft) (a motor vehicle) (a railroad car) (any depository designed for the safe keeping of property)] [or any part of that property].

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved January 24, 2014.

720 ILCS 5/19-2.5 (West 2013), added by P.A. 96-1307, § 5, effective January 1, 2011.

Give Instruction 14.12A.

When applicable, give Instruction 14.12C, defining “lock bumping”.

When applicable, give Instruction 23.43B, defining “motor vehicle”.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

Section 19-2.5 sets forth an exception to the offense of unlawful sale of burglary tools. The statute does not apply to the sale or transfer of any key or lock pick described in this instruction to any peace officer or other employee of a law enforcement agency, or to any person or agency licensed as a locksmith pursuant to statute, or to any person engaged in the business of towing vehicles, or to any person engaged in the business of lawful repossession of property who possesses a valid Repossessor-ICC Authorization Card. If the defendant relies on this exception, it will be necessary to give additional instructions.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in the proposition. Give Instruction 5.03.

14.12C
Definition Of Lock Bumping

The term "lock bumping" means a lock picking technique for opening a pin tumbler lock using a specially-crafted bumpkey.

Committee Note

Instruction and Committee Note Approved January 24, 2014.

720 ILCS 5/19-2.5 (West 2013), added by P.A. 96-1307, § 5, effective January 1, 2011.

Give this instruction when the defendant is charged with unlawful sale of burglary tools under Section 19-2.5(b) and it is alleged he sold or transferred a key designed for lock bumping.

14.13
Definition Of Residential Burglary

A person commits the offense of residential burglary when he knowingly and without authority enters the dwelling place of another with the intent to commit therein the offense of ____.

Committee Note

720 ILCS 5/19-3 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §19-3 (1991)).

Give Instruction 14.14.

Give Instruction 4.03, defining the term "dwelling place" for the purposes of residential burglary.

In People v. Donoho, 245 Ill.App.3d 938, 942, 615 N.E.2d 805, 807, 186 Ill.Dec. 1, 3 (2d Dist.1993), the court held that the trial court must give an instruction defining "dwelling" in residential burglary cases.

Give Instruction 11.53A when an issue arises regarding the defendant's criminal intent when he entered the dwelling and whether this intent, or lack thereof, makes his entry into the dwelling "with authority" or "without authority". Instruction 11.53A discusses this "limited authority" doctrine as it applies to the offense of home invasion. See the Committee Note to Instruction 11.53A. The Committee believes that the supreme court's decision in People v. Bush, 157 Ill.2d 248, 253-54, 623 N.E.2d 1361, 1364, 191 Ill.Dec. 475, 478 (1993), that the limited authority doctrine applies to private residences and the offense of home invasion similarly extends to the offense of residential burglary. Thus, if the defendant's intent when entering the dwelling is an issue, an instruction on the limited authority doctrine should be given in conjunction with the residential burglary instructions. See *Bush*, 157 Ill.2d at 257, 623 N.E.2d at 1365, 191 Ill.Dec. at 479.

14.14
Issues In Residential Burglary

To sustain the charge of residential burglary, the State must prove the following propositions:

First Proposition: That the defendant knowingly entered the dwelling place of another; and

Second Proposition: That the defendant did so without authority; and

Third Proposition: That the defendant did so with the intent to commit therein the offense of ____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/19-3 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §19-3 (1991)).

Give Instruction 14.13.

See the Committee Note to Instruction 14.07, concerning the selection of the appropriate offense for use at the conclusion of the Third Proposition.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

14.15
Definition Of Criminal Fortification Of A Residence Or Building

A person commits the offense of criminal fortification of a residence or building when, with the intent to prevent the lawful entry of a law enforcement officer [or another], he maintains a residence or building in a fortified condition, knowing that such residence or building is used for the [(manufacture) (storage) (delivery) (trafficking)] of [(cannabis) (____, a controlled substance)].

Committee Note

720 ILCS 5/19-5(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §19-5(a) (1991)), added by P.A. 86-760, effective January 1, 1990.

Give Instruction 14.16.

Give Instruction 14.15A, defining the term "fortified condition."

If the charging document refers to a law enforcement officer, do not use the bracketed phrase "or another."

Use applicable bracketed material.

14.15A
Definition Of Fortified Condition

The term "fortified condition" means preventing or impeding entry through the use of steel doors, wooden planking, crossbars, alarm systems, dogs, or other similar means.

Committee Note

720 ILCS 5/19-5(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §19-5(b) (1991)).

14.16
Issues In Criminal Fortification Of A Residence Or Building

To sustain the charge of criminal fortification of a residence or building, the State must prove the following propositions:

First Proposition: That the defendant maintained a residence or building in a fortified condition; and

Second Proposition: That the defendant did so knowing the residence or building was used for the [(manufacture) (storage) (delivery) (trafficking)] of [(cannabis) (____, a controlled substance)]; and

Third Proposition: That the defendant did so with the intent to prevent the lawful entry of [(a law enforcement officer) (____)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/19-5(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §19-5(a) (1991)), added by P.A. 86-760, effective January 1, 1990.

Give Instructions 14.15 and 14.15A.

When applicable, insert in the blank in the Second Proposition the name of the controlled substance.

When applicable, insert in the blank in the Third Proposition the name or designation of "another" used in the charging document if not a law enforcement officer.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

14.17
Definition Of Criminal Trespass To A Residence

A person commits the offense of criminal trespass to a residence when, without authority, he knowingly [(enters) (remains within)] any residence.

Committee Note

720 ILCS 5/19-4(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §19-4(a) (1991)).

Give Instructions 14.17A and 14.18.

Use applicable bracketed material.

14.17A
Definition Of A Residence--Criminal Trespass

The word "residence"
[1] includes a house trailer.

[or]

[2] means the portion of a multi-unit residential building or complex which is the actual dwelling place of any person[, and does not include such places as common recreational areas or lobbies].

Committee Note

720 ILCS 5/19-4(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §19-4(a) (1991)).

When appropriate, use the final bracketed material prohibiting the application of the statute to common recreational areas or lobbies.

Use applicable paragraphs.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

14.18
Issues In Criminal Trespass To A Residence

To sustain the charge of criminal trespass to a residence, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(entered) (remained within)] a residence; and

Second Proposition: That the defendant [(entered) (remained within)] the residence without authority to do so.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/19-4(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §19-4(a) (1991)).

Give Instruction 14.17.

The Committee takes no position on whether defendant's knowledge of his non-authority to enter or remain within the residence is an element of the offense. See People v. Brown, 150 Ill.App.3d 535, 501 N.E.2d 1347, 103 Ill.Dec. 809 (3d Dist.1986).

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

14.19
Definition Of Aggravated Robbery

A person commits the offense of aggravated robbery when he [(intentionally) (knowingly) (recklessly)] takes property from the person or presence of another by the use of force or by threatening the imminent use of force while indicating verbally or by his actions to the victim that he is presently armed with a firearm.

A person can commit the offense of aggravated robbery even though it is later determined that he had no firearm in his possession when he committed the robbery.

Committee Note

720 ILCS 5/18-5 (West Supp.1993), added by P.A. 88-144, effective January 1, 1994, and amended by P.A. 88-670, effective December 2, 1994.

Give Instruction 14.20.

When appropriate, give Instruction 18.35G, defining "firearm."

In People v. Jones, 149 Ill.2d 288, 297, 595 N.E.2d 1071, 1075, 172 Ill.Dec. 401, 405 (1992), the Illinois Supreme Court held that "either intent, knowledge, or recklessness is an element of robbery even though the statutory definition of robbery does not expressly set forth a mental state." The Committee believes this holding applies as well to aggravated robbery. Accordingly, the Committee has included those three mental states as alternative elements of this offense. See 720 ILCS 5/4-3(b).

Specific intent to permanently deprive is not an element of the offense of robbery. People v. Banks, 75 Ill.2d 383, 388 N.E.2d 1244, 27 Ill.Dec. 195 (1979).

Use applicable bracketed material.

14.20
Issues In Aggravated Robbery

To sustain the charge of aggravated robbery, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] took property from the person or presence of ____; and

Second Proposition: That the defendant did so by the use of force or by threatening the imminent use of force; and

Third Proposition: That the defendant did so while indicating verbally or by his actions to the victim that he was at that time armed with a firearm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/18-5 (West Supp.1993), added by P.A. 88-144, effective January 1, 1994, and amended by P.A. 88-670, effective December 2, 1994.

Give Instruction 14.19.

When appropriate, give Instruction 18.35G, defining "firearm."

The Committee believes that this instruction need not identify the specific property alleged to have been taken from the victim.

Insert in the blank the name of the victim.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

14.21
Definition Of Vehicular Hijacking

A person commits the offense of vehicular hijacking when he [(intentionally) (knowingly) (recklessly)] takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force.

Committee Note

720 ILCS 5/18-3 (West Supp.1993), added by P.A. 88-351, effective August 13, 1993.

Give Instruction 14.22.

Give Instruction 23.43B, defining the term "motor vehicle", if there is an issue as to whether the item taken was a motor vehicle.

In People v. Jones, 149 Ill.2d 288, 297, 595 N.E.2d 1071, 1075, 172 Ill.Dec. 401, 405 (1992), the Illinois Supreme Court held that "either intent, knowledge or recklessness is an element of robbery even though the statutory definition of robbery does not expressly set forth a mental state." Because the offense of vehicular hijacking closely resembles robbery, the Committee believes the holding in Jones applies to vehicular hijacking as well. Accordingly, the Committee has included alternative mental states for this offense.

Specific intent to permanently deprive is not an element of the offense of robbery. People v. Banks, 75 Ill.2d 383, 388 N.E.2d 1244, 27 Ill.Dec. 195 (1979).

Use applicable bracketed material.

14.22
Issues In Vehicular Hijacking

To sustain the charge of vehicular hijacking, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] took a motor vehicle from the person or the immediate presence of ____; and

Second Proposition: That the defendant did so by the use of force or by threatening the imminent use of force.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/18-3 (West Supp.1993), added by P.A. 88-351, effective August 13, 1993.

Give Instruction 14.21.

In People v. Jones, 149 Ill.2d 288, 297, 595 N.E.2d 1071, 1075, 172 Ill.Dec. 401, 405 (1992), the Illinois Supreme Court held that "either intent, knowledge or recklessness is an element of robbery even though the statutory definition of robbery does not expressly set forth a mental state." Because the offense of vehicular hijacking closely resembles robbery, the Committee believes the holding in Jones applies to vehicular hijacking as well. Accordingly, the Committee has included alternative mental states for this offense.

The Committee does not believe that it is necessary to identify in this instruction the specific motor vehicle alleged to have been taken from the victim.

Insert in the blank the name of the victim.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

14.23
Definition Of Aggravated Vehicular Hijacking

A person commits the offense of aggravated vehicular hijacking when he [(intentionally) (knowingly) (recklessly)] takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force, and

[1] the person from whose immediate presence the motor vehicle is taken is a [(physically handicapped person) (person 60 years of age or over)].

[or]

[2] a person under 16 years of age is a passenger in the motor vehicle at the time of the offense.

[or]

[3] he carries on or about his person or is otherwise armed with a dangerous weapon.

Committee Note

720 ILCS 5/18-4 (West Supp.1993), added by P.A. 88-351, effective August 13, 1993.

Give Instruction 14.24.

Give Instruction 23.43B, defining the term "motor vehicle", if there is an issue as to whether the item taken was a motor vehicle.

In People v. Jones, 149 Ill.2d 288, 297, 595 N.E.2d 1071, 1075, 172 Ill.Dec. 401, 405 (1992), the Illinois Supreme Court held that "either intent, knowledge or recklessness is an element of robbery even though the statutory definition of robbery does not expressly set forth a mental state." Because the offense of aggravated vehicular hijacking closely resembles robbery, the Committee believes the holding in Jones applies to aggravated vehicular hijacking as well. Accordingly, the Committee has included alternative mental states for this offense.

Specific intent to permanently deprive is not an element of the offense of robbery. People v. Banks, 75 Ill.2d 383, 388 N.E.2d 1244, 27 Ill.Dec. 195 (1979).

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

Use applicable paragraphs and bracketed material.

14.24
Issues In Aggravated Vehicular Hijacking

To sustain the charge of aggravated vehicular hijacking, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] took a motor vehicle from the person or the immediate presence of ____; and

Second Proposition: That the defendant did so by the use of force or by threatening the imminent use of force; and

[1] *Third Proposition:* That the person from whose immediate presence the motor vehicle was taken was a [(physically handicapped person) (person 60 years of age or over)].

[or]

[2] *Third Proposition:* That a person under 16 years of age was a passenger in the motor vehicle at the time of the offense.

[or]

[3] *Third Proposition:* That the defendant carried on or about his person or was otherwise armed with a dangerous weapon at the time of the taking.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/18-4 (West Supp.1993), added by P.A. 88-351, effective August 13, 1993.

Give Instruction 14.23.

When the weapon in question is not inherently dangerous, give Instruction 4.17. See People v. Skelton, 83 Ill.2d 58, 414 N.E.2d 455, 46 Ill.Dec. 571 (1980).

In People v. Jones, 149 Ill.2d 288, 297, 595 N.E.2d 1071, 1075, 172 Ill.Dec. 401, 405 (1992), the Illinois Supreme Court held that "either intent, knowledge or recklessness is an element of robbery even though the statutory definition of robbery does not expressly set forth a mental state." Because the offense of aggravated vehicular hijacking closely resembles robbery, the Committee believes the holding in Jones applies to aggravated vehicular hijacking as well. Accordingly, the Committee has included alternative mental states for this offense.

The Committee does not believe that it is necessary to identify in this instruction the specific motor vehicle alleged to have been taken from the victim.

Insert in the blank the name of the victim.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

Use applicable paragraphs and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

15.00
ARSON AND RELATED OFFENSES

15.01
Definition Of Arson

A person commits the offense of arson when he, by means of [(fire) (explosive)], knowingly

[1] damages real property of another without his consent.

[or]

[2] damages any personal property having a value of $150 or more of another without his consent.

[or]

[3] damages any [(real property) (personal property having a value of $150 or more)] with intent to defraud an insurer.

[The phrase "property of another" means a building or other property, whether real or personal, in which a person other than the defendant has an interest which the defendant has no authority to defeat or impair, even though the defendant may also have an interest in the building or property.]

Committee Note

720 ILCS 5/20-1(a) and (b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §20-1(a) and (b) (1991)).

When paragraph [1] is used, give Instruction 15.02. When paragraph [2] is used, give Instruction 15.02A. When paragraph [3] is used, give Instruction 15.02B.

Give the last bracketed paragraph only when the evidence shows the defendant claims some interest in the property.

The $150 limitation applies only to personal property and does not relate to the amount of damage incurred to the personal property, but rather to the value of the item damaged. People v. Johnson, 23 Ill.App.3d 886, 321 N.E.2d 38 (1st Dist.1974); People v. Helm, 9 Ill.App.3d 143, 291 N.E.2d 680 (4th Dist.1973).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

15.02
Issues In Arson--Real Property

To sustain the charge of arson, the State must prove the following propositions:

First Proposition: That the defendant, by means of [(fire) (explosive)], knowingly damaged the real property of ____; and

Second Proposition: That the defendant did so without the consent of ____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/20-1(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §20-1(a) (1991)).

Give Instruction 15.01.

Give the last paragraph of Instruction 15.01, if an issue is raised as to whether the property is the "property of another."

The Committee believes that the issue of whether the property is real or personal is a legal issue to be determined by the court.

If the property is specifically named in the charge, it must be named in this instruction.

Insert in the blanks the name of the property owner. Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

15.02A
Issues In Arson--Personal Property Having A Value Of $150 Or More

To sustain the charge of arson, the State must prove the following propositions:

First Proposition: That the defendant, by means of [(fire) (explosive)], knowingly damaged the personal property of ____; and

Second Proposition: That the personal property had a value of $150 or more; and

Third Proposition: That the defendant did so without the consent of ____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/20-1(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §20-1(a) (1991)).

Give Instruction 15.01.

Give the last paragraph of Instruction 15.01, if an issue is raised as to whether the property is the "property of another."

The Committee believes the issue of whether the property is real or personal is a legal issue to be determined by the court.

If the property is specifically named in the charge, it must be named in this instruction.

Insert in the blanks the name of the property owner. Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

15.02B
Issues In Arson--Insurance Fraud

To sustain the charge of arson, the State must prove the following propositions:

First Proposition: That the defendant, by means of [(fire) (explosive)], knowingly damaged [(real property) (personal property having a value of $150 or more)]; and

Second Proposition: That the defendant did so with the intent to defraud an insurer.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/20-1(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §20-1(b) (1991)).

Give Instruction 15.01.

Give the last paragraph of Instruction 15.01, if an issue is raised as to whether the property is "property of another."

The Committee believes that the issue of whether the property is real or personal is a legal issue to be determined by the court.

If the property is specifically named in the charge, it must be named in this instruction.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

15.03
Definition Of Aggravated Arson

A person commits the offense of aggravated arson when, in the course of committing arson, he knowingly damages, partially or totally, any [(building) (structure)] [including any adjacent [(building) (structure)]], and

[1] he knows or reasonably should know that one or more persons are present therein.

[or]

[2] any person suffers [(great bodily harm) (permanent disability) (permanent disfigurement)] as a result of the [(fire) (explosion)].

[or]

[3] a [(fireman) (policeman)] who is present at the scene acting in the line of duty is injured as a result of the [(fire) (explosion)].

Committee Note

720 ILCS 5/20-1.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §20-1.1 (1991)), as amended by P.A. 84-1100, effective December 9, 1985.

Give Instruction 15.04.

Give Instruction 15.01, defining arson, before this instruction.

The change in the first paragraph substituting the phrase "in the course of committing arson" for "by means of fire or explosive" reflects the legislative change effective December 9, 1985, which was intended to cure the constitutional defect noted in People v. Wick, 107 Ill.2d 62, 481 N.E.2d 676, 89 Ill.Dec. 833 (1985), and People v. Johnson, 114 Ill.2d 69, 499 N.E.2d 470, 101 Ill.Dec. 882 (1986).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

15.04
Issues In Aggravated Arson

To sustain the charge of aggravated arson, the State must prove the following propositions:

First Proposition: That the defendant, in the course of committing arson, knowingly damaged, partially or totally, any [(building) (structure)] [including any adjacent [(building) (structure)]]; and

Second Proposition: That when the defendant did so, he knew or reasonably should have known that one or more persons were present therein.

[or]

Second Proposition: That ____ suffered [(great bodily harm) (permanent disability) (permanent disfigurement)] as a result of the [(fire) (explosion)].

[or]

Second Proposition: That ____ was a [(fireman) (policeman)] who was present at the scene acting in the line of duty and was injured as a result of the [(fire) (explosion)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/20-1.1 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §20-1.1 (1991)), amended by P.A. 84-1100, effective December 9, 1985.

Give Instruction 15.03.

Insert in the blank the name of the victim.

In People v. Benoit, 240 Ill.App.3d 185, 190, 608 N.E.2d 250, 255, 181 Ill.Dec. 177, 182 (1st Dist.1992), the court held that this instruction needed to include the word "reasonably" in the first alternative of the Second Proposition. The Committee revised this instruction accordingly.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

15.05
Definition Of Possession Of Explosives Or Incendiary Device

A person commits the offense of possession of [(explosives) (explosive or incendiary devices)] when he knowingly [(possesses) (manufactures) (transports)] any [(explosive compound) (timing or detonating device)] and

[1] intends to use such [(explosive) (device)] to commit the offense[s] of ____.

[or]

[2] knows that another intends to use such [(explosive) (device)] to commit the offense[s] of ____.

Committee Note

720 ILCS 5/20-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §20-2 (1991)).

Give both paragraphs [1] and [2] and Instructions 15.06 and 15.06A, when a person is charged in the alternative and proof is sufficient to submit both charges to the jury.

Give Instruction 4.16 when possession is an issue.

When possession is the essence of a crime it must be "knowingly." Chapter 720, Section 4-2; People v. Smith, 20 Ill.2d 345, 169 N.E.2d 777 (1960). See also People v. Thomas, 3 Ill.App.3d 1079, 279 N.E.2d 784 (3d Dist.1972); People v. Green, 14 Ill.App.3d 972, 304 N.E.2d 32 (1st Dist.1973).

Insert in the blank in paragraph [1] the appropriate offense(s).

Insert in the blank in paragraph [2] the appropriate felony offense(s).

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

15.06
Issues In Possession Of Explosives Or Incendiary Devices With Intent To Use

To sustain the charge of possession of [(explosives) (explosive or incendiary devices)], the State must prove the following propositions:

First Proposition: That the defendant knowingly [(possessed) (manufactured) (transported)] a[n] [(explosive compound) (timing or detonating device)]; and

Second Proposition: That the defendant intended to use such [(explosive compound) (timing or detonating device)] to commit the offense[s] of ____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/20-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §20-2 (1991)).

Give Instruction 15.05.

See Committee Note to Instruction 15.05.

Insert in the blank the appropriate felony offense(s).

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

15.06A
Issues In Possession Of Explosives Or Incendiary Devices Knowing Of Another's Intended Use

To sustain the charge of possession of [(explosives) (incendiary devices)], the State must prove the following propositions:

First Proposition: That the defendant knowingly [(possessed) (manufactured) (transported)] a[n] [(explosive compound) (timing or detonating device)]; and

Second Proposition: That the defendant knew that another intended to use such [(explosive compound) (timing or detonating device)] to commit the offense[s] of ____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/20-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §20-2 (1991)).

Give Instruction 15.05.

See Committee Note to Instruction 15.05.

Insert in the blank the name of the appropriate felony offense(s).

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

15.07
Definition Of Residential Arson

A person commits the offense of residential arson when, in the course of committing an arson, be knowingly damages, partially or totally, any building or structure that is the dwelling place of another.

The term dwelling place "of another" means a dwelling place in which a person other than the defendant has an interest [which the defendant has no authority to defeat or impair even though the defendant may also have an interest in the dwelling place].

Committee Note

720 ILCS 5/20-1.2(a) (West 2003).

Give Instruction 15.01, defining arson, before this instruction.

Give Instruction 4.03, defining the term "dwelling place". Use applicable bracketed definition.

Give Instruction 15.08.

The bracketed portion of the second paragraph is adapted from Instruction 15.01 and should be given only when the evidence suggests the defendant has some interest in the property.

The brackets are present solely for the guidance of court and counsel and should not be included in the Instruction submitted to the jury.

15.08
Issues In Residential Arson

To sustain the charge of residential arson, the state must prove the following propositions:

First Proposition: That the defendant, in the course of committing an arson, knowingly damaged, partially or totally, a building or structure that was the dwelling place of [(another); (____);] and

Second Proposition: That the defendant did so without [lawful consent.] [the consent of ____.]

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions have not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/20-1.2(a) (West 2003).

Give Instruction 15.01, defining arson.

Give Instruction 15.07. Give the bracketed portion of the second paragraph of Instruction 15.07, only when the evidence suggests the defendant has some interest in the property.

Give Instruction 4.03 defining the term "dwelling place". Use applicable bracketed definition.

If the owner of the dwelling place is specifically named in the charge, he or she may be named in this instruction in both the first and second propositions. Blank spaces appear in each proposition for this purpose.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one of whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

16.00
CRIMINAL DAMAGE AND TRESPASS

16.01
Definition Of Criminal Damage To Property

A person commits the offense of criminal damage to property when he
[1] knowingly damages any property of another without his consent[(.) (; and)]

[or]

[2] recklessly by means of [(fire) (explosive)] damages property of another[(.) (; and)]

[or]

[3] knowingly starts a fire on the land of another without his consent[(.) (; and)]

[or]

[4] knowingly injures a domestic animal of another without his consent[(.) (; and)]

[or]

[5] knowingly deposits [(on the land) (in the building)] of another, without his consent, any [(stink bomb) (offensive smelling compound)] with the intent to interfere with the use by another of the [(land) (building)] [(.) (; and)]

[or]

[6] damages any property with intent to defraud an insurer[(.) (; and)]
[7] the damage to the property [(exceeds $300) (exceeds $10,000) (exceeds $100,000)].

Committee Note

720 ILCS 5/21-1 (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, §21-1 (1991)), amended by P.A. 86-496, effective January 1, 1990; P.A. 86-1254, effective January 1, 1991; and P.A. 88-406, effective August 20, 1993.

Give Instruction 16.02.

P.A. 88-406, effective August 20, 1993, removed the former seventh bracketed alternative paragraph of this instruction (defacing property) from the criminal damage to property statute and created the new offense of criminal defacement of property. For offenses

involving that conduct committed on or after August 20, 1993, use Instruction 16.01X.

With respect to paragraph [6], the statutory language "other than as described in subsection (b) of Section 20-1" is disregarded because that material would not be of importance to the jury. However, both court and counsel should be aware of this limitation.

When the charge of criminal damage to property exceeding a specified value is brought, the statute specifically states that the extent of the damage is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the specified value. Accordingly, give paragraph [<us>7</us>] when the value of the property exceeds the specified value.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdict forms for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issues instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $300, then this instruction would begin "A person commits the offense of criminal damage to property in excess of $300 when he . . . ."

For an offense brought under Section 21-1(1)(g), see Instruction 16.03.

If there is an issue of whether the property was property of another, see the definition of the term "property of another" in Section 20-1.

If there is an issue regarding the defendant's interest in the property, give Instruction 16.01A.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

16.01A
Interest In The Property Not A Defense

When a defendant is charged with [(criminal damage to property) (criminal defacement of property)] of another, it is not a defense to the charge that the defendant also has an interest in the property.

Committee Note

This instruction should be given when a defendant is charged with criminal damage to property or criminal defacement of property and there is evidence that the defendant, as well as the alleged victim, has an interest in the property. See People v. Jones, 145 Ill.App.3d 835, 495 N.E.2d 1371, 99 Ill.Dec. 636 (3d Dist.1986); People v. Schneider, 139 Ill.App.3d 222, 487 N.E.2d 379, 93 Ill.Dec. 712 (5th Dist.1985).

Use applicable bracketed material.

16.01X
Definition Of Criminal Defacement Of Property

A person commits the offense of criminal defacement of property when he knowingly damages the property of another without that person's consent by defacing, deforming, or otherwise damaging such property by the use of paint or any similar substance or by the use of a writing instrument, etching tool, or any other similar device [and the damage to the property exceeds $300].

Committee Note

720 ILCS 5/21-1.3 (West Supp.1993), added by P.A. 88-406, *effective August 20, 1993.*

Give Instruction 16.02X. Use *only* for offenses allegedly committed on or after August 20, 1993.

When the charge of criminal defacement of property exceeding $300 is brought, the Committee believes that the extent of the damage is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding that value. Accordingly, give the bracketed material when the value of the property exceeds $300.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdict forms for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issues instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $300, then this instruction would begin "A person commits the offense of criminal defacement of property in excess of $300 when he . . . ."

If there is an issue of whether the property was property of another, see the definition of the term "property of another" in Section 20-1.

If there is an issue regarding the defendant's interest in the property, give Instruction 16.01A.

Use applicable bracketed material.

16.02
Issues In Criminal Damage To Property

To sustain the charge of criminal damage to property, the State must prove the following propositions:

[1] *First Proposition:* That the defendant knowingly damaged the property of ____; and

Second Proposition: That the defendant did so without the consent of ____[; and

Third Proposition: That the damage to the property was [(more than $300) (more than $10,000) (more than $100,000)]].

[or]

[2] *First Proposition:* That the defendant recklessly, by means of [(fire) (explosive)], damaged the property of ____[; and

Second Proposition: That the damage to the property was [(more than $300) (more than $10,000) (more than $100,000)]].

[or]

[3] *First Proposition:* That the defendant knowingly started a fire on the land of ____; and

Second Proposition: That the defendant did so without the consent of ____[; and

Third Proposition: That the damage to the property was [(more than $300) (more than $10,000) (more than $100,000]].

[or]

[4] *First Proposition:* That the defendant knowingly injured a domestic animal of ____; and

Second Proposition: That the defendant did so without the consent of ____[; and

Third Proposition: That the damage to the property was [(more than $300) (more than $10,000) (more than $100,000)]].

[or]

[5] *First Proposition:* That the defendant knowingly deposited [(a stink bomb) (an offensive smelling compound)] [(on the land) (in the building)] of ____; and

Second Proposition: That the defendant did so without the consent of ____; and

Third Proposition: That the defendant did so with the intent to interfere with ____'s use of the [(land) (building)][; and

Fourth Proposition: That the damage to the property was [(more than $300) (more than $10,000) (more than $100,000)]].

[or]

[6] *First Proposition:* That the defendant damaged any property with intent to defraud an insurer[; and

Second Proposition: That the damage to the property was [(more than $300) (more than $10,000) (more than $100,000)]].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/21-1 (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, §21-1 (1991)), amended by P.A. 86-496, effective January 1, 1990; P.A. 86-1254, effective January 1, 1991; and P.A. 88-406, effective August 20, 1993.

Give Instruction 16.01.

<us>P.A. 88-406, effective August 20, 1993, removed the former seventh bracketed alternative set of propositions of this instruction (defacing property) from the criminal damage to property statute and created the new offense of criminal defacement of property. For offenses involving that conduct committed on or after August 20, 1993, use Instruction 16.02X.</us>

When the charge of criminal damage to property exceeding a specified value is brought, the statute specifically states that the extent of the damage is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the specified value. Accordingly, give the final proposition in each set of propositions when the value of the property exceeds the specified value.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdict forms for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issues instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $300, then this instruction would begin "To sustain the charge of criminal damage to property in excess of $300, the State must prove . . . ."

For an offense brought under Section 21-1(1)(g), see Instruction 16.04.

Insert in the blanks the name of the alleged victim.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

16.02X
Issues In Criminal Defacement Of Property

To sustain the charge of criminal defacement of property, the State must prove the following propositions:

First Proposition: That the defendant knowingly damaged the property of ____ by defacing, deforming, or otherwise damaging such property by the use of paint or any similar substance or by the use of a writing instrument, etching tool, or any other similar device; and

Second Proposition: That the defendant did so without the consent of ____[(; and) (.)]

[*Third Proposition:* That the damage to the property was more than $300.]

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/21-1.3 (West Supp.1993), added by P.A. 88-406, *effective August 20, 1993.*

Give Instruction 16.01X. Use *only* for offenses allegedly committed on or after August 20, 1993.

When the charge of criminal defacement of property exceeding $300 is brought, the Committee believes that the extent of the damage is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding that value. Accordingly, give the bracketed Third Proposition when the value of the property exceeds $300.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdict forms for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issues instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $300, then this instruction would begin "To sustain the charge of criminal defacement of property in excess of $300, the State must prove . . . ."

Insert in the blanks the name of the alleged victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

16.03
Definition Of Shooting A Firearm At A Train--Criminal Damage

A person commits the offense of shooting a firearm at a train when he knowingly shoots a firearm at any portion of a railroad train.

Committee Note

720 ILCS 5/21-1(1)(g) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §21-1(1)(g) (1991)), as amended by P.A. 86-496, effective January 1, 1990, and P.A. 86-1254, effective January 1, 1991.

Give Instruction 16.04.

Although contained in the criminal damage statute, Chapter 720, Section 21-1(1)(g) defines a separate and distinct offense. That offense is a felony without regard to the amount of damage caused and even without regard to whether any damage is caused. Compare Committee Note to Instruction 16.01. The Committee concluded that the jury would be less likely to be confused by a separate instruction defining this offense without any reference to the term "criminal damage."

See Instruction 16.01A.

16.04
Issues In Shooting A Firearm At A Train--Criminal Damage

To sustain the charge of shooting a firearm at a train, the State must prove the following proposition:

That the defendant knowingly shot a firearm at any portion of a railroad train.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/21-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §21-1 (1991)), as amended by P.A. 86-496, effective January 1, 1990, and P.A. 86-1254, effective January 1, 1991.

Give Instruction 16.03.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

16.05
Definition Of Criminal Damage Of Fire Fighting Apparatus, Hydrants, Or Equipment

A person commits the offense of criminal damage of fire fighting apparatus, hydrants, or equipment when he

[1] wilfully and maliciously [(cuts) (injures) (damages) (tampers with) (destroys) (defaces)] [(any fire hydrant) (any fire hose) (any fire engine) (any public or private fire fighting equipment) (any apparatus appertaining to any fire fighting equipment)].

[or]

[2] intentionally opens any fire hydrant without proper authorization.

Committee Note

720 ILCS 5/21-1.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §21-1.1 (1991)).

Give Instruction 16.06.

See People v. Marquis, 54 Ill.App.3d 209, 369 N.E.2d 372, 11 Ill.Dec. 918 (4th Dist.1977), concerning the required mental state of wilfulness; see also Chapter 720, Section 4-5.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

16.06
Issues In Criminal Damage Of Fire Fighting Apparatus, Hydrants, Or Equipment

To sustain the charge of criminal damage of fire fighting apparatus, hydrants, or equipment, the State must prove the following proposition[s]:

That the defendant wilfully and maliciously [(cut) (injured) (damaged) (tampered with) (destroyed) (defaced)] [(any fire hydrant) (any fire hose) (any fire engine) (any public or private fire fighting equipment) (any apparatus appertaining to any fire fighting equipment)].

[or]

First Proposition: That the defendant intentionally opened a fire hydrant; and

Second Proposition: That the defendant did so without proper authority.

If you find from your consideration of all the evidence that [(this proposition) (each one of these propositions)] has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that [(this proposition) (any one of these propositions)] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/21-1.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §21-1.1 (1991)).

Give Instruction 16.05.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

16.07
Definition Of Institutional Vandalism

A person commits the offense of institutional vandalism when, by reason of the actual or perceived [(race) (color) (creed) (religion) (national origin)] of another individual or group of individuals, he knowingly and without consent inflicts damage [exceeding $300] to

[1] a [(church) (synagogue) (building, structure, or place used for religious worship or other religious purpose)].

[or]

[2] a [(cemetery) (mortuary) (facility used for the purpose of burial or memorializing the dead)].

[or]

[3] a [(school) (educational facility) (community center)].

[or]

[4] the grounds adjacent to, and owned or rented by, a

[a] [(church) (synagogue) (structure or place used for a religious purpose)].

[or]

[b] [(cemetery) (mortuary) (facility used for the purpose of burial or memorializing the dead)].

[or]

[c] [(school) (educational facility) (community center)].

[or]

[5] any personal property contained in a

[a] [(church) (synagogue) (building, structure, or place used for religious worship or other religious purpose)];

[or]

[b] [(cemetery) (mortuary) (facility used for the purpose of burial or memorializing the dead)];

[or]

[c] [(school) (educational facility) (community center)].

Committee Note

720 ILCS 5/21-1.2 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §21-1.2 (1991))<us>, amended by P.A. 88-659, effective September 16, 1994</us>.

Give Instruction 16.08.

Section (b) enhances the penalty from a Class 3 felony to a Class 2 felony when the damage exceeds $300. Thus, give the bracketed phrase in the opening paragraph ("[exceeding $300]") when the amount of the damage is an issue. When the amount of the damage is an issue, it should be resolved by the jury.

Use applicable paragraphs, subparagraphs, and bracketed material.

P.A. 88-659, effective September 16, 1994, amended the statute to include the "actual or perceived" language regarding the victim's status. The Committee has accordingly modified the opening paragraph to reflect this amendment.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

16.08
Issues In Institutional Vandalism

To sustain the charge of institutional vandalism, the State must prove the following propositions:

First Proposition: That the defendant knowingly and without consent damaged

[1] a [(church) (synagogue) (building, structure, or place used for religious worship or other religious purpose)].

[or]

[2] a [(cemetery) (mortuary) (facility used for the purpose of burial or memorializing the dead)].

[or]

[3] a [(school) (educational facility) (community center)].

[or]

[4] the grounds adjacent to, and owned or rented by, a

[a] [(church) (synagogue) (structure or place used for a religious purpose)].

[or]

[b] [(cemetery) (mortuary) (facility used for the purpose of burial or memorializing the dead)].

[or]

[c] [(school) (educational facility) (community center)].

[or]

[5] any personal property contained in a

[a] [(church) (synagogue) (building, structure, or place used for religious worship or other religious purpose)];

[or]

[b] [(cemetery) (mortuary) (facility used for the purpose of burial or memorializing the dead)];

[or]

[c] [(school) (educational facility) (community center)];

and

Second Proposition: That the defendant inflicted the damage by reason of the actual or perceived [(race) (color) (creed) (religion) (national origin)] of another individual or group of individuals[(; and) (.)]

[*Third Proposition:* That the damage exceeded $300.]

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/21-1.2 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §21-1.2 (1991))<us>, amended by P.A. 88-659, effective September 16, 1994</us>.

Give Instruction 16.07.

Use applicable paragraphs, subparagraphs, and bracketed material.

Give the bracketed Third Proposition only when the issue arises whether the amount of the damage exceeds $300. See the Committee Note to Instruction 16.07.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

16.09
Definition Of Criminal Trespass To Vehicle

A person commits the offense of criminal trespass to a vehicle when he, knowingly and without authority, [(enters any part of) (operates)] any [(vehicle) (aircraft) (watercraft) (snowmobile)].

Committee Note

720 ILCS 5/21-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §21-2 (1991)).

Give Instruction 16.10.

The word "vehicle" is defined in Instruction 23.20. That definition is taken from the Illinois Vehicle Code, 625 ILCS 5/4-100. There are other definitions of the word "vehicle" in the Illinois statutes, such as 625 ILCS 5/1-217. The Committee takes no position on which of these definitions should be given.

Use applicable bracketed material.

16.10
Issues In Criminal Trespass To Vehicle

To sustain the charge of criminal trespass to a vehicle, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(entered any part of) (operated)] any [(vehicle) (aircraft) (watercraft) (snowmobile)]; and

Second Proposition: That the defendant did so without authority.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/21-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §21-2 (1991)).

Give Instruction 16.09.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

16.11
Definition Of Criminal Trespass To Real Property

A person commits the offense of criminal trespass to real property when he [(knowingly) (intentionally) (recklessly)]

[1] enters [(upon the land) (a building other than a residence)] of another [or any part thereof] after receiving, prior to such entry, notice from the [(owner) (occupant)] that such entry is forbidden.

[or]

[2] remains [(upon the land) (in a building other than a residence)] of another after receiving notice from the [(owner) (occupant)] to depart.

[or]

[3] enters, in or on a motor vehicle, [(a field that is [capable of being] used for growing crops) (an enclosed area containing livestock) (an orchard) (a barn or other agricultural building containing livestock)] after receiving, prior to such entry, notice from the [(owner) (occupant)] that such entry is forbidden. [A motor vehicle includes an off-road vehicle, motorcycle, moped, or any other powered two-wheel vehicle.]

[or]

[4] remains in [(a field that is [capable of being] used for growing crops) (an enclosed area containing livestock) (an orchard) (a barn or other agricultural building containing livestock)] that he entered in or on a motor vehicle, after receiving notice from the [(owner) (occupant)] to depart. [A motor vehicle includes an off-road vehicle, motorcycle, moped, or any other powered two-wheel vehicle.]

Committee Note

720 ILCS 5/21-3 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §21-3 (1991))<us>; amended by P.A. 89-346, effective January 1, 1996</us>.

Give either Instruction 16.12 or 16.12A.

Give Instruction 16.11A.

Although Section 21-3 does not include a mental state, the Committee provided three alternative mental states pursuant to People v. Grant, 101 Ill.App.3d 43, 47-48, 427 N.E.2d 810, 814, 56 Ill.Dec. 478, 482 (1st Dist.1981), which held that Section 4-3 incorporates a mental state requirement into this offense. See 720 ILCS 5/4-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction. See the Committee Note to Instruction 5.01A regarding the

applicable mental state.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

16.11A
Definition Of Notice--Criminal Trespass To Real Property

[For purposes of the offense of criminal trespass to real property,] [(A) (a)] person has received notice from the owner or occupant if [(he has been notified personally, either orally or in writing) (a printed or written notice forbidding such entry to him or a group of which he is a part has been conspicuously posted or exhibited at the main entrance of such land or the forbidden part thereof)].

Committee Note

720 ILCS 5/21-3(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §21-3(b) (1991)).

This definition of notice applies only to the offense of criminal trespass to real property. Note that the statute includes a valid court order within the meaning of the word "writing."

The bracketed phrase "For purposes of the offense of criminal trespass to real property" should be given only if the defendant is charged with at least one other offense and the phrase is necessary to clarify the instructions.

16.12
Issues In Criminal Trespass To Real Property--Prior Warning

To sustain the charge of criminal trespass to real property, the State must prove the following propositions:

First Proposition: That the defendant [(knowingly) (intentionally) (recklessly)] entered [(upon the land) (a building other than a residence)] of another [or any part thereof]; and

Second Proposition: That prior to the entry, the defendant received notice from the [(owner) (occupant)] of the [(land) (building other than a residence)] that such entry is forbidden.

[or]

First Proposition: That the defendant [(knowingly) (intentionally) (recklessly)] entered, in or on a motor vehicle, [(a field that is [capable of being] used for growing crops) (an enclosed area containing livestock) (an orchard) (a barn or other agricultural building containing livestock)]; and

Second Proposition: That prior to the entry, the defendant received notice from the [(owner) (occupant)] of the [(field that is [capable of being] used for growing crops) (enclosed area containing livestock) (orchard) (barn or other agricultural building containing livestock)] that such entry is forbidden.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/21-3 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §21-3 (1991))<us>; amended by P.A. 89-346, effective January 1, 1996</us>.

Give Instruction 16.11.

Although Section 21-3 does not include a mental state, the Committee provided three alternative mental states pursuant to People v. Grant, 101 Ill.App.3d 43, 47-48, 427 N.E.2d 810, 814, 56 Ill.Dec. 478, 482 (1st Dist.1981), which held that Section 4-3 incorporates a mental state requirement into this offense. See 720 ILCS 5/4-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction. See the Committee Note to Instruction 5.01A regarding the applicable mental state.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

16.12A
Issues In Criminal Trespass To Real Property--Notice To Depart

To sustain the charge of criminal trespass to real property, the State must prove the following proposition:

That the defendant [(knowingly) (intentionally) (recklessly)] remained [(on the land) (in a building other than a residence)] of another after receiving notice from the [(owner) (occupant)] to depart.

[or]

That the defendant, after entering, in or on a motor vehicle, the [(field that is [capable of being] used for growing crops) (enclosed area containing livestock) (orchard) (barn or other agricultural building containing livestock)], [(knowingly) (intentionally) (recklessly)] remained there after receiving notice from the [(owner) (occupant)] to depart.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/21-3 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §21-3 (1991))<us>; amended by P.A. 89-346, effective January 1, 1996</us>.

Give Instruction 16.11.

Although Section 21-3 does not include a mental state, the Committee provided three alternative mental states pursuant to People v. Grant, 101 Ill.App.3d 43, 47-48, 427 N.E.2d 810, 814, 56 Ill.Dec. 478, 482 (1st Dist.1981), which held that Section 4-3 incorporates a mental state requirement into this offense. See 720 ILCS 5/4-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction. See the Committee Note to Instruction 5.01A regarding the applicable mental state.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

16.13
Definition Of Criminal Damage To State Or Government Supported Property

A person commits the offense of criminal damage to [(State) (government)] supported property when he

[1] knowingly damages any property supported in whole or in part with [(State funds) (Federal funds administered or granted through State agencies) (funds of a local government or school district)] without the consent of the State[(.) (; and)]

[or]

[2] knowingly, by means of [(fire) (explosive)], damages property supported in whole or in part with [(State funds) (Federal funds administered or granted through State agencies) (funds of a local government or school district)] [(.) (; and)]

[or]

[3] knowingly starts a fire on property supported in whole or in part by [(State funds) (Federal funds administered or granted through State agencies) (funds of a local government or school district)] without the consent of the State[(.) (; and)]

[or]

[4] knowingly deposits [(on the land) (in the building)] supported in whole or in part by [(State funds) (Federal funds administered or granted through State agencies) (funds of a local government or school district)] without the consent of the State, [(a stink bomb) (any offensive smelling compound)] with the intent to interfere with the use by another of the [(land) (building)] [(.) (; and)]

[5] the damage to the property [(exceeds $500) (exceeds $10,000) (exceeds $100,000)].

Committee Note

720 ILCS 5/21-4 (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §21-4), amended by P.A. 86-1254, effective January 1, 1991<us>; and P.A. 89-31, effective January 1, 1996</us>.

P.A. 89-31 amended Section 21-4 by (1) changing the title of the offense from "Criminal Damage to State Supported Property" to "Criminal Damage to Government Supported Property," and (2) adding that the offense can be committed when property supported by "funds of a local government or school district" is damaged. However, these changes become effective January 1, 1996, and apply prospectively only.

Do not use either bracketed alternative "government" or "funds of a local government or school district" for offenses allegedly occurring before January 1, 1996.

Give Instruction 16.14.

The Committee has included the value of the damage of the property as an issue to be resolved by the jury because Section 21-4(1) sets forth different penalties depending on the damage to the property in question. See People v. Mays, 80 Ill.App.3d 340, 399 N.E.2d 718, 35 Ill.Dec. 652 (3d Dist.1980). Accordingly, the Committee has included paragraph [5] which should be given when the value of the property exceeds $500.

If the amount of damage to the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdict forms for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $500, then this instruction would begin "A person commits the offense of criminal damage to State supported property in excess of $500 when he ...."

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

16.14
Issues In Criminal Damage To State Or Government Supported Property

To sustain the charge of criminal damage to [(State) (government)] supported property, the State must prove the following propositions:

[1] *First Proposition:* That the defendant knowingly damaged any property supported in whole or in part with [(State funds) (Federal funds administered or granted through State agencies) (funds of a local government or school district)]; and

Second Proposition: That the defendant did so without the consent of the State[; and

Third Proposition: That the damage to the property [(exceeded $500) (exceeded $10,000) (exceeded $100,000)]].

[or]

[2] *First Proposition:* That the defendant knowingly, by means of [(fire) (explosive)], damaged property supported in whole or in part with [(State funds) (Federal funds administered or granted through State agencies) (funds of a local government or school district)] [; and

Second Proposition: That the damage to the property [(exceeded $500) (exceeded $10,000) (exceeded $100,000)]].

[or]

[3] *First Proposition:* That the defendant knowingly started a fire on property supported in whole or in part by [(State funds) (Federal funds administered or granted through State agencies) (funds of a local government or school district)]; and

Second Proposition: That the defendant did so without the consent of the State[; and

Third Proposition: That the damage to the property [(exceeded $500) (exceeded $10,000) (exceeded $100,000)]].

[or]

[4] *First Proposition:* That the defendant knowingly deposited [(on the land) (in the building)] supported in whole or in part by [(State funds) (Federal funds administered or granted through State agencies) (funds of a local government or school)] [(a stink bomb) (an offensive smelling compound)]; and

Second Proposition: That the defendant did so with the intent to interfere with the use by another of the [(land) (building)]; and

Third Proposition: That the defendant did so without the consent of the State[; and

Fourth Proposition: That the damage to the property [(exceeded $500) (exceeded $10,000) (exceeded $100,000)]].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/21-4 (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §21-4), amended by P.A. 86-1254, effective January 1, 1991<us>; and P.A. 89-31, effective January 1, 1996</us>.

P.A. 89-31 amended Section 21-4 by (1) changing the title of the offense from "Criminal Damage to State Supported Property" to "Criminal Damage to Government Supported Property," and (2) adding that the offense can be committed when property supported by "funds of a local government or school district" is damaged. However, these changes become effective January 1, 1996, and apply prospectively only.

Do *not* use either bracketed alternative "government" or "funds of a local government or school district" for offenses allegedly occurring before January 1, 1996.

Give Instruction 16.13.

The Committee has included the amount of the damage of the property as an issue to be resolved by the jury because Section 21-4(1) sets forth different penalties depending on the damage to the property in question. See People v. Mays, 80 Ill.App.3d 340, 399 N.E.2d 718, 35 Ill.Dec. 652 (3d Dist.1980). Accordingly, the Committee has included the final proposition in each set of propositions which should be given when the value of the property exceeds $500.

If the amount of damage to the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdict forms for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $500, then this instruction would begin "To sustain the charge of criminal damage to State supported property in excess of $500, the State must prove ...."

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

16.15
Definition Of Criminal Trespass To State Supported Land

A person commits the offense of criminal trespass to State supported land when he [(knowingly) (intentionally) (recklessly)]

[1] enters [(upon land) (a building on land)] supported in whole or in part with [(State funds) (Federal funds administered through State agencies)] after receiving, prior to such entry, notice from the State or its representative that such entry is forbidden and who thereby interferes with another person's lawful use or enjoyment of such [(land) (building)].

[or]

[2] remains [(upon land) (in a building on land)] supported in whole or in part with [(State funds) (Federal funds administered or granted through State agencies)] after receiving notice from the State or its representatives to depart and who thereby interferes with another person's lawful use or enjoyment of such [(land) (building)].

Committee Note

720 ILCS 5/21-5 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §21-5 (1991)).

Give either Instruction 16.16 or 16.16A.

Give Instruction 16.15A, defining the word "notice."

See Chapter 720, Sections 4-3 and 4-9 and Committee Note to Instruction 5.01A, regarding the applicable mental state.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

16.15A
Definition Of Notice--Criminal Trespass To State Supported Land

[For purposes of the offense of criminal trespass to State supported land,] [(A) (a)] person has received notice from the State if [(he has been notified personally, either orally or in writing) (a printed or written notice forbidding such entry to him or a group of which he is a part has been conspicuously posted or exhibited at the main entrance of such land or the forbidden part thereof)].

Committee Note

720 ILCS 5/21-5 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §21-5 (1991)).

This definition of notice applies only to the offense of criminal trespass to State supported land.

The bracketed phrase "For purposes of the offense of criminal trespass to State supported land" should be given only if the defendant is charged with at least one other offense and the phrase is necessary to clarify the instructions.

16.16
Issues In Criminal Trespass To State Supported Land--Prior Warning

To sustain the charge of criminal trespass to State supported land, the State must prove the following propositions:

First Proposition: That the defendant [(knowingly) (intentionally) (recklessly)] entered [(upon land) (in a building on land)] supported in whole or in part with [(State funds) (Federal funds administered or granted through State agencies)]; and

Second Proposition: That the defendant received, prior to such entry, notice from the State or its representative that such entry was forbidden; and

Third Proposition: That the defendant thereby interfered with another person's lawful use or enjoyment of such [(land) (building)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/21-5 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §21-5 (1991)).

Give Instruction 16.15.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

16.16A
Issues In Criminal Trespass To State Supported Land--Notice To Depart

To sustain the charge of criminal trespass to State supported land, the State must prove the following propositions:

First Proposition: That the defendant [(knowingly) (intentionally) (recklessly)] remained [(upon land) (in a building on land)] supported in whole or in part with [(State funds) (Federal funds administered or granted through State agencies)] after receiving notice from the State or its representatives to depart; and

Second Proposition: That the defendant thereby interfered with another person's lawful use or enjoyment of such [(land) (building)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/21-5 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §21-5 (1991)).

Give Instruction 16.15.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

16.17
Definition Of Unauthorized Possession Or Storage Of Weapons

A person commits the offense of unauthorized possession or storage of weapons when he knowingly [(possesses) (stores)] any [(pistol) (revolver) (rifle) (shotgun) (spring gun) (other firearm) (sawed-off shotgun) (stun gun or taser) (knife with a blade of at least three inches in length) (bludgeon) (black jack) (slungshot) (sand-bag) (sand-club) (metal knuckles) (dagger) (billy) (switch blade knife) (stiletto) [or other dangerous weapon or instrument of like character]] [(on land) (in a building on land)] supported in whole or in part with [(State funds) (Federal funds administered through State agencies)] without prior written permission from the chief security officer for the [(land) (building)].

Committee Note

720 ILCS 5/21-6 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §21-6 (1991)). This statutory provision does not name specific weapons, but refers to those weapons named in Chapter 720, Section 33A-1. That section should also be reviewed.

Give Instruction 16.18.

The bracketed phrase "or other dangerous weapon or instrument of like character" should be used only when the weapon charged is not one of the weapons specifically enumerated. When the phrase is used, it must be used in conjunction with one or more of the enumerated weapons.

Chapter 720, Section 21-6(b) provides that the chief security officer must grant any reasonable request for permission under subparagraph (a). This instruction may have to be modified when such a request is at issue. The Committee takes no position as to whether lack of permission is an affirmative defense.

The phrase "stun gun or taser" is defined in Chapter 720, Section 24-1(a)(10), and in Instruction 18.35E.

Use applicable bracketed material.

16.18
Issues In Unauthorized Possession Or Storage Of Weapons

To sustain the charge of unauthorized possession or storage of weapons, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(possessed) (stored)] any [(pistol) (revolver) (rifle) (shotgun) (spring gun) (other firearm) (sawed-off shotgun) (bludgeon) (stun gun or taser) (knife with a blade of at least three inches in length) (blackjack) (slungshot) (sand-club) (sand-bag) (metal knuckles) (dagger) (dirk) (billy) (switch-blade knife) (stiletto) [or other dangerous weapon or instrument of like character]]; and

Second Proposition: That the defendant did so [(on land) (in a building on land)] supported in whole or in part with [(State funds) (Federal funds administered through State agencies)] without prior written permission from the chief security officer for such [(land) (building)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/21-6 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §21-6 (1991)).

Give Instruction 16.17.

Section 21-6 does not name specific weapons, but refers to those weapons named in Chapter 720, Section 33A-1. That section should also be reviewed.

The bracketed phrase "or other dangerous weapon or instrument of like character" should be used only when the weapon charged is not one of the weapons specifically enumerated. When the phrase is used, it must be used in conjunction with one or more of the enumerated weapons.

The phrase "stun gun or taser" is defined in Chapter 720, Section 24-1(a)(10), and in Instruction 18.35E.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

16.19
Definition Of Interference With Public Institution Of Higher Education

A person commits the offense of interference with a public institution of higher education when [(on the campus of a public institution of higher education) (at or in a building or other facility owned, operated, or controlled by a public institution of higher education)] and without authority from the institution, through force or violence, actual or threatened, he

[1] wilfully denies to a[n] [(trustee) (employee) (student) (invitee)] of the institution [(freedom of movement at such place) (use of the property or facilities of the institution) (the right to ingress or egress to the property or facilities of the institution)].

[or]

[2] wilfully [(impedes) (obstructs) (interferes with) (disrupts)] [(the performance of institutional duties by a[n] [(trustee) (employee)] of the institution) (the pursuit of educational activities as determined or prescribed by the institution by a[n] [(trustee) (employee) (student) (invitee)] of the institution)].

[or]

[3] knowingly occupies or remains in or at a [(building) (property) (facility)] owned, operated, or controlled by the institution after due notice to depart.

Committee Note

720 ILCS 5/21.2-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §21.2-2 (1991)).

Give Instruction 16.20.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

16.20
Issues In Interference With Public Institution Of Higher Education

To sustain the charge of interference with a public institution of higher education, the State must prove the following propositions:

First Proposition: That while the defendant was [(on the campus of a public institution of higher education) (at or in a building or other facility owned, operated, or controlled by a public institution of higher education)], he wilfully denied to a[n] [(trustee) (employee) (student) (invitee)] of the institution [(freedom of movement at such place) (use of the property or facilities of the institution) (the right of ingress or egress to the property or facilities of the institution)];

[or]

First Proposition: That while the defendant was [(on the campus of a public institution of higher education) (at or in a building or other facility owned, operated, or controlled by a public institution of higher education)] he wilfully [(impeded) (obstructed) (interfered with) (disrupted)] [(the performance of institutional duties by a[n] [(trustee) (employee)] of the institution) (the pursuit of educational activities, as determined or prescribed by the institution, by a[n] [(trustee) (employee) (student) (invitee)] of the institution)];

[or]

First Proposition: That while the defendant was [(on the campus of a public institution of higher education) (at or in a building or other facility owned, operated, or controlled by a public institution of higher education)], he knowingly [(occupied) (remained in or at)] a [(building) (property) (facility)] owned, operated, or controlled by the institution after due notice to depart;

and

Second Proposition: That the defendant did so without authority from the institution and through force or violence, actual or threatened.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/21.2-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §21.2-2 (1991)).

Give Instruction 16.19.

See Chapter 720, Section 21.2-5 for definitions of the phrase "public institution of higher education," the term "due notice," and the phrase "force or violence."

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

16.21
Definition Of Criminal Trespass To Restricted Areas At Airports

A person commits the offense of criminal trespass to restricted areas at airports when he [(enters upon) (remains in)] [(any restricted area) (any restricted landing area)] used in connection with an airport facility [or part thereof] after such person has received notice from the airport authority that such entry is forbidden.

Committee Note

720 ILCS 5/21-7 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §21-7 (1991)).

Give Instruction 16.22.

When applicable, give Instruction 16.21A, defining the term "restricted area" and the phrase "restricted landing area."

When applicable, give Instruction 16.21B, defining the word "notice" within the meaning of Section 21-7.

Use applicable bracketed material.

16.21A
Definition Of Restricted Area Or Restricted Landing Areas At Airports

The term "restricted area" or the phrase "restricted landing area" means any area of land, water, or both which is used or is made available for the landing and takeoff of aircraft, and includes any area that has been restricted by the airport authority.

Committee Note

720 ILCS 5/21-7 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §21-7 (1991)).

16.21B
Definition Of Notice--Criminal Trespass To Restricted Areas At Airports

[For purposes of the offense of criminal trespass to restricted areas at airports,] [(The) (the)] word "notice" means that a person has been informed that entry is forbidden [(by personal notification either orally or in writing) (by a printed or written notice forbidding such entry to that person, or a group or an organization of which that person is a member, which has been conspicuously posted or exhibited at every useable entrance to the forbidden area or part thereof)].

Committee Note

720 ILCS 5/21-7 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §21-7 (1991)).

The bracketed phrase "For purposes of the offense of criminal trespass to restricted areas at airports" should be given only when the defendant is charged with at least one other offense and the phrase is necessary to limit the applicability of this instruction.

This definition of the word "notice" applies only to the offense of criminal trespass to restricted areas at airports.

Use applicable bracketed material.

16.22
Issues In Criminal Trespass To Restricted Areas At Airports

To sustain the charge of criminal trespass to restricted areas at airports, the State must prove the following proposition:

That the defendant [(knowingly) (intentionally) (recklessly)] [(entered upon) (remained in)] [(any restricted area) (any restricted landing area)] used in connection with an airport facility [or part thereof] after the defendant had received notice from the airport authority that such entry is forbidden.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/21-7 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §21-7 (1991)).

Give Instruction 16.21.

See Chapter 720, Sections 4-3 and 4-9 and Committee Note to Instruction 5.01A, regarding the applicable mental state.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

16.23
Definition Of Criminal Trespass To A Cemetery

A person commits the offense of criminal trespass to a cemetery when he

[1] [(intentionally) (knowingly) (recklessly)] violates any of the rules made and established by the board of directors of a cemetery for the protection or government thereof.

[or]

[2] knowingly [(enters) (remains upon)] the premises of a public or private cemetery without authorization during hours that the cemetery is posted as closed to the public.

Committee Note

765 ILCS 835/1(e) and (f) (West, 1992) (formerly Ill.Rev.Stat. ch. 21, §15(e) and (f) (1991)), amended by P.A. 87-527, effective September 16, 1991.

Give Instruction 16.24.

Use paragraph [1] for charges brought under Section 1(e) and paragraph [2] for charges brought under Section 1(f).

Because Sections 1(e) does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)) in paragraph [1]. The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

16.24
Issues In Criminal Trespass To A Cemetery

To sustain the offense of criminal trespass to a cemetery, the State must prove the following proposition[s]:

[1] That the defendant [(intentionally) (knowingly) (recklessly)] violated any of the rules made and established by the board of directors of a cemetery for the protection or government thereof.

[or]

[2] *First Proposition:* That the defendant knowingly [(entered) (remained upon)] the premises of a public or private cemetery without authorization; and

[3] *Second Proposition:* That the defendant did so during hours that the cemetery was posted as closed to the public.

If you find from your consideration of all the evidence that [(this proposition) (each of these propositions)] has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that [(this proposition) (any one of these propositions)] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

765 ILCS 835/1(e) and (f) (West, 1992) (formerly Ill.Rev.Stat. ch. 21, §15(e) and (f) (1991)), amended by P.A. 87-527, effective September 16, 1991.

Give Instruction 16.23.

Because Sections 1(e) does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)) in paragraph [1]. The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

17.00
CANNABIS AND CONTROLLED SUBSTANCES

DISPOSITION TABLE

Showing where the Pattern Instructions in the Third Edition are covered in the Fourth Edition.

3d ed. Instruction Number	4th ed. Instruction Number
17.67	17.65A

INTRODUCTION

Generally, the jury need not be instructed as to the definitions of words which are contained or defined in the Statute. There will, however, be situations in which a definition will be necessary. One example would be a prosecution for the possession or delivery of a substance containing cannabis (720 ILCS 550/4 and 550/5), when there is evidence that raises an issue as to the nature of the substance involved. In this particular example, give the definition of cannabis (720 ILCS 550/3(a)) to the jury.

When the need for a definitional instruction arises, and the particular word is not defined in these Pattern Instructions, the Committee recommends that the jury be given an instruction which defines the term involved as set out in the appropriate section of the Statute (720 ILCS 550/3; 720 ILCS 570/102), with inapplicable language deleted, to avoid confusing the jury.

17.01
Definition Of Possession Of Cannabis

A person commits the offense of possession of cannabis when he knowingly possesses a substance containing cannabis [and that substance containing the cannabis weighs [(more than ____ grams) (more than ____ grams but not more than ____ grams)]].

Committee Note

720 ILCS 550/4 (West, 1999).

Give Instruction 17.02.

When possession of more than 2.5 grams of a substance containing cannabis is charged, weight then determines the penalty for the offense and is an essential element to be decided by the jury. See People v. Kadlec, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist.1974); People v. Hill, 169 Ill.App.3d 901, 524 N.E.2d 604, 120 Ill.Dec. 574 (1st Dist.1988). When the jury must decide this element, use the bracketed material in this instruction and use both propositions in Instruction 17.02.

Particular care must be taken when disputes about weight support lesser included offenses. See example in this Committee Note, below, and People v. Smith, 67 Ill.App.3d 952, 385 N.E.2d 707, 24 Ill.Dec. 566 (5th Dist.1978).

When the prosecution must prove the quantity of the substance as an element of the offense, it need not prove that the defendant *knew* the quantity was of any specific amount. See People v. Cortez, 77 Ill.App.3d 448, 395 N.E.2d 1177, 32 Ill.Dec. 796 (1st Dist.1979); People v. Ziehm, 120 Ill.App.3d 777, 458 N.E.2d 588, 76 Ill.Dec. 188 (2d Dist.1983).

Although the quantity may not always be required in the verdict forms, People v. Roy, 172 Ill.App.3d 16, 526 N.E.2d 204, 122 Ill.Dec. 64 (4th Dist.1988), to insure clarity the Committee recommends that each verdict form contain the same quantity language used in the definitional and issues instructions supporting the verdict.

It should not be necessary in most possession cases to add the phrase "... but not more than ____ grams." Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in 720 ILCS 550/4(b) through (d) an issue in the case.

If the evidence concerning the weight of the substance containing cannabis is in dispute, then separate issues and definitional instructions and verdict forms should be given to permit the jury to resolve that dispute with its verdict. For example, if a defendant is charged with possession of more than 500 grams of a substance containing cannabis (720 ILCS 550/4(e)), a Class 3 felony, the defendant may claim that the substance weighed only 480 grams, thereby reducing the offense to a Class 4 felony.

Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses.

The first definitional instruction should read as follows:

"A person commits the offense of possession of cannabis when he knowingly possesses a substance containing cannabis and that substance containing the cannabis weighs more than 500 grams."

The second definitional instruction should read as follows:

"A person commits the offense of possession of cannabis when he knowingly possesses a substance containing cannabis and that substance containing the cannabis weighs more than 30 grams but not more than 500 grams."

The first issues instruction should read as follows:

"To sustain the charge of possession of cannabis when the substance containing the cannabis weighed more than 500 grams, the State must prove the following propositions:

First Proposition: That the defendant knowingly possessed a substance containing cannabis; and

Second Proposition: That the weight of the substance possessed was more than 500 grams."

Then the standard concluding two paragraphs should be added.

The second issues instruction should read as follows:

"To sustain the charge of possession of cannabis when the substance containing the cannabis weighed more than 30 grams but not more than 500 grams, the State must prove the following propositions:

First Proposition: That the defendant knowingly possessed a substance containing cannabis; and

Second Proposition: That the weight of the substance possessed was more than 30 grams but not more than 500 grams."

Then the standard concluding two paragraphs should be added.

Finally, the three verdict forms should repeat the appropriate language from the lead-in paragraph of each issues instruction. In this example, the verdict forms would read as follows:

"We the jury find the defendant guilty of possession of cannabis when the substance containing the cannabis weighed more than 500 grams."

"We the jury find the defendant guilty of possession of cannabis when the

substance containing the cannabis weighed more than 30 grams but not more than 500 grams."

"We the jury find the defendant not guilty."

If the defendant is being tried on other charges and a general not guilty verdict form cannot be used, it should read:

"We the jury find the defendant not guilty of possession of cannabis when the substance containing the cannabis weighed more than 500 grams and not guilty of possession of cannabis when the substance containing the cannabis weighed more than 30 grams but not more than 500 grams."

Additional instructions should be given for each specific weight level (720 ILCS 550/4(a) through (e)) constituting a different class offense that, based upon the evidence in the case, the jury will be permitted to consider. In other words, if the dispute concerning weight reaches as far down as less than 30 grams (Chapter 561/2, Section 704(c)), then other instructions should be given permitting the jury to find the defendant guilty of the lesser included Class A misdemeanor.

See Instructions 4.15 and 4.16, defining the word "possession."

If other terms used in this instruction need to be defined, see the definitions contained in Chapter 720.

See generally Instructions 26.01Q through 26.01X, regarding verdicts in lesser included offense situations.

Use applicable bracketed material.

17.02
Issues In Possession Of Cannabis

To sustain the charge of possession of cannabis [when the substance containing the cannabis weighed [(more than ____ grams) (more than ____ grams but not more than ____ grams)]], the State must prove the following proposition[s]:

That the defendant knowingly possessed a substance containing cannabis.

[or]

First Proposition: That the defendant knowingly possessed a substance containing cannabis; and

Second Proposition: That the weight of the substance possessed was [(more than ____ grams) (more than ____ grams but not more than ____ grams)].

If you find from your consideration of all the evidence that [(this) (each one of these)] proposition[s] has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that [(this) (any of these)] proposition[s] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 550/4 (West, 1999).

Give Instruction 17.01; for discussion and examples, see the Committee Note to that instruction.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

17.03
Definition Of Subsequent Offense Of Possession Of Cannabis

A person commits the offense of subsequent offense of possession of cannabis when he, having been convicted of the offense of ____, knowingly possesses a substance containing cannabis and that substance containing the cannabis weighs more than [(10) (30)] grams.

Committee Note

720 ILCS 550/3(*l*), 550/4(c), and 550/4(d) (West, 1999).

Give Instruction 17.04.

The first conviction must precede the *conduct* constituting the subsequent offense. See People v. Phillips, 56 Ill.App.3d 689, 371 N.E.2d 1214, 14 Ill.Dec. 161 (5th Dist.1978); People v. Miller, 115 Ill.App.3d 592, 450 N.E.2d 767, 71 Ill.Dec. 79 (2d Dist.1983).

Generally, when the degree or class of an offense depends on a prior conviction, the State must prove the existence of that prior conviction as an element of the offense. See People v. Hicks, 119 Ill.2d 29, 518 N.E.2d 148, 115 Ill.Dec. 623 (1987); People v. Palmer, 104 Ill.2d 340, 472 N.E.2d 795, 84 Ill.Dec. 658 (1984); People v. Mays, 80 Ill.App.3d 340, 399 N.E.2d 718, 35 Ill.Dec. 652 (3d Dist.1980). However, 725 ILCS 5/111-3(c), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction when used to increase the classification of an offense is not an element of the crime and may not be disclosed to the jury unless otherwise permitted by the issues. As a result, after the effective date of P.A. 86-964, prior convictions will not be presented to the jury and this instruction should not be used. See People v. Kennard, 204 Ill.App.3d 641, 561 N.E.2d 1188, 149 Ill.Dec. 492 (1st Dist.1990). For offenses occurring after June 30, 1990, use Instruction 17.01.

Subsequent offense enhancement for possession applies only when a defendant is charged with possessing (1) more than 10 grams but less than 30 grams, or (2) more than 30 grams but less than 500 grams. 720 ILCS 550/4.

When possession of more than 10 or 30 grams of a substance containing cannabis is charged, weight then determines the penalty for the offense and is an essential element to be decided by the jury. See People v. Kadlec, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist.1974); People v. Hill, 169 Ill.App.3d 901, 524 N.E.2d 604, 120 Ill.Dec. 574 (1st Dist.1988). When the jury must determine this element, use the bracketed weight in this instruction and in Instruction 17.04.

Particular care must be taken when disputes about weight support lesser included offenses. See example in the Committee Note to Instruction 17.01 and People v. Smith, 67 Ill.App.3d 952, 385 N.E.2d 707, 24 Ill.Dec. 566 (5th Dist.1978).

When the prosecution must prove the quantity of the substance as an element of the offense, it need not prove that the defendant *knew* the quantity was of any specific amount. See People v. Cortez, 77 Ill.App.3d 448, 395 N.E.2d 1177, 32 Ill.Dec. 796 (1st Dist.1979); People v. Ziehm, 120 Ill.App.3d 777, 458 N.E.2d 588, 76 Ill.Dec. 188 (2d Dist.1983).

Although the quantity may not always be required in the verdict forms, People v. Roy, 172 Ill.App.3d 16, 526 N.E.2d 204, 122 Ill.Dec. 64 (4th Dist.1988), to insure clarity the Committee recommends that each verdict form contain the same quantity language used in the definitional and issues instructions supporting the verdict.

See Committee Note to Instruction 17.01, concerning verdict forms and disputes of weight.

Insert in the blank the prior conviction.

Use applicable bracketed material.

17.04
Issues In Subsequent Offense Of Possession Of Cannabis

To sustain the charge of subsequent offense of possession of cannabis when the substance containing the cannabis weighed more than [(10) (30)] grams, the State must prove the following propositions:

First Proposition: That the defendant knowingly possessed a substance containing cannabis; and

Second Proposition: That the weight of the substance possessed was more than [(10) (30)] grams; and

Third Proposition: That at the time of the possession the defendant had been convicted of the offense of ____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 550/3(*l*), 550/4(c), and 550/4(d) (West, 1999).

Give Instruction 17.03 and see Committee Note to 17.03.

Generally, when the degree or class of an offense depends on a prior conviction, the State must prove the existence of that prior conviction as an element of the offense. See People v. Hicks, 119 Ill.2d 29, 518 N.E.2d 148, 115 Ill.Dec. 623 (1987); People v. Palmer, 104 Ill.2d 340, 472 N.E.2d 795, 84 Ill.Dec. 658 (1984); People v. Mays, 80 Ill.App.3d 340, 399 N.E.2d 718, 35 Ill.Dec. 652 (3d Dist.1980). However, 725 ILCS 5/111-3(c), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction when used to increase the grade of an offense is not an element of the crime and may not be disclosed to the jury unless otherwise permitted by the issues. As a result, after the effective date of P.A. 86-964, prior convictions will not be an element of the offense and this instruction should not be used. For offenses occurring after June 30, 1990, use Instruction 17.02.

Subsequent offense possession of cannabis applies only when a defendant is charged with possessing (1) more than 10 grams but less than 30 grams, or (2) more than 30 grams but less than 500 grams. 720 ILCS 550/4.

See Committee Note to Instruction 17.01 concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance containing cannabis is an issue.

Insert in the blank the prior conviction.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

17.05
Definition Of Manufacture Or Delivery Of Cannabis

A person commits the offense of [(manufacture of) (delivery of) (possession with intent to deliver) (possession with intent to manufacture)] cannabis when he knowingly [(manufactures) (delivers) (possesses with intent to deliver) (possesses with intent to manufacture)] a substance containing cannabis [and the substance containing the cannabis weighs [(more than ____ grams) (more than ____ grams but not more than ____ grams)]].

Committee Note

720 ILCS 550/5 (West, 1999).

Give Instruction 17.06.

In many cases it will be necessary to give other instructions defining terms used in this instruction. See Instruction 17.05A, defining the word "deliver"; Instructions 4.15 and 4.16, defining the word "possession"; and 720 ILCS 550/3(h), defining the word "manufacture."

When manufacture or delivery of more than 2.5 grams of a substance containing cannabis is charged, weight then determines the penalty for the offense and is an essential element to be decided by the jury. See People v. Kadlec, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist.1974); People v. Hill, 169 Ill.App.3d 901, 524 N.E.2d 604, 120 Ill.Dec. 574 (1st Dist.1988). When the jury must decide this element, use the bracketed material in this instruction and use both propositions in Instruction 17.06.

Particular care must be taken when disputes about weight support lesser included offenses. See example in the Committee Note to Instruction 17.01 and People v. Smith, 67 Ill.App.3d 952, 385 N.E.2d 707, 24 Ill.Dec. 566 (5th Dist.1978).

When the prosecution must prove the quantity of the substance as an element of the offense, it need not prove that the defendant *knew* the quantity was of any specific amount. See People v. Cortez, 77 Ill.App.3d 448, 395 N.E.2d 1177, 32 Ill.Dec. 796 (1st Dist.1979); People v. Ziehm, 120 Ill.App.3d 777, 458 N.E.2d 588, 76 Ill.Dec. 188 (2d Dist.1983).

Although the quantity may not always be required in the verdict forms, People v. Roy, 172 Ill.App.3d 16, 526 N.E.2d 204, 122 Ill.Dec. 64 (4th Dist.1988), to insure clarity the Committee recommends that each verdict form contain the same quantity language used in the definitional and issues instructions supporting the verdict.

It should not be necessary in most manufacture and delivery cases to add the phrase "... but not more than ____ grams." Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in 720 ILCS 550/5(b) through (d) an issue in the case.

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance containing cannabis is in dispute.

See Committee Note to Instruction 17.05A if delivery is in dispute.

If other terms used in this instruction need to be defined, see definitions contained in Chapter 720.

Use applicable bracketed material.

17.05A
Definition Of Deliver

[1] The word "deliver" means to transfer possession or to attempt to transfer possession.

[2] The word "deliver" includes a constructive transfer of possession which occurs without an actual physical transfer. When the conduct or declarations of the person who has the right to exercise control over a thing is such as to effectively relinquish the right of control to another person, so that the other person is then in constructive possession, there has been a delivery.

[3] A delivery may occur with or without the transfer or exchange of money, or with or without the transfer or exchange of other consideration.

Committee Note

720 ILCS 550/3(d) and 570/102(h) (West, 1999).

Generally, when the offense involves a delivery (720 ILCS 550/5, 550/5.1, 550/7, and 550/9; 720 ILCS 570/401, 570/405, 570/407, and 570/407.1) and the evidence indicates that the delivery in question was an actual physical transfer of possession, no definition of the term need be given to the jury. The term, in this sense, is commonly understood by laymen. People v. Monroe, 32 Ill.App.3d 482, 335 N.E.2d 783 (3d Dist.1975).

Give Paragraph [1] when there is some evidence that the delivery in question consisted of an attempt to transfer possession.

Give Paragraphs [1] and [2] when there is some evidence that the delivery in question involved a constructive transfer of possession.

Paragraph [3] may be given when the Court believes it would help the jury understand the issues.

It may be necessary, in situations in which the possession of the defendant or the person who received delivery is either constructive or joint, to give appropriate paragraphs contained in Instructions 4.15 and 4.16 relating to possession.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.07.

17.06
Issues In Manufacture Or Delivery Of Cannabis

To sustain the charge of [(manufacture of) (delivery of) (possession with intent to deliver) (possession with intent to manufacture)] cannabis [when the substance containing the cannabis weighed [(more than ____ grams) (more than ____ grams but not more than ____ grams)]], the State must prove the following proposition[s]:

That the defendant knowingly [(manufactured) (delivered) (possessed with intent to manufacture) (possessed with intent to deliver)] a substance containing cannabis.

[or]

First Proposition: That the defendant knowingly [(manufactured) (delivered) (possessed with intent to manufacture) (possessed with intent to deliver)] a substance containing cannabis; and

Second Proposition: That the weight of the substance [(manufactured) (possessed) (delivered)] was [(more than ____ grams) (more than ____ grams but not more than ____ grams)].

If you find from your consideration of all the evidence that [(this) (each one of these)] proposition[s] has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that [(this) (any one of these)] proposition[s] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 550/5 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §705).

Give Instruction 17.05.

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance containing cannabis is an issue.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

17.07
Definition Of Cannabis Trafficking

A person commits the offense of cannabis trafficking when he knowingly [(brings) (causes to be brought)] into this State [(for the purpose of manufacture) (for the purpose of delivery) (with the intent to manufacture) (with the intent to deliver)] 2,500 grams or more of cannabis in this or any other state or country.

Committee Note

720 ILCS 550/5.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §705.1), added by P.A. 85-1388, effective January 1, 1989.

Give Instruction 17.08.

Although the prosecution must prove the quantity was 2,500 grams or more, it need not prove that the defendant *knew* the quantity was of any specific amount. See People v. Cortez, 77 Ill.App.3d 448, 395 N.E.2d 1177, 32 Ill.Dec. 796 (1st Dist.1979); People v. Ziehm, 120 Ill.App.3d 777, 458 N.E.2d 588, 76 Ill.Dec. 188 (2d Dist.1983).

See Committee Note to Instruction 17.05A if delivery is an issue.

If other terms used in this instruction need to be defined, see definitions contained in Chapter 720.

Use applicable bracketed material.

17.08
Issues In Cannabis Trafficking

To sustain the charge of cannabis trafficking, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(brought cannabis) (caused cannabis to be brought)] into this State; and

Second Proposition: That the cannabis brought into Illinois weighed 2,500 grams or more; and

Third Proposition: That the defendant did so [(for the purpose of the manufacture of) (for the purpose of the delivery of) (with the intent to manufacture) (with the intent to deliver)] the cannabis in this or any other state or country.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 550/5.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §705.1), added by P.A. 85-1388, effective January 1, 1989.

Give Instruction 17.07.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

17.09
Definition Of Delivery Of Cannabis--Enhancing Factors Based Upon Age

A person commits the offense of delivery of cannabis to a person under 18 years of age when he, being 18 years of age or older, knowingly delivers cannabis to a person under 18 years of age who is at least 3 years junior to defendant [and the substance containing the cannabis weighs [(more than ____ grams) (more than ____ grams but not more than ____ grams)]].

Committee Note

720 ILCS 550/7 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §707).

Give Instruction 17.10.

When delivery of more than 2.5 grams of a substance containing cannabis is charged, weight then determines the penalty for the offense and is an essential element to be decided by the jury. See People v. Kadlec, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist.1974); People v. Hill, 169 Ill.App.3d 901, 524 N.E.2d 604, 120 Ill.Dec. 574 (1st Dist.1988). When the jury must decide this element, use the bracketed material in this instruction and use all four propositions in Instruction 17.10.

Particular care must be taken when disputes about weight support lesser included offenses. See example in the Committee Note to Instruction 17.01 and People v. Smith, 67 Ill.App.3d 952, 385 N.E.2d 707, 24 Ill.Dec. 566 (5th Dist.1978).

When the prosecution must prove the quantity of the substance as an element of the offense, it need not prove that the defendant *knew* the quantity was of any specific amount. See People v. Cortez, 77 Ill.App.3d 448, 395 N.E.2d 1177, 32 Ill.Dec. 796 (1st Dist.1979); People v. Ziehm, 120 Ill.App.3d 777, 458 N.E.2d 588, 76 Ill.Dec. 188 (2d Dist.1983).

Although the quantity may not always be required in the verdict forms, People v. Roy, 172 Ill.App.3d 16, 526 N.E.2d 204, 122 Ill.Dec. 64 (4th Dist.1988), to insure clarity the Committee recommends that each verdict form contain the same quantity language used in the definitional and issues instructions supporting the verdict.

It should not be necessary in most delivery cases to add the phrase "... but not more than ____ grams." Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in 720 ILCS 550/5(b) through (d) an issue in the case.

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance containing cannabis is in dispute.

See Committee Note to Instruction 17.05A if delivery is an issue.

If other terms used in this instruction need to be defined, see the definitions contained in Chapter 561/2.

Use applicable bracketed material.

17.10
Issues In Delivery Of Cannabis--Enhancing Factors Based Upon Age

To sustain the charge of the delivery of cannabis to a person under 18 years of age [when the substance containing the cannabis weighed [(more than ____ grams) (more than ____ grams but not more than ____ grams)]], the State must prove the following propositions:

First Proposition: That the defendant was 18 years of age or older on the date in question; and

Second Proposition: That the defendant knowingly delivered a substance containing cannabis; and

Third Proposition: That the person to whom the substance was delivered by the defendant was under 18 years of age and at least 3 years junior to the defendant on the date in question.

[or]

Third Proposition: That the person to whom the substance was delivered by the defendant was under 18 years of age and at least 3 years junior to the defendant on the date in question; and

Fourth Proposition: That the weight of the substance delivered was [(more than ____ grams) (more than ____ grams but not more than ____ grams)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 550/7 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §707).

Give Instruction 17.09.

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance containing cannabis is an issue.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

17.11
Definition Of Production Or Possession Of Cannabis Sativa Plant

A person commits the offense of [(production) (possession)] of [(a) (more than ____) (more than ____ but not more than ____)] cannabis sativa plant[s] when he knowingly [(produces) (possesses)] [(a) (more than ____) (more than ____ but not more than ____)] cannabis sativa plant[s].

[The words "produces" and "production" mean planting, cultivating, tending, or harvesting.]

Committee Note

720 ILCS 550/3(j) and 550/8 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §§703(j) and 708).

Give Instruction 17.12.

720 ILCS 550/8 contains an exception for possession authorized by Section 550/11, but there is no burden on the State to negate that exception. (See Section 550/16.) Therefore no reference to the exception is made in the definitional or issues instructions for this offense, but it may be necessary to give additional instructions if the defendant relies on that exception.

The question of the number of plants involved in this charge must be submitted to the jury for its resolution when that number exceeds five and is the basis for increased penalties under Sections 550/8(b) through (d).

When the prosecution must prove the quantity of the plants as an element of the offense, it need not prove that the defendant *knew* the quantity was of any specific amount. See People v. Cortez, 77 Ill.App.3d 448, 395 N.E.2d 1177, 32 Ill.Dec. 796 (1st Dist.1979); People v. Ziehm, 120 Ill.App.3d 777, 458 N.E.2d 588, 76 Ill.Dec. 188 (2d Dist.1983).

It should not be necessary in most cases to add the phrase "... but not more than ____." Only when a lesser included offense instruction is given, based upon a lesser number of plants being produced or possessed, are the statutory upper limits provided in Sections 550/8(b) and (c) an issue in the case.

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the number of plants is an issue.

See Instructions 4.15 and 4.16, defining the word "possession."

If other terms used in this instruction need to be defined, see the definitions contained in Chapter 720.

Use applicable bracketed material.

17.12
Issues In Production Or Possession Of Cannabis Sativa Plant

To sustain the charge of [(production) (possession)] of [(a) (more than ____) (more than ____ but not more than ____)] cannabis sativa plant[s], the State must prove the following proposition:

That the defendant knowingly [(produced) (possessed)] [(a) (more than ____) (more than ____ but not more than ____)] cannabis sativa plant[s].

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 550/3(j) and 550/8 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §§703(j) and 708).

Give Instruction 17.11.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

17.13
Definition Of Calculated Criminal Cannabis Conspiracy

A person commits the offense of calculated criminal cannabis conspiracy when he knowingly [(possesses) (produces) (delivers) (manufactures) (possesses with intent to deliver) (possesses with intent to manufacture)] more than [(30 grams of any substance containing cannabis) (20 cannabis sativa plants)], and he does so as part of an agreement undertaken and carried on with two or more other persons, and he

[1] obtains anything of value greater than $500 from the [(possession) (production) (delivery) (manufacture) (possession with intent to deliver) (possession with intent to manufacture) (agreement)].

[or]

[2] organizes, directs, or finances the [(possession) (production) (delivery) (manufacture) (possession with intent to deliver) (possession with intent to manufacture) (agreement)].

Committee Note

720 ILCS 550/9 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §709).

Give Instruction 17.14.

For a decision concerning the evidence required to prove a calculated drug conspiracy, see People v. Harmison, 108 Ill.2d 197, 483 N.E.2d 508, 91 Ill.Dec. 162 (1985).

See Committee Note to Instruction 17.05B if delivery is an issue.

See Instruction 17.13A, regarding the word "agreement."

See Instructions 4.15 and 4.16, defining the word "possession."

If other terms used in this instruction need to be defined, see definitions contained in Chapter 720.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

17.13A
Agreement Implied From Conduct

An agreement may be implied from the conduct of the parties although they acted separately or by different means and did not come together or enter into an express agreement.

Committee Note

This instruction may be given in a conspiracy case when it would help the jury understand the issues.

See People v. Heard, 48 Ill.2d 356, 270 N.E.2d 18 (1971); People v. Collins, 70 Ill.App.3d 413, 387 N.E.2d 995, 26 Ill.Dec. 165 (1st Dist.1979).

17.14
Issues In Calculated Criminal Cannabis Conspiracy

To sustain the charge of calculated criminal cannabis conspiracy, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(possessed) (produced) (manufactured) (delivered) (possessed with intent to deliver) (possessed with intent to manufacture)] more than [(30 grams of any substance containing cannabis) (20 cannabis sativa plants)]; and

Second Proposition: That the defendant did so as part of an agreement undertaken or carried on with two or more other persons; and

Third Proposition: That the defendant obtained something of value greater than $500 from such [(possession) (production) (manufacture) (delivery) (possession with intent to deliver) (possession with intent to manufacture) (agreement)].

[or]

Third Proposition: That the defendant organized, directed, or financed such [(possession) (production) (delivery) (manufacture) (possession with intent to deliver) (possession with intent to manufacture) (agreement)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 550/9 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §709).

Give Instruction 17.13.

The Committee cautions against using normal principles of accountability. The defendant himself must receive the benefit or perform the acts contained in either of the Third Propositions, see People v. Holmes, 41 Ill.App.3d 585, 353 N.E.2d 396 (3d Dist.1976), but there is no clear answer to the question of whether the defendant himself must have performed the acts in the First Proposition. See People v. Vincent, 92 Ill.App.3d 446, 415 N.E.2d 1147, 47 Ill.Dec. 834 (1st Dist.1980).

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance containing cannabis is an issue.

See Instruction 17.13A, regarding the word “agreement.”

Use applicable paragraphs and bracketed material.

17.15
Definition Of Subsequent Offense Of Calculated Criminal Cannabis Conspiracy

A person commits a subsequent offense of calculated criminal cannabis conspiracy when he, having been convicted of the offense of ____, knowingly [(possesses) (produces) (delivers) (manufactures) (possesses with intent to deliver) (possesses with intent to manufacture)] more than [(30 grams of any substance containing cannabis) (20 cannabis sativa plants)], and he does so as part of an agreement undertaken and carried on with two or more other persons, and he

[1] obtains anything of value greater than $500 from the [(possession) (production) (delivery) (manufacture) (possession with intent to deliver) (possession with intent to manufacture) (agreement)].

[or]

[2] organizes, directs, or finances the [(possession) (production) (delivery) (manufacture) (possession with intent to deliver) (possession with intent to manufacture) (agreement)].

Committee Note

720 ILCS 550/9 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §709).

Give Instruction 17.16.

The first conviction must precede the *conduct* constituting the subsequent offense. See People v. Phillips, 56 Ill.App.3d 689, 371 N.E.2d 1214, 14 Ill.Dec. 161 (5th Dist.1978); People v. Miller, 115 Ill.App.3d 592, 450 N.E.2d 767, 71 Ill.Dec. 79 (2d Dist.1983).

Generally, when the degree or class of an offense depends on a prior conviction, the State must prove the existence of that prior conviction as an element of the offense. See People v. Hicks, 119 Ill.2d 29, 518 N.E.2d 148, 115 Ill.Dec. 623 (1987); People v. Palmer, 104 Ill.2d 340, 472 N.E.2d 795, 84 Ill.Dec. 658 (1984); People v. Mays, 80 Ill.App.3d 340, 399 N.E.2d 718, 35 Ill.Dec. 652 (3d Dist.1980). However, 725 ILCS 5/111-3(c), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction when used to increase the classification of an offense is not an element of the crime and may not be disclosed to the jury unless otherwise permitted by the issues. As a result, after the effective date of P.A. 86-964, prior convictions will not be presented to the jury and this instruction should not be used. See People v. Kennard, 204 Ill.App.3d 641, 561 N.E.2d 1188, 149 Ill.Dec. 492 (1st Dist.1990). For offenses occurring after June 30, 1990, use Instruction 17.13.

For a decision concerning the evidence required to prove a calculated drug conspiracy, see People v. Harmison, 108 Ill.2d 197, 483 N.E.2d 508, 91 Ill.Dec. 162 (1985).

See Committee Note to Instruction 17.05A if delivery is an issue.

See Instruction 17.13A, regarding the word “agreement.”

See 720 ILCS 550/9(a) for the prior offense that will aggravate the penalty.

See Instructions 4.15 and 4.16, defining the word "possession."

If other terms used in this instruction need to be defined, see the definitions contained in Chapter 720.

Insert in the blank the prior conviction.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

17.16
Issues In Subsequent Offense Of Calculated Criminal Cannabis Conspiracy

To sustain the charge of subsequent offense of calculated criminal cannabis conspiracy, the State must prove the following propositions:

First Proposition: That the defendant had been convicted of the offense of ____; and

Second Proposition: That, after the date of such conviction, the defendant knowingly [(possessed) (produced) (manufactured) (delivered) (possessed with intent to deliver) (possessed with intent to manufacture)] more than [(30 grams of any substance containing cannabis) (20 cannabis sativa plants)]; and

Third Proposition: That the defendant did so as part of an agreement undertaken or carried on with two or more other persons; and

Fourth Proposition: That the defendant obtained something of value greater than $500 from such [(possession) (production) (manufacture) (delivery) (possession with intent to deliver) (possession with intent to manufacture) (agreement)].

[or]

Fourth Proposition: That the defendant organized, directed, or financed such [(possession) (production) (delivery) (manufacture) (possession with intent to deliver) (possession with intent to manufacture) (agreement)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 550/9 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §709).

Give Instruction 17.15.

Generally, when the degree or class of an offense depends on a prior conviction, the State must prove the existence of that prior conviction as an element of the offense. See People v. Hicks, 119 Ill.2d 29, 518 N.E.2d 148, 115 Ill.Dec. 623 (1987); People v. Palmer, 104 Ill.2d 340, 472 N.E.2d 795, 84 Ill.Dec. 658 (1984); People v. Mays, 80 Ill.App.3d 340, 399 N.E.2d 718, 35 Ill.Dec. 652 (3d Dist.1980). However, 725 ILCS 5/111-3(c), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction when used to increase the classification of an offense is not an element of the crime and may not be disclosed to the jury unless otherwise permitted by the issues. As a result, after the effective date of P.A. 86-964, prior convictions will not be presented to the jury and this instruction should not be used. See People v. Kennard, 204 Ill.App.3d 641, 561 N.E.2d 1188, 149 Ill.Dec. 492 (1st Dist.1990). For offenses occurring after June 30, 1990, use Instruction 17.14.

The Committee cautions against using normal principles of accountability. The defendant himself must receive the benefit or perform the acts contained in either of the Fourth Propositions, see People v. Holmes, 41 Ill.App.3d 585, 353 N.E.2d 396 (3d Dist.1976), but there is no clear answer to the question of whether the defendant himself must have performed the acts

in the First Proposition. See People v. Vincent, 92 Ill.App.3d 446, 415 N.E.2d 1147, 47 Ill.Dec. 834 (1st Dist.1980).

See Instruction 17.13A, regarding the word "agreement."

See Committee Note to Instruction 17.14.

Use applicable paragraphs and bracketed material.

17.17
Definition Of Manufacture Or Delivery Of Controlled Or Counterfeit Substance

A person commits the offense of [(delivery of) (manufacture of) (possession with intent to deliver) (possession with intent to manufacture)] a [(controlled) (counterfeit)] substance when he knowingly [(delivers) (manufactures) (possesses with intent to deliver) (possesses with intent to manufacture)] a substance containing a [(controlled) (counterfeit)] substance [and the substance containing the [(controlled) (counterfeit)] substance weighs [(____ grams or more) (____ grams or more but less than ____ grams)]].

Committee Note

720 ILCS 550/401 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1401). P.A. 86-266 and P.A. 86-442 contain identical language and are both effective January 1, 1990. These Acts repealed Section 1401.2 and merged those enhancing provisions into a new Section 1401 and changed the weight format in portions of Section 1401 from "more than ____ grams but not more than ____ grams" to "____ grams or more but less than ____ grams." In cases alleging violations before that effective date, the Committee suggests the use of instructions from the 1989 Supplement to the Second Edition. P.A. 86-604, also effective January 1, 1990, is basically identical to former Section 1401, with slight modifications to LSD provisions, and continues to refer to the Section 1401.2 enhancing provisions repealed by the other two Acts. The Committee takes no position on the legal effect of these inconsistencies. The Section 1401 instructions in this Third Edition are based on P.A. 86-266 and P.A. 86-442. The instructions in the 1989 Supplement to the Second Edition would apply to P.A. 86-604.

Give Instruction 17.18.

It may be necessary to give other instructions defining terms used in this instruction. See Instruction 17.05A, defining the word "deliver"; Instructions 4.15 and 4.16, defining the word "possession"; Instruction 17.33A, defining the term "counterfeit substance"; 720 ILCS 570/102(z), defining the word "manufacture"; 720 ILCS 570/401, defining the term "controlled substance analog."

When manufacture or delivery of more than the statutory minimum of a substance is charged, weight then determines the penalty for the offense and is an essential element to be decided by the jury. See People v. Kadlec, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist.1974); People v. Hill, 169 Ill.App.3d 901, 524 N.E.2d 604, 120 Ill.Dec. 574 (1st Dist.1988). When the jury must decide this element, use the final bracketed material in this instruction and use both propositions in Instruction 17.18.

Particular care must be taken when disputes about weight support lesser included offenses. See example in the Committee Note to Instruction 17.01 and People v. Smith, 67 Ill.App.3d 952, 385 N.E.2d 707, 24 Ill.Dec. 566 (5th Dist.1978).

When the prosecution must prove the quantity of the substance as an element of the offense, it need not prove that the defendant *knew* the quantity was of any specific amount. See People v. Cortez, 77 Ill.App.3d 448, 395 N.E.2d 1177, 32 Ill.Dec. 796 (1st Dist.1979); People v. Ziehm, 120 Ill.App.3d 777, 458 N.E.2d 588, 76 Ill.Dec. 188 (2d Dist.1983).

Although the quantity may not always be required in the verdict forms, People v. Roy, 172 Ill.App.3d 16, 526 N.E.2d 204, 122 Ill.Dec. 64 (4th Dist.1988), to insure clarity the Committee recommends that each verdict form contain the same quantity language used in the definitional and issues instructions supporting the verdict.

It should not be necessary in most manufacture and delivery cases to add the phrase "... but less than ____ grams." Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in 720 ILCS 570/401 an issue in the case.

The phrase "controlled substance analog" has been omitted because a controlled substance ordinarily includes its salts, isomers, and synthetic form. See People v. Chianakas, 114 Ill.App.3d 496, 448 N.E.2d 620, 69 Ill.Dec. 902 (2d Dist.1983); People v. Atencia, 113 Ill.App.3d 247, 446 N.E.2d 1243, 68 Ill.Dec. 846 (1st Dist.1983). However, in certain cases the nature of the chemical evidence will be such that the phrase "a controlled substance or controlled substance analog" should be used in place of the phrase "a controlled substance."

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance is an issue.

See Committee Note to Instruction 17.05A if delivery is an issue.

If other terms used in this instruction need to be defined, see the definitions contained in Chapter 720.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.07.

17.18
Issues In Manufacture Or Delivery Of Controlled Or Counterfeit Substance

To sustain the charge of [(manufacture) (delivery) (possession with intent to manufacture) (possession with intent to deliver)] a [(controlled) (counterfeit)] substance [when the substance containing the [(controlled) (counterfeit)] substance weighed [(____ grams or more) (____ grams or more but less than ____ grams)]], the State must prove the following proposition[s]:

That the defendant knowingly [(manufactured) (delivered) (possessed with intent to manufacture) (possessed with intent to deliver)] a substance containing [(____, a controlled substance) (a counterfeit substance)].

[or]

First Proposition: That the defendant knowingly [(manufactured) (delivered) (possessed with intent to manufacture) (possessed with intent to deliver)] a substance containing [(____, a controlled substance) (a counterfeit substance)]; and

Second Proposition: That the weight of the substance containing the [(controlled) (counterfeit)] substance was [(____ grams or more) (____ grams or more but less than ____ grams)].

If you find from your consideration of all the evidence that [(this) (each one of these)] proposition[s] has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that [(this) (any one of these)] proposition[s] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 570/401 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1401). See Committee Note to Instruction 17.17, regarding inconsistent amendments to this section, effective January 1, 1990.

Give Instruction 17.17.

If any of the enhancing factors specified in 720 ILCS 570/407 and 570/407.1 are charged, consider the use of the appropriate Instruction from 17.20, 17.22, or 17.24.

When applicable, insert in the appropriate blanks the name of the controlled substance or the weight.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

For an example of the use of this instruction, see Sample Set 27.07.

17.19
Definition Of Manufacture Of, Delivery Of, Or Possession With Intent To Manufacture Or Deliver A Controlled Or Counterfeit Substance--Enhancing Factors Based Upon Location

A person commits the offense of [(delivery of) (manufacture of) (possession with intent to deliver) (possession with intent to manufacture)] a [(controlled) (counterfeit)] substance when he knowingly [(delivers) (manufactures) (possesses with intent to deliver) (possesses with intent to manufacture)] a substance containing a [(controlled) (counterfeit)] substance [and the substance containing the [(controlled) (counterfeit)] substance weighs [(____ grams or more) (____ grams or more but less than ____ grams)]] while

[1] in a school [regardless of [(the time of day) (the time of year) (whether classes were currently in session at the time)]].

[or]

[2] on the real property comprising a school [regardless of [(the time of day) (the time of year) (whether classes were currently in session at the time)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school [regardless of [(the time of day) (the time of year) (whether classes were currently in session at the time)]].

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] on the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship.

[or]

[12] on a public way within 1000 feet of the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship.

Committee Note

720 ILCS 570/407(b) and 407(c) (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, §1407(b) and (c) (1991)), added by P.A. 84-1075, effective December 2, 1985, amended by P.A. 85-616, effective January 1, 1988; P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; and P.A. 89-451, effective January 1, 1997.

Give Instruction 17.20.

Use the bracketed material regarding the time of day, time of year, or whether classes were currently in session at the time of the events in question for alternatives [1] through [3] only when the time of day, time of year, or whether classes were currently in session becomes a potential issue.

720 ILCS 570/407(b), as established by P.A. 84-1075 and as amended by P.A. 85-616, P.A. 86-946, P.A. 87-524, and P.A. 89-451, sets forth geographical factors enhancing the penalties for violations of 720 ILCS 570/401 (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, §1401 (1991)) as listed in the above alternatives numbered [1] through [12]. Select the alternative that corresponds to the location in the charge. Before January 1, 1990, as a general rule, Section 407 raised the classification for a violation on or within 1000 feet of certain locations one grade higher than the classification would normally be for the violation elsewhere. Effective January 1, 1990, 720 ILCS 570/401 was amended by three Public Acts, two consistent and one inconsistent. The Committee takes no position as to the legal effects the inconsistent

amendments to the predicate offenses have on these Section 570/407(b) cases. See also Committee Note to Instruction 17.17.

When more than the statutory minimum of a substance is charged, weight then determines the penalty for the offense and becomes an essential element to be decided by the jury. See People v. Hill, 169 Ill.App.3d 901, 524 N.E.2d 604, 120 Ill.Dec. 574 (1st Dist.1988); People v. Kadlec, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist.1974). When the jury must decide the weight of the substance, use the final bracketed material in the first paragraph of this instruction and use all three propositions in Instruction 17.20.

Particular care must be taken when disputes about weight support lesser included offenses. See example in the Committee Note to Instruction 17.01 and People v. Smith, 67 Ill.App.3d 952, 385 N.E.2d 707, 24 Ill.Dec. 566 (5th Dist.1978).

When the prosecution must prove the quantity of the substance as an element of the offense, it need not prove that the defendant *knew* the quantity was of any specific amount. See People v. Ziehm, 120 Ill.App.3d 777, 458 N.E.2d 588, 76 Ill.Dec. 188 (2d Dist.1983); People v. Cortez, 77 Ill.App.3d 448, 395 N.E.2d 1177, 32 Ill.Dec. 796 (1st Dist.1979).

Similarly, when the prosecution must prove one of the enhancing factors based upon location as an element of the offense, it need not prove that the defendant knew he was at such a location. People v. Brooks, 271 Ill.App.3d 570, 573, 648 N.E.2d 626, 628, 207 Ill.Dec. 926, 928 (4th Dist.1995).

Although the quantity may not always be required in the verdict forms, People v. Roy, 172 Ill.App.3d 16, 526 N.E.2d 204, 122 Ill.Dec. 64 (4th Dist.1988), to insure clarity the Committee recommends that each verdict form contain the same quantity language used in the definitional and issues instructions supporting the verdict.

It should not be necessary in most manufacture and delivery cases to add the phrase "... but less than ____ grams." Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in 720 ILCS 570/401 an issue in the case.

This instruction does not include language for a look-alike substance offense charged under 720 ILCS 570/407(b)(3) (formerly Ill.Rev.Stat. ch. 561/2, §1407(b)(3) (1991)) with 720 ILCS 570/404(b) (formerly Ill.Rev.Stat. ch. 561/2, §1404(b) (1991)) as the predicate offense. For that offense, see Instruction 17.35.

For a case involving the relationship between the predicate offense and the enhanced offense under Section 407(b), see People v. Lipscomb, 173 Ill.App.3d 416, 527 N.E.2d 704, 123 Ill.Dec. 241 (4th Dist.1988).

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance is an issue.

See Committee Note to Instruction 17.05A if delivery is an issue.

See Instruction 17.33A, defining the term "counterfeit substance."

If other terms used in this instruction need to be defined, see the definitions contained in the Illinois Controlled Substances Act, 720 ILCS 570/100 *et seq.* (West, 1992).

Use applicable bracketed material.

17.20
Issues In Manufacture Of, Delivery Of, Or Possession With Intent To Manufacture Or Deliver A Controlled Or Counterfeit Substance--Enhancing Factors Based Upon Location

To sustain the charge of [(delivery of) (manufacture of) (possession with intent to deliver) (possession with intent to manufacture)] a [(controlled) (counterfeit)] substance [when the substance containing the [(controlled) (counterfeit)] substance weighed [(____ grams or more) (____ grams or more but less than ____ grams)]] while

[1] in a school, the State must prove the following propositions:

[or]

[2] on the real property comprising a school, the State must prove the following propositions:

[or]

[3] on a public way within 1000 feet of the real property comprising a school, the State must prove the following propositions:

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)], the State must prove the following propositions:

[or]

[5] in residential property owned, operated, and managed by a public housing agency, the State must prove the following propositions:

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency, the State must prove the following propositions:

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency, the State must prove the following propositions:

[or]

[8] in a public park, the State must prove the following propositions:

[or]

[9] on the real property comprising a public park, the State must prove the following propositions:

[or]

[10] on a public way within 1000 feet of the real property comprising a public park, the State must prove the following propositions:

[or]

[11] on the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship, the State must prove the following propositions:

[or]

[12] on a public way within 1000 feet of the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(delivered) (manufactured) (possessed with intent to deliver) (possessed with intent to manufacture)] a substance containing [(____, a controlled substance) (a counterfeit substance)]; and

Second Proposition: That the [(delivery) (manufacture) (possession with intent to deliver) (possession with intent to manufacture)] took place

[1] in a school [regardless of the [(time of day) (time of year) (whether classes were currently in session at the time)]]; and

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year) (whether classes were currently in session at the time)]]; and

[or]

[3] on a public way within 1000 feet of the real property comprising a school [regardless of the [(time of day) (time of year) (whether classes were currently in session at the time)]]; and

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)]; and

[or]

[5] in residential property owned, operated, and managed by a public housing agency; and

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency; and

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency; and

[or]

[8] in a public park; and

[or]

[9] on the real property comprising a public park; and

[or]

[10] on a public way within 1000 feet of the real property comprising a public park; and

[or]

[11] on the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship; and

[or]

[12] on a public way within 1000 feet of the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship; and

Third Proposition: That the weight of the substance containing the [(controlled) (counterfeit)] substance was [(____ grams or more) (____ grams or more but less than ____ grams)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 570/407(b) and 407(c) (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, §1407(b) and (c) (1991)), added by P.A. 84-1075, effective December 2, 1985, and amended by P.A. 85-616, effective January 1, 1988; P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; and P.A. 89-451, effective January 1, 1997.

Give Instruction 17.19 and see Committee Note to that instruction.

Use the bracketed material regarding the time of day, time of year, or whether classes were currently in session at the time of the events in question for alternatives [1] through [3] only when the time of day, time of year, or whether classes were currently in session becomes a potential issue.

The bracketed numbers [1] through [12] under the opening paragraph and the Second Proposition correspond to the alternatives of the same number in Instruction 17.19, the definitional instruction for this offense. Select the corresponding alternatives under the opening paragraph and the Second Proposition that correspond to the alternative selected from the definitional instruction.

Use the bracketed Third Proposition and the bracketed language in the first paragraph regarding the weight of the substance when the jury must decide the weight of the substance.

This instruction does not include language for a look-alike substance offense charged under 720 ILCS 570/407(b)(3) (formerly Ill.Rev.Stat. ch. 561/2, §1407(b)(3) (1991)) with 720 ILCS 570/404(b) (formerly Ill.Rev.Stat. ch. 561/2, §1404(b) (1991)) as the predicate offense. For that offense, see Instruction 17.36.

See Committee Notes to Instructions to 17.01 and 17.18.

When applicable, insert in the appropriate blanks the name of the controlled substance or the weight.

Use applicable paragraphs and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

17.21
Definition Of Delivery Of Controlled, Counterfeit, Or Look-Alike Substance--Enhancing Factors Based Upon Age

A person commits the offense of delivery of a [(controlled) (counterfeit) (look-alike)] substance to a person under 18 years of age when he, being 18 years of age or older, knowingly delivers a [(substance containing a controlled) (substance containing a counterfeit) (look-alike)] substance to a person under 18 years of age [and the substance containing the [(controlled) (counterfeit)] substance weighs [(____ grams or more) (____ grams or more but less than ____ grams)]].

Committee Note

720 ILCS 570/407(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1407(a)).

Give Instruction 17.22.

When delivery of more than the statutory minimum of a substance is charged, weight then determines the penalty for the offense and is an essential element to be decided by the jury. See People v. Kadlec, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist.1974); People v. Hill, 169 Ill.App.3d 901, 524 N.E.2d 604, 120 Ill.Dec. 574 (1st Dist.1988). When the jury must decide this element, use the final bracketed material in this instruction and use all four propositions in Instruction 17.22.

Particular care must be taken when disputes about weight support lesser included offenses. See example in the Committee Note to Instruction 17.01 and People v. Smith, 67 Ill.App.3d 952, 385 N.E.2d 707, 24 Ill.Dec. 566 (5th Dist.1978).

When the prosecution must prove the quantity of the substance as an element of the offense, it need not prove that the defendant *knew* the quantity was of any specific amount. See People v. Cortez, 77 Ill.App.3d 448, 395 N.E.2d 1177, 32 Ill.Dec. 796 (1st Dist.1979); People v. Ziehm, 120 Ill.App.3d 777, 458 N.E.2d 588, 76 Ill.Dec. 188 (2d Dist.1983).

Although the quantity may not always be required in the verdict forms, People v. Roy, 172 Ill.App.3d 16, 526 N.E.2d 204, 122 Ill.Dec. 64 (4th Dist.1988), to insure clarity the Committee recommends that each verdict form contain the same quantity language used in the definitional and issues instructions supporting the verdict.

It should not be necessary in most delivery cases to add the phrase "... but less than ____ grams." Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in Section 570/401 an issue in the case.

Although Section 570/407(a) incorporates by reference violations of Sections 570/401 and 570/404(b), by its own specific language it is limited to acts of delivery and not other acts proscribed by those predicate Sections.

The Committee intentionally did not include the term "look-alike" in the bracketed material after the word "age" because weight is never an issue in look-alike cases.

See Committee Note to Instruction 17.19, regarding inconsistent amendments to the predicate offense, Section 570/401.

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance is an issue.

See Committee Note to Instruction 17.05A if delivery is an issue.

See Instructions 17.33A and 17.33B, defining the terms "counterfeit substance" and "look-alike substance" respectively.

If other terms used in this instruction need to be defined, see the definitions contained in Chapter 720.

Use applicable bracketed material.

17.22
Issues In Delivery Of Controlled, Counterfeit, Or Look-Alike Substance--Enhancing Factors Based Upon Age

To sustain the charge of delivery of a [(controlled) (counterfeit) (look-alike)] substance to a person under 18 years of age, the State must prove the following propositions:

First Proposition: That the defendant was 18 years of age or older on the date in question; and

Second Proposition: That the defendant knowingly delivered [(a substance containing ____, a controlled substance) (a counterfeit substance) (a look-alike substance)]; and

Third Proposition: That the person to whom the substance was delivered by the defendant was under 18 years of age on the date in question.

[or]

Third Proposition: That the person to whom the substance was delivered by the defendant was under 18 years of age on the date in question; and

Fourth Proposition: That the weight of the substance delivered was [(____ grams or more) (____ grams or more but less than ____ grams)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 570/407(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1407(a)).

Give Instruction 17.21.

The Fourth Proposition should not be given in a look-alike case because weight is not an issue.

See Committee Notes to Instructions 17.01, 17.19, and 17.18.

When applicable, insert in the appropriate blanks the name of the controlled substance or the weight.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

17.23
Definition Of Delivery Of Controlled, Counterfeit, Or Look-Alike Substance--Enhancing Factors Based Upon Use Of Youths In Commission Of Offense

A person commits the offense of delivery of a [(controlled) (counterfeit) (look-alike)] substance involving the use of another under 18 years of age when he, being 18 years of age or older, [(delivers) (manufactures) (possesses with intent to deliver) (possesses with intent to manufacture)] a [(substance containing a controlled) (substance containing a counterfeit) (look-alike)] substance and, in so doing, [(uses) (engages) (employs)] a person under 18 years of age to deliver a [(substance containing a controlled) (substance containing a counterfeit) (look-alike)] substance [and the substance containing the [(controlled) (counterfeit)] substance weighs [(____ grams or more) (____ grams or more but less than ____ grams)]].

Committee Note

720 ILCS 570/407.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1407.1), added by P.A. 84-1475, effective February 5, 1987.

Give Instruction 17.24.

Give Instruction 17.33A, defining the term "counterfeit substance" when appropriate.

Give Instruction 17.33B, defining the term "look-alike substance" when appropriate.

When more than the statutory minimum of a substance is charged, weight then determines the penalty for the offense and is an essential element to be decided by the jury. See People v. Kadlec, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist.1974); People v. Hill, 169 Ill.App.3d 901, 524 N.E.2d 604, 120 Ill.Dec. 574 (1st Dist.1988). When the jury must decide this element, use the final bracketed material in this instruction and use all four propositions in Instruction 17.24.

Particular care must be taken when disputes about weight support lesser included offenses. See example in the Committee Note to Instruction 17.01 and People v. Smith, 67 Ill.App.3d 952, 385 N.E.2d 707, 24 Ill.Dec. 566 (5th Dist.1978).

When the prosecution must prove the quantity of the substance as an element of the offense, it need not prove that the defendant *knew* the quantity was of any specific amount. See People v. Cortez, 77 Ill.App.3d 448, 395 N.E.2d 1177, 32 Ill.Dec. 796 (1st Dist.1979); People v. Ziehm, 120 Ill.App.3d 777, 458 N.E.2d 588, 76 Ill.Dec. 188 (2d Dist.1983).

Although the quantity may not always be required in the verdict forms, People v. Roy, 172 Ill.App.3d 16, 526 N.E.2d 204, 122 Ill.Dec. 64 (4th Dist.1988), to insure clarity the Committee recommends that each verdict form contain the same quantity language used in the definitional and issues instructions supporting the verdict.

It should not be necessary in most delivery cases to add the phrase "... but less than ____ grams." Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in Section 570/401 an issue in the case.

Although Section 570/407.1 incorporates by reference violations of Sections 570/401, 570/404, and 570/405, by its own specific language it is limited to acts of delivery and not other acts proscribed by those predicate Sections.

If the predicate offense is a calculated criminal drug conspiracy under Section 570/405, this instruction must be modified to conform to the language of the charging document.

The Committee intentionally did not include the term "look-alike" in the bracketed material after the word "age" because weight is never an issue in look-alike cases.

See Committee Note to Instruction 17.19, regarding inconsistent amendments to the predicate offense, Section 570/401.

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance is an issue.

See Committee Note to Instruction 17.05A if delivery is an issue.

If other terms used in this instruction need to be defined, see the definitions contained in Chapter 720.

Use applicable bracketed material.

17.24
Issues In Delivery Of Controlled, Counterfeit, Or Look-Alike Substance--Enhancing Factors Based Upon Use Of Youths In Commission Of Offense

To sustain the charge of delivery of a [(controlled) (counterfeit) (look-alike)] substance involving the use of another under 18 years of age, the State must prove the following propositions:

First Proposition: That the defendant was 18 years of age or older on the date in question; and

Second Proposition: That the defendant knowingly [(delivered) (manufactured) (possessed with intent to deliver) (possessed with intent to manufacture)] a [(substance containing ____, a controlled substance) (substance containing a counterfeit substance) (look-alike substance)]; and

Third Proposition: That the defendant [(used) (engaged) (employed)] a person under 18 years of age to deliver a [(controlled) (counterfeit) (look-alike)] substance.

[or]

Third Proposition: That the defendant [(used) (engaged) (employed)] a person under 18 years of age to deliver a [(controlled) (counterfeit) (look-alike)] substance; and

Fourth Proposition: That the weight of the substance containing the [(controlled) (counterfeit)] substance was [(____ grams or more) (____ grams or more but less than ____ grams)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 570/407.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1407.1), added by P.A. 84-1475, effective February 5, 1987.

Give Instruction 17.23.

The Fourth Proposition should not be given in a look-alike case because weight is not an issue.

See Committee Notes to Instructions 17.17, 17.18, and 17.20.

When applicable, insert in the appropriate blanks the name of the controlled substance or the weight.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

17.25
Definition Of Delivery Of Controlled Substance--Enhancing Factors Based Upon Pregnant Woman Recipient

A person commits the offense of delivery of a controlled substance to a pregnant woman when he knowingly delivers a substance containing a controlled substance to a woman he knows to be pregnant [and the substance containing the controlled substance weighs [(____ grams or more) (____ grams or more but less than ____ grams)]].

Committee Note

720 ILCS 570/407.2 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1407.2), added by P.A. 86-1459, effective January 1, 1991.

Give Instruction 17.26.

When delivery of more than the statutory minimum of a substance is charged, weight then determines the penalty for the offense and is an essential element to be decided by the jury. See People v. Kadlec, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist.1974); People v. Hill, 169 Ill.App.3d 901, 524 N.E.2d 604, 120 Ill.Dec. 574 (1st Dist.1988). When the jury must decide this issue, use the bracketed material in this instruction and use all three propositions in Instruction 17.26.

Particular care must be taken when disputes about weight support lesser included offenses. See example in the Committee Note to Instruction 17.01 and People v. Smith, 67 Ill.App.3d 952, 385 N.E.2d 707, 24 Ill.Dec. 566 (5th Dist.1978).

When the prosecution must prove the quantity of the substance as an element of the offense, it need not prove that the defendant *knew* the quantity was of any specific amount. See People v. Cortez, 77 Ill.App.3d 448, 395 N.E.2d 1177, 32 Ill.Dec. 796 (1st Dist.1979); People v. Ziehm, 120 Ill.App.3d 777, 458 N.E.2d 588, 76 Ill.Dec. 188 (2d Dist.1983).

Although the quantity may not always be required in the verdict forms, People v. Roy, 172 Ill.App.3d 16, 526 N.E.2d 204, 122 Ill.Dec. 64 (4th Dist.1988), to insure clarity the Committee recommends that each verdict form contain the same quantity language used in the definitional and issues instructions supporting the verdict.

It should not be necessary in most delivery cases to add the phrase "... but less than ____ grams." Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in Section 570/401 an issue in the case.

Although Section 570/407.2 incorporates by reference violations of Section 570/401, by its own specific language it is limited to acts of delivery and not other acts proscribed by the predicate section, and it is limited to controlled substances and not counterfeit substances.

See Committee Note to Instruction 17.19, regarding inconsistent amendments to the predicate offense, Section 570/401.

See Committee Note to Instruction 17.01 concerning verdict forms and for directions on

how the jury should be instructed when the weight of the substance is an issue.

If other terms used in this instruction need to be defined, see the definitions contained in Chapter 720.

Use applicable bracketed material.

17.26
Issues In Delivery Of Controlled Substance--Enhancing Factors Based Upon Pregnant Woman Recipient

To sustain the charge of delivery of a controlled substance to a pregnant woman [when the substance containing the controlled substance weighed [(____ grams or more) (____ grams or more but less than ____ grams)]], the State must prove the following propositions:

First Proposition: That the defendant knowingly delivered a substance containing ____, a controlled substance; and

Second Proposition: That the person to whom the substance was delivered was known by the defendant to be pregnant on the date in question.

[or]

Second Proposition: That the person to whom the substance was delivered was known by the defendant to be pregnant on the date in question; and

Third Proposition: That the weight of the substance delivered was [(____ grams or more) (____ grams or more but less than ____ grams)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 570/407.2 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1407.2), added by P.A. 86-1459, effective January 1, 1991.

Give Instruction 17.25 and see the Committee Note to that instruction.

See Committee Notes to Instructions 17.01, 17.18, and 17.19.

When applicable, insert in the appropriate blanks the name of the controlled substance or the weight.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

17.27
Definition Of Possession Of Controlled Or Counterfeit Substance

A person commits the offense of possession of a [(controlled) (counterfeit)] substance when he knowingly possesses a substance containing a [(controlled) (counterfeit)] substance [and the substance containing the [(controlled) (counterfeit)] substance weighs [(____ grams or more) (____ grams or more but less than ____ grams)]].

Committee Note

720 ILCS 570/402 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1402). P.A. 86-266 and P.A. 86-442 contain identical language and are both effective January 1, 1990. These Acts repealed Section 1402.1 and merged those enhancing provisions into a new Section 1402. P.A. 86-604, also effective January 1, 1990, is basically identical to former Section 1402 with slight modifications to LSD provisions. The Committee takes no position on the legal effect of these inconsistencies. These Section 1402 instructions in this Third Edition are worded to accommodate all three Acts.

Give Instruction 17.28.

When possession of more than the statutory minimum of a substance is charged, weight then determines the penalty for the offense and becomes an essential element to be decided by the jury. See People v. Kadlec, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist.1974); People v. Hill, 169 Ill.App.3d 901, 524 N.E.2d 604, 120 Ill.Dec. 574 (1st Dist.1988). When the jury must decide this element, use the final bracketed material in this instruction and use both propositions in Instruction 17.28.

Particular care must be taken when disputes about weight support lesser included offenses. See example in the Committee Note to Instruction 17.01 and People v. Smith, 67 Ill.App.3d 952, 385 N.E.2d 707, 24 Ill.Dec. 566 (5th Dist.1978).

When the prosecution must prove the quantity of the substance as an element of the offense, it need not prove that the defendant *knew* the quantity was of any specific amount. See People v. Cortez, 77 Ill.App.3d 448, 395 N.E.2d 1177, 32 Ill.Dec. 796 (1st Dist.1979); People v. Ziehm, 120 Ill.App.3d 777, 458 N.E.2d 588, 76 Ill.Dec. 188 (2d Dist.1983).

Although the quantity may not always be required in the verdict forms, People v. Roy, 172 Ill.App.3d 16, 526 N.E.2d 204, 122 Ill.Dec. 64 (4th Dist.1988), to insure clarity the Committee recommends that each verdict form contain the same quantity language used in the definitional and issues instructions supporting the verdict.

It should not be necessary in most possession cases to add the phrase "... but less than ____ grams." Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in 720 ILCS 570/402 an issue in the case.

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance is an issue.

See Instructions 4.15 and 4.16, defining the word "possession."

If other terms used in this instruction need to be defined, see the definitions contained in Chapter 720.

Use applicable bracketed material.

17.28
Issues In Possession Of Controlled Or Counterfeit Substance

To sustain the charge of possession of a [(controlled) (counterfeit)] substance [when the substance containing the [(controlled) (counterfeit)] substance weighed [(____ grams or more) (____ grams or more but less than ____ grams)]], the State must prove the following proposition[s]:

That the defendant knowingly possessed a substance containing [(____, a controlled substance) (a counterfeit substance)].

[or]

First Proposition: That the defendant knowingly possessed a substance containing [(____, a controlled substance) (a counterfeit substance)]; and

Second Proposition: That the weight of the substance possessed was [(____ grams or more) (____ grams or more but less than ____ grams)].

If you find from your consideration of all the evidence that [(this) (each one of these)] proposition[s] has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that [(this) (any one of these)] proposition[s] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 570/402 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1402).

Give Instruction 17.27 and see Committee Note to that instruction.

When applicable, insert in the appropriate blanks the name of the controlled substance or the weight.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

17.29
Definition Of Calculated Criminal Drug Conspiracy

A person commits the offense of calculated criminal drug conspiracy when he knowingly

[1] [(manufactures) (delivers) (possesses with intent to manufacture) (possesses with intent to deliver)] ____ grams or more of a substance containing ____, a controlled substance;

[or]

[2] possesses ____ grams or more of a substance containing ____, a controlled substance;

[or]

[3] [(manufactures) (delivers) (possesses with intent to manufacture) (possesses with intent to deliver)] ____, a controlled substance;

and he does so as part of an agreement undertaken or carried on with two or more other persons; and

[1] he obtains anything of value greater than $500 from the [(possession) (delivery) (manufacture) (possession with intent to deliver) (possession with intent to manufacture)] or the agreement.

[or]

[2] he organizes, directs, or finances the [(possession) (delivery) (manufacture) (possession with intent to deliver) (possession with intent to manufacture)] or the agreement.

Committee Note

720 ILCS 570/405 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1405).

Give Instruction 17.30.

Section 570/405 incorporates by reference subsections (a) and (c) of Section 1401 and subsection (a) of Section 1402. See the first paragraph to the Committee Notes to Instructions 17.17 and 17.18 regarding inconsistent Public Acts effective January 1, 1990. The Committee takes no position on the legal effect of those acts on Section 570/405 cases.

For a decision concerning the evidence required to prove a calculated criminal drug conspiracy, see People v. Harmison, 108 Ill.2d 197, 483 N.E.2d 508, 91 Ill.Dec. 162 (1985).

See Committee Note to Instruction 17.05A if delivery is an issue.

See Instruction 17.13A, regarding the word “agreement.”

Insert in the appropriate blanks the name of the controlled substance and the weight.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

17.30
Issues In Calculated Criminal Drug Conspiracy

To sustain the charge of calculated criminal drug conspiracy, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(manufactured) (delivered) (possessed with intent to manufacture) (possessed with intent to deliver)] ____ grams or more of a substance containing ____, a controlled substance; and

[or]

First Proposition: That the defendant knowingly possessed ____ grams or more of a substance containing ____, a controlled substance; and

[or]

First Proposition: That the defendant knowingly [(manufactured) (delivered) (possessed with intent to manufacture) (possessed with intent to deliver)] ____, a controlled substance; and

Second Proposition: That the defendant did so as part of an agreement undertaken or carried on with two or more other persons; and

Third Proposition: That the defendant obtained something of value greater than $500 from such [(possession) (manufacture) (delivery) (possession with intent to manufacture) (possession with intent to deliver)] or agreement.

[or]

Third Proposition: That the defendant organized, directed, or financed such [(possession) (manufacture) (delivery) (possession with intent to manufacture) (possession with intent to deliver)] or agreement.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 570/405 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1405).

Give Instruction 17.29 and see the accompanying Committee Note.

The Committee cautions against using normal principles of accountability. The defendant himself must receive the benefit or perform the acts contained in either of the Third Propositions, see People v. Holmes, 41 Ill.App.3d 585, 353 N.E.2d 396 (3d Dist.1976), but there is no clear answer to the question of whether the defendant himself must have performed the acts in the First Proposition. See People v. Vincent, 92 Ill.App.3d 446, 415 N.E.2d 1147, 47 Ill.Dec. 834 (1st Dist.1980).

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance is an issue.

Insert in the appropriate blanks the name of the controlled substance and the weight.

Use applicable paragraphs and bracketed material.

17.31
Definition Of Criminal Drug Conspiracy

A person commits the offense of criminal drug conspiracy when he, with the intent that the offense of ____ be committed, agrees with [(another) (others)] to the commission of the offense of ____, and an act in furtherance of the agreement is performed by any party to the agreement.

To constitute the offense of criminal drug conspiracy it is not necessary that the conspirators succeed in committing the offense of ____.

Committee Note

720 ILCS 570/405.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1405.1), added by P.A. 86-809, effective January 1, 1990.

The court must also give an instruction that defines the drug offense that is the alleged subject of the criminal drug conspiracy. See Committee Notes to that drug definition instruction and to Instruction 6.03 generally regarding conspiracy principles.

P.A. 86-809 is worded in general conspiracy language from 720 ILCS 5/8-2, but it is limited to agreements to commit a violation of 720 ILCS 570/401, 570/402, or 570/407.

See Committee Note to Instruction 17.05A if delivery is an issue.

See Instruction 17.13A, regarding the word "agreement."

Insert in the blanks the name of the offense that is the subject of the alleged criminal drug conspiracy.

Use applicable bracketed material.

17.32
Issues In Criminal Drug Conspiracy

To sustain the charge of criminal drug conspiracy, the State must prove the following propositions:

First Proposition: That the defendant agreed with ____ to the commission of the offense of ____; and

Second Proposition: That the defendant did so with the intent that the offense of ____ be committed; and

Third Proposition: That an act in furtherance of the agreement was performed by any party to the agreement.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 570/405.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1405.1), added by P.A. 86-809, effective January 1, 1990.

Give Instruction 17.31.

The court must also give an instruction that defines the drug offense that is the alleged subject of the criminal drug conspiracy. See Committee Notes to that drug definition instruction and to Instruction 6.03 generally regarding conspiracy principles.

P.A. 86-809 is worded in general conspiracy language from 720 ILCS 5/8-2, but it is limited to agreements to commit a violation of 720 ILCS 570/401, 570/402, or 570/407.

Insert in the blanks the name of the offense that is the subject of the alleged criminal drug conspiracy.

17.33
Definition Of Manufacture, Distribution, Advertisement Of, Or Possession With Intent To Manufacture Or Distribute A Look-Alike Substance

A person commits the offense of [(manufacturing) (distributing) (advertising) (possession with intent to manufacture) (possession with intent to distribute)] a look-alike substance when he knowingly [(manufactures) (distributes) (advertises) (possesses with intent to manufacture) (possesses with intent to distribute)] a look-alike substance.

[It is not a defense to the charge of [(manufacturing) (distributing) (advertising) (possession with intent to manufacture) (possession with intent to distribute)] a look-alike substance that the defendant believed the look-alike substance actually to be a controlled substance.]

Committee Note

720 ILCS 570/404(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1404(b)).

Give Instruction 17.34.

Give Instruction 17.33B, defining the term "look-alike substance."

The bracketed paragraph is based on Section 570/404(d) and should be given if there is some evidence or argument before the jury concerning the defendant's belief that the look-alike substance actually was a controlled substance. See People v. Upton, 151 Ill.App.3d 1075, 503 N.E.2d 1102, 105 Ill.Dec. 96 (5th Dist.1987).

See Instructions 4.15 and 4.16, defining the word "possession."

See Section 570/102(r), defining the word "distribute."

17.33A
Definition Of Counterfeit Substance

The term "counterfeit substance" means a controlled substance, which, or the container or labeling of which, without authorization bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

Committee Note

720 ILCS 570/102(g) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1102(g)).

If the word "person" is an issue, prepare a definition from Section 570/102(gg), and do *not* use Instruction 4.10.

17.33B
Definition Of Look-Alike Substance

The term "look-alike substance" means

[1] a substance, other than a controlled substance, which by overall dosage unit appearance, including shape, color, size, markings or lack thereof, taste, consistency, or any other identifying physical characteristics of the substance, would lead a reasonable person to believe that the substance is a controlled substance.

[or]

[2] a substance, other than a controlled substance, which is expressly or impliedly represented to be a controlled substance or is distributed under circumstances which would lead a reasonable person to believe that the substance is a controlled substance. In determining whether a substance has been so represented or distributed you should consider all relevant factors[, including

[a] statements made by the owner or person in control of the substance concerning its nature, use or effect

[b] statements made to the buyer or recipient that the substance may be resold for profit

[c] whether the substance is packaged in a manner normally used for the illegal distribution of controlled substances

[d] whether the distribution or attempted distribution included an exchange of or demand for money or other property in return for the substance, and whether the value of the money or property was substantially greater than the reasonable retail market value of the substance].

A controlled substance is an illegal drug which it is unlawful to possess, manufacture, or deliver under the Illinois Controlled Substance Act. [____[(is a) (are)] controlled substance[s].]

Committee Note

720 ILCS 570/102(y) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1102(y)).

The statutory definition of a look-alike substance contains a number of exceptions which are not included in this instruction. (Section 570/102(y).) When the evidence shows that those statutory exceptions are at issue, this instruction must be modified.

Insert in the blank the names of any controlled substance or substances which the look-alike drug is said to resemble.

Use applicable paragraphs and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

17.34
Issues In Manufacture, Distribution, Advertisement Of Or Possession With Intent To Manufacture Or Distribute A Look-Alike Substance

To sustain the charge of [(manufacture of) (distribution of) (advertisement of) (possession of) (possession with intent to manufacture) (possession with intent to distribute)] a look-alike substance, the State must prove the following proposition:

That the defendant knowingly [(manufactured) (distributed) (advertised) (possessed) (possessed with intent to manufacture) (possessed with intent to distribute)] a look-alike substance.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 570/404 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1404).

Give Instructions 17.33 and 17.33B.

Separate issues and definitional instructions may have to be given, along with separate verdict forms, if the jury is to consider more than one charge under Section 570/404.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

17.35
Definition Of Manufacture, Distribution, Advertisement Of, Or Possession With Intent To Manufacture Or Distribute A Look-Alike Substance--Enhancing Factors Based Upon Location

A person commits the offense of [(manufacturing) (distributing) (advertising) (possession with intent to manufacture) (possession with intent to distribute)] a look-alike substance when he knowingly [(manufactures) (distributes) (advertises) (possesses with intent to manufacture) (possesses with intent to deliver)] a look-alike substance while

[1] in a school [regardless of [(the time of day) (the time of year) (whether classes were currently in session at the time)]].

[or]

[2] on the real property comprising a school [regardless of [(the time of day) (the time of year) (whether classes were currently in session at the time)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school [regardless of [(the time of day) (the time of year) (whether classes were currently in session at the time)]].

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school-related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] on the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship.

[or]

[12] on a public way within 1000 feet of the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship.

Committee Note

720 ILCS 570/407(b) and 407(c) (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, §1407(b) and (c) (1991)), added by P.A. 84-1075, effective December 1, 1985; and amended by P.A. 85-616, effective January 1, 1988; P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; and P.A. 89-451, effective January 1, 1997. This Section incorporates by reference 720 ILCS 570/404(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, §1404(b) (1991)).

Give Instruction 17.36.

Give Instruction 17.33B, defining the term "look-alike substance."

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] through [3] only when the time of day or time of year becomes a potential issue.

The bracketed numbers [1] through [12] correspond to the locations indicated in Section 407(b) as enhancing factors. Select the alternative that corresponds to the location in the charge.

When the prosecution must prove one of the enhancing factors based upon location as an element of the offense, it need not prove that the defendant knew he was at such a location. People v. Brooks, 271 Ill.App.3d 570, 573, 648 N.E.2d 626, 628, 207 Ill.Dec. 926, 928 (4th Dist.1995).

See Instructions 4.15 and 4.16, defining the word "possession."

For a case involving the relationship between the predicate offense and the enhanced offense under Section 407(b), see People v. Lipscomb, 173 Ill.App.3d 416, 527 N.E.2d 704, 123 Ill.Dec. 241 (4th Dist.1988).

Use applicable bracketed material.

17.36
Issues In Manufacture, Distribution, Advertisement Of, Or Possession With Intent To Manufacture Or Distribute A Look-Alike Substance--Enhancing Factors Based Upon Location

To sustain the charge of [(manufacture of) (distribution of) (advertisement of) (possession with intent to manufacture) (possession with intent to distribute)] a look-alike substance while:

[1] in a school, the State must prove the following propositions:

[or]

[2] on the real property comprising a school, the State must prove the following propositions:

[or]

[3] on a public way within 1000 feet of the real property comprising a school, the State must prove the following propositions:

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school-related activity)], the State must prove the following propositions:

[or]

[5] in residential property owned, operated, and managed by a public housing agency, the State must prove the following propositions:

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency, the State must prove the following propositions:

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency, the State must prove the following propositions:

[or]

[8] in a public park, the State must prove the following propositions:

[or]

[9] on the real property comprising a public park, the State must prove the following propositions:

[or]

[10] on a public way within 1000 feet of the real property comprising a public park, the State must prove the following propositions:

[or]

[11] on the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship, the State must prove the following propositions:

[or]

[12] on a public way within 1000 feet of the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(manufactured) (distributed) (advertised) (possessed with intent to manufacture) (possessed with intent to distribute)] a look-alike substance; and

Second Proposition: That the [(manufacture) (distribution) (advertisement) (possession with intent to manufacture) (possession with intent to distribute)] took place while

[1] in a school [regardless of [(the time of day) (the time of year) (whether classes were currently in session at the time)]].

[or]

[2] on the real property comprising a school [regardless of [(the time of day) (the time of year) (whether classes were currently in session at the time)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school [regardless of [(the time of day) (the time of year) (whether classes were currently in session at the time)]].

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] on the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship.

[or]

[12] on a public way within 1000 feet of the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship.

If you find from your consideration of all the evidence that each one of these propositions

has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 570/407(b) and 407(c) (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, §1407(b) and (c) (1991)), added by P.A. 84-1075, effective December 1, 1985; and amended by P.A. 85-616, effective January 1, 1988; P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; and P.A. 89-451, effective January 1, 1997. This Section incorporates by reference 720 ILCS 570/404(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, §1404(b) (1991)).

Give Instruction 17.35.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] through [3] only when the time of day or time of year becomes a potential issue.

The bracketed numbers [1] through [12] under the opening paragraph and the Second Proposition correspond to the alternatives of the same number in Instruction 17.35, the definitional instruction for this offense. Select the corresponding alternatives under the opening paragraph and the Second Proposition that correspond to the alternative selected from the definitional instruction.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

17.37
Definition Of Possession Of Hypodermic Syringe Or Needle

A person commits the offense of possession of [(a hypodermic syringe) (a hypodermic needle) (any instrument adapted for the use of a controlled substance or cannabis by subcutaneous injection)] when he knowingly has in his possession [(a hypodermic syringe) (a hypodermic needle) (any instrument adapted for the use of a controlled substance or cannabis by subcutaneous injection)].

Committee Note

720 ILCS 635/1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §22-50).

Give Instruction 17.38.

Use applicable bracketed material.

17.38
Issues In Possession Of Hypodermic Syringe Or Needle

To sustain the charge of possession of [(a hypodermic syringe) (a hypodermic needle) (any instrument adapted for the use of a controlled substance or cannabis by subcutaneous injection)], the State must prove the following proposition:

That the defendant knowingly had in his possession [(a hypodermic syringe) (a hypodermic needle) (any instrument adapted for the use of a controlled substance or cannabis by subcutaneous injection)]

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all of the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 635/1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §22-50).

Give Instruction 17.37.

Note that Sections 635/1 and 635/5 contain exceptions.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

17.39
Definition Of Delivery, Sale, Or Exchange Of Hypodermic Syringe Or Needle

A person commits the offense of [(delivery) (sale) (exchange)] of [(a hypodermic syringe) (a hypodermic needle) (any instrument adapted for the use of a controlled substance or cannabis by subcutaneous injection)] when he knowingly [(delivers) (sells) (exchanges)] [(a hypodermic syringe) (a hypodermic needle) (any instrument adapted for the use of controlled substance or cannabis by subcutaneous injection)] [(to) (with)] any person.

Committee Note

720 ILCS 635/2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §22-51).

Give Instruction 17.40.

Instruction 17.22, defining the offense of subsequent offense of possession, delivery, sale, or exchange of hypodermic syringe or needle, has been eliminated because of the infrequency with which that charge would be made.

See Committee Note to Instruction 17.05A if delivery is an issue.

Use applicable bracketed material.

17.40
Issues In Delivery, Sale, Or Exchange Of Hypodermic Syringe Or Needle

To sustain the charge of [(delivery) (sale) (exchange)] of [(a hypodermic syringe) (a hypodermic needle) (any instrument adapted for the use of a controlled substance or cannabis by subcutaneous injection)], the State must prove the following proposition:

That the defendant knowingly [(delivered) (sold) (exchanged)] [(a hypodermic syringe) (a hypodermic needle) (any instrument adapted for the use of a controlled substance or cannabis by subcutaneous injection)] [(to) (with)] another person.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all of the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 635/2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §22-51).

Give Instruction 17.39.

Note that Sections 635/2 and 635/5 contain exceptions.

Instruction 17.23, issues in the offense of subsequent offense of possession, delivery, sale, or exchange of hypodermic syringe or needle, has been eliminated because of the infrequency with which that charge would be made.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in the proposition. See Instruction 5.03.

17.41
Definition Of Permitting Unlawful Use Of A Building

A person commits the offense of permitting unlawful use of a building when he controls a building and knowingly grants, permits, or makes that building available for use for the purpose of unlawfully manufacturing or delivering a controlled substance.

Control of a building means the power or authority to direct, restrict, or regulate the use of the building.

Committee Note

720 ILCS 570/406.1 (West, 1999) formerly Ill.Rev.Stat. ch. 561/2, §1406.1, added by P.A. 85-537, effective January 1, 1988.

Give Instruction 17.42.

For a discussion of the definition of "control," see People v. Parker, 277 Ill.App.3d 585, 660 N.E.2d 1296, 214 Ill.Dec. 347 (4th Dist.1996).

17.41A
Definition Of Use Of A Dangerous Place For The Commission Of A Controlled Substance Or Cannabis Offense

A person commits the offense of Use of a Dangerous Place for the Commission of a [(Controlled Substance) (Cannabis)] Offense when that person knowingly exercises control over any place with the intent to use that place to [(manufacture) (produce) (deliver) (possess with intent to deliver)] a [(controlled substance) (counterfeit substance) (controlled substance analog) (cannabis)]; and

[1] the place, by virtue of the presence of the [(substance) (substances)] [(used) (intended to be used)] to manufacture [(a controlled substance) (a counterfeit substance) (a controlled substance analog) (cannabis)] presents a substantial risk of injury to any person from [(fire) (explosion) (exposure to toxic or noxious chemicals or gas)]

[or]

[2] the place [(used) (intended to be used)] to [(manufacture) (produce) (deliver) (possess with intent to deliver)] [(a controlled substance) (a counterfeit substance) (a controlled substance analog) (cannabis)] has located [(within) (surrounding)] it [(devices) (weapons) (chemicals) (explosives)] [(designed) (hidden) (arranged)] in a manner that would cause a person to be exposed to a substantial risk of great bodily harm.

Committee Note

Chapter 720 ILCS 5/12-2.6, added by P.A. 93-0516, effective January 1, 2004.

Give Instructions 17.42A, 17.43E, and 17.43F.

Use applicable bracketed material.

Give Instruction 17.33A, defining the term “counterfeit substance”, as appropriate.

The bracketed numbers and the brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

17.42
Issues In Permitting Unlawful Use Of A Building

To sustain the charge of permitting unlawful use of a building, the State must prove the following propositions:

First Proposition: That the defendant controlled a building; and

Second Proposition: That the defendant knowingly granted, permitted, or made that building available for use for the purpose of unlawfully manufacturing or delivering a controlled substance.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 570/406.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1406.1), added by P.A. 85-537, effective January 1, 1988.

Give Instruction 17.41.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

17.42A
Issues In Use Of A Dangerous Place For The Commission Of A Controlled Substance Or Cannabis Offense

To sustain the charge of Use of a Dangerous Place for the Commission of a [(Controlled Substance) (Cannabis)] Offense, the State must prove the following propositions:

First Proposition: That the defendant knowingly exercised control over any place with the intent to use that place to [(manufacture) (produce) (deliver) (possess with intent to deliver)] a [(controlled substance) (counterfeit substance) (controlled substance analog) (cannabis)]; and

Second Proposition: That the place

by virtue of the presence of the [(substance) (substances)] [(used) (intended to be used)] to manufacture [(a controlled substance) (a counterfeit substance) (a controlled substance analog) (cannabis)] presents a substantial risk of injury to any person from [(fire) (explosion) (exposure to toxic or noxious chemicals or gas)];

[or]

Second Proposition: That the place

[(used) (intended to be used)] to [(manufacture) (produce) (deliver) (possess with intent to deliver)] [(a controlled substance) (a counterfeit substance) (a controlled substance analog) (cannabis)] has located [(within) (surrounding)] it [(devices) (weapons) (chemicals) (explosives)] [(designed) (hidden) (arranged)] in a manner that would cause a person to be exposed to a substantial risk of great bodily harm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Chapter 720 ILCS 5/12-2.6, added by P.A. 93-0516, effective January 1, 2004.

Give Instructions 17.41A, 17.43E, and 17.43F.

Use applicable paragraphs and bracketed material.

Give Instruction 17.33A, defining the term “counterfeit substance”, as appropriate.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

17.43
Definition Of Money Laundering

A person commits the offense of money laundering when he knowingly engages or attempts to engage in a financial transaction in criminally derived property [(of a value exceeding $10,000 but not exceeding $100,000) (of a value exceeding $100,000)] [(with the intent to promote the carrying on of the unlawful activity from which the criminally derived property was obtained) (where he knows or reasonably should know that the financial transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the criminally derived property)].

Committee Note

720 ILCS 5/29B-1(a) (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, §29B-1(a) (1991)); added by P.A. 85-675, effective January 1, 1988; amended by P.A. 86-1459, effective January 1, 1991; P.A. 88-258, effective August 9, 1993.

Give Instruction 17.44.

Give Instructions 17.43A, 17.43B, 17.43C, and 17.43D, defining the terms "financial transaction", "financial institution", "monetary instrument", and "criminally derived property" respectively, as applicable.

Between January 1, 1988, and January 1, 1991, money laundering was a Class 3 felony regardless of the value of the property alleged to be criminally derived. After January 1, 1991, if the value exceeds $10,000 but not $100,000, the offense is a Class 2 felony; and, if it exceeds $100,000, the offense is a Class 1 felony. Because the value now determines the penalty, when laundering property exceeding $10,000 in value is charged, the Committee believes value is an essential element to be decided by the jury similar to substance weight in People v. Kadlec, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist.1974), and People v. Hill, 169 Ill.App.3d 901, 524 N.E.2d 604, 120 Ill.Dec. 574 (1st Dist.1988). See also People v. Harden, 42 Ill.2d 301, 247 N.E.2d 404 (1969); but see, People v. Jackson, 99 Ill.2d 476, 459 N.E.2d 1362, 77 Ill.Dec. 113 (1984). When the jury must decide this element, use the first bracketed material in this instruction and use all four propositions in Instruction 17.44.

Particular care must be taken with instructions and verdict forms when disputes about value support lesser included offenses. See an example regarding weight rather than value in the Committee Note to Instruction 17.01.

Use applicable bracketed material.

17.43A
Definition Of Financial Transaction

The term "financial transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition utilizing criminally derived property[, and with respect to financial institutions, includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit or other monetary instrument or any other payment, transfer or delivery by, through, or to a financial institution]. [The receipt by an attorney of bona fide fees for the purpose of legal representation is not a financial transaction.]

Committee Note

720 ILCS 5/29B-1(b)(1) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §29B-1(b)(1) (1991)); amended by P.A. 88-258, effective August 9, 1993.

Use applicable bracketed material.

17.43B
Definition Of Financial Institution

The term "financial institution" means any bank; saving and loan association; trust company; agency or branch of a foreign bank in the United States; currency exchange; credit union; mortgage banking institution; pawnbroker; loan or finance company; operator of a credit card system; issuer, redeemer, or cashier of travelers checks, checks, or money orders; dealer in precious metals, stones, or jewels; broker or dealer in securities or commodities; investment banker; or investment company.

Committee Note

720 ILCS 5/29B-1(b)(2) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §29B-1(b)(2) (1991)).

17.43C
Definition Of Monetary Instrument

The term "monetary instrument" means United States coins and currency; coins and currency of a foreign country; travelers checks; bearer negotiable instruments; bearer investment securities; or bearer securities and certificates of stock.

Committee Note

720 ILCS 5/29B-1(b)(3) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §29B-1(b)(3) (1991)).

17.43D
Definition Of Criminally Derived Property

The term "criminally derived property" means any property constituting or derived from proceeds obtained, directly or indirectly, pursuant to the commission of ____.

Committee Note

720 ILCS 5/29B-1(b)(4) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §29B-1(b)(4) (1991)).

The Committee recommends that, at the request of either party, or *sua sponte,* the court submit to the jury a definitional instruction for each violation.

Insert in the blank the offense or offenses from the Criminal Code of 1961, the Illinois Controlled Substance Act, or the Cannabis Control Act involved in the money laundering case before the jury.

17.43E
Definition Of Place

The word "place" means a premises, conveyance, or location that offers [(seclusion) (shelter) (means) (facilitation)] for manufacturing, producing, possessing or possessing with intent to deliver [(a controlled substance) (a counterfeit substance) (a controlled substance analog) (cannabis)].

Committee Note

Chapter 720 ILCS 5/12-2.6, added by P.A. 93-0516, effective January 1, 2004.

Give Instructions 17.41A, 17.42A and 17.43F.

Use applicable bracketed material.

The Committee points out that the statute uses the word "premise" instead of "premises." However, upon inquiry, the Committee determined that the word used in the statute was a grammatically incorrect drafting error and that, in an upcoming revisory statute, the word will be corrected to read "premises."

Give Instruction 17.33A, defining the term "counterfeit substance", as appropriate.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

17.43F
Inferences On Intended Use Of A Place

You may infer that a place was intended to be used to manufacture a [(controlled substance) (counterfeit substance) (controlled substance analog)] if a substance containing a [(controlled substance) (counterfeit substance) (controlled substance analog)] or a substance containing a chemical important to the manufacture of said substance is found at the place of the alleged illegal controlled substance manufacturing in close proximity to equipment or to a chemical used for facilitating the manufacture of said substance.

You never are required to make this inference. It is for the jury to determine whether the inference should be drawn. You should consider all of the evidence in determining whether a place was intended to be used to manufacture a [(controlled substance) (counterfeit substance) (controlled substance analog)].

Committee Note

Chapter 720 ILCS 5/12-2.6(b), added by P.A. 93-0516, effective January 1, 2004.

Give Instructions 17.41A, 17.42A, and 17.43E.

Use applicable bracketed material.

Give Instruction 17.33A, defining the term "counterfeit substance," as appropriate.

The Committee points out that this Instruction permits a jury to make the inference herein but that such an inference is permissive, not mandatory. People v. Pomykala, 203 Ill.2d 198, 784 N.E.2d 784, 271 Ill.Dec 230 (2003) and People v. Funches, 212 Ill.2d 334, 818 N.E.2d 342, 288 lll.Dec. 654 (2004). Mandatory presumptions are *per se* unconstitutional in Illinois. People v. Watts, 181 Ill.2d 133, 692 N.E.2d 315, 229 Ill.Dec. 542 (1998). Consistent with the above Illinois Supreme Court decisions, the Committee drafted the second paragraph of this instruction, using IPI 23.30 (Presumptions of Being Under the Influence of Alcohol) as a model.

The statute does not include cannabis when providing for this inference at 720 ILCS 5/12-2.6(b) and, therefore, cannabis is not included in this Instruction.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

17.44
Issues In Money Laundering

To sustain the charge of money laundering, the State must prove the following propositions:

First Proposition: That the defendant knowingly engaged or attempted to engage in a financial transaction in criminally derived property; and

Second Proposition: That when the defendant did so, he [(intended to promote the carrying on of the unlawful activity from which the criminally derived property was obtained) (knew or reasonably should have known that the financial transaction was designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the criminally derived property)] [(.) (; and)]

[*Third Proposition:* That the value of the criminally derived property exceeded [($10,000 but did not exceed $100,000) ($100,000)].]

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/29B-1(a) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §29B-1(a) (1991)); added by P.A. 85-675, effective January 1, 1988; amended by P.A. 86-1459, effective January 1, 1991; P.A. 88-258, effective August 9, 1993.

Give Instruction 17.43.

Give the bracketed Third Proposition if property of a value exceeding $10,000 is at issue.

See the Committee Note to Instruction 17.43.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

17.45
Definition Of Controlled Substances Trafficking

A person commits the offense of controlled substances trafficking when he knowingly [(brings) (causes to be brought)] into this State a [(controlled) (counterfeit)] substance [(for the purpose of [(the manufacture of) (the delivery of)]) (with the intent to [(manufacture) (deliver)])] a [(controlled) (counterfeit)] substance in this or any other state or country [and the substance containing the [(controlled) (counterfeit)] substance weighed [(____ grams or more) (____ grams or more but less than ____ grams)]].

Committee Note

720 ILCS 570/401.1(a) and (b) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1401.1(a) and (b)), added by P.A. 85-743, effective September 22, 1987, and amended by P.A. 85-1294, effective January 1, 1989, and P.A. 86-1391, effective January 1, 1991.

Give Instruction 17.46.

If the use of a cellular radio telecommunications device in trafficking is alleged, do not use this instruction; instead, use Instructions 17.47 and 17.48.

When more than the statutory minimum of a substance is charged, weight then determines the penalty for the offense and is an essential element to be decided by the jury. See People v. Kadlec, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist.1974); People v. Hill, 169 Ill.App.3d 901, 524 N.E.2d 604, 120 Ill.Dec. 574 (1st Dist.1988). When the jury must decide this element, use the final bracketed material in this instruction and use all three propositions in Instruction 17.46.

Particular care must be taken when disputes about weight support lesser included offenses. See example in the Committee Note to Instruction 17.01 and People v. Smith, 67 Ill.App.3d 952, 385 N.E.2d 707, 24 Ill.Dec. 566 (5th Dist.1978).

When the prosecution must prove the quantity of the substance as an element of the offense, it need not prove that the defendant *knew* the quantity was of any specific amount. See People v. Cortez, 77 Ill.App.3d 448, 395 N.E.2d 1177, 32 Ill.Dec. 796 (1st Dist.1979); People v. Ziehm, 120 Ill.App.3d 777, 458 N.E.2d 588, 76 Ill.Dec. 188 (2d Dist.1983).

Although the quantity may not always be required in the verdict forms, People v. Roy, 172 Ill.App.3d 16, 526 N.E.2d 204, 122 Ill.Dec. 64 (4th Dist.1988), to insure clarity the Committee recommends that each verdict form contain the same quantity language used in the definitional and issues instructions supporting the verdict.

It should not be necessary in most possession cases to add the phrase "... but less than ____ grams." Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in Section 570/401 an issue in the case.

See Committee Note to Instruction 17.17, regarding inconsistent amendments to Section 570/410, effective January 1, 1991.

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance is in dispute.

See Committee Note to Instruction 17.05A if delivery is an issue.

If other terms used in this instruction need to be defined, see the definitions in Chapter 720.

Use applicable bracketed material.

17.46
Issues In Controlled Substances Trafficking

To sustain the charge of controlled substances trafficking, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(brought) (caused to be brought)] into this State [(____, a controlled) (a counterfeit)] substance; and

Second Proposition: That the defendant did so [(for the purpose of the manufacture of) (for the purpose of the delivery of) (with the intent to manufacture) (with the intent to deliver)] the [(controlled) (counterfeit)] substance in this or any other state or country.

[or]

Second Proposition: That the defendant did so [(for the purpose of the manufacture of) (for the purpose of the delivery of) (with the intent to manufacture) (with the intent to deliver)] the [(controlled) (counterfeit)] substance in this or any other state or country; and

Third Proposition: That the weight of the substance containing the [(controlled) (counterfeit)] substance was [(____ grams or more) (____ grams or more but less than ____ grams)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 570/401.1(a) and (b) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1401.1(a) and (b)), added by P.A. 85-743, effective September 22, 1987, and amended by P.A. 85-1294, effective January 1, 1989.

Give Instruction 17.45 and see Committee Note to that instruction.

When applicable, insert in the appropriate blanks the name of the controlled substance or the weight.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

17.47
Definition Of Controlled Substances Trafficking--Use Of A Cellular Radio Telecommunications Device

A person commits the offense of controlled substances trafficking involving the use of a cellular radio telecommunications device when he knowingly [(brings) (causes to be brought)] into this State a [(controlled) (counterfeit)] substance [(for the purpose of [(the manufacture of) (the delivery of)]) (with the intent to [(manufacture) (deliver)])] a [(controlled) (counterfeit)] substance in this or any other state or country and he knowingly uses a cellular radio telecommunications device in the furtherance of this activity.

Committee Note

720 ILCS 570/401.1(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1401.1(c)), added by P.A. 86-1391, effective January 1, 1991.

Give Instruction 17.48.

If the use of a cellular radio telecommunications device in controlled substance trafficking is alleged, use this instruction and 17.48, and do not use Instructions 17.45 and 17.46 for that charge.

See Committee Note to Instruction 17.05A if delivery is an issue.

If other terms used in this instruction need to be defined, see definitions in Chapter 720.

Use applicable bracketed material.

17.48
Issues In Controlled Substances Trafficking--Use Of A Cellular Radio Telecommunications Device

To sustain the charge of controlled substances trafficking involving use of a cellular radio telecommunications device, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(brought) (caused to be brought)] into this State [(____, a controlled) (a counterfeit)] substance; and

Second Proposition: That the defendant knowingly used a cellular radio telecommunications device in the furtherance of that activity; and

Third Proposition: That the defendant did so [(for the purpose of the manufacture of) (for the purpose of the delivery of) (with the intent to manufacture) (with the intent to deliver)] the [(controlled) (counterfeit)] substance in this or any other state or country.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 570/401.1(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1401.1(c)), added by P.A. 86-1391, effective January 1, 1991.

Give Instruction 17.47.

Insert in the blank the name of the controlled substance.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

17.49
Definition Of Unlawful Transfer Of A Telecommunications Device To A Minor

A person commits the offense of unlawful transfer of a telecommunications device to a minor when he gives, sells, or otherwise transfers possession of a telecommunications device to a person under 18 years of age with the intent that the device be used to commit the offense of ____.

Committee Note

720 ILCS 5/44-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §44-2 (1991)), added by P.A. 86-811, effective January 1, 1990.

Give Instructions 17.49A and 17.50.

The statute refers to "any offense under this [the Criminal] Code, the Cannabis Control Act or the Illinois Controlled Substances Act." The Committee believes that whether the offense or offenses in question is "under" any of these three Codes is a question of law for the court to resolve. Accordingly, if the court has determined that offense or offenses in question is under any of these three Codes, then the jury should simply be given this general instruction, referring to "offense" without further qualification.

Insert in the blank the offense named in the information or indictment, and give the instruction defining that offense.

17.49A
Definition Of Telecommunications Device

The term "telecommunications device" means a device which is portable or which may be installed in a motor vehicle, boat, or other means of transportation, and which is capable of receiving or transmitting speech, data, signals, or other information, including but not limited to paging devices, cellular and mobile telephones, and radio transceivers, transmitters, and receivers, but not including radios designed to receive only standard AM and FM broadcasts.

Committee Note

720 ILCS 5/44-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §44-1 (1991)), added by P.A. 86-811, effective January 1, 1990.

17.50
Issues In Unlawful Transfer Of A Telecommunications Device To A Minor

To sustain the charge of unlawful transfer of a telecommunications device to a minor, the State must prove the following propositions:

First Proposition: That the defendant gave, sold, or otherwise transferred possession of a telecommunications device to another person; and

Second Proposition: That this other person was then under 18 years of age; and

Third Proposition: That the defendant did so with the intent that this other person use the device to commit the offense of ____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/44-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §44-2 (1991)), added by P.A. 86-811, effective January 1, 1990.

Give Instructions 17.49 and 17.49A.

See Committee Note to Instruction 17.49.

Insert in the blank the offense named in the information or indictment.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

17.51-17.56
Reserved

17.57
Definition Of Sale Of Drug Paraphernalia

A person commits the offense of sale of drug paraphernalia when he knowingly [(keeps for sale) (offers for sale) (sells) (delivers for any commercial consideration)] any item of drug paraphernalia.

Committee Note

720 ILCS 600/3(a) (West, 1994) (formerly Ill.Rev.Stat. ch. 561/2, §2103(a) (1991)).

Give Instruction 17.58.

Give Instruction 17.57A, defining the term "drug paraphernalia."

Give Instruction 17.67, defining "inference of legitimacy."

Note that 720 ILCS 600/4 contains exemptions.

Use applicable bracketed material.

17.57A
Definition Of Drug Paraphernalia

The term "drug paraphernalia" means all equipment, products and materials of any kind which are peculiar to and marketed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body cannabis or a controlled substance.

[This term includes, but is not limited to, ____.]

Committee Note

720 ILCS 600/2 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §2102).

Note that Section 600/4, contains exemptions.

Insert in the blank, when appropriate, an example of an item of drug paraphernalia specifically found in paragraphs (1) through (6) of 720 ILCS 600/1(d).

Use bracketed material when appropriate.

17.58
Issues In Sale Of Drug Paraphernalia

To sustain the charge of sale of drug paraphernalia, the State must prove the following proposition:

That the defendant knowingly [(kept for sale) (offered for sale) (sold) (delivered for any commercial consideration)] any item of drug paraphernalia.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all of the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 600/3 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §2103).

Give Instruction 17.57.

Note that Section 600/4, contains exemptions.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in the proposition. See Instruction 5.03.

17.59
Definition Of Sale Of Drug Paraphernalia To A Person Under 18 Years Of Age

A person commits the offense of sale of drug paraphernalia to a person under 18 years of age when he is 18 years of age or older and knowingly [(sells) (delivers for any commercial consideration)] any item of drug paraphernalia to a person under 18 years of age.

Committee Note

720 ILCS 600/3(a) (West, 1994) (formerly Ill.Rev.Stat. ch. 561/2, §2103(a) (1991)).

Give Instruction 17.60.

Give Instruction 17.57A, defining the term "drug paraphernalia."

Give Instruction 17.67, defining "inference of legitimacy."

Note that 720 ILCS 600/4 contains exemptions.

Use applicable bracketed material.

17.60
Issues In Sale Of Drug Paraphernalia To A Person Under 18 Years Of Age

To sustain the charge of sale of drug paraphernalia to a person under 18 years of age, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(sold) (delivered for any commercial consideration)] any item of drug paraphernalia; and

Second Proposition: That the defendant was 18 years of age or older; and

Third Proposition: That the person to whom the item was [(sold) (delivered for any commercial consideration)] was under 18 years old at the time of the [(sale) (delivery)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all of the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 600/3(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §2103(a)).

Give Instruction 17.59.

Note that Section 600/4, contains exemptions.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

17.61
Definition Of Sale Of Drug Paraphernalia To A Pregnant Woman

A person commits the offense of sale of drug paraphernalia to a pregnant woman when he knowingly [(sells) (delivers for any commercial consideration)] any item of drug paraphernalia to a woman he knows to be pregnant.

Committee Note

720 ILCS 600/3(b) (West, 1994) (formerly Ill.Rev.Stat. ch. 561/2, §2103(b) (1991)), added by P.A. 86-271, effective January 1, 1991.

Give Instruction 17.62.

Give Instruction 17.57A, defining the term "drug paraphernalia."

Give Instruction 17.67, defining "inference of legitimacy."

Note that 720 ILCS 600/4 contains exemptions.

Use applicable bracketed material.

17.62
Issues In Sale Of Drug Paraphernalia To A Pregnant Woman

To sustain the charge of sale of drug paraphernalia to a pregnant woman, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(sold) (delivered for any commercial consideration)] any item of drug paraphernalia; and

Second Proposition: That the person to whom the item was [(sold) (delivered for any commercial consideration)] was pregnant at the time of the [(sale) (delivery)]; and

Third Proposition: That the defendant knew the woman to be pregnant.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all of the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 600/3(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §2103(b)), added by P.A. 86-271, effective January 1, 1991.

Give Instruction 17.61.

Note that Section 600/4, contains exemptions.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

17.63
Definition Of Manufacture Or Delivery Of Cannabis--Enhancing Factor Based On Location On School Grounds

A person commits the offense of [(manufacture of) (delivery of) (possession with the intent to manufacture) (possession with the intent to deliver)] cannabis when he knowingly [(manufactures) (delivers) (possesses with the intent to manufacture) (possesses with the intent to deliver)] a substance containing cannabis [and the substance containing cannabis weighs [(more than ____ grams) (more than ____ grams but not more than ____ grams)]] while

[1] in a school.

[or]

[2] on the real property comprising a school.

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] on a public way within 1000 feet of any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

Committee Note

720 ILCS 550/5.2 (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, §705.2 (1991)), added by P.A. 87-544, effective September 17, 1991.

Give Instruction 17.64.

Although Section 5.2 lists "Delivery of cannabis on school grounds" as a separate offense, it incorporates and refers to violations of 720 ILCS 550/5 (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, §705 (1991)) (manufacture or delivery of cannabis) and merely enhances the penalties one class higher whenever a violation of Section 5 occurs on school property. Thus, the Committee thought it better to treat Section 5.2 as an enhancing factor rather than a separate offense.

The bracketed numbers [1] through [5] correspond to the locations indicated in Section 5.2. Select the alternative that corresponds to the location in the charge.

In many cases, it will be necessary to give other instructions defining terms used in this instruction. See Instruction 17.05A, defining the word "deliver;" Instructions 4.15 and 4.16, defining the word "possession;" and 720 ILCS 550/3(h) (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, §703(h) (1991)), defining the word "manufacture."

When manufacture or delivery of more than 2.5 grams of a substance containing cannabis is charged, weight then determines the penalty for the offense and is an essential element to be decided by the jury. See People v. Hill, 169 Ill.App.3d 901, 524 N.E.2d 604, 120 Ill.Dec. 574 (1st Dist.1988); People v. Kadlec, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist.1974). This is accomplished by giving the bracketed material in this instruction and all three propositions in Instruction 17.64.

Particular care must be taken when disputes of weight support lesser included offenses. See example in the Committee Note to Instruction 17.01 and People v. Smith, 67 Ill.App.3d 952, 385 N.E.2d 707, 24 Ill.Dec. 566 (5th Dist.1978).

When the prosecution must prove the quantity of the substance as an element of the offense, it need not prove that the defendant *knew* the quantity was of any specific amount. See People v. Ziehm, 120 Ill.App.3d 777, 458 N.E.2d 588, 76 Ill.Dec. 188 (2d Dist.1983); People v. Cortez, 77 Ill.App.3d 448, 395 N.E.2d 1177, 32 Ill.Dec. 796 (1st Dist.1979).

Although the quantity may not always be required in the verdict forms, People v. Roy, 172 Ill.App.3d 16, 526 N.E.2d 204, 122 Ill.Dec. 64 (4th Dist.1988), the Committee recommends that, to ensure clarity, each verdict form contain the same quantity language used in the definitional and issues instructions supporting the verdict.

It should not be necessary in most manufacture and delivery cases to add the phrase "... but not more than ____ grams." Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in 720 ILCS 550/5(b) through (d) an issue in the case.

See Committee Note to Instruction 17.05A if delivery is in dispute.

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance containing cannabis is in dispute.

If other terms used in this instruction need to be defined, see definitions contained in the Cannabis Control Act, 720 ILCS 550/1 *et seq.*

Use applicable bracketed material.

17.64
Issues In Manufacture Or Delivery Of Cannabis--Enhancing Factor Based On Location On School Grounds

To sustain the charge of [(manufacture of) (delivery of) (possession with the intent to manufacture) (possession with the intent to deliver)] cannabis

[1] in a school, the State must prove the following propositions:

[or]

[2] on the real property comprising a school, the State must prove the following propositions:

[or]

[3] on a public way within 1000 feet of the real property comprising a school, the State must prove the following propositions:

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)], the State must prove the following propositions:

[or]

[5] on a public way within 1000 feet of any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)], the State must prove the following propositions:

First Proposition: That the defendant knowingly [(manufactured) (delivered) (possessed with the intent to manufacture) (possessed with the intent to deliver)] a substance containing cannabis; and

Second Proposition: That the [(manufacture) (delivery) (possession with the intent to manufacture) (possession with the intent to deliver)] took place while

[1] in a school; and

[or]

[2] on the real property comprising a school; and

[or]

[3] on a public way within 1000 feet of the real property comprising a school; and

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)]; and

[or]

[5] on a public way within 1000 feet of any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)]; and

Third Proposition: That the weight of the substance containing the cannabis was [(more than ____ grams) (more than ____ grams but not more than ____ grams)]].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

Committee Note

720 ILCS 550/5.2 (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, §705.2 (1991)), added by P.A. 87-544, effective September 17, 1991.

Give Instruction 17.63 and see the Committee Note to that instruction.

The bracketed numbers [1] through [5] under the opening paragraph and the Second Proposition correspond to the alternatives of the same number in Instruction 17.63, the definitional instruction for this offense. Select the corresponding alternatives under the opening paragraph and the Second Proposition that correspond to the alternative selected from the definitional instruction.

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance containing cannabis is an issue.

When applicable, insert in the blanks the appropriate weight.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

17.65
Definition Of Possession Of Drug Paraphernalia

A person commits the offense of possession of drug paraphernalia when he knowingly possesses an item of drug paraphernalia with the intent to use it [(in ingesting, inhaling, or otherwise introducing [(cannabis) (a controlled substance)] into the human body) (in preparing [(cannabis) (a controlled substance)] for ingesting, inhaling, or otherwise introducing [(cannabis) (a controlled substance)] into the human body)].

Committee Note

720 ILCS 600/3.5 (West, 1994), added by P.A. 88-677, effective December 15, 1994.

Give Instruction 17.66.

Give Instruction 17.57A, defining the term "drug paraphernalia."

Give Instruction 17.67, defining "inference of legitimacy."

Use applicable bracketed material.

17.65A
Definition Of Inference Of Legitimacy--Possession Or Sale Of Drug Paraphernalia

The law prohibiting the [(possession) (sale)] of drug paraphernalia is intended to be used solely for suppressing the [(commercial traffic in) (possession of)] items that, within the context of [(the sale or offering for sale) (possession)], are clearly and beyond a reasonable doubt marketed for the illegal and unlawful use of cannabis or controlled substances. You should not find the defendant guilty unless the facts and circumstances proved exclude all reasonable and common-sense inferences that can be drawn in favor of the legitimacy of any [(transaction) (item)].

Committee Note

720 ILCS 600/6 (West, 1994), amended by P.A. 88-677, effective December 15, 1994.

Section 6 of the Act provides as follows:

> "This Act is intended to be used solely for the suppression of the commercial traffic in and possession of items that, within the context of the sale or offering for sale, or possession, are clearly and beyond a reasonable doubt marketed for the illegal and unlawful use of cannabis or controlled substances. To this end, all reasonable and common-sense inferences shall be drawn in favor of the legitimacy of any transaction or item."

Use applicable bracketed material.

17.66
Issues In Possession Of Drug Paraphernalia

To sustain the charge of possession of drug paraphernalia, the State must prove the following propositions:

First Proposition: That the defendant knowingly possessed an item of drug paraphernalia; and

Second Proposition: That when he did so, the defendant intended to use that item [(in ingesting, inhaling, or otherwise introducing [(cannabis) (a controlled substance)] into the human body) (in preparing [(cannabis) (a controlled substance)] for ingesting, inhaling, or otherwise introducing [(cannabis) (a controlled substance)] into the human body)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 600/3.5 (West, 1994), added by P.A. 88-677, effective December 15, 1994.

Give Instruction 17.65.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

17.67
Definition Of Streetgang Criminal Drug Conspiracy

A person commits the offense of streetgang criminal drug conspiracy when he knowingly

[1] [(manufactures) (delivers) (possesses with intent to manufacture) (possesses with intent to deliver)] ____ grams or more of a substance containing ____, a [(controlled) (counterfeit)] substance;

[or]

[2] [(manufactures) (delivers) (possesses with intent to manufacture) (possesses with intent to deliver)] ____, a [(controlled) (counterfeit)] substance;

and he does so in furtherance of the activities of an organized gang and as part of an agreement undertaken or carried out with two or more other persons; and he occupies a position of organizer, supervising person, or any other position of management over at least two or more of the same persons who were part of the agreement undertaken or carried out.

Committee Note

720 ILCS 570/405.2 (West, 1997), added by P.A. 89-498, effective June 27, 1996.

Give Instruction 17.66.

Section 405.2 incorporates by reference subsections (a) and (c) of Section 401 (720 ILCS 570/401 (West, 1997)). See the first paragraph to the Committee Notes to Instruction 17.17 regarding inconsistent Public Acts effective January 1, 1990. The Committee takes no position on the legal effect of those acts on Section 405.2.

If the definition of "organized gang" becomes an issue, use Instruction 4.30. See Section 720 ILCS 570/405.2(a)(iii) (West, 1997).

See Committee Note to Instruction 17.05A if delivery is an issue.

See Instruction 17.13A, regarding the term "agreement."

See Committee Note to Instruction 17.01, concerning the verdict forms and for directions on how the jury should be instructed when the weight of the substance is an issue.

Insert in the appropriate blanks the name of the controlled substance and the weight.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

17.67A
Definition Of Organized Gang

The phrase "organized gang" means any combination, confederation, alliance, network, conspiracy, understanding or other similar conjoining, in law or fact, of three or more persons with an established hierarchy that, through its members or agents, engages in a course or pattern of criminal activity.

Committee Note

740 ILCS 147/10, amended by P.A. 88-467, effective July 1, 1994.

17.68
Issues In Streetgang Criminal Drug Conspiracy

To sustain the charge of streetgang criminal drug conspiracy, the State must prove the following propositions:

[1] *First Proposition:* That the defendant knowingly [(manufactured) (delivered) (possessed with intent to manufacture) (possessed with intent to deliver)] ____ grams or more of a substance containing ____, a [(controlled) (counterfeit)] substance; and

[or]

[2] *First Proposition:* That the defendant knowingly [(manufactured) (delivered) (possessed with intent to manufacture) (possessed with intent to deliver)] ____, a [(controlled) (counterfeit)] substance; and

Second Proposition: That the defendant did so in furtherance of the activities of an organized gang; and

Third Proposition: That the defendant did so as part of an agreement undertaken or carried out with two or more other persons; and

Fourth Proposition: That the defendant occupied a position of organizer, supervising person, or any other position of management over at least two or more of the same persons who were part of the agreement undertaken or carried out.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 570/405.2 (West, 1997), added by P.A. 89-498, effective June 27, 1996.

Give Instruction 17.65.

Insert in the appropriate blanks the name of the controlled substance and the weight.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

18.00
WEAPONS

18.01
Definition Of Unlawful Use Of Weapons

A person commits the offense of unlawful use of weapons when he knowingly

[1] [(sells) (manufactures) (purchases) (possesses) (carries)] a [(bludgeon) (black-jack) (sling-shot) (sand-club) (sand-bag) (metal knuckles) (throwing star) (switchblade knife) (ballistic knife)].

[or]

[2] [(carries) (possesses)] a [(dagger) (dirk) (billy) (dangerous knife) (razor) (stiletto) (broken bottle) (piece of glass) (stun gun or taser) [or other dangerous or deadly weapon or instrument of like character]] with intent to use the [(dagger) (dirk) (billy) (dangerous knife) (razor) (stiletto) (broken bottle) (piece of glass) (stun gun or taser) [or other dangerous or deadly weapon or instrument of a like character]] unlawfully against another.

[or]

[3] carries [(on or about his person) (in a vehicle)] a [(tear gas gun projector) (tear gas bomb) (any object containing a noxious liquid gas or substance other than an object containing a non-lethal noxious liquid gas or substance designed solely for personal defense when carried by a person 18 years of age or older)].

[or]

[4] [(carries) (possesses)] a [(pistol) (revolver) (firearm) (stun gun or taser)] [(concealed on or about his person) (in a vehicle)] except when on his land, in his abode, or in his fixed place of business.

[or]

[5] sets a spring gun.

[or]

[6] possesses a device or attachment [(designed) (used) (intended for use)] in silencing the report of any firearm.

[or]

[7] [(sells) (manufactures) (purchases) (possesses) (carries)] [(a machine gun) (any combination of parts designed or intended for use in converting any weapon into a machine gun) (any combination of parts from which a machine gun can be assembled if such parts are in possession or under the control of a person) (a rifle having one or more barrels less than 16 inches in length) (a shotgun having one or more barrels less than 18 inches in length) (a weapon made from a rifle or shotgun, whether by alteration, modification, or otherwise, if such weapon as modified has an overall length of less than 26 inches) (a [(bomb) (bomb-shell) (grenade)] [or a bottle or other container containing an explosive substance of over one-quarter ounce for like purposes])].

[or]

[8] [(carries) (possesses)] a [(firearm) (stun gun or taser) (deadly weapon)] [(in a place which is licensed to sell intoxicating beverages) (at a public gathering held pursuant to a license issued by a governmental body) (at a public gathering at which an admission is charged)], excluding a place where a showing, demonstration, or lecture involving the exhibit of unloaded firearms is conducted.

[or]

[9] [(carries) (possesses)] [(in a vehicle) (on or about his person)] a [(pistol) (revolver) (stun gun or taser) (firearm) (ballistic knife)] when he is hooded, robed, or masked in such a manner as to conceal his identity.

[or]

[10] [(carries) (possesses)] on or about his person a [(pistol) (revolver) (stun gun or taser) (firearm)] while upon [(a public street) (a public alley) (public lands)] within the corporate limits of [(a city) (a village) (an incorporated town)] except when an invitee for the purpose of [(the display of such weapon) (lawful commerce in weapons)] or when on his land, in his abode, or in his fixed place of business.

[or]

[11] [(sells) (manufactures) (purchases)] an explosive bullet.

[or]

[12] [(carries) (possesses)] on or about his person [(a) (an)] [(bludgeon) (black-jack) (sling-shot) (sand-club) (sand-bag) (metal knuckles) (switchblade knife) (ballistic knife) (tear gas gun projector bomb) (object containing noxious liquid or gas) (pistol) (revolver) (firearm) ([(bomb) (grenade) [or a bottle or other container containing an explosive substance over one-quarter ounce]) (cartridge)] while [(in the building) (on the grounds)] of [(an elementary

school) (a secondary school) (a community college) (a college) (a university)].

Committee Note

720 ILCS 5/24-1 (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, §24-1 (1991)), amended by P.A. 86-1003, P.A. 86-1028, P.A. 86-1393, effective February 5, 1990; and P.A. 88-467, effective July 1, 1994.

Give Instruction 18.02.

When applicable, give Instruction 18.35, defining the term "ballistic knife"; Instruction 18.35A, defining the term "switchblade knife"; Instruction 18.35E, defining the term "stun gun or taser"; Instruction 18.35B, defining the term "explosive bullet"; Instruction 18.35D, defining the term "machine gun"; and Instruction 18.35C, defining the term "cartridge". The term "bludgeon" has been defined as a "stick with one end loaded, thicker or heavier than the other end." People v. Tate, 68 Ill.App.3d 881, 386 N.E.2d 584, 25 Ill.Dec. 313 (1st Dist.1979).

P.A. 88-467 deleted paragraph 12 from Section 24-1(a). Accordingly, alternative [12] should not be used if the offense was committed on or after July 1, 1994, the effective date of P.A. 88-467.

The bracketed phrase "or other dangerous or deadly weapon or instrument of a like character" in paragraph [2] should be used only when the weapon charged is not one of the weapons specifically enumerated. When the phrase is used, it must be used in conjunction with one or more of the enumerated weapons. Firearms are not included in the phrase. See People v. Rutledge, 104 Ill.2d 394, 472 N.E.2d 438, 84 Ill.Dec. 478 (1984).

Section 24-1(a)(7), which in part makes it unlawful to possess a "bomb, bomb-shell, grenade, bottle or other container containing an explosive substance of over one-quarter ounce for like purposes," specifically includes "black powder bombs," "molotov cocktails," and "artillery projectile" within the category of "other containers." If appropriate, one of these phrases may be added to paragraph [7]. The phrase "or a bottle or other container containing an explosive substance of over one-quarter ounce for like purposes" should be used only in conjunction with one or more of the specifically prohibited items.

Section 24-1(d) provides that in some circumstances the presence of a weapon in a private vehicle is "*prima facie*" evidence that it is possessed by all occupants of the vehicle. No instruction should be given concerning the *prima facie* effect of this evidence. People v. Gray, 99 Ill.App.3d 851, 426 N.E.2d 290, 55 Ill.Dec. 315 (5th Dist.1981).

Section 24-2 exempts certain persons from the offenses created in Sections 24-1(a)(1), (a)(3), (a)(4), (a)(7), (a)(8), (a)(10), and (a)(11). The defendant bears the burden of proving the exemption by a preponderance of the evidence. See Section 24-2(h); see also People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the term "preponderance of the evidence."

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

18.01A
Exemptions To Weapons Offenses

A [(description of exempt person)] may lawfully [(description of conduct charged)]. The defendant has the burden of proving by a preponderance of the evidence that at the time of the offense charged he was [(description of exempt person)].

Committee Note

720 ILCS 5/24-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §24-2 (1991)).

Give Instruction 4.18, defining the phrase "preponderance of the evidence."

Do not use this instruction with Instruction 18.09.

Section 24-2 exempts certain persons from the offenses established by Section 24-1. Additionally, many of the sections of Article 24 that create offenses contain exemptions. See Sections 24-1(a)(12), 24-1.1(a), 24-2.1(b), 24-2.2(b), 24-3(g), 24-3(j), 24-3.2(d), and 24-3.3. This instruction can be used whether the exemption is embodied in the section creating the offense or in the exemption provisions of Section 24-2. Section 24-2(h) specifically places the burden of proving the applicability of the exemption on the defendant. The defendant must prove the exemption by a preponderance of the evidence. People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978).

This instruction cannot be used when the defense asserted is not a statutory exemption but rather an affirmative defense created by Article 24. See, e.g., Section 24-1.1(c) which establishes an affirmative defense to the offense of Unlawful Possession of a Weapon by a Person in Custody of the Department of Corrections and suggested instructions governing that affirmative defense set forth in the Committee Note to Instruction 18.09. Of course, when appropriate, a defendant would also be entitled to instructions concerning the affirmative defenses set forth in Chapter 24-25.00.

18.02
Issues In Unlawful Use Of Weapons

To sustain the charge of unlawful use of weapons, the State must prove the following proposition[s]:

[1] That the defendant knowingly [(sold) (manufactured) (purchased) (possessed) (carried)] a [(bludgeon) (black-jack) (sling-shot) (sand-club) (sand-bag) (metal knuckles) (throwing star) (switchblade knife) (ballistic knife)].

[or]

[2] *First Proposition:* That the defendant knowingly [(carried) (possessed)] a [(dagger) (dirk) (billy) (dangerous knife) (razor) (stiletto) (broken bottle) (piece of glass) (stun gun or taser) [or other dangerous or deadly weapon or instrument of a like character]]; and

Second Proposition: That the defendant did so with intent to use the [(dagger) (dirk) (billy) (dangerous knife) (razor) (stiletto) (broken bottle) (piece of glass) (stun gun or taser) [or other dangerous or deadly weapon or instrument of a like character]] unlawfully against another person.

[or]

[3A] That the defendant knowingly carried [(on or about his person) (in a vehicle)] a [(tear gas gun projector) (tear gas bomb)].

[or]

[3B] That the defendant knowingly carried [(on or about his person) (in a vehicle)] an object containing a lethal noxious liquid gas or substance.

[or]

[3C] *First Proposition:* That the defendant knowingly carried [(on or about his person) (in a vehicle)] an object containing a non-lethal noxious liquid gas or substance; and

Second Proposition: That when the defendant did so, he was less than 18 years of age.

[or]

Second Proposition: That the object containing the noxious liquid gas or substance was not designed solely for personal defense.

[or]

[4] *First Proposition:* That the defendant knowingly [(carried) (possessed)] a [(pistol)

(revolver) (firearm) (stun gun or taser)] [(concealed on or about his person) (in a vehicle)]; and

Second Proposition: That when the defendant did so, he was not on his land, in his abode, or in his fixed place of business.

[or]

[5] That the defendant knowingly set a spring gun.

[or]

[6] That the defendant knowingly possessed a device or attachment which was [(designed) (used) (intended for use)] in silencing the report of any firearm.

[or]

[7A] That the defendant knowingly [(sold) (manufactured) (purchased) (possessed) (carried)] a machine gun.

[or]

[7B] That the defendant knowingly [(sold) (manufactured) (purchased) (possessed) (carried)] any combination of parts designed or intended for use in converting a weapon into a machine gun.

[or]

[7C] *First Proposition:* That the defendant knowingly [(sold) (manufactured) (purchased) (possessed) (carried)] any combination of parts from which a machine gun could be assembled; and

Second Proposition: That the combination of parts was in the possession or under the control of a person.

[or]

[7D] *First Proposition:* That the defendant knowingly [(sold) (manufactured) (purchased) (possessed) (carried)] a rifle; and

Second Proposition: That the rifle had one or more barrels less than 16 inches in length.

[or]

[7E] *First Proposition:* That the defendant knowingly [(sold) (manufactured) (purchased) (possessed) (carried)] a shotgun; and

Second Proposition: That the shotgun had one or more barrels less than 18 inches in length.

[or]

[7F] *First Proposition:* That the defendant knowingly [(sold) (manufactured) (purchased) (possessed) (carried)] a weapon made from a rifle or shotgun whether by alteration, modification, or otherwise; and

Second Proposition: That the weapon as modified had an overall length of less than 26 inches.

[or]

[7G] That the defendant knowingly [(sold) (manufactured) (purchased) (possessed) (carried)] a [(bomb) (bombshell) (grenade) [or a bottle or other container containing an explosive substance over one-quarter ounce for like purposes]].

[or]

[8] *First Proposition:* That the defendant knowingly [(carried) (possessed)] a [(firearm) (stun gun or taser) (deadly weapon)]; and

Second Proposition: That when the defendant did so, he was [(in a place licensed to sell intoxicating beverages) (at a public gathering held pursuant to a license issued by a governmental body) (at a public gathering at which an admission was charged)]; and

Third Proposition: That a [(showing) (demonstration) (lecture)] involving the exhibit of unloaded firearms was not being conducted at the [(place) (gathering)] where the defendant [(carried) (possessed)] the [(firearm) (stun gun or taser) (deadly weapon)].

[or]

[9] *First Proposition:* That the defendant knowingly [(carried) (possessed)] [(in a vehicle) (on or about his person)] a [(pistol) (revolver) (stun gun or taser) (firearm) (ballistic knife)]; and

Second Proposition: That when the defendant did so he was hooded, robed, or masked in such a manner as to conceal his identity.

[or]

[10] *First Proposition:* That the defendant knowingly [(carried) (possessed)] on or about his person a [(pistol) (revolver) (stun gun or taser) (firearm)]; and

Second Proposition: That when the defendant did so, he was upon [(a public street) (a public alley) (public lands)] within the corporate limits of [(a city) (a village) (an unincorporated town)]; and

Third Proposition: That when the defendant did so, he was not an invitee for the purpose

of [(the display of such weapon) (lawful commerce in weapons)]; and

Fourth Proposition: That when the defendant did so, he was not on his land, in his abode, or in his fixed place of business.

[or]

[11] That the defendant knowingly [(sold) (manufactured) (purchased)] an explosive bullet.

[or]

[12] *First Proposition:* That the defendant knowingly [(carried) (possessed)] on or about his person [(a) (an)] [(bludgeon) (black-jack) (sling-shot) (sand-club) (sand-bag) (metal knuckles) (switchblade knife) (ballistic knife) (tear gas gun projector bomb) (object containing noxious liquid or gas) (pistol) (revolver) (firearm) ([(bomb) (grenade)] [or a bottle or other container containing an explosive substance over one-quarter ounce]) (cartridge)]; and

Second Proposition: That the defendant did so while [(in the building) (on the grounds)] of [(an elementary school) (a secondary school) (a community college) (a college) (a university)].

If you find from your consideration of all the evidence that [(any one of these propositions) (this proposition)] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

If you find from your consideration of all the evidence that [(each one of these propositions) (this proposition)] has been proved beyond a reasonable doubt, you should find the defendant guilty. [However, if you find the defendant has proved by a preponderance of the evidence that ____, you should find the defendant not guilty.]

Committee Note

720 ILCS 5/24-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §24-1 (1991)), as amended by P.A. 86-1003, effective February 5, 1990.

Give Instruction 18.01.

Give the bracketed portion of the last paragraph when evidence of an exemption is presented. Insert in the blank the applicable exemption. See Committee Note to Instruction 18.01.

The bracketed numbers [1] through [12] correspond to the paragraphs of the same number in Instruction 18.01, the definitional instruction for these offenses. Paragraph [3] of the definitional instruction, defining the offenses of possession of tear gas gun projectors and bombs and other objects containing noxious substances, has been further subdivided into paragraphs [3A] through [3C] for clarity purposes. Likewise, paragraph [7] of the definitional instruction, defining the offenses of possession of machine guns, rifles, shotguns, and bombs, has been further subdivided into paragraphs [7A] through [7F]. Select the proposition(s) that correspond to the paragraph selected from the definitional instruction.

The bracketed phrase "or other dangerous or deadly weapon or instrument of a like character" in the First Proposition of the second set of propositions should be used only when the weapon charged is not one of the weapons specifically enumerated. When the phrase is used, it must be used in conjunction with one or more of the enumerated weapons. Firearms are not included in the phrase. See People v. Rutledge, 104 Ill.2d 394, 472 N.E.2d 438, 84 Ill.Dec. 478 (1984).

Section 24-1(a)(8) makes it an offense to possess a firearm or other specified weapon in a place licensed to sell intoxicating beverages or at certain public gatherings unless a demonstration or lecture involving the exhibition of unloaded firearms is being conducted. The statute is unclear as to whether the "exhibition of unloaded firearms" exception is applicable to places licensed to sell intoxicating beverages or is only applicable to the specified types of public gatherings. Paragraph [8] of this instruction assumes that Section 24-1(a)(8) permits weapons to be possessed in places licensed to sell intoxicating beverages as long as an exhibition concerning unloaded firearms is being conducted.

See the Committee Note to Instruction 18.01 concerning the need for definitional instructions and the effect of Section 24-1(d) which provides that in some circumstances the presence of a weapon in a private vehicle is "*prima facie* evidence" that the weapon is possessed by all occupants of the vehicle.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

18.03
Definition Of Aggravated Unlawful Use Of Weapons--Possessing A Silencer--Enhancing Factor Based Upon Location

A person commits the offense of aggravated unlawful use of weapons when he knowingly possesses a device or attachment of any kind [(designed for use) (used) (intended for use)] in silencing the report of a firearm while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

Committee Note

720 ILCS 5/24-1(c)(1) (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, §24-1(c)(1) (1991)), amended by P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; P.A. 87-930, effective January 1, 1993; P.A. 88-156, effective July 28, 1993; and P.A. 88-467, effective July 1, 1994.

Give Instruction 18.04.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Section 24-1(a)(6) (possessing a silencer) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(3) (carrying tear gas or noxious liquid gas), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(7)(i) (possessing a machine gun), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), 24-1(a)(9) (concealing one's identity), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate 18.03 series instruction.

Section 24-1(c)(1) provides enhanced penalties for the violation of Section 24-1(a)(6) when committed on the premises listed in the above alternatives numbered [1] through [13]. A violation of Section 24-1(a)(6) is increased from a Class 3 to a Class 2 felony. Select the alternative that corresponds to the location in the charge.

The Committee has created separate instructions for “aggravated” unlawful use of weapons because the State must prove the existence of the enhancing factors beyond a reasonable doubt. See People v. Martin, 266 Ill.App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist.1994).

Because the Committee believes that “simple” unlawful use of weapons instructions will often be given as a lesser included offense when “aggravated” unlawful use of weapons is charged, the Committee titled this offense “aggravated unlawful use of weapons” to distinguish it from “simple” unlawful use of weapons. If only “aggravated” unlawful use of weapons instructions are given to the jury, the term “aggravated” should be removed from the title as set out in the first sentence of this instruction and issues Instruction 18.04.

When applicable, give Instruction 18.35F (defining the term “school”) and 18.35J (defining the term “courthouse”).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

18.03U
Definition Of Aggravated Unlawful Use Of Weapons--Possessing A Bludgeon, Sling-Shot, Metal Knuckles, Throwing Star, Switchblade, Or Ballistic Knife--Enhancing Factor Based Upon Location

A person commits the offense of aggravated unlawful use of weapons when he knowingly [(sells) (manufactures) (purchases) (possesses) (carries)] a [(bludgeon) (black-jack) (sling-shot) (sand-club) (sand-bag) (metal knuckles) (throwing star) (switchblade knife) (ballistic knife)] while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

Committee Note

720 ILCS 5/24-1(c)(2) (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, §24-1(c)(2) (1991)), amended by P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; P.A. 87-930, effective January 1, 1993; P.A. 88-156, effective July 28, 1993; and P.A. 88-467, effective July 1, 1994.

Give Instruction 18.04U.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife) is the predicate offense charged. When Section 24-1(a)(3) (carrying tear gas or noxious liquid gas), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(6) (possessing a silencer), 24-1(a)(7)(i) (possessing a machine gun), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), 24-1(a)(9) (concealing one's identity), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate 18.03 series instruction.

Section 24-1(c)(2) provides enhanced penalties for the violation of Section 24-1(a)(1) when committed on the premises listed in the above alternatives numbered [1] through [13]. A

violation of Section 24-1(a)(1) is increased from a Class A misdemeanor to a Class 4 felony. Select the alternative that corresponds to the location in the charge.

The Committee has created separate instructions for "aggravated" unlawful use of weapons because the State must prove the existence of the enhancing factors beyond a reasonable doubt. See People v. Martin, 266 Ill.App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist.1994).

Because the Committee believes that "simple" unlawful use of weapons instructions will often be given as a lesser included offense when "aggravated" unlawful use of weapons is charged, the Committee titled this offense "aggravated unlawful use of weapons" to distinguish it from "simple" unlawful use of weapons. If only "aggravated" unlawful use of weapons instructions are given to the jury, the term "aggravated" should be removed from the title as set out in the first sentence of this instruction and issues Instruction 18.04U.

When applicable, give Instruction 18.35A (defining the term "switchblade knife"), Instruction 18.35F (defining the term "school"), and Instruction 18.35J (defining the term "courthouse"). Also, when applicable, give Instruction 18.35 (defining the term "ballistic knife"); however, Section 24-1(e) exempts crossbows, common or compound bows, and underwater spearguns from the definition of a ballistic knife. The term "bludgeon" has been defined as a "stick with one end loaded, thicker or heavier than the other end." People v. Tate, 68 Ill.App.3d 881, 386 N.E.2d 584, 25 Ill.Dec. 313 (1st Dist.1979).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

18.03V
Definition Of Aggravated Unlawful Use Of Weapons--Carrying Tear Gas Or Noxious Liquid Gas--Enhancing Factor Based Upon Location

A person commits the offense of aggravated unlawful use of weapons when he knowingly carries [(on or about his person) (in a vehicle)] a [(tear gas gun projector) (tear gas bomb) (any object containing a noxious liquid gas or substance other than an object containing a non-lethal noxious liquid gas or substance designed solely for personal defense when carried by a person 18 years of age or older)] while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

Committee Note

720 ILCS 5/24-1(c)(2) (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, §24-1(c)(2) (1991)), amended by P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; P.A. 87-930, effective January 1, 1993; P.A. 88-156, effective July 28, 1993; and P.A. 88-467, effective July 1, 1994.

Give Instruction 18.04V.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Section 24-1(a)(3) (carrying tear gas or noxious liquid gas) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(6) (possessing a silencer), 24-1(a)(7)(i) (possessing a machine gun), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), 24-1(a)(9) (concealing one's identity), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate 18.03 series instruction.

Section 24-1(c)(2) provides enhanced penalties for the violation of Section 24-1(a)(3) when committed on the premises listed in the above alternatives numbered [1] through [13]. A

violation of Section 24-1(a)(3) is increased from a Class A misdemeanor to a Class 4 felony. Select the alternative that corresponds to the location in the charge.

The Committee has created separate instructions for "aggravated" unlawful use of weapons because the State must prove the existence of the enhancing factors beyond a reasonable doubt. See People v. Martin, 266 Ill.App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist.1994).

Because the Committee believes that "simple" unlawful use of weapons instructions will often be given as a lesser included offense when "aggravated" unlawful use of weapons is charged, the Committee titled this offense "aggravated unlawful use of weapons" to distinguish it from "simple" unlawful use of weapons. If only "aggravated" unlawful use of weapons instructions are given to the jury, the term "aggravated" should be removed from the title as set out in the first sentence of this instruction and issues Instruction 18.04V.

When applicable, give Instruction 18.35F (defining the term "school"), and Instruction 18.35J (defining the term "courthouse").

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

18.03W
Definition Of Aggravated Unlawful Use Of Weapons--Possessing A Concealed Weapon--Enhancing Factor Based Upon Location

A person commits the offense of aggravated unlawful use of weapons when he knowingly [(carries) (possesses)] a [(pistol) (revolver) (stun gun or taser) (firearm)] [(in a vehicle) (concealed on or about his person)] except when on his land, in his abode, or in his fixed place of business while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

Committee Note

720 ILCS 5/24-1(c)(1.5) (West, 1994), added by P.A. 88-680, effective January 1, 1995. P.A. 88-680 removed this factor from Section 24-1(c)(2) and placed it in new Section 24-1(c)(1.5).

Give Instruction 18.04W.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Section 24-1(a)(4) (possessing a concealed weapon) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(3) (carrying tear gas or noxious liquid gas), 24-1(a)(6) (possessing a silencer), 24-1(a)(7)(i) (possessing a machine gun), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), 24-1(a)(9) (concealing one's identity), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate 18.03 series instruction.

Section 24-1(c)(1.5) provides enhanced penalties for the violation of Section 24-1(a)(4) when committed on the premises listed in the above alternatives numbered [1] through [13]. A violation of Section 24-1(a)(4) is increased from a Class 4 to a Class 3 felony. Select the alternative that corresponds to the location in the charge.

The Committee has created separate instructions for “aggravated” unlawful use of weapons because the State must prove the existence of the enhancing factors beyond a reasonable doubt. See People v. Martin, 266 Ill.App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist.1994).

Because the Committee believes that “simple” unlawful use of weapons instructions will often be given as a lesser included offense when “aggravated” unlawful use of weapons is charged, the Committee titled this offense “aggravated unlawful use of weapons” to distinguish it from “simple” unlawful use of weapons. If only “aggravated” unlawful use of weapons instructions are given to the jury, the term “aggravated” should be removed from the title as set out in the first sentence of this instruction and issues Instruction 18.04W.

When applicable, give Instruction 18.35E (defining the phrase “stun gun or taser”), Instruction 18.35F (defining the word “school”), Instruction 18.35G (defining the word “firearm”), and Instruction 18.35J (defining the word “courthouse”).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

18.03X
Definition Of Aggravated Unlawful Use Of Weapons--Possessing A Rifle, Shotgun, Or Bomb--Enhancing Factor Based Upon Location

A person commits the offense of aggravated unlawful use of weapons when he knowingly [(sells) (manufactures) (purchases) (possesses) (carries)]

[A] a rifle having one or more barrels less than 16 inches in length; while

[or]

[B] a shotgun having one or more barrels less than 18 inches in length; while

[or]

[C] a weapon made from a rifle or shotgun whether by alteration, modification, or otherwise, if such weapon as modified had an overall length of less than 26 inches; while

[or]

[D] a [(bomb) (bomb-shell) (grenade)] [or a bottle or other container containing an explosive substance over one-quarter ounce for like purposes]; while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

Committee Note

720 ILCS 5/24-1(c)(1) (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, §24-1(c)(1) (1991)), amended by P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; P.A. 87-930, effective January 1, 1993; P.A. 88-156, effective July 28, 1993; and P.A. 88-467, effective July 1, 1994.

Give Instruction 18.04X.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Section 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(3) (carrying tear gas or noxious liquid gas), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(6) (possessing a silencer), 24-1(a)(7)(i) (possessing a machine gun), 24-1(a)(9) (concealing one's identity), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate 18.03 series instruction.

Sections 24-1(a)(7)(ii) and (7)(iii) define the offenses of possession of rifles, shotguns, and bombs which have been subdivided into paragraphs [A] through [D] for clarity purposes. Select the alternative that corresponds to the offense in the charge.

Section 24-1(c)(1) provides enhanced penalties for the violation of Sections 24-1(a)(7)(ii) and (7)(iii) when committed on the premises listed in the above alternatives numbered [1] through [13]. A violation of Section 24-1(a)(7)(ii) or (7)(iii) is increased from a Class 3 to a Class 2 felony. Select the alternative that corresponds to the location in the charge.

The Committee has created separate instructions for “aggravated” unlawful use of weapons because the State must prove the existence of the enhancing factors beyond a reasonable doubt. See People v. Martin, 266 Ill.App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist.1994).

Because the Committee believes that “simple” unlawful use of weapons instructions will often be given as a lesser included offense when “aggravated” unlawful use of weapons is charged, the Committee titled this offense “aggravated unlawful use of weapons” to distinguish it from “simple” unlawful use of weapons. If only “aggravated” unlawful use of weapons instructions are given to the jury, the term “aggravated” should be removed from the title as set out in the first sentence of this instruction and issues Instruction 18.04X.

When applicable, give Instruction 18.35F (defining the term “school”), and Instruction 18.35J (defining the term “courthouse”).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

18.03XX
Definition Of Aggravated Unlawful Use Of Weapons--Possessing A Machine Gun--Enhancing Factors

A person commits the offense of aggravated unlawful use of weapons when he knowingly [(sells) (manufactures) (purchases) (possesses) (carries)]

[A] a machine gun; while

[or]

[B] any combination of parts designed or intended for use in converting a weapon into a machine gun; while

[or]

[C] any combination of parts from which a machine gun could be assembled if such combination of parts was in the possession or under the control of a person; while

[1] possessing the [(machine gun) (machine gun parts)] in the compartment of a motor vehicle.

[or]

[2] possessing the [(machine gun) (machine gun parts)] on his person while [(it is) (they are)] loaded.

Committee Note

720 ILCS 5/24-1(b) (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, §24-1(b) (1991)), amended by P.A. 88-467, effective July 1, 1994.

Give Instruction 18.04XX.

Give Instruction 18.35D, defining the term “machine gun”.

When applicable, give Instruction 23.43B, defining the term “motor vehicle”.

Use this instruction when 24-1(a)(7)(i) (possessing a machine gun) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(3) (carrying tear gas or noxious liquid gas), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(6) (possessing a silencer), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), 24-1(a)(9) (concealing one's identity), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate 18.03 series instruction.

Section 24-1(a)(7)(i) defines the offenses of possession of a machine gun or parts of a machine gun which have been subdivided into paragraphs [A] through [C] for clarity purposes.

Select the alternative that corresponds to the offense in the charge.

Section 24-1(b) provides enhanced penalties for the violation of Section 24-1(a)(7)(i) when committed under the conditions listed in the above alternatives numbered [1] and [2]. A violation of Section 24-1(a)(7)(i) is increased from a Class 2 to a Class X felony. Select the alternative that corresponds to the condition in the charge.

The Committee has created separate instructions for "aggravated" unlawful use of weapons because the State must prove the existence of the enhancing factors beyond a reasonable doubt. See People v. Martin, 266 Ill.App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist.1994).

Because the Committee believes that "simple" unlawful use of weapons instructions will often be given as a lesser included offense when "aggravated" unlawful use of weapons is charged, the Committee titled this offense "aggravated unlawful use of weapons" to distinguish it from "simple" unlawful use of weapons. If only "aggravated" unlawful use of weapons instructions are given to the jury, the word "aggravated" should be removed from the title as set out in the first sentence of this instruction and issues Instruction 18.04XX.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

18.03Y
Definition Of Aggravated Unlawful Use Of Weapons--Concealing One's Identity--Enhancing Factor Based Upon Location

A person commits the offense of aggravated unlawful use of weapons when he knowingly [(carries) (possesses)] [(in a vehicle) (on or about his person)] a [(pistol) (revolver) (stun gun or taser) (firearm) (ballistic knife)] when he is hooded, robed, or masked in such a manner as to conceal his identity while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

Committee Note

720 ILCS 5/24-1(c)(1.5) (West, 1994), added by P.A. 88-680, effective January 1, 1995. P.A. 88-680 removed this factor from Section 24-1(c)(2) and placed it in new Section 24-1(c)(1.5).

Give Instruction 18.04Y.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Section 24-1(a)(9) (concealing one's identity) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(3) (carrying tear gas or noxious liquid gas), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(6) (possessing a silencer), 24-1(a)(7)(i) (possessing a machine gun), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate 18.03 series instruction.

Section 24-1(c)(1.5) provides enhanced penalties for the violation of Section 24-1(a)(9) when committed on the premises listed in the above alternatives numbered [1] through [13]. A violation of Section 24-1(a)(9) is increased from a Class 4 to a Class 3 felony. Select the alternative that corresponds to the location in the charge.

When applicable, give Instruction 18.35 (defining the term “ballistic knife”), Instruction 18.35E (defining the phrase “stun gun or taser”), Instruction 18.35F (defining the word “school”), Instruction 18.35G (defining the word “firearm”), and Instruction 18.35J (defining the word “courthouse”).

The Committee has created separate instructions for “aggravated” unlawful use of weapons because the State must prove the existence of the enhancing factors beyond a reasonable doubt. See People v. Martin, 266 Ill.App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist.1994).

Because the Committee believes that “simple” unlawful use of weapons instructions will often be given as a lesser included offense when “aggravated” unlawful use of weapons is charged, the Committee titled this offense “aggravated unlawful use of weapons” to distinguish it from “simple” unlawful use of weapons. If only “aggravated” unlawful use of weapons instructions are given to the jury, the word “aggravated” should be removed from the title as set out in the first sentence of this instruction and issues Instruction 18.04Y.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

18.03Z
Definition Of Aggravated Unlawful Use Of Weapons--Possessing A Weapon On A Public Way Or Land Within City Limits--Enhancing Factor Based Upon Location

A person commits the offense of aggravated unlawful use of weapons when he knowingly [(carries) (possesses)] on or about his person a [(pistol) (revolver) (stun gun or taser) (firearm)] while upon [(a public street) (a public alley) (public lands)] within the corporate limits of [(a city) (a village) (an incorporated town)] except when an invitee for the purpose of [(the display of such weapon) (lawful commerce in weapons)] or when on his land, in his abode, or in his fixed place of business; while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

Committee Note

720 ILCS 5/24-1(c)(1.5) (West, 1994), added by P.A. 88-680, effective January 1, 1995. P.A. 88-680 removed this factor from Section 24-1(c)(2) and placed it in new Section 24-1(c)(1.5).

Give Instruction 18.04Z.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Section 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(3) (carrying tear gas or noxious liquid gas), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(6) (possessing a silencer), 24-1(a)(7)(i) (possessing a machine gun), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), or 24-1(a)(9) (concealing one's identity) is the predicate offense charged, use the appropriate 18.03 series instruction.

Section 24-1(c)(1.5) provides enhanced penalties for the violation of Section 24-1(a)(10) when committed on the premises listed in the above alternatives numbered [1] through [13]. A

violation of Section 24-1(a)(10) is increased from a Class 4 to a Class 3 felony. Select the alternative that corresponds to the location in the charge.

The Committee has created separate instructions for "aggravated" unlawful use of weapons because the State must prove the existence of the enhancing factors beyond a reasonable doubt. See People v. Martin, 266 Ill.App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist.1994).

Because the Committee believes that "simple" unlawful use of weapons instructions will often be given as a lesser included offense when "aggravated" unlawful use of weapons is charged, the Committee titled this offense "aggravated unlawful use of weapons" to distinguish it from "simple" unlawful use of weapons. If only "aggravated" unlawful use of weapons instructions are given to the jury, the word "aggravated" should be removed from the title as set out in the first sentence of this instruction and issues Instruction 18.04Z.

When applicable, give Instruction 18.35E (defining the phrase "stun gun or taser"), Instruction 18.35F (defining the word "school"), Instruction 18.35G (defining the word "firearm"), and Instruction 18.35J (defining the word "courthouse").

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

18.04
Issues In Aggravated Unlawful Use Of Weapons--Possessing A Silencer--Enhancing Factor Based Upon Location

To sustain the charge of aggravated unlawful use of weapons, the State must prove the following propositions:

First Proposition: That the defendant knowingly possessed a device or attachment of any kind [(designed for) (used in) (intended for use in)] silencing the report of a firearm; and

Second Proposition: That the defendant did so while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/24-1(c)(1) (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, §24-1(c)(1) (1991)), amended by P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; P.A. 87-930, effective January 1, 1993; P.A. 88-156, effective July 28, 1993; and P.A. 88-467, effective July 1, 1994.

Give Instruction 18.03.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Section 24-1(a)(6) (possessing a silencer) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(3) (carrying tear gas or noxious liquid

gas), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(7)(i) (possessing a machine gun), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), 24-1(a)(9) (concealing one's identity), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate 18.04 series instruction.

The bracketed numbers [1] through [13] under the Second Proposition correspond to the alternatives of the same number in Instruction 18.03, the definitional instruction for this offense. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Exemptions to the aggravated version of offenses under Section 24-1(c)(1) are set forth in Section 24-1(c)(3). The defendant bears the burden of proving the exemptions by a preponderance of the evidence. See Section 24-2(h); see also People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the term "preponderance of the evidence." The exemptions set forth in Section 24-2 are not applicable to the non-aggravated versions of offenses under Section 24-1(a)(6).

See Committee Note to Instruction 18.03 concerning the need for definitional instructions and a discussion of penalty enhancement under Section 24-1(a)(6) based upon the location of the offense charged.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

18.04U
Issues In Aggravated Unlawful Use Of Weapons--Possessing A Bludgeon, Sling-Shot, Metal Knuckles, Throwing Star, Switchblade, Or Ballistic Knife--Enhancing Factor Based Upon Location

To sustain the charge of aggravated unlawful use of weapons, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(sold) (manufactured) (purchased) (possessed) (carried)] a [(bludgeon) (black-jack) (sling-shot) (sand-club) (sand-bag) (metal knuckles) (throwing star) (switchblade knife) (ballistic knife)]; and

Second Proposition: That the defendant did so while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/24-1(c)(2) (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, §24-1(c)(2) (1991)), amended by P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; P.A. 87-930, effective January 1, 1993; P.A. 88-156, effective July 28, 1993; and P.A. 88-467, effective July 1, 1994.

Give Instruction 18.03U.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal

knuckles, throwing star, switchblade, or ballistic knife) is the predicate offense charged. When Section 24-1(a)(3) (carrying tear gas or noxious liquid gas), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(6) (possessing a silencer), 24-1(a)(7)(i) (possessing a machine gun), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), 24-1(a)(9) (concealing one's identity), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate 18.04 series instruction.

The bracketed numbers [1] through [13] under the Second Proposition correspond to the alternatives of the same number in Instruction 18.03U, the definitional instruction for this offense. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Exemptions to the aggravated version of offenses under Section 24-1(c)(2) are set forth in Section 24-1(c)(3). Also, the exemptions set forth in Section 24-2(d) are applicable to all offenses under Section 24-1(a)(1). The defendant bears the burden of proving the exemptions by a preponderance of the evidence. See Section 24-2(h); see also People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the term "preponderance of the evidence."

See Committee Note to Instruction 18.03U concerning the need for definitional instructions and a discussion of penalty enhancement under Section 24-1(a)(1) based upon the location of the offense charged.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

18.04V
Issues In Aggravated Unlawful Use Of Weapons--Carrying Tear Gas Or Noxious Liquid Gas--Enhancing Factor Based Upon Location

To sustain the charge of aggravated unlawful use of weapons, the State must prove the following propositions:

First Proposition: That the defendant knowingly carried [(in a vehicle) (on or about his person)]

[A] a [(tear gas gun projector) (tear gas bomb)]; and

[or]

[B] an object containing a lethal noxious liquid gas or substance; and

[or]<

[C] an object containing a non-lethal noxious liquid gas or substance and that when the defendant did so, he was less than 18 years of age; and

[or]

[D] an object containing a non-lethal noxious liquid gas or substance which was not designed solely for personal defense; and

Second Proposition: That the defendant did so while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/24-1(c)(2) (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, §24-1(c)(2) (1991)), amended by P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; P.A. 87-930, effective January 1, 1993; P.A. 88-156, effective July 28, 1993; and P.A. 88-467, effective July 1, 1994.

Give Instruction 18.03V.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Section 24-1(a)(3) (carrying tear gas or noxious liquid gas) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(6) (possessing a silencer), 24-1(a)(7)(i) (possessing a machine gun), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), 24-1(a)(9) (concealing one's identity), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate 18.04 series instruction.

The first part of Instruction 18.03U, which defines the offenses under Section 24-1(a)(3), has been subdivided into paragraphs [A] through [D] under the First Proposition for clarity purposes. Select the paragraphs that correspond to the bracketed alternatives selected in the first part of Instruction 18.03U.

The bracketed numbers [1] through [13] under the Second Proposition correspond to the alternatives of the same number in Instruction 18.03U. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Exemptions to the aggravated version of offenses under Section 24-1(c)(2) are set forth in Section 24-1(c)(3). Also, the exemptions set forth in Section 24-2(a) are applicable to all offenses under Section 24-1(a)(3). The defendant bears the burden of proving the exemptions by a preponderance of the evidence. See Section 24-2(h); see also People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the term "preponderance of the evidence."

See Committee Note to Instruction 18.03V concerning the need for definitional instructions and a discussion of penalty enhancement under Section 24-1(a)(3) based upon the location of the offense charged.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

18.04W
Issues In Aggravated Unlawful Use Of Weapons--Possessing A Concealed Weapon--Enhancing Factor Based Upon Location

To sustain the charge of aggravated unlawful use of weapons, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(carried) (possessed)] a [(pistol) (revolver) (stun gun or taser) (firearm)] [(in a vehicle) (concealed on or about his person)]; and

Second Proposition: That when the defendant did so, he was not on his land, in his abode, or in his fixed place of business; and

Third Proposition: That the defendant did so while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/24-1(c)(1.5) (West, 1994), added by P.A. 88-680, effective January 1, 1995. P.A. 88-680 removed this factor from Section 24-1(c)(2) and placed it in new Section 24-1(c)(1.5).

Give Instruction 18.03W.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Section 24-1(a)(4) (possessing a concealed weapon) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(3) (carrying tear gas or noxious liquid gas), 24-1(a)(6) (possessing a silencer), 24-1(a)(7)(i) (possessing a machine gun), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), 24-1(a)(9) (concealing one's

identity), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate 18.04 series instruction.

The bracketed numbers [1] through [13] under the Third Proposition correspond to the alternatives of the same number in Instruction 18.03W, the definitional instruction for this offense. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Exemptions to the aggravated version of offenses under Section 24-1(c)(1.5) are set forth in Section 24-1(c)(3). Also, the exemptions set forth in Sections 24-2(a), 2(b), and 2(f) are applicable to all offenses under Section 24-1(a)(4). The defendant bears the burden of proving the exemptions by a preponderance of the evidence. See Section 24-2(h); see also People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the phrase "preponderance of the evidence."

See Committee Note to Instruction 18.03W concerning the need for definitional instructions and a discussion of penalty enhancement under Section 24-1(a)(4) based upon the location of the offense charged.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

18.04X
Issues In Aggravated Unlawful Use Of Weapons--Possessing A Rifle, Shotgun, Or Bomb--Enhancing Factor Based Upon Location

To sustain the charge of aggravated unlawful use of weapons, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(sold) (manufactured) (purchased) (possessed) (carried)]

[A] a rifle having one or more barrels less than 16 inches in length; and

[or]

[B] a shotgun having one or more barrels less than 18 inches in length; and

[or]

[C] a weapon made from a rifle or shotgun whether by alteration, modification, or otherwise, if such weapon as modified had an overall length of less than 26 inches; and

[or]

[D] a [(bomb) (bomb-shell) (grenade)] [or a bottle or other container containing an explosive substance over one-quarter ounce for like purposes]; and

Second Proposition: That the defendant did so while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/24-1(c)(1) (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, §24-1(c)(1) (1991)), amended by P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; P.A. 87-930, effective January 1, 1993; P.A. 88-156, effective July 28, 1993; and P.A. 88-467, effective July 1, 1994.

Give Instruction 18.03X.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Sections 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(3) (carrying tear gas or noxious liquid gas), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(6) (possessing a silencer), 24-1(a)(7)(i) (possessing a machine gun), 24-1(a)(9) (concealing one's identity), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate 18.04 series instruction.

The bracketed letters [A] through [D] under the First Proposition correspond to the alternatives of the same letter in Instruction 18.03X, the definitional instruction for this offense, and the bracketed numbers [1] through [13] under the Second Proposition correspond to the alternatives of the same number in Instruction 18.03X. Select the alternatives that correspond to the alternatives selected from the definitional instruction.

Exemptions to the aggravated version of offenses under Section 24-1(c)(1) are set forth in Section 24-1(c)(3). Also, the exemptions set forth in Section 24-2(c) are applicable to all offenses under Sections 24-1(a)(7)(ii) and (7)(iii). The defendant bears the burden of proving the exemptions by a preponderance of the evidence. See Section 24-2(h); see also People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the term “preponderance of the evidence.”

See Committee Note to Instruction 18.03X concerning the need for definitional instructions and a discussion of penalty enhancement under Sections 24-1(a)(7)(ii) and (7)(iii) based upon the location of the offense charged.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

18.04XX
Issues In Aggravated Unlawful Use Of Weapons--Possessing A Machine Gun--Enhancing Factors

To sustain the charge of aggravated unlawful use of weapons, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(sold) (manufactured) (purchased) (possessed) (carried)]

[A] a machine gun; and

[or]

[B] any combination of parts designed or intended for use in converting a weapon into a machine gun; and

[or]

[C] any combination of parts from which a machine gun could be assembled if such combination of parts was in the possession or under the control of a person; and

Second Proposition: That the defendant did so while

[1] possessing the [(machine gun) (machine gun parts)] in the compartment of a motor vehicle.

[or]

[2] possessing the [(machine gun) (machine gun parts)] on his person while [(it is) (they are)] loaded.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/24-1(b) (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, §24-1(b) (1991)), amended by P.A. 88-467, effective July 1, 1994.

Give Instruction 18.03XX.

Use this instruction when Section 24-1(a)(7)(i) (possessing a machine gun) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(3) (carrying tear gas or noxious liquid gas), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(6) (possessing a silencer), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), 24-1(a)(9) (concealing one's identity), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate 18.04 series instruction.

The bracketed letters [A] through [C] under the First Proposition correspond to the alternatives of the same letter in Instruction 18.03XX, the definitional instruction for this offense, and the bracketed numbers [1] and [2] under the Second Proposition correspond to the alternatives of the same number in Instruction 18.03XX. Select the alternatives that correspond to the alternatives selected from the definitional instruction.

The exemptions set forth in Section 24-2(c) are applicable to the offenses under Section 24-1(a)(7)(i). The defendant bears the burden of proving the exemptions by a preponderance of the evidence. See Section 24-2(h); see also People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the term "preponderance of the evidence."

See Committee Note to Instruction 18.03XX concerning the need for definitional instructions and a discussion of penalty enhancement under Section 24-1(a)(7)(i) based upon the enhancing factors present when the charged offense was committed.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

18.04Y
Issues In Aggravated Unlawful Use Of Weapons--Concealing One's Identity--Enhancing Factor Based Upon Location

To sustain the charge of aggravated unlawful use of weapons, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(carried) (possessed in a vehicle) (possessed on or about his person)] a [(pistol) (revolver) (stun gun or taser) (firearm) (ballistic knife)]; and

Second Proposition: That the defendant did so while hooded, robed, or masked in such a manner as to conceal his identity; and

Third Proposition: That the defendant did so while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/24-1(c)(1.5) (West, 1994), added by P.A. 88-680, effective January 1, 1995. P.A. 88-680 removed this factor from Section 24-1(c)(2) and placed it in new Section 24-1(c)(1.5).

Give Instruction 18.03Y.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Section 24-1(a)(9) (concealing one's identity) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(3) (carrying tear gas or noxious liquid gas), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(6) (possessing a silencer), 24-

1(a)(7)(i) (possessing a machine gun), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate 18.04 series instruction.

The bracketed numbers [1] through [13] under the Third Proposition correspond to the alternatives of the same number in Instruction 18.03Y, the definitional instruction for this offense. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Exemptions to the aggravated version of offenses under Section 24-1(c)(1.5) are set forth in Section 24-1(c)(3). The defendant bears the burden of proving the exemptions by a preponderance of the evidence. See Section 24-2(h); see also People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the phrase "preponderance of the evidence." The exemptions set forth in Section 24-2 are not applicable to the non-aggravated versions of offenses under Section 24-1(a)(9).

See Committee Note to Instruction 18.03Y concerning the need for definitional instructions and a discussion of penalty enhancement under Section 24-1(a)(9) based upon the location of the offense charged.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

18.04Z
Issues In Aggravated Unlawful Use Of Weapons--Possessing A Weapon On A Public Way Or Land Within City Limits--Enhancing Factor Based Upon Location

To sustain the charge of aggravated unlawful use of weapons, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(carried) (possessed)] on or about his person a [(pistol) (revolver) (stun gun or taser) (firearm)]; and

Second Proposition: That when the defendant did so, he was upon [(a public street) (a public alley) (public lands)] within the corporate limits of [(a city) (a village) (an incorporated town)]; and

Third Proposition: That when the defendant did so, he was not an invitee for the purpose of [(the display of such weapon) (lawful commerce in weapons)]; and

Fourth Proposition: That when the defendant did so, he was not on his land, in his abode, or in his fixed place of business; and

Fifth Proposition: That the defendant did so while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/24-1(c)(1.5) (West, 1994), added by P.A. 88-680, effective January 1, 1995. P.A. 88-680 removed this factor from Section 24-1(c)(2) and placed it in new Section 24-1(c)(1.5).

Give Instruction 18.03Z.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Section 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(3) (carrying tear gas or noxious liquid gas), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(6) (possessing a silencer), 24-1(a)(7)(i) (possessing a machine gun), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), or 24-1(a)(9) (concealing one's identity) is the predicate offense charged, use the appropriate 18.03 series instruction.

The bracketed numbers [1] through [13] under the Fifth Proposition correspond to the alternatives of the same number in Instruction 18.03Z, the definitional instruction for this offense. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Exemptions to the aggravated version of offenses under Section 24-1(c)(1.5) are set forth in Section 24-1(c)(3). Also, the exemptions set forth in Sections 24-2(a), 2(b), and 2(f) are applicable to all offenses under Section 24-1(a)(10). The defendant bears the burden of proving the exemptions by a preponderance of the evidence. See Section 24-2(h); see also People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the phrase “preponderance of the evidence.”

See Committee Note to Instruction 18.03Z concerning the need for definitional instructions and a discussion of penalty enhancement under Section 24-1(a)(10) based upon the location of the offense charged.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

18.05
Definition Of Subsequent Offense Of Unlawful Use Of Weapons

A person commits the offense of subsequent offense of unlawful use of weapons when he, having been previously convicted of the offense of unlawful use of weapons, knowingly [(carries) (possesses)] a [(pistol) (revolver) (firearm) (stun gun or taser)] [(in a vehicle) (concealed on or about his person)] except when on his land, in his abode, or in his fixed place of business.

Committee Note

720 ILCS 5/24-1(a)(4) and (b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §24-1(a)(4) and (b) (1991)).

Give Instruction 18.06.

When applicable, give Instruction 18.35E, defining the phrase "stun gun or taser."

Section 24-1(b) provides that a second or subsequent violation of Section 24-1(a)(4) increases the classification of the offense from a Class A misdemeanor to a Class 4 felony. Section 24-1(a)(4) prohibits carrying certain weapons in a vehicle or concealed on or about the person. When the prior conviction is for a violation of any subsection of Section 24-1(a) other than Section 24-1(a)(4), the enhanced penalty provision of Section 24-1(b) is not applicable and this instruction cannot be given.

Generally, when the degree or class of an offense depends on a prior conviction, the State must prove the existence of that prior conviction as an element of the offense. See People v. Hicks, 119 Ill.2d 29, 518 N.E.2d 148, 115 Ill.Dec. 623 (1987); People v. Palmer, 104 Ill.2d 340, 472 N.E.2d 795, 84 Ill.Dec. 658 (1984); People v. Mays, 80 Ill.App.3d 340, 399 N.E.2d 718, 35 Ill.Dec. 652 (3d Dist.1980). However, Chapter 38, Section 111-3(c), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction when used to increase the classification of an offense is not an element of the crime and may not be disclosed to the jury unless otherwise permitted by the issues. As a result, after the effective date of P.A. 86-964, prior convictions will not be presented to the jury and this instruction should not be used. See People v. Kennard, 204 Ill.App.3d 641, 561 N.E.2d 1188, 149 Ill.Dec. 492 (1st Dist.1990). For offenses occurring after June 30, 1990, use Instruction 18.01.

The exemptions set forth in Section 24-2 applicable to the offense created in Section 24-1(a)(4) are likewise applicable to subsequent offense unlawful use of weapons. The defendant bears the burden of proving the exemption by a preponderance of the evidence. See Section 24-2(h); see also People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the phrase "preponderance of the evidence."

Use applicable bracketed material.

18.06
Issues In Subsequent Offense Of Unlawful Use Of Weapons

To sustain the charge of subsequent offense of unlawful use of weapons, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(carried) (possessed)] a [(pistol) (revolver) (firearm) (stun gun or taser)] [(in a vehicle) (concealed on or about his person)]; and

Second Proposition: That when the defendant did so, he was not on his own land, in his abode, or in his fixed place of business; and

Third Proposition: That the defendant has been previously convicted of unlawful use of weapons.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty. [However, if you find the defendant has proved by a preponderance of the evidence that ____, you should find the defendant not guilty.]

Committee Note

720 ILCS 5/24-1(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §24-1(b) (1991)).

Give Instruction 18.05.

Section 24-1(b) provides that a second or subsequent violation of Section 24-1(a)(4) increases the classification of the offense from a Class A misdemeanor to a Class 4 felony. Section 24-1(a)(4) prohibits carrying certain weapons in a vehicle or concealed on or about the person. The first conviction must precede the *conduct* constituting the subsequent offense. See People v. Phillips, 56 Ill.App.3d 689, 371 N.E.2d 1214, 14 Ill.Dec. 161 (5th Dist.1978); People v. Miller, 115 Ill.App.3d 592, 450 N.E.2d 767, 71 Ill.Dec. 79 (2d Dist.1983). When the prior conviction is for a violation of any subsection of Section 24-1, other than Subsection 24-1(a)(4), the enhanced penalty provision of Section 24-1(b) is not applicable and this instruction cannot be given.

Generally, when the degree or class of an offense depends on a prior conviction, the State must prove the existence of that prior conviction as an element of the offense. See People v. Hicks, 119 Ill.2d 29, 518 N.E.2d 148, 115 Ill.Dec. 623 (1987); People v. Palmer, 104 Ill.2d 340, 472 N.E.2d 795, 84 Ill.Dec. 658 (1984); People v. Mays, 80 Ill.App.3d 340, 399 N.E.2d 718, 35 Ill.Dec. 652 (3d Dist.1980). However, Chapter 725, Section 111-3(c), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction when used to increase the classification of an offense is not an element of the crime and may not be disclosed to the jury unless otherwise permitted by the issues. As a result, after the effective date of P.A. 86-964, prior convictions will not be presented to the jury and this instruction should not be used. See People v. Kennard, 204 Ill.App.3d 641, 561 N.E.2d 1188, 149 Ill.Dec. 492 (1st Dist.1990). For offenses occurring after June 30, 1990, use Instruction 18.01.

Give the bracketed portion of the last paragraph when evidence of an exemption is presented. Insert in the blank the applicable exemption. See Committee Note to Instruction 18.05.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

18.07
Definition Of Unlawful Possession Of A Weapon By A Felon

A person commits the offense of unlawful possession of a weapon by a felon when he, having been previously convicted of the offense of ____, knowingly possesses [(a firearm) (firearm ammunition) (a ____)].

Committee Note

720 ILCS 5/24-1.1(a) (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §24-1.1(a) (1991)).

Give Instruction 18.08.

Give Instruction 18.07A, defining the word "firearm," if applicable.

Section 24-1.1(a) exempts certain persons from criminal liability. The defendant bears the burden of proving the exemption by a preponderance of the evidence. See Section 24-2(h); see also People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the term "preponderance of the evidence."

Insert in the first blank the prior felony conviction.

In People v. Gonzalez, 151 Ill.2d 79, 87, 600 N.E.2d 1189, 1192-93, 175 Ill.Dec. 731, 734-35 (1992), the supreme court held that location is not a relevant consideration for this offense. Accordingly, the bracketed alternatives referring to location have been deleted. See also People v. Hester, 271 Ill.App.3d 954, 956, 649 N.E.2d 1351, 1354, 208 Ill.Dec. 690, 694 (4th Dist.1995).

If the charge involves a weapon prohibited by Section 24-1 other than a firearm or firearms ammunition, insert in the second blank the name or description of the weapon. If the weapon is prohibited by Section 24-1(a)(2), the State must prove, in addition to possession, an intent to use the weapon unlawfully against another. People v. Crawford, 145 Ill.App.3d 318, 495 N.E.2d 1025, 99 Ill.Dec. 290 (1st Dist.1986). As a result, the phrase "with intent to use the ____ unlawfully against another" must be added to the end of the instruction when a Section 24-1(a)(2) weapon is charged.

Use applicable bracketed material.

18.07A
Definition Of Firearm--Unlawful Possession Of A Weapon By A Felon

The word "firearm" means any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas, or escape of gas. [The term does not include ____.]

[Whether a firearm is operable does not affect its status as a weapon.]

Committee Note

430 ILCS 65/1.1 (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §83-1.1 (1991)).

This instruction is for use only in conjunction with offenses charged under 720 ILCS 5/24-1.1 (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §24-1.1 (1991)). Do not use this instruction with offenses arising under 720 ILCS 5/24-1 (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §24-1 (1991)). Instead, see Instruction 18.35G.

Use the bracketed material in the first paragraph when appropriate. Insert in the blank the name or description of any gun or device excluded from this definition of the word "firearm" by subsection (1), (2), (3), or (4) of 430 ILCS 65/1.1 (West, 1994).

Use the bracketed second paragraph when a firearm's operability is at issue. See People v. White, 253 Ill.App.3d 1097, 1098, 627 N.E.2d 383, 384, 194 Ill.Dec. 267, 268 (4th Dist.1993), and People v. Hester, 271 Ill.App.3d 954, 957, 649 N.E.2d 1351, 1355, 208 Ill.Dec. 690, 694 (4th Dist.1995).

18.08
Issues In Unlawful Possession Of A Weapon By A Felon

To sustain the charge of unlawful possession of a weapon by a felon, the State must prove the following propositions:

First Proposition: That the defendant knowingly possessed [(a firearm) (firearm ammunition) (____)]; and

Second Proposition: That the defendant had previously been convicted of the offense of ____.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty. [However, if you find the defendant has proved by a preponderance of the evidence that the Director of the Department of State Police has granted the defendant a Firearm Owner's Identification Card, you should find the defendant not guilty.]

Committee Note

720 ILCS 5/24-1.1(a) (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §24-1.1(a) (1991)).

Give Instruction 18.07.

Give the bracketed portion of the last paragraph when evidence of an exemption is presented. See Committee Note to Instruction 18.07.

If the charge involves a weapon prohibited by Section 24-1, other than a firearm or firearm ammunition, insert in the blank in the First Proposition the name or description of the weapon. If the weapon is prohibited by Section 24-1(a)(2), the following proposition must be added to reflect the requirement that the defendant possessed the weapon with an intent to use it unlawfully against another:

> *Second Proposition:* That the defendant did so with intent to use the ____ unlawfully against another person; and

See People v. Crawford, 145 Ill.App.3d 318, 495 N.E.2d 1025, 99 Ill.Dec. 290 (1st Dist.1986). The Committee suggests that this proposition be included as the Second Proposition and that the Second Proposition in the original instruction be renumbered Third Proposition.

Insert in the blank in the second proposition the prior felony conviction.

In People v. Gonzalez, 151 Ill.2d 79, 87, 600 N.E.2d 1189, 1192-93, 175 Ill.Dec. 731, 734-35 (1992), the supreme court held that location is not a relevant consideration for this offense. Accordingly, the previous second proposition has been deleted. See also People v. Hester, 271 Ill.App.3d 954, 956, 649 N.E.2d 1351, 1354, 208 Ill.Dec. 690, 694 (4th Dist.1995).

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he

is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

18.09
Definition Of Unlawful Possession Of A Weapon By A Person In The Custody Of The Department Of Corrections Facilities

A person commits the offense of possession of a weapon by a person in the custody of a Department of Corrections facility when he knowingly possesses [(a firearm) (firearm ammunition) (a ____)] while confined in a penal institution which is a facility of the Illinois Department of Corrections, regardless of the intent with which he possesses the [(firearm) (firearm ammunition) (____)].

Committee Note

720 ILCS 5/24-1.1(b) (West, 1993) (formerly Ill.Rev.Stat. ch. 38, §24-1.1(b) (1991)), amended by P.A. 88-300, effective January 1, 1994.

Give Instruction 18.10.

Do not use Instruction 4.09, defining the term "penal institution," because that definition, based upon Section 2-14 (720 ILCS 5/2-14 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §2-14 (1991))), includes facilities other than those of the Illinois Department of Corrections.

Section 24-1.1(c) provides that it shall be an affirmative defense that possession of the firearm, firearm ammunition, or weapon was specifically authorized by a rule, regulation, directive, or order of the Illinois Department of Corrections. When some evidence is presented to raise this defense, the following instruction should be given:

> "It is a defense to the charge of unlawful possession of a weapon by a person in the custody of a Department of Corrections facility that possession of the weapon was specifically authorized by a rule, regulation, directive, or order of the Illinois Department of Corrections."

The defense of necessity is not available for this offense. See Section 24-1.1(d).

If the charge involves a weapon enumerated in Section 24-1, other than a firearm or firearm ammunition, insert in the blank the name or description of the weapon.

Use applicable bracketed material.

18.10
Issues In Unlawful Possession Of A Weapon By A Person In The Custody Of The Department Of Corrections Facilities

To sustain the charge of possession of a weapon by a person in the custody of a Department of Corrections facility, the State must prove the following propositions:

First Proposition: That the defendant knowingly possessed [(a firearm) (firearm ammunition) (a ____)], regardless of the intent with which he possessed it; and

Second Proposition: That when the defendant did so, he was confined in a penal institution; and

Third Proposition: That the penal institution in which the defendant was confined was a facility of the Illinois Department of Corrections.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/24-1.1(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §24-1.1(b) (1991)).

Give Instruction 18.09.

When the affirmative defense created in Section 24-1.1(c) is raised by the evidence, give the following instruction as the final proposition:

> "*Fourth Proposition:* That the defendant's possession of the [(firearm) (firearm ammunition) (____)] was not specifically authorized by a rule, regulation, directive, or order of the Illinois Department of Corrections)]."

The burden is on the State to overcome the affirmative defense beyond a reasonable doubt. See Chapter 720, Section 3-2. See also Committee Note to Instruction 18.09.

If a weapon enumerated in Section 24-1 forms the basis of the charge, insert in the blanks the name or description of the weapon.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

18.11

Definition Of Aggravated Discharge Of A Firearm—Discharge At A Person, Vehicle Or Building

A person commits the offense of aggravated discharge of a firearm when he [(knowingly) (intentionally)] discharges a firearm

[1] at or into a building he [knows) (reasonably should know)] to be occupied and from a place or position outside that building.

[or]

[2] in the direction of [(another person) (a vehicle he [(knows) (reasonably should know)] to be occupied by a person)].

Committee Note

Instruction and Committee Note Approved December 2, 2014

720 ILCS 5/24-1.2(a)(1) and (a)(2) (West 2013) as amended by P.A. 87-921, effective January 1, 1993 inserting "or intentionally" after "knowingly" at the end of the introductory language; and as amended by P.A. 91-12, effective January 1, 2000 inserting "or reasonably should know" in subdivisions (a)(1) and (a)(2) and adding "by a person" at the end of subdivision (2).

Give Instruction 18.12.

When applicable, give Instruction 18.35G, defining "firearm".

When applicable, give Instruction 18.35O, defining "school".

When applicable, give Instruction 18.35P, defining "school related activity".

This Instruction and Instruction 18.12 reflect the Class 1 felony variations of aggravated discharge of a firearm. For the Class X variations, see Instructions 18.13 and 18.14.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

18.12

Issues In Aggravated Discharge Of A Firearm—Discharge At A Person, Vehicle, Or Building

To sustain the charge of aggravated discharge of a firearm, the State must prove the following propositions:

First Proposition: That the defendant [(knowingly) (intentionally)] discharged a firearm;

and

[1] *Second Proposition*: That the defendant discharged the firearm at or into a building and from a place outside the building; and

Third Proposition: That when the defendant did so, he [(knew) (reasonably should have known)] the building was occupied.

[or]

[2] *Second Proposition*: That the defendant discharged the firearm in the direction of [(another person) (a vehicle he [(knew) (reasonably should have known)] was occupied)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved December 2, 2014

720 ILCS 5/24-1.2(a)(1) and (a)(2) (West 2013) as amended by P.A. 87-921, effective January 1, 1993 inserting "or intentionally" after "knowingly" at the end of the introductory language; and as amended by P.A. 91-12, effective January 1, 2000 inserting "or reasonably should know" in subdivisions (a)(1) and (a)(2) and adding "by a person" at the end of subdivision (2).

Give Instruction 18.11.

When applicable, give Instruction 18.35G, defining "firearm".

When applicable, give Instruction 18.35O, defining "school".

When applicable, give Instruction 18.35P, defining "school related activity".

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

18.13
Definition Of Aggravated Discharge Of A Firearm--Enhancing Factor Based On Status Of Victim

A person commits the offense of aggravated discharge of a firearm when he knowingly discharges a firearm in the direction of

[1] a [(person he knows to be) (vehicle he knows to be occupied by)] a [(peace officer) (person summoned or directed by a peace officer) (correctional institution employee) (fireman)]

[a] while the [(officer) (employee) (fireman)] is engaged in the execution of his official duties.

[or]

[b] to prevent the [(officer) (employee) (fireman)] from performing his official duties.

[or]

[c] in retaliation for the [(officer) (employee) (fireman)] performing his official duties.

[or]

[2] a [(person he knows to be) (vehicle he knows to be occupied by)] [(an emergency medical technician) (an ambulance driver) (a medical assistant) (a first aid attendant)] employed by a municipality [or other governmental unit]

[a] while the [(emergency medical technician) (ambulance driver) (medical assistant) (first aid attendant)] is engaged in the execution of any of his official duties.

[or]

[b] to prevent the [(emergency medical technician) (ambulance driver) (medical assistant) (first aid attendant)] from performing his official duties.

[or]

[c] in retaliation for the [(emergency medical technician) (ambulance driver) (medical assistant) (first aid attendant)] performing his official duties.

Committee Note

720 ILCS 5/24-1.2(a)(3), (a)(4), (a)(5), and (a)(6) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §§24-1.2(a)(3), (a)(4), (a)(5), and (a)(6) (1991)), added by P.A. 86-1393, effective September 10, 1990; and amended by P.A. 87-921, effective January 1, 1993; and P.A. 88-433, effective January 1, 1994.

Give Instruction 18.14.

Regarding offenses committed upon emergency medical technicians (EMT) (paragraph [2]), if the definition of EMT or the type of EMT becomes an issue, see Sections 4.12, 4.13, or 4.15 of the Emergency Medical Services System Act (210 ILCS 50/4.12, 4.13, or 4.15 (West, 1992)) which define EMT-ambulance, EMT-paramedic, and EMT-intermediate. See 720 ILCS 5/2-6.5 (West Supp.1993).

This instruction and Instruction 18.14 reflect the Class X felony variations of aggravated discharge of a firearm. For the Class 1 variations, see Instructions 18.11 and 18.12.

See Instruction 18.35G, defining the term “firearm”.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

18.14
Issues In Aggravated Discharge Of A Firearm--Enhancing Factor Based On Status Of Victim

To sustain the charge of aggravated discharge of a firearm, the State must prove the following propositions:

First Proposition: That the defendant knowingly discharged a firearm; and

Second Proposition: That the defendant discharged the firearm in the direction of [(____) (a vehicle)]; and

[1] *Third Proposition:* That the defendant knew that [(____ was) (the vehicle was occupied by)] [(a peace officer) (a person summoned or directed by a peace officer) (a correctional institution employee) (a fireman)]; and

[or]

[2] *Third Proposition:* That the defendant knew that [(____ was) (the vehicle was occupied by)] [(an emergency medical technician) (an ambulance driver) (a medical assistant) (a first aid attendant)]; and

Fourth Proposition: That the defendant did so

[a] while [(____) (the peace officer) (the correctional officer) (the fireman) (the emergency medical technician) (the ambulance driver) (the medical assistant) (the first aid attendant)] was engaged in the execution of his official duties.

[or]

[b] to prevent [(____) (the peace officer) (the correctional officer) (the fireman) (the emergency medical technician) (the ambulance driver) (the medical assistant) (the first aid attendant)] from performing his official duties.

[or]

[c] in retaliation for [(____) (the peace officer) (the correctional officer) (the fireman) (the emergency medical technician) (the ambulance driver) (the medical assistant) (the first aid attendant)] performing his official duties.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/24-1.2(a)(3), (a)(4), (a)(5), and (a)(6) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §§24-1.2(a)(3), (a)(4), (a)(5), and (a)(6) (1991)), added by P.A. 86-1393, effective September

10, 1990; and amended by P.A. 87-921, effective January 1, 1993; and P.A. 88-433, effective January 1, 1994.

Give Instruction 18.13.

Insert in the blanks the name of the intended victim.

Use applicable paragraphs and bracketed material. The bracketed numbers and letters in this instruction correspond with the bracketed numbers and letters in Instruction 18.13.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

18.15
Definition Of Unlawful Sale Or Delivery Of Firearms

A person commits the offense of unlawful sale or delivery of firearms when he knowingly

[1] [(sells) (gives)] a firearm of a size which may be concealed upon the person to any person under 18 years of age.

[or]

[2] [(sells) (gives)] a firearm to a person under 21 years of age who has been [(convicted of a misdemeanor other than a traffic offense) (adjudged delinquent)].

[or]

[3] [(sells) (gives)] a firearm to any person who is a narcotic addict.

[or]

[4] [(sells) (gives)] a firearm to any person who has been convicted of a felony.

[or]

[5] [(sells) (gives)] a firearm to any person who has been a patient in a mental [(hospital) (institution)] within the past 5 years.

[or]

[6] [(sells) (gives)] a firearm to any person who is intellectually disabled.

[or]

[7] delivers a firearm of a size which may be concealed upon the person, incidental to a sale, without withholding delivery of such firearm for at least 72 hours after application for its purchase has been made.

[or]

[8] delivers a [(rifle) (shotgun) (other long gun) (stun gun) (taser)], incidental to a sale, without withholding delivery of such [(rifle) (shotgun) (other long gun) (stun gun) (taser)] for at least 24 hours after application for its purchase has been made.

[or]

[9] while holding a license under the Federal Gun Control Act of 1968 as [(a) (an)] [(dealer) (importer) (manufacturer) (pawnbroker)] [(manufactures) (sells to any unlicensed person) (delivers to any unlicensed person)] a handgun having a [(barrel) (slide) (frame) (receiver)] which is a die casting of zinc alloy or other nonhomogeneous metal which will melt or deform at a temperature of less than 800 degrees Fahrenheit.

[or]

[10] [(sells) (gives)] a firearm to a person under 18 years of age who does not possess a valid Firearms Owner's Identification Card.

[or]

[11] [(sells) (gives)] a firearm while engaged in the business of selling firearms at wholesale or retail without being licensed as a federal firearms dealer under the federal Gun Control Act of 1968.

[or]

[12] [(sells) (gives)] ownership of a firearm to a person who does not display to the [(seller) (transferor)] of the firearm a currently valid Firearms Owner's Identification Card that has previously been issued in the transferee's name by the Department of State Police.

[or]

[13] delivers the firearm, not being entitled to the possession of the firearm, knowing it to have been stolen or converted.

Committee Note

Instruction and Committee Note Approved July 18, 2014

720 ILCS 5/24-3 (West 2013), amended by P.A. 88-680, effective January 1, 1995, amended by P.A. 93-162, effective July 10, 2003, adding paragraph [11], amended by P.A. 93-906, effective August 11, 2004, adding paragraph [12], amended by 94-6, effective June 3, 2005, adding "stun gun" and "taser" to paragraph [8], amended by P.A. 97-347, effective January 1, 2012, adding paragraph [13], amended by P.A. 97-1167, effective June 1, 2013, substituting "institution" for "hospital" in paragraph [5] and defining "mental institution" and "patient in a mental institution".

Give Instruction 18.16.

When applicable, give Instruction 18.35G, defining "firearm".

When applicable, give Instruction 18.35I, defining "handgun".

When applicable, give Instruction 18.35K, defining "mental institution".

When applicable, give Instruction 18.35L, defining "patient in a mental institution".

When applicable, give Instruction 18.35M, defining "person engaged in the business".

When applicable, give Instruction 18.35N, defining "with the principal objective of livelihood and profit".

Use the word "hospital" in paragraph [5] for offenses committed before June 1, 2013. Use the word "institution" in paragraph [5] for offenses committed on or after June 1, 2013.

When an enhanced version of the offenses of unlawful sale of firearms as set forth in Section 24-3(a) and 3(i) is charged (*see* 720 ILCS 5/24-3(k) (West 2013)), give Instructions 18.15X and 18.16X.

The bracketed phrase "other long gun" in paragraph [8] should be used only when a question is raised as to the precise nature of the weapon involved and then only in conjunction with the word "rifle" or "shotgun".

Sections 24-3(g) and (j) exempt certain persons and transactions from criminal liability. The defendant bears the burden of proving the exemption by a preponderance of the evidence. *See* 720 ILCS 5/24-2(h) (West 2013); *see also People v. Smith*, 71 Ill.2d 95, 374 N.E.2d 472 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining "preponderance of the evidence".

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

18.15X
Definition Of Aggravated Unlawful Sale Of Firearms--Enhancing Factor Based Upon Location

A person commits the offense of aggravated unlawful sale of firearms when he knowingly [(sells) (gives)] a firearm to any person who is under 18 years of age

[A] and the firearm is of a size which may be concealed upon the person; while

[or]

[B] who does not possess a valid Firearm Owner's Identification Card; while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse**.**

Committee Note

720 ILCS 5/24-3(k) (West, 1994), amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 18.16X.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Sections 24-3(a) and 3(i) define different ways of committing the offenses of selling or giving a firearm to a person under 18 years of age and are presented in separate paragraphs [A] and [B] for clarity purposes. Select the alternative that corresponds to the offense in the charge.

Section 24-3(k) provides enhanced penalties for the violation of Sections 24-3(a) and 3(i) when committed on the premises listed in the above alternatives numbered [1] through [13]. A violation of Section 24-3(a) or 3(i) is increased from a Class 3 to a Class 2 felony. Select the alternative that corresponds to the location in the charge.

The Committee has created separate instructions for “aggravated” unlawful sale of

firearms because the State must prove the existence of the enhancing factors beyond a reasonable doubt. See People v. Martin, 266 Ill.App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist.1994).

Because the Committee believes that "simple" unlawful sale of firearms instructions will often be given as a lesser included offense when "aggravated" unlawful sale of firearms is charged, the Committee titled this offense "aggravated unlawful sale of firearms" to distinguish it from "simple" unlawful sale of firearms. If only "aggravated" unlawful sale of firearms instructions are given to the jury, the term "aggravated" should be removed from the title as set out in the first sentence of this instruction and issues Instruction 18.16X.

When applicable, give Instruction 18.35F (defining the word "school"), Instruction 18.35J (defining the word "courthouse"), and Instruction 18.35G (defining the word "firearm").

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

18.16
Issues In Unlawful Sale Or Delivery Of Firearms

To sustain the charge of unlawful sale or delivery of firearms, the State must prove the following propositions:

[1] *First Proposition*: That the defendant knowingly [(sold) (gave)] a firearm to another; and

Second Proposition: That the firearm was of a size which may be concealed upon a person; and

Third Proposition: That the person to whom the defendant [(sold) (gave)] the firearm was under 18 years of age; and

Fourth Proposition: That the defendant knew that the person to whom he [(sold) (gave)] the firearm was under 18 years of age.

[or]

[2] *First Proposition*: That the defendant knowingly [(sold) (gave)] a firearm to another; and

Second Proposition: That the person to whom the defendant [(sold) (gave)] the firearm was under 21 years of age; and

Third Proposition: That the defendant knew the person to whom he [(sold) (gave)] the firearm had been [(convicted of a misdemeanor other than a traffic offense) (adjudged delinquent)].

[or]

[3] *First Proposition*: That the defendant knowingly [(sold) (gave)] a firearm to another; and

Second Proposition: That the person to whom the defendant [(sold) (gave)] the firearm was a narcotic addict; and

Third Proposition: That the defendant knew that the person to whom he [(sold) (gave)] the firearm was a narcotic addict.

[or]

[4] *First Proposition*: That the defendant knowingly [(sold) (gave)] a firearm to another; and

Second Proposition: That the person to whom the defendant [(sold) (gave)] the firearm had been convicted of the offense of _____; and

Third Proposition: That the defendant knew that the person to whom he [(sold) (gave)] the firearm had been convicted of the offense of _____.

[or]

[5] *First Proposition*: That the defendant knowingly [(sold) (gave)] a firearm to another; and

Second Proposition: That the person to whom the defendant [(sold) (gave)] the firearm had been a patient in a mental [(hospital) (institution)] within the past 5 years; and

Third Proposition: That the defendant knew that the person to whom he [(sold) (gave)] the firearm had been a patient in a mental [(hospital) (institution)] within the past 5 years.

[or]

[6] *First Proposition*: That the defendant knowingly [(sold) (gave)] a firearm to another; and

Second Proposition: That the person to whom the defendant [(sold) (gave)] the firearm was intellectually disabled; and

Third Proposition: That the defendant knew the person to whom he [(sold) (gave)] the firearm was intellectually disabled.

[or]

[7] *First Proposition*: That the defendant knowingly delivered, incidental to a sale, a firearm of a size which may be concealed upon the person; and

Second Proposition: That the defendant delivered the firearm within 72 hours after application for its purchase had been made.

[or]

[8] *First Proposition*: That the defendant knowingly delivered, incidental to a sale, a [(rifle) (shotgun) (other long gun) (stun gun) (taser)]; and

Second Proposition: That the defendant delivered such [(rifle) (shotgun) (other long gun) (stun gun) (taser)] within 24 hours after application for its purchase had been made.

[or]

[9] *First Proposition*: That the defendant knowingly [(manufactured) (sold) (delivered)] to an unlicensed person a handgun having a [(barrel) (slide) (frame) (receiver)] which is a die casting of a zinc alloy or other nonhomogeneous metal which melts or deforms at a temperature of less than 800 degrees Fahrenheit; and

Second Proposition: That the defendant held a license under the federal Gun Control Act of 1968 as [(a)(an)] [(dealer) (importer) (manufacturer) (pawnbroker)].

[or]

[10] *First Proposition*: That the defendant knowingly [(sold) (gave)] a firearm to another; and

Second Proposition: That the person to whom the defendant [(sold) (gave)] the firearm was under 18 years of age; and

Third Proposition: That the defendant knew that the person to whom he [(sold) (gave)] the firearm was under 18 years of age; and

Fourth Proposition: That the person to whom the defendant [(sold) (gave)] the firearm did not possess a valid Firearm Owner's Identification Card; and

Fifth Proposition: That the defendant knew that the person to whom he [(sold) (gave)] the firearm did not possess a valid Firearm Owner's Identification Card.

[or]

[11] *First Proposition*: That the defendant knowingly [(sold) (gave)] a firearm to another; and

Second Proposition: That the defendant was engaged in the business of selling firearms [(wholesale) (retail)]; and

Third Proposition: At the time the defendant was not licensed as a federal firearms dealer under the federal Gun Control Act of 1968.

[or]

[12] *First Proposition*: That the defendant [(sold) (transferred)] ownership of a firearm to another; and

Second Proposition: That the person to whom the defendant [(sold) (transferred)] ownership of the firearm did not display to defendant a currently valid Firearms Owner's Identification Card previously issued in that person's name by the Department of State Police.

[or]

[13] *First Proposition*: That the defendant was not entitled to possession of the firearm; and

Second Proposition: That the defendant delivered the firearm; and

Third Proposition: That the defendant knew the firearm was stolen or converted.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty. [However, if you find the defendant has proved by a preponderance of the evidence that _____, you should find the defendant not guilty.]

Committee Note

Instru8ction and Committee Note Approved July 18, 2014

720 ILCS 5/24-3 (West 2013), amended by P.A. 88-680, effective January 1, 1995, amended by P.A. 93-162, effective July 10, 2003, adding paragraph [11], amended by P.A. 93-906, effective August 11, 2004, adding paragraph [12], amended by 94-6, effective June 3, 2005, adding "stun gun" and "taser" to paragraph [8], amended by P.A. 97-347, effective January 1, 2012, adding paragraph [13], amended by P.A. 97-1167, effective June 1, 2013, substituting "institution" for "hospital" in paragraph [5] and defining "mental institution" and "patient in a mental institution".

Give Instruction 18.15.

When applicable, give Instruction 18.35G, defining "firearm".

When applicable, give Instruction 18.35I, defining "handgun".

When applicable, give Instruction 18.35K, defining "mental institution".

When applicable, give Instruction 18.35L, defining "patient in a mental institution".

When applicable, give Instruction _18.35M, defining "person engaged in the business".

When applicable, give Instruction _18.35N, defining "with the principal objective of livelihood and profit".

Use the word "hospital" in paragraph [5] for offenses committed before June 1, 2013. Use the word "institution" in paragraph [5] for offenses committed on or after June 1, 2013.

Give the bracketed portion of the last paragraph when evidence of an exemption is presented. Insert in the blank the applicable exemption. See Committee Note to Instruction 18.15.

See Committee Note to Instruction 18.15 for appropriate use of the bracketed phrase "other long gun" and the need for additional definition instructions.

Insert in the blank in the Third Proposition in the second set of propositions the misdemeanor conviction other than a traffic offense.

Insert in the blank in the Second Proposition in the fourth set of propositions the felony conviction.

Section 24-3, in part, provides that a person commits the offense of unlawful sale of firearms when he knowingly transfers a firearm to a person prohibited from possessing a firearm by reason of age, mental condition, prior convictions, or prior adjudication of delinquency. While Section 24-3 does require the mental state of knowledge, it does not indicate precisely which elements of the offense require knowledge on the part of the defendant. The statute appears to require that the transfer of the firearm be knowingly made but is less clear as to whether the defendant must also have knowledge of the status of the transferee as underage, a former mental patient, intellectually disabled, or possessing a prior conviction or adjudication of delinquency. Section 4-3 provides that where, as here, a statute defining an offense prescribes a mental state with respect to the offense as a whole, without distinguishing among the elements thereof, the prescribed mental state applies to each element of the offense. Since the status of the transferee is an element of the crime under Section 24-3, the Committee is of the opinion that Section 4-3 requires the defendant to have knowledge of that status at the time the firearm is transferred. Therefore, this instruction includes a requirement that the State prove that the defendant had knowledge of the relevant status of the person to whom the firearm was transferred. While the Committee is of the opinion that Sections 4-3 and 24-3 require this result, the Committee is not aware of any reported decision discussing the issue.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

18.16X
Issues In Aggravated Unlawful Sale Of Firearms--Enhancing Factor Based Upon Location

To sustain the charge of aggravated unlawful sale of firearms, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(sold) (gave)] a firearm to another; and

Second Proposition: That the person to whom the defendant [(sold) (gave)] the firearm was under 18 years of age; and

Third Proposition: That the defendant knew that the person to whom he [(sold) (gave)] the firearm was under 18 years of age; and

[A] *Fourth Proposition:* That the firearm was of a size which may be concealed upon a person; and

Fifth Proposition: That the defendant did so while

[or]

[B] *Fourth Proposition:* That the person to whom the defendant [(sold) (gave)] the firearm did not possess a valid Firearm Owner's Identification Card; and

Fifth Proposition: That the defendant knew that the person to whom he [(sold) (gave)] the firearm did not possess a valid Firearm Owner's Identification Card; and

Sixth Proposition: That the defendant did so while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/24-3(k) (West, 1994), amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 18.15X.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

The bracketed portions [A] and [B] correspond to the alternatives of the same letter in Instruction 18.15X, the definitional instruction for this offense, and the bracketed numbers [1] through [13] correspond to the alternatives of the same number in Instruction 18.15X. Select the alternatives that correspond to the alternatives selected from the definitional instruction.

See the Committee Note to Instruction 18.16 regarding the mental state of knowledge which the Committee has set forth in the Third Proposition and the Fifth Proposition in alternative [B].

See Committee Note to Instruction 18.15X concerning the need for definitional instructions and a discussion of penalty enhancement under Sections 24-3(a) and 3(i) based upon the location of the offense charged.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

18.17
Definition Of Unlawful Possession Of Firearms And Firearm Ammunition

A person commits the offense of unlawful possession of [(firearms) (firearm ammunition) (handguns)] when he

[1] is under 18 years of age and knowingly has in his possession a [(firearm of a size) (handgun)] which may be concealed upon his person.

[or]

[2] is under 21 years of age and has been [(convicted of the offense of ____) (adjudged delinquent)] and knowingly has in his possession [(a firearm) (firearm ammunition) (a handgun)].

[or]

[3] is a narcotic addict and knowingly has in his possession [(a firearm) (firearm ammunition) (a handgun)].

[or]

[4] has been a patient in a mental hospital within the past 5 years and knowingly has in his possession [(a firearm) (firearm ammunition) (a handgun)].

[or]

[5] is mentally retarded and knowingly has in his possession [(a firearm) (firearm ammunition) (a handgun)].

[or]

[6] knowingly has in his possession an explosive bullet.

Committee Note

720 ILCS 5/24-3.1 (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §24-3.1 (1991)), amended by P.A. 88-680, effective January 1, 1995.

When applicable, give Instruction 18.35I, defining the word “handgun.”

When giving paragraph [6], give Instruction 18.35B, defining the term “explosive bullet.”

P.A. 88-680, effective January 1, 1995, provides that if the violation of Section 24-3.1 is committed with a handgun, the offense is increased from a Class A misdemeanor to a Class 4

felony. Accordingly, the Committee has provided the bracketed alternative "(handgun)" to the title of the offense in the opening phrase of this instruction and alternatives [1] through [5] to allow the jury to specifically find this element of the Class 4 felony offense. If an issue arises whether the firearm is a handgun, two separate sets of instructions may be appropriate in order to distinguish between a firearm and a handgun.

Although Section 24-3.1 does not include a mental state, any possession must be knowing. See 720 ILCS 5/4-2 (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §4-2 (1991)). See also People v. Woodworth, 187 Ill.App.3d 44, 542 N.E.2d 1321, 134 Ill.Dec. 814 (5th Dist.1989).

Insert in the blank the name of the misdemeanor other than a traffic offense when applicable.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

18.18
Issues In Unlawful Possession Of Firearms And Firearm Ammunition

To sustain the charge of unlawful possession of [(firearms) (firearm ammunition) (handguns)], the State must prove the following proposition[s]:

[1] *First Proposition:* That the defendant was under 18 years of age; and

Second Proposition: That the defendant knowingly had in his possession a [(firearm) (handgun)]; and

Third Proposition: That the [(firearm) (handgun)] was of a size which could be concealed on defendant's person.

[or]

[2] *First Proposition:* That the defendant was under 21 years of age; and

Second Proposition: That the defendant had been [(convicted of the offense of ____) (adjudged delinquent)]; and

Third Proposition: That the defendant knowingly had in his possession [(a firearm) (firearm ammunition) (a handgun)].

[or]

[3] *First Proposition:* That the defendant was a narcotic addict; and

Second Proposition: That the defendant knowingly had in his possession [(a firearm) (firearm ammunition) (a handgun)].

[or]

[4] *First Proposition:* That the defendant was a patient in a mental hospital within the past 5 years; and

Second Proposition: That the defendant knowingly had in his possession [(a firearm) (firearm ammunition) (a handgun)].

[or]

[5] *First Proposition:* That the defendant was mentally retarded; and

Second Proposition: That the defendant knowingly had in his possession [(a firearm) (firearm ammunition) (a handgun)].

[or]

[6] That the defendant knowingly had in his possession an explosive bullet.

If you find from your consideration of all the evidence that [(this) (each one of these)] proposition[s] has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that [(this) (any one of these)]

proposition[s] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/24-3.1 (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §24-3.1 (1991)), amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 18.17.

The bracketed numbers [1] through [6] correspond to the paragraphs of the same number in Instruction 18.17, the definitional instruction for these offenses.

Insert in the blank in the second set of propositions the name of the misdemeanor other than a traffic offense when applicable.

P.A. 88-680, effective January 1, 1995, provides that if the violation of Section 24-3.1 is committed with a handgun, the offense is increased from a Class A misdemeanor to a Class 4 felony. Accordingly, the Committee has provided the bracketed alternative "(handgun)" to the title of the offense in the opening phrase of this instruction and alternatives [1] through [5] to allow the jury to specifically find this element of the Class 4 felony offense. See the Committee Note to Instruction 18.17.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

18.19
Definition Of Unlawful Sale Or Delivery Of Firearms On School Or Public Housing Premises

A person commits the offense of unlawful [(sale) (delivery)] of firearms on the premises of a [(school) (public housing facility)] when he, being 18 years of age or older, [(knowingly) (intentionally) (recklessly)] [(sells) (gives) (delivers)] a firearm to any person under 18 years of age while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]].

[or]

[3] in residential property owned, operated, and managed by a public housing agency.

[or]

[4] on the real property comprising residential property owned, operated, and managed by a public housing agency.

Committee Note

720 ILCS 5/24-3.3 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §24-3.3 (1991)), amended by P.A. 87-524, effective January 1, 1992.

Give Instruction 18.20.

When appropriate, give Instruction 18.35F, defining the word "school."

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

The bracketed numbers [1] through [4] correspond to the locations indicated in Section 24-3.3. Select the alternative that corresponds to the location in the charge.

Because Section 24-3.3 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* People v. Gean,

143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Section 24-3.3 exempts certain persons from criminal liability. The defendant bears the burden of proving the exemption by a preponderance of the evidence. See Section 24-2(h); see also People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the term "preponderance of the evidence."

Use applicable bracketed material.

18.20
Issues In Unlawful Sale Or Delivery Of Firearms On School Or Public Housing Premises

To sustain the charge of unlawful [(sale) (delivery)] of firearms on the premises of a [(school) (public housing facility)], the State must prove the following propositions:

First Proposition: That the defendant [(knowingly) (intentionally) (recklessly)] [(sold) (gave) (delivered)] a firearm; and

Second Proposition: That when the defendant did so, he was 18 years of age or older; and

Third Proposition: That the defendant [(sold) (gave) (delivered)] the firearm while

[1] in a school [regardless of the [(time of day) (time of year)]]; and

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]]; and

[or]

[3] in residential property owned, operated, and managed by a public housing agency; and

[or]

[4] on the real property comprising residential property owned, operated, and managed by a public housing agency; and

Fourth Proposition: That the person to whom the firearm was [(sold) (given) (delivered)] was under 18 years of age.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty. [However, if you find the defendant has proved by a preponderance of the evidence that ____, you should find the defendant not guilty.]

Committee Note

720 ILCS 5/24-3.3 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §24-3.3 (1991)), amended by P.A. 87-524, effective January 1, 1992.

Give Instruction 18.19.

When appropriate, give Instruction 18.35F, defining the word “school.”

Use the bracketed portion of the last paragraph of the instruction when evidence of an exemption is presented. Insert in the blank the applicable exemption. See Committee Note to Instruction 18.19.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

The bracketed numbers [1] through [4] under the Third Proposition correspond to the alternatives of the same number in Instruction 18.19, the definitional instruction for this offense. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Because Section 24-3.3 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

18.21
Definition Of Failure To Keep A Register Of Firearm Sales By Dealer

A person, other than [(a manufacturer selling to a bona fide wholesaler) (a manufacturer selling to a bona fide retailer) (a wholesaler selling to a bona fide retailer)], who sells firearms of a size which may be concealed upon the person, commits the offense of failure to keep a register of firearm sales by dealer when he

[1] fails to keep a register of all firearms sold or given away, containing the date of the sale or gift, the name, address, age, and occupation of the person to whom the firearm is sold or given, the price of the firearm, the kind, description and number of the firearm, and the purpose for which it is purchased and obtained.

[or]

[2] on demand of a peace officer, fails to produce for the police officer's inspection all stock on hand and a register of all firearms sold or given away by him containing the dates of the sales or gifts, the name, address, age, and occupation of the persons to whom the firearms had been sold or given, the price of the firearm, the kind, description, and number of each firearm and the purpose for which the firearms were purchased and obtained.

Committee Note

720 ILCS 5/24-4 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §24-4 (1991)).

Give Instruction 18.22.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

18.22
Issues In Failure To Keep A Register Of Firearm Sales By Dealer

To sustain the charge of failure to keep a register of firearm sales by dealer, the State must prove the following propositions:

First Proposition: That the defendant was engaged as a seller, other than [(a manufacturer selling to a bona fide wholesaler) (a manufacturer selling to a bona fide retailer) (a wholesaler selling to a bona fide retailer)], of firearms of a size which might be concealed on a person; and

Second Proposition: That the defendant sold or gave away a firearm for which he did not keep a register containing the date of the sale or gift, the name, address, age, and occupation of the person to whom the firearm was sold or given, the price of the firearm, the kind, description, and number of the firearm, and the purpose for which the firearm was purchased and obtained.

[or]

Second Proposition: That upon demand of a police officer, the defendant failed to produce for the police officer's inspection all stock on hand and a register of all firearms sold or given away by the defendant containing the dates of sales or gifts, the name, address, age, and occupation of the persons to whom the firearms had been sold or given, the prices of the firearms, the kind, description, and number of each firearm, and the purpose for which the firearms were purchased and obtained.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/24-4 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §24-4 (1991)).

Give Instruction 18.21.

Use applicable paragraphs and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

18.23
Definition Of Defacing The Identification Marks Of Firearms

A person commits the offense of defacing the identification marks of firearms when he [(intentionally) (knowingly)] changes, alters, removes, or obliterates [(the name of the maker) (the name of the model) (the manufacturer's number) (any identification mark)] of a firearm.

Committee Note

720 ILCS 5/24-5 (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §24-5 (1991)), amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 18.24.

No instruction should be given concerning the provision in Section 24-5(b) that possession of an altered firearm is "*prima facie* evidence" that the possessor altered the firearm. See People v. Gray, 99 Ill.App.3d 851, 426 N.E.2d 290, 55 Ill.Dec. 315 (5th Dist.1981). See also Committee Note to Instruction 18.24A.

Use applicable bracketed material.

18.24
Issues In Defacing The Identification Marks Of Firearms

To sustain the charge of defacing the identification marks of firearms, the State must prove the following proposition:

That the defendant [(intentionally) (knowingly)] changed, altered, removed, or obliterated [(the name of the maker) (the name of the model) (the manufacturer's number) (any identification mark)] of a firearm.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/24-5 (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §24-5 (1991)), amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 18.23.

See Committee Note to Instruction 18.23, concerning the effect of the statutory provision that possession of an altered firearm is "*prima facie* evidence" that the possessor altered the firearm.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant." See Instruction 5.03.

18.24A
Interference Arising From Possession Of Altered Firearms

Committee Note

720 ILCS 5/24-5(b) provides that possession of an altered firearm is "*prima facie* evidence" that the possessor altered the firearm. An instruction incorporating this statutory provision was included in the First Edition of IPI-Criminal, but deleted from subsequent editions.

Dictum in People v. Gray, 99 Ill.App.3d 851, 426 N.E.2d 290, 55 Ill.Dec. 315 (1981), supports the view that the legislature's use of the term "*prima facie*" is a direction to the court on when to submit the evidence to the jury and should not be translated into a jury instruction. Gray holds that the jury should not be instructed in the language of the statute about the "*prima facie*" effect of certain evidence. The term is a legal one which, according to Gray, might be read by a jury as creating the type of presumption that is constitutionally impermissible in criminal cases, and might also confuse the jury as to which party carries the burden of proof.

18.25
Definition Of Failure To Possess A Firearm Owner's Identification Card

A person commits the offense of failure to possess a firearm owner's identification card when he knowingly [(acquires) (possesses)] [(a firearm) (firearm ammunition)] at a time when he does not have in his possession a firearm owner's identification card previously issued in his name by the Department of State Police.

Committee Note

430 ILCS 65/2(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §83-2(a) (1991)).

Give Instruction 18.26.

Persons identified in Section 65/2(b), including members of the armed forces, federal marshals and others, are excepted from the requirement of possessing a firearm owner's identification card. Section 65/2(b), however, does not indicate whether these exceptions are to be treated as exemptions from criminal liability or are to be treated as affirmative defenses. If Section 65/2(b) creates exemptions from criminal liability, then the defendant has the burden of proving the exemptions by a preponderance of the evidence, People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978), and the instructions may be patterned after Instructions 18.01A and 18.02. If Section 65/2(b) creates an affirmative defense, then the State has the burden of disproving the exception once raised by the evidence (Section 3-2) and the instructions should follow the format suggested in the Committee Note to Instructions 18.09 and 18.10. Although the Committee takes no position on the issue, the fact that the legislature has not labeled the provisions of Section 65/2(b) as an affirmative defense is some indication that the exceptions in Section 65/2(b) should be treated as exemptions. See People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978) ("whenever the legislature intends a provision to constitute an affirmative defense it has labeled it as such").

Use applicable bracketed material.

18.26
Issues In Failure To Possess A Firearm Owner's Identification Card

To sustain the charge of failure to possess a firearm owner's identification card, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(acquired) (possessed)] [(a firearm) (firearm ammunition)] within this State; and

Second Proposition: That the defendant at the time of his [(acquisition) (possession)] of the [(firearm) (firearm ammunition)] failed to have in his possession a firearm owner's identification card previously issued in his name by the Department of State Police.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

430 ILCS 65/2(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §83-2(a)).

Give Instruction 18.25.

The fact that a defendant may own a firearm owner's identification card is irrelevant to the offense of possessing a firearm without having such card in his possession. See People v. Cahill, 37 Ill.App.3d 361, 345 N.E.2d 528 (2d Dist.1976); People v. Elders, 63 Ill.App.3d 554, 380 N.E.2d 10, 20 Ill.Dec. 333 (5th Dist.1978).

Section 65/2(a) excludes certain persons from the requirement of possessing a Firearms Owner's Identification Card. See Committee Note to Instruction 18.25, concerning which party bears the burden of proof on the issue.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

18.27
Definition Of Unlawful Use Of Metal Piercing Bullets

A person commits the offense of unlawful use of metal piercing bullets when he knowingly [(manufactures) (sells) (purchases) (possesses) (carries)] a metal piercing bullet.

Committee Note

720 ILCS 5/24-2.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §24-2.1 (1991)).

Give Instruction 18.28.

Give Instruction 18.35H, defining the phrase "metal piercing bullet."

Section 24-2.1(b) exempts certain persons from criminal liability. The defendant bears the burden of proving the exemption by a preponderance of the evidence. See Section 24-2.1(c); see also People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the phrase "preponderance of the evidence."

Use applicable bracketed material.

18.28
Issues In Unlawful Use Of Metal Piercing Bullets

To sustain the charge of unlawful use of metal piercing bullets, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(manufactured) (sold) (purchased) (possessed) (carried)] a bullet; and

Second Proposition: That at the time the defendant [(manufactured) (sold) (purchased) (possessed) (carried)] the bullet, he knew it was a metal piercing bullet.

If you find from your consideration of all the evidence that these propositions have not been proved beyond a reasonable doubt, you should find the defendant not guilty.

If you find from your consideration of all the evidence that these propositions have been proved beyond a reasonable doubt, you should find the defendant guilty. [However, if you find the defendant has proved by a preponderance of the evidence that ____, you should find the defendant not guilty.]

Committee Note

720 ILCS 5/24-2.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §24-2.1 (1991)).

Give Instruction 18.27.

Give Instruction 18.35H, defining the phrase "metal piercing bullet."

Give the bracketed portion of the last paragraph when evidence of an exemption is presented. Insert in the blank the applicable exemption. See Committee Note to Instruction 18.27.

Section 24-2.1 provides that a person commits the offense of unlawful use of metal piercing bullets when he knowingly manufactures, sells, purchases, possesses, or carries a metal piercing bullet. While Section 24-2.1 does require the mental state of knowledge, it does not indicate precisely which elements of the offense require knowledge on the part of the defendant. The statute appears to require that the manufacture, sale, purchase, possession, or carrying be knowing, but is less clear as to whether the defendant must know the bullet is metal piercing. Section 4-3 provides that where, as here, a statute defining an offense prescribes a mental state with respect to the offense as a whole, without distinguishing among the elements thereof, the prescribed mental state applies to each element of the offense. Since the nature of the bullet is an element of the offense under Section 24-2.1, the Committee is of the opinion that Section 4-3 requires the defendant to have knowledge of the nature of the bullet at the time it is possessed. Therefore, this instruction includes a requirement that the State prove that the defendant had knowledge of the metal piercing nature of the bullet. While the Committee is of the opinion that Sections 4-3 and 24-2.1 requires this result, the Committee is not aware of any reported decision discussing the issue.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

18.29
Definition Of Manufacture, Sale, Or Transfer Of Bullets Represented To Be Metal Piercing Bullets

A person commits the offense of [(manufacture) (sale) (transfer)] of metal piercing bullets when he knowingly [(manufactures) (sells) (offers to sell) (transfers)] any bullet which is represented to be [(metal or armor piercing) (polytetrafluoroethylene-coated) (jacketed and having a core other than lead or lead alloy) (wholly composed of metal or metal alloy other than lead)].

Committee Note

720 ILCS 5/24-2.2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §24-2.2 (1991)).

Give Instruction 18.30.

Section 24-2.2(b) exempts certain persons from criminal liability. The defendant bears the burden of proving the exemption by a preponderance of the evidence. See Section 24-2.2(c); see also People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the phrase "preponderance of the evidence."

Use applicable bracketed material.

18.30
Issues In Manufacture, Sale, Or Transfer Of Bullets Represented To Be Metal Piercing Bullets

To sustain the charge of [(manufacture) (sale) (transfer)] of bullets represented to be metal piercing bullets, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(manufactured) (sold) (offered to sell) (transferred)] a bullet; and

Second Proposition: That the defendant represented such bullet to be [(metal or armor piercing) (polytetrafluoroethylene-coated) (jacketed and having a core other than lead or lead alloy) (wholly composed of a metal or metal alloy other than lead)].

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty. [However, if you find the defendant has proved by a preponderance of the evidence that ____, you should find the defendant not guilty.]

Committee Note

720 ILCS 5/24-2.2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §24-2.2 (1991)).

Give Instruction 18.29.

Give the bracketed portion of the last paragraph when evidence of an exemption is presented. Insert in the blank the applicable exemption. See Committee Note to Instruction 18.29.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

18.31
Definition Of Unlawful Discharge Of Metal Piercing Bullets

A person commits the offense of unlawful discharge of metal piercing bullets when he, knowing that a firearm is loaded with a metal piercing bullet, [(intentionally) (recklessly)] discharges the firearm and the metal piercing bullet strikes another person.

Committee Note

720 ILCS 5/24-3.2(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §24-3.2(b) (1991)).

Give Instruction 18.32.

Give Instruction 18.35H, defining the phrase "metal piercing bullet."

Section 24-3.2(b) incorporates the definition of firearm found in 430 ILCS 65/1.1. As a result, Instruction 18.35G, which defines the word "firearm" in the language of 430 ILCS 65/1.1, should be given.

Section 24-3.2(d) exempts certain persons from criminal liability. The defendant bears the burden of proving the exemption by a preponderance of the evidence. See Section 24-2(h); see also People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978). When the exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the phrase "preponderance of the evidence."

18.32
Issues In Unlawful Discharge Of Metal Piercing Bullets

To sustain the charge of unlawful discharge of metal piercing bullets, the State must prove the following propositions:

First Proposition: That the defendant knew that a firearm was loaded with a metal piercing bullet; and

Second Proposition: That the defendant [(intentionally) (recklessly)] discharged the firearm; and

Third Proposition: That the discharged metal piercing bullet struck another person.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty. [However, if you find the defendant has proved by a preponderance of the evidence that ____, you should find the defendant not guilty.]

Committee Note

720 ILCS 5/24-3.2(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §24-3.2(b) (1991)).

Give Instruction 18.31.

Give the bracketed portion of the last paragraph when evidence of an exemption is presented. Insert in the blank the applicable exemption. See Committee Note to Instruction 18.31.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

18.33
Definition Of Unlawful Possession Of A Concealed Metal Piercing Bullet And Firearm

A person commits the offense of unlawful possession of a concealed metal piercing bullet and firearm when he knowingly possesses, concealed on or about his person, a metal piercing bullet and a firearm suitable for the discharge of the metal piercing bullet.

Committee Note

720 ILCS 5/24-3.2(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §24-3.2(c) (1991)).

Give Instruction 18.34.

Give Instruction 18.35H, defining the phrase "metal piercing bullet."

Unlike Section 24-3.2(b), Section 24-3.2(c) does not incorporate the definition of firearm found in 430 ILCS 65/1.1. As a result, the Committee takes no position on whether Instruction 18.35G, defining the word "firearm," should be given when this charge is before the jury.

The Committee discussed the issue of whether recklessness could suffice as a mental state for this offense based upon the use of the word "recklessly" in Section 24-3.2(a). The Committee was of the opinion that Section 24-3.2(a) is not sufficiently clear to evidence a legislative intent to deviate from the general rule that any possession must be knowing. See Chapter 38, Section 4-2; see also People v. Woodworth, 187 Ill.App.3d 44, 542 N.E.2d 1321, 134 Ill.Dec. 814 (5th Dist.1989). As a result, knowledge is the only mental state included in the instruction.

Section 24-3.2(d) exempts certain persons from criminal liability. The defendant bears the burden of proving the exemption by a preponderance of the evidence. See Section 24-2(h); see also People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the phrase "preponderance of the evidence."

18.34
Issues In Unlawful Possession Of A Concealed Metal Piercing Bullet And Firearm

To sustain the charge of unlawful possession of a concealed metal piercing bullet and firearm, the State must prove the following propositions:

First Proposition: That the defendant knowingly possessed a bullet; and

Second Proposition: That the defendant knew it was a metal piercing bullet; and

Third Proposition: That when the defendant did so, he knowingly possessed a firearm; and

Fourth Proposition: That the firearm was suitable for the discharge of the metal piercing bullet; and

Fifth Proposition: That the metal piercing bullet and the firearm were concealed on or about the defendant's person.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty. [However, if you find the defendant has proved by a preponderance of the evidence that ____, you should find the defendant not guilty.]

Committee Note

720 ILCS 5/24-3.2(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §24-3.2(c) (1991)).

Give Instruction 18.33.

Give the bracketed portion of the last paragraph when evidence of an exemption is presented. Insert in the blank the applicable exemption. See Committee Note to Instruction 18.33.

See the Committee Note to Instruction 18.33 for a discussion of the applicable mental state.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

18.35
Definition Of Ballistic Knife

The term "ballistic knife" means a device that propels a knifelike blade as a projectile by means of a coil spring, elastic material, or compressed gas. [It does not include crossbows, common or compound bows, or underwater spearguns.]

Committee Note

720 ILCS 5/24-1(a) and (e) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §24-1(a) and (e) (1991)).

Use bracketed material when appropriate.

18.35A
Definition Of Switchblade Knife

The term "switchblade knife" means a knife which has a blade that opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife.

Committee Note

720 ILCS 5/24-1(a)(1) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §24-1(a)(1) (1991)).

18.35B
Definition Of Explosive Bullet

The term "explosive bullet" means the projectile portion of an ammunition cartridge which contains or carries an explosive charge which will explode upon contact with the flesh of a human or an animal.

Committee Note

720 ILCS 5/24-1(a)(11) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §24-1(a)(11) (1991)).

See Instruction 18.35C, defining the word "cartridge."

18.35C
Definition Of Cartridge

The word "cartridge" means a tubular metal case having a projectile affixed at the front and a cap or primer at the rear end, with the propellant contained in the tube between the projectile and the cap.

Committee Note

720 ILCS 5/24-1(a)(11) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §24-1(a)(11) (1991)).

18.35D
Definition Of Machine Gun

The term “machine gun” means any weapon which [(shoots) (is designed to shoot) (can be readily restored to shoot)] automatically more than one shot, without manually reloading by a single function of a trigger, including the frame or receiver of such weapon.

Committee Note

720 ILCS 5/24-1(a)(7) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §24-1(a)(7) (1991)).

18.35E
Definition Of Stun Gun Or Taser

The phrase “stun gun or taser” means

[1] any device which is powered by electrical charging units, such as batteries, and which fires one or several barbs attached to a length of wire and which, upon hitting a human, can send out a current capable of disrupting a person's nervous system in such a manner as to render him incapable of normal functioning.

[or]

[2] any device which is powered by electrical charging units, such as batteries, and which, upon contact with a human or clothing worn by a human, can send out a current capable of disrupting a person's nervous system in such a manner as to render him incapable of normal functioning.

Committee Note

720 ILCS 5/24-1(a)(10) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §24-1(a)(10) (1991)).

Use applicable paragraphs.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

18.35F
Definition Of School--Weapons

The word "school" means any public or private elementary or secondary school, community college, college, or university.

Committee Note

720 ILCS 5/24-1(c)(4) (West Supp.1993) and 24-3.3 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §24-3.3 (1991)).

18.35G
Definition Of Firearm

The word “firearm” means any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas, or escape of gas. [The term does not include ____.]

Committee Note

430 ILCS 65/1.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §83-1.1 (1991)).

Insert in the blank the name or description of any gun or device excluded from the definition by subsections (1), (2), (3), or (4) of Section 65/1.1.

Use bracketed material when appropriate.

18.35H
Definition Of Metal Piercing Bullet

The phrase "metal piercing bullet" includes polytetrafluoroethylene-coated bullets, jacketed bullets with other than lead or lead alloy cores, and ammunition of which the bullet is wholly composed of a metal or metal alloy other than lead. [The term does not include shotgun shells.]

Committee Note

720 ILCS 5/24-3.2(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §24-3.2(a) (1991)).

Use bracketed material when appropriate.

18.35I
Definition Of Handgun

The word “handgun” means a firearm designed to be held and fired by the use of a single hand, and includes a combination of parts from which a firearm can be assembled.

Committee Note

720 ILCS 5/24-3(h) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §24-3(h) (1991)).

18.35J
Definition Of Courthouse--Weapons

The word "courthouse" means any building that is used by the Circuit, Appellate, or Supreme Court of this State for the conduct of official business.

Committee Note

720 ILCS 5/24-1(c)(2) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §24-1(c)(2) (1991)), amended by P.A. 88-156, effective July 28, 1993.

18.35K
Definition Of Mental Institution

The phrase "mental institution" means any hospital, institution, clinic, evaluation facility, mental health center, or part thereof, which is used primarily for the care or treatment of persons with mental illness.

Committee Note

Instruction and Committee Note Approved July 18, 2014

720 ILCS 5/24-3(A)(e) (West 2013) P.A. 97-1167, effective June 1, 2013.

18.35L
Definition Of Patient In A Mental Institution

The phrase "patient in a mental institution" means the person was admitted, either voluntarily or involuntarily, to a mental institution for mental health treatment, unless the treatment was voluntary and solely for an alcohol abuse disorder and no other secondary substance abuse disorder or mental illness.

Committee Note

Instruction and Committee Note Approved July 18, 2014

720 ILCS 5/24-3(A)(e) (West 2013) P.A. 97-1167, effective June 1, 2013.

18.35M
Definition Of Person Engaged In The Business

The phrase "person engaged in the business" means a person who devotes time, attention, and labor to engaging in the activity as a regular course of trade or business with the principal objective of livelihood and profit, but does not include a person who makes occasional repairs of firearms or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms.

Committee Note

Instruction and Committee Note Approved July 18, 2014

720 ILCS 5/24-3 (A)(j) (West 2013) P.A. 93-162, effective July 10, 2003.

18.35N
Definition Of With The Principal Objective Of Livelihood And Profit

The phrase "with the principal objective of livelihood and profit" means that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection; however, proof of profit shall not be required as to a person who engaged in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism.

Committee Note

Instruction and Committee Note Approved July 18, 2014

720 ILCS 5/24-3 (A)(j) (West 2013) P.A. 93-162, effective July 10, 2003.

18.35O

Definition Of School

The term “school” means a public or private elementary or secondary school, community college, college, or university.

Committee Note

Instruction and Committee Note Approved December 2, 2014

720 ILCS 5/24-1.2(c) (West 2013).

18.35P

Definition Of School Related Activity

The phrase "school related activity" means any sporting, social, academic, or other activity for which students' attendance or participation is sponsored, organized, or funded in whole or in part by a school or school district.

Committee Note

Instruction and Committee Note Approved December 2, 2014

720 ILCS 5/24-1.2(c) (West 2013).

18.37
Definition Of Unlawful Discharge Of A Firearm--Discharge In A Cemetery

A person commits the offense of unlawful discharge of a firearm when he

[1] [(intentionally) (knowingly) (recklessly)] [(hunts) (shoots any gun, pistol, or other missile) (discharges any gun, pistol, or other missile)] within the limits of any cemetery.

[or]

[2] [(intentionally) (knowingly) (recklessly)] causes any shot or missile to be discharged into or over any portion of a cemetery.

Committee Note

765 ILCS 835/1(e) (West, 1992) (formerly Ill.Rev.Stat. ch. 21, §15(e) (1991)).

Give Instruction 18.38.

Because Section 1(e) does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Section 1(g) of the statute excludes "the discharge of firearms loaded with blank ammunition as part of any funeral, any memorial observance or any other patriotic or military ceremony."

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

18.38
Issues In Unlawful Discharge Of A Firearm--Discharge In A Cemetery

To sustain the offense of unlawful discharge of a firearm, the State must prove the following proposition:

[1] That the defendant [(intentionally) (knowingly) (recklessly)] [(hunted) (shot a gun, pistol, or other missile) (discharged a gun, pistol, or other missile)] within the limits of a cemetery.

[or]

[2] That the defendant [(intentionally) (knowingly) (recklessly)] caused any shot or missile to be discharged into or over any portion of a cemetery.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

765 ILCS 835/1(e) (West, 1992) (formerly Ill.Rev.Stat. ch. 21, §15(e) (1991)), amended by P.A. 87-527, effective September 16, 1991.

Give Instruction 18.37.

Because Section 1(e) does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

18.39
Definition Of Unlawful Sale Of Firearms By Liquor Licensee

A person commits the offense of unlawful sale of firearms by a liquor licensee when he [(holds) (is an agent or employee of a person who holds)] a license issued by the [(Illinois Liquor Control Commission) (local liquor control commissioner)] to sell at retail any alcoholic liquor and [(knowingly) (intentionally) (recklessly)] [(sells) (delivers)] a firearm to any other person [(in) (on)] the real property where the licensee is licensed to sell alcoholic liquors.

Committee Note

720 ILCS 5/24-3.4 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §24-3.4 (1991)), added by P.A. 87-591, effective January 1, 1992.

Give Instruction 18.40.

Because Section 24-3.4 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Section 24-3.4 exempts certain persons from criminal liability. The defendant bears the burden of proving the exemption by a preponderance of the evidence. See Section 5/24-2(h); see also People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the term “preponderance of the evidence.”

Use applicable bracketed material.

18.40
Issues In Unlawful Sale Of Firearms By Liquor Licensee

To sustain the charge of unlawful sale of firearms by a liquor licensee, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] [(sold) (delivered)] a firearm to another person; and

Second Proposition: That when the defendant did so, he [(held a license) (was an agent or employee of a person who held a license)] to sell alcoholic liquor at retail issued by the [(Illinois Liquor Control Commission) (local liquor control commissioner)]; and

Third Proposition: That when the defendant did so, he was [(in) (on)] the real property of the establishment where [(he) (the licensee)] is licensed to sell alcoholic liquors.

If you find from your consideration of the evidence that each one of these propositions have been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/24-3.4 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §24-3.4 (1991)), added by P.A. 87-591, effective January 1, 1992.

Give Instruction 18.39.

Because Section 24-3.4 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

18.41
Definition Of Reckless Discharge Of A Firearm

A person commits the offense of reckless discharge of a firearm when he

[1] discharges a firearm in a reckless manner which endangers the bodily safety of an individual.

[or]

[2] is a driver of a moving motor vehicle and he knows of and consents to his passenger discharging a firearm in a reckless manner which endangers the bodily safety of an individual.

Committee Note

720 ILCS 5/24-1.5 (West, 1992), added by P.A. 88-217, effective August 6, 1993.

Give Instruction 18.42.

Give Instruction 23.43B, defining the term "motor vehicle", if an issue arises as to whether the defendant was the driver of a motor vehicle or another person was a passenger in a motor vehicle.

Use applicable paragraph.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

18.42
Issues In Reckless Discharge Of A Firearm

To sustain the charge of reckless discharge of a firearm, the State must prove the following propositions:

[1] *First Proposition*: That the defendant discharged a firearm in a reckless manner; and

Second Proposition: That when the defendant did so, he endangered the bodily safety of an individual.

[or]

[2] *First Proposition*: That the defendant was the driver of a moving motor vehicle; and

Second Proposition: That the defendant knew of and consented to his passenger discharging a firearm in a reckless manner; and

Third Proposition: That when the passenger did so, the bodily safety of an individual was endangered.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/24-1.5 (West, 1992), added by P.A. 88-217, effective August 6, 1993.

Give Instruction 18.41.

Use applicable paragraphs.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

18.43
Definition Of Gunrunning

A person commits the offense of gunrunning when he transfers three or more firearms by [any combination of]:

[A] knowingly [(selling) (giving)] a firearm of a size which may be concealed upon the person to any person who is under 18 years of age [(, and) (.)]

[or]

[B] knowingly [(selling) (giving)] a firearm to any person who is under 21 years of age and who has been [(convicted of the offense of ____) (adjudged delinquent)] [(, and) (.)]

[or]

[C] knowingly [(selling) (giving)] a firearm to any person who is a narcotic addict [(, and) (.)]

[or]

[D] knowingly [(selling) (giving)] a firearm to any person who has been convicted of a felony [(, and) (.)]

[or]

[E] knowingly [(selling) (giving)] a firearm to any person who has been a patient in a mental hospital within the past 5 years [(, and) (.)]

[or]

[F] knowingly [(selling) (giving)] a firearm to any person who is mentally retarded [(, and) (.)]

[or]

[G] knowingly delivering a firearm of a size which may be concealed upon the person, incidental to a sale, without withholding delivery of such firearm for at least 72 hours after application for its purchase has been made [(, and) (.)]

[or]

[H] knowingly delivering a [(rifle) (shotgun) [or other long gun]], incidental to a sale,

without withholding delivery of such [(rifle) (shotgun) [or other long gun]] for at least 24 hours after application for its purchase has been made [(, and) (.)]

[or]

[I] while holding a license under the Federal Gun Control Act of 1968, as amended, as [(a) (an)] [(dealer) (importer) (manufacturer) (pawnbroker)], knowingly [(manufacturing) (selling to any unlicensed person) (delivering to any unlicensed person)] a handgun having a [(barrel) (slide) (frame) (receiver)] which is a die casting of zinc alloy or other nonhomogenous metal which will melt or deform at a temperature of less than 800 degrees Fahrenheit [(, and) (.)]

[or]

[J] knowingly [(selling) (giving)] a firearm to a person under 18 years of age who does not possess a valid Firearm Owner's Identification Card.

Committee Note

720 ILCS 5/24-3A (West, 1994), added by P.A. 88-680, effective January 1, 1995.

Give Instruction 18.44.

The bracketed phrase “or other long gun” in paragraph [H] should be used only when a question is raised as to the precise nature of the weapon involved and then only in conjunction with the word “rifle” or “shotgun.”

If paragraph [I] is given, give Instruction 18.35G, defining the word “firearm,” and Instruction 18.35I, defining the word “handgun.”

The offense of gunrunning requires a violation of Section 24-3 (unlawful sale of firearms). Sections 24-3(g) and (j) exempt certain persons and transactions from criminal liability. The defendant bears the burden of proving the exemption by a preponderance of the evidence. See Section 24-2(h); see also People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the phrase “preponderance of the evidence.”

Use applicable paragraphs and bracketed material.

The bracketed letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

18.44
Issues In Gunrunning

To sustain the charge of gunrunning, the State must prove the following propositions:

First Proposition: That the defendant knowingly transferred three or more firearms; and

Second Proposition: That when the defendant transferred these firearms, he did so in the following way[s]:

[A] *First:* That the defendant knowingly [(sold) (gave)] a firearm to another; and

Second: That the firearm was of a size which may be concealed upon a person; and

Third: That the person to whom the defendant [(sold) (gave)] the firearm was under 18 years of age; and

Fourth: That the defendant knew that the person to whom he [(sold) (gave)] the firearm was under 18 years of age.

[or]

[B] *First:* That the defendant knowingly [(sold) (gave)] a firearm to another; and

Second: That the person to whom the defendant [(sold) (gave)] the firearm was under 21 years of age; and

Third: That the defendant knew that the person to whom he [(sold) (gave)] the firearm was under 21 years of age; and

Fourth: That the person to whom the defendant [(sold) (gave)] the firearm had been [(convicted of the offense of ____) (adjudged delinquent)]; and

Fifth: That the defendant knew that the person to whom he [(sold) (gave)] the firearm had been [(convicted of the offense of ____) (adjudged delinquent)].

[or]

[C] *First:* That the defendant knowingly [(sold) (gave)] a firearm to another; and

Second: That the person to whom the defendant [(sold) (gave)] the firearm was a narcotic addict; and

Third: That the defendant knew that the person to whom he [(sold) (gave)] the firearm was a narcotic addict.

[or]

[D] *First:* That the defendant knowingly [(sold) (gave)] a firearm to another; and

Second: That the person to whom defendant [(sold) (gave)] the firearm had been convicted of the offense of ____; and

Third: That the defendant knew that the person to whom he [(sold) (gave)] the firearm had been convicted of the offense of ____.

[or]

[E] *First:* That the defendant knowingly [(sold) (gave)] a firearm to another; and

Second: That the person to whom the defendant [(sold) (gave)] the firearm had been a patient in a mental hospital within the past 5 years; and

Third: That the defendant knew that the person to whom he [(sold) (gave)] the firearm had been a patient in a mental hospital within the past 5 years.

[or]

[F] *First:* That the defendant knowingly [(sold) (gave)] a firearm to another; and

Second: That the person to whom the defendant [(sold) (gave)] the firearm was mentally retarded; and

Third: That the defendant knew the person to whom he [(sold) (gave)] the firearm was mentally retarded.

[or]

[G] *First:* That the defendant knowingly delivered, incidental to a sale, a firearm of a size which may be concealed upon the person; and

Second: That the defendant delivered such firearm within 72 hours after application for its purchase had been made.

[or]

[H] *First:* That the defendant knowingly delivered, incidental to a sale, a [(rifle) (shotgun) [or other long gun]]; and

Second: That the defendant delivered such [(rifle) (shotgun) [or other long gun]] within 24 hours after application for its purchase had been made.

[or]

[I] *First:* That the defendant knowingly [(manufactured) (sold) (delivered)] to an unlicensed person a handgun having a [(barrel) (slide) (frame) (receiver)] which is a die casting of a zinc alloy or other nonhomogenous metal which melts or deforms at a temperature of less than 800 degrees Fahrenheit; and

Second: That the defendant held a license under the Federal Gun Control Act of 1968 as a[n] [(dealer) (importer) (manufacturer) (pawnbroker)].

[or]

[J] *First:* That the defendant knowingly [(sold) (gave)] a firearm to another; and

Second: That the person to whom the defendant [(sold) (gave)] the firearm was under 18 years of age; and

Third: That the defendant knew that the person to whom he [(sold) (gave)] the firearm was under 18 years of age; and

Fourth: That the person to whom the defendant [(sold) (gave)] the firearm did not

possess a valid Firearm Owner's Identification Card; and

Fifth: That the defendant knew that the person to whom he [(sold) (gave)] the firearm did not possess a valid Firearm Owner's Identification Card.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty. [However, if you find the defendant has proved by a preponderance of the evidence that ____, you should find the defendant not guilty.]

Committee Note

720 ILCS 5/24-3A (West, 1994), added by P.A. 88-680, effective January 1, 1995.

Give Instruction 18.43.

Give the bracketed portion of the last paragraph when evidence of an exemption is presented. Insert in the blank the applicable exemption. See Committee Note to Instruction 18.43.

See Committee Note to Instruction 18.43 for appropriate use of the bracketed phrase "or other long gun" and the need for additional definition instructions.

Insert in the blank in the Fourth and Fifth Propositions in the second set of propositions (alternative [B]) the misdemeanor conviction other than a traffic offense.

Insert in the blank in the Second and Third Propositions in the fourth set of propositions (alternative [D]) the felony conviction.

The offense of gunrunning defined in Section 24-3A requires violations of Section 24-3 which, in part, provides that a person commits the offense of unlawful sale of firearms when he knowingly transfers a firearm to a person prohibited from possessing a firearm by reason of age, mental condition, prior convictions, or prior adjudication of delinquency. While Section 24-3 does require the mental state of knowledge, it does not indicate precisely which elements of the offense require knowledge on the part of the defendant. The statute appears to require that the transfer of the firearm be knowingly made but is less clear as to whether the defendant must also have knowledge of the status of the transferee as underage, a former mental patient, mentally retarded, or possessing a prior conviction or adjudication of delinquency. Section 4-3 of the Criminal Code provides that where, as here, a statute defining an offense prescribes a mental state with respect to the offense as a whole, without distinguishing among the elements thereof, the prescribed mental state applies to each element of the offense. See 720 ILCS 5/4-3 (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §4-3 (1991)). Because the status of the transferee is an element of the crime under Section 24-3, the Committee believes that Section 4-3 requires the defendant to have knowledge of that status at the time the firearm is transferred. Therefore, this instruction includes a requirement that the State prove that the defendant had knowledge of the relevant status of the person to whom the firearm was transferred. While the Committee believes that Sections 4-3 and 24-3 require this result, the Committee is not aware of any reported decision discussing the issue.

Use applicable paragraphs and bracketed material.

The bracketed letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

19.00
MOB ACTION

19.01
Definition Of Mob Action--Unlawful Assembly

A person commits the offense of mob action when he

[1] acting together with one or more persons and without authority of law [(knowingly) (intentionally) (recklessly)] disturbs the public peace by the use of force or violence.

[or]

[2] assembles with one or more persons to do an unlawful act, [(knowing) (intending)] that the purpose of assembling was to perform the unlawful act.

[or]

[3] assembles with one or more persons without authority of law, [(knowing) (intending)] that the purpose of assembling [(was to do violence to the person or property of anyone supposed to have been guilty of a violation of the law) (was to exercise correctional powers or regulative powers over any person by violence)].

Committee Note

720 ILCS 5/25-1(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §25-1(a) (1991)).

Give Instruction 19.02.

Give Instructions 5.01, 5.01A, and 5.01B, defining the words "recklessness," "intent," and "knowledge" respectively, when appropriate.

Mental states have been inserted to conform with People v. Leach, 3 Ill.App.3d 389, 279 N.E.2d 450 (1st Dist.1972). See also Landry v. Daley, 280 F.Supp. 938 (N.D.Ill.1968), reversed on other grounds, 401 U.S. 77, 91 S.Ct. 758, 27 L.Ed.2d 696 (1971); People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

P.A. 86-863, effective January 1, 1990, raised the grade of offense for violations of Section 25-1(a)(1) from a misdemeanor to a felony. Violations of Sections 25-1(a)(2) and (a)(3) remain misdemeanor offenses. See Chapter 720, Sections 25-1(b) and (c).

When the jury is given both Instruction 19.01 and either Instruction 19.03 or Instruction 19.05, the verdict forms should reflect the specific names of these crimes as reflected in the instructions, e.g., "Mob Action--Unlawful Assembly" and "Mob Action--Failure to Withdraw."

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

19.02
Issues In Mob Action--Unlawful Assembly

To sustain the charge of mob action, the State must prove the following propositions:

First Proposition: That the defendant acted together with one or more persons without authority of law; and

Second Proposition: That the defendant [(knowingly) (intentionally) (recklessly)] disturbed the public peace by the use of force or violence.

[or]

First Proposition: That the defendant assembled with one or more persons to do ____; and

Second Proposition: That the defendant [(knew) (intended)] that the purpose of assembling was to perform ____.

[or]

First Proposition: That the defendant assembled with one or more persons without authority of law; and

Second Proposition: That the defendant [(knew) (intended)] that the purpose of assembling [(was to do violence to the person or property of anyone supposed have been guilty of a violation of the law) (was to exercise correctional powers or regulative powers over any person by violence)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/25-1(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §25-1(a) (1991)).

Give Instruction 19.01.

When applicable, insert in the blanks the alleged unlawful act.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

19.03
Definition Of Mob Action--Violent Infliction Of Injury

A person commits the offense of mob action involving the violent infliction of injury when he

[1] acting together with one or more persons and without authority of law [(knowingly) (intentionally) (recklessly)] disturbs the public peace by the use of force or violence;

[or]

[2] assembles with one or more persons to do an unlawful act, [(knowing) (intending)] that the purpose of assembling was to perform the unlawful act;

[or]

[3] assembles with one or more persons without authority of law, [(knowing) (intending)] that the purpose of assembling [(was to do violence to the person or property of anyone supposed to have been guilty of a violation of law) (was to exercise correctional powers or regulative powers over any person by violence)];

and

one of the participants in the mob action violently inflicts injury to the [(person) (property)] of another.

Committee Note

720 ILCS 5/25-1(a) and (d) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §25-1(a) and (d) (1991)).

Give Instruction 19.04.

Give Instructions 5.01, 5.01A, and 5.01B, defining the words "recklessness," "intent," and "knowledge" respectively, when appropriate.

When the jury is given both Instruction 19.01 and either Instruction 19.03 or Instruction 19.05, the verdict forms should reflect the specific names of these crimes as reflected in the instructions, e.g., "Mob Action--Unlawful Assembly" and "Mob Action--Violent Infliction of Injury."

Mental states have been inserted to conform with People v. Leach, 3 Ill.App.3d 389, 279 N.E.2d 450 (1st Dist.1972). See also Landry v. Daley, 280 F.Supp. 938 (N.D.Ill.1968), reversed on other grounds, 401 U.S. 77, 91 S.Ct. 758, 27 L.Ed.2d 696 (1971); People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

19.04
Issues In Mob Action--Violent Infliction Of Injury

To sustain the charge of mob action involving violent infliction of injury the State must prove the following propositions:

First Proposition: That the defendant acted together with one or more persons without authority of law; and

Second Proposition: That the defendant [(knowingly) (intentionally) (recklessly)] disturbed the public peace by the use of force or violence; and

Third Proposition: That one of the participants in the mob action violently inflicted injury upon the [(person) (property)] of another.

[or]

First Proposition: That the defendant assembled with one or more persons to do ____; and

Second Proposition: That the defendant [(knew) (intended)] that the purpose of assembling was to perform ____; and

Third Proposition: That one of the participants in the mob action violently inflicted injury upon the [(person) (property)] of another.

[or]

First Proposition: That the defendant assembled with one or more persons without authority of law; and

Second Proposition: That the defendant [(knew) (intended)] that the purpose of assembling [(was to do violence to the person or property of anyone supposed to have been guilty of a violation of law) (was to exercise correctional powers or regulative powers over any person by violence)]; and

Third Proposition: That one of the participants in the mob action violently inflicted injury upon the [(person) (property)] of another.

If you find from your consideration of all of the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/25-1(a) and (c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §25-1(a) and (c) (1991)).

Give Instruction 19.03.

When applicable, insert in the blanks the alleged unlawful act.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

19.05
Definition Of Mob Action--Failure To Withdraw

A person commits the offense of mob action involving the failure to withdraw when he

[1] acting together with one or more persons and without authority of law [(knowingly) (intentionally) (recklessly)] disturbs the peace by the use of force or violence;

[or]

[2] assembles with one or more persons to do an unlawful act, [(knowing) (intending)] that the purpose of assembling was to perform the unlawful act;

[or]

[3] assembles with one or more persons without authority of law, [(knowing) (intending)] that the purpose of assembling [(was to do violence to the person or property of anyone supposed to have been guilty of a violation of the law) (was to exercise correctional powers or regulative powers over any person by violence)];

and

the defendant fails to withdraw from the mob action on being commanded to do so by a peace officer.

Committee Note

720 ILCS 5/25-1(a) and (e) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §25-1(a) and (e) (1991)).

Give Instruction 19.06.

Give Instruction 4.08, defining the term "peace officer."

Give Instructions 5.01, 5.01A, and 5.01B, defining the words "recklessness," "intent," and "knowledge" respectively, when appropriate.

When the jury is given both Instruction 19.01 and either Instruction 19.03 or Instruction 19.05, the verdict forms should reflect the specific names of these crimes as reflected in the instructions, e.g., "Mob Action--Unlawful Assembly" and "Mob Action--Failure to Withdraw."

Mental states have been inserted to conform with People v. Leach, 3 Ill.App.3d 389, 279 N.E.2d 450 (1st Dist.1972). See also Landry v. Daley, 280 F.Supp. 938 (N.D.Ill.1968), reversed on other grounds, 401 U.S. 77, 91 S.Ct. 758, 27 L.Ed.2d 696 (1971); People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

19.06
Issues In Mob Action--Failure To Withdraw

To sustain the charge of mob action involving the failure to withdraw the State must prove the following propositions:

First Proposition: That the defendant acted together with one or more persons without authority of law; and

Second Proposition: That the defendant [(knowingly) (intentionally) (recklessly)] disturbed the public peace by the use of force or violence; and

Third Proposition: That the defendant failed to withdraw from the mob action on being commanded to do so by a peace officer.

[or]

First Proposition: That the defendant assembled with one or more persons to do ____; and

Second Proposition: That the defendant [(knew) (intended)] that the purpose of assembling was to perform ____; and

Third Proposition: That the defendant failed to withdraw from the mob action on being commanded to do so by a peace officer.

[or]

First Proposition: That the defendant assembled with one or more persons without authority of law; and

Second Proposition: That the defendant [(knew) (intended)] that the purpose of assembling [(was to do violence to the person or property of anyone supposed to have been guilty of a violation of law) (was to exercise correctional powers or regulative powers over any person by violence)]; and

Third Proposition: That the defendant failed to withdraw from the mob action on being commanded to do so by a peace officer.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/25-1(a) and (d) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §25-1(a) and (d) (1991)).

Give Instruction 19.05.

When applicable, insert in the blanks the alleged unlawful act.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

19.07
Definition Of Disorderly Conduct

A person commits the offense of disorderly conduct when he knowingly

[1] does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace.

[or]

[2] transmits to a fire department of any city, town, village, or fire protection district a false alarm of fire, knowing there is no reasonable ground for believing that a fire exists.

[or]

[3] transmits to another a false alarm that a bomb or other explosive is concealed in such a place that its explosion would endanger human life, knowing there is no reasonable ground for believing that a bomb or explosive is concealed in such a place.

[or]

[4] transmits to any [(peace officer) (public officer) (public employee)] a report that an offense has been committed, knowing there is no reasonable ground for believing that such an offense has been committed.

[or]

[5] enters upon the property of another and, for a lewd or unlawful purpose, deliberately looks into a dwelling on the property through any window or opening in it.

[or]

[6] while acting as a collection agency or as an employee of such collection agency and while attempting to collect an alleged debt, makes a telephone call to an alleged debtor which is designed to harass, annoy, or intimidate the alleged debtor.

[or]

[7] transmits a false report to the Department of Children and Family Services that ____.

[or]

[8] transmits a false report to the Department of Public Health that ____.

[or]

[9] transmits to a [(police department) (fire department of any municipality or fire protection district) (privately owned and operated ambulance service)] a false request for an [(ambulance) (emergency medical technician-ambulance) (emergency medical technician-paramedic)] knowing there is no reasonable ground for believing that such assistance is required.

[or]

[10] transmits a false report to the Department of Aging of the State of Illinois that ____.

Committee Note

720 ILCS 5/26-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §26-1 (1991)).

Give Instruction 19.08.

When paragraph [4] is used, give Instruction 4.08, defining the term "peace officer."

Insert in the blank in paragraph [7] the applicable type(s) of false report(s).

Insert in the blank in paragraph [8] the applicable type(s) of false report(s) defined in 210 ILCS 45/1-101 *et seq.*

Insert in the blank in paragraph [10] the applicable type(s) of false report(s) defined in 320 ILCS 15/1 *et seq.*

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

19.08
Issues In Disorderly Conduct

To sustain the charge of disorderly conduct, the State must prove the following proposition[s]:

[1] That the defendant knowingly performed an act in such an unreasonable manner as to alarm or disturb another and provoke a breach of the peace.

[or]

[2] *First Proposition:* That the defendant knowingly transmitted to a fire department of any city, town, village, or fire protection district a false alarm of a fire; and

Second Proposition: That the defendant did so knowing that there was no reasonable ground for believing that a fire existed.

[or]

[3] *First Proposition:* That the defendant knowingly transmitted to another a false alarm that a bomb or another explosive was concealed in such a place that its explosion would endanger human life; and

Second Proposition: That the defendant did so knowing that there was no reasonable ground for believing that a bomb or explosive was concealed in that place.

[or]

[4] *First Proposition:* That the defendant knowingly transmitted to a [(peace officer) (public officer) (public employee)] a report that an offense had been committed; and

Second Proposition: That the defendant did so knowing that there was no reasonable ground for believing that such an offense had been committed.

[or]

[5] That the defendant knowingly entered upon the property of another and, for a lewd or unlawful purpose, deliberately looked into a dwelling on the property through any window or other opening in it.

[or]

[6] That the defendant, while acting as a collection agency or as an employee of such collection agency, and while attempting to collect an alleged debt, knowingly made a telephone call to an alleged debtor which was designed to harass, annoy, or intimidate the alleged debtor.

[or]

[7] That that defendant knowingly transmitted a false report to the Department of Children and Family Services that ____.

[or]

[8] That the defendant knowingly transmitted a false report to the Department of Public Health that ____.

[or]

[9] That the defendant knowing transmitted to a [(police department) (fire department of any municipality or fire protection district) (privately owned and operated ambulance service)] a false request for an [(ambulance) (emergency medical technician-ambulance) (emergency medical technician-paramedic)] knowing there was no reasonable ground for believing that such assistance is required.

[or]

[10] That the defendant knowingly transmitted a false report to the Department of Aging of the State of Illinois that ____.

If you find from your consideration of all the evidence that [(each one of these propositions) (this proposition)] has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that [(any one of these propositions) (this proposition)] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/26-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §26-1 (1991)).

Give Instruction 19.07.

When applicable, insert in the blanks the appropriate acts. See Committee Note to Instruction 19.03 to determine the appropriate act(s) to put in the blanks.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

19.09
Definition Of Harassment By Telephone

A person commits the offense of harassment by telephone when he

[1] uses a telephone communication for the purpose of making any comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, or indecent with an intent to offend.

[or]

[2] makes a telephone call, whether or not conversation ensues, with the intent to abuse, threaten, or harass any person at the called number.

[or]

[3] makes or causes the telephone of another to ring repeatedly, with the intent to harass any person at the called number.

[or]

[4] makes repeated telephone calls, during which conversation ensues, solely to harass any person at the called number.

[or]

[5] knowingly permits any telephone under his control to be used for the purpose of ____.

Committee Note

720 ILCS 135/1-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 134, §16.4-1 (1991)).

Give Instruction 19.10.

See People v. Parkins, 77 Ill.2d 253, 396 N.E.2d 22, 32 Ill.Dec. 909 (1979).

When paragraph [5] is given, insert in the blank the appropriate definition contained in the first four paragraphs.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

19.10
Issues In Harassment By Telephone

To sustain the charge of harassment by telephone, the State must prove the following propositions:

First Proposition: That the defendant [(used a telephone) (knowingly permitted a telephone under his control to be used)]; and

Second Proposition: That the defendant did so for the purpose of making any comment, request, suggestions, or proposal which was obscene, lewd, lascivious, filthy, or indecent; and

Third Proposition: That the defendant did so intending to offend.

[or]

Second Proposition: That the defendant did so for the purpose of making a telephone call, whether or not conversation ensued; and

Third Proposition: That the defendant did so intending to abuse, threaten, or harass any person at the called number.

[or]

Second Proposition: That the defendant did so for the purpose of making or causing the telephone of another to ring repeatedly; and

Third Proposition: That the defendant did so intending to harass any person at the called number.

[or]

Second Proposition: That the defendant did so for the purpose of making repeated telephone calls, during which conversation ensued; and

Third Proposition: That the defendant did so intending solely to harass any person at the called number.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 135/1-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 134, §16.4-1 (1991)).

Give Instruction 19.09.

When paragraph [5] of Instruction 19.09, the definitional instruction for this offense, is given, use the phrase "knowingly permitted a telephone under his control to be used" in the First Proposition.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

19.11
Definition Of Residential Picketing

A person commits the offense of residential picketing when he pickets before or about the [(residence) (dwelling)] of any person and that [(residence) (dwelling)] is not used as a place of business.

Committee Note

720 ILCS 5/21.1-2 (West, 1992) (formerly Ill.Rev.Stat., ch. 38, §21.1-2 (1991)).

Give Instruction 19.12.

Note the exclusions in Section 21.1-1 regarding peacefully picketing one's own residence and peacefully picketing before or about the place of a meeting or assembly on premises commonly used to discuss subjects of general public interest.

In People v. McQueen, 241 Ill.App.3d 509, 517, 608 N.E.2d 1333, 1338, 181 Ill.Dec. 859, 864 (4th Dist.1993), the court held that the State must prove that the residence was not "used as a place of business" as an element in all cases because that language in the statute is "descriptive of the offense." The court added parenthetically that because the other two exclusions "are not 'descriptive of the offense,' *** the State need not prove the absence of those exceptions in the absence of some evidence thereon being presented by the defense." (Emphasis deleted.) *McQueen,* 241 Ill.App.3d at 517, 608 N.E.2d at 1338-39, 181 Ill.Dec. at 864-65.

Use applicable bracketed material.

19.12
Issues In Residential Picketing

To sustain the charge of residential picketing, the State must prove the following propositions:

First Proposition: That the defendant picketed; and

Second Proposition: That the defendant did so before or about a [(residence) (dwelling)]; and

Third Proposition: That the [(residence) (dwelling)] was not used as a place of business.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/21.1-2 (West, 1992) (formerly Ill.Rev.Stat., ch. 38, §21.1-2 (1991)).

Give Instruction 19.11 and see the Committee Note to that instruction.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.</pub>

20.00
GAMBLING

20.01
Definition Of Gambling

A person commits the offense of gambling when he
[1] plays a game of chance or skill for money or other things of value.

[or]

[2] makes a wager upon the result of any [(game) (contest) (political nomination) (political appointment) (political election)].

[or]

[3] [(operates) (keeps) (owns) (uses) (purchases) (exhibits) (rents) (sells) (bargains for the sale or lease of) (manufactures) (distributes)] any gambling device.

[or]

[4] contracts to [(have or give himself or another the option to buy or sell) (buy or sell, at a future time,)] any [(grain or other commodity whatsoever) (stock or security of any company)], where, at the time of making such contract, it is intended by both parties thereto that the contract to buy or sell, or the option, whenever exercised, or the contract resulting therefrom, shall be settled, not by the receipt or delivery of such property, but by the payment only of differences in prices.

[or]

[5] knowingly [(owns) (possesses)] any [(book) (instrument) (apparatus)] by means of which bets or wagers [(have been) (are)] [(recorded) (registered)].

[or]

[6] knowingly possesses any money which he has received in the course of a bet or wager.

[or]

[7] sells pools upon the result of any [(game or contest of skill or chance) (political nomination) (political appointment) (political election)].

[or]

[8] [(sets up) (promotes)] any lottery or [(sells) (offers to sell) (transfers)] any [(lottery ticket) (share of a lottery)].

[or]

[9] [(sets up) (promotes)] any policy game or [(sells) (offers to sell) (knowingly possesses) (knowingly transfers)] any [(policy ticket) (policy slip) (policy record) (policy document) [or other similar device]].

[or]

[10] knowingly [(drafts) (prints) (publishes)] any [(lottery ticket) (lottery share) (policy ticket) (policy slip) (policy record) (policy document) [or similar device]].

[or]

[11] knowingly advertises any [(lottery) (policy game)].

[or]

[12] knowingly transmits information as to [(wagers) (betting odds) (changes in betting odds)] by [(telephone) (telegraph) (radio) (semaphore) [or similar means]].

[or]

[13] knowingly [(installs) (maintains)] equipment for the [(transmission) (receipt)] of information as to [(wagers) (betting odds) (changes in betting odds)].

Committee Note

720 ILCS 5/28-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §28-1 (1991)).

Give Instruction 20.02.

When the charge alleges the use of similar devices or similar means, give all the types of devices or means within the brackets.

Note the exception in Section 28-1(a)(4), regarding options or contracts to buy or sell.

Note the exception in Section 28-1(a)(9), regarding activities authorized by or conducted

in accordance with the law.

Note the exception in Section 28-1(a)(10), regarding activities authorized by or conducted in accordance with the law.

Note the exception in Section 28-1(a)(11), regarding news reporting.

Note the exclusions contained in Section 28-1(b).

See Instruction 20.01A, defining the term "gambling device."

See Instruction 20.01B, defining the word "lottery."

See Instruction 20.01C, defining the term "policy game."

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

20.01A
Definition Of A Gambling Device

The term "gambling device" means

[1] any clock, tape machine, slot machine, or other machines or device for the reception of money or other thing of value on chance or skill, or upon the action of which money or other thing of value is staked, hazarded, bet, won, or lost.

[or]

[2] any mechanism, furniture, fixture, equipment, or other device designed primarily for use in a gambling place.

Committee Note

720 ILCS 5/28-2(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §28-2(a) (1991)).

Give this instruction with paragraph [3], [9], or [10] of Instruction 20.01.

See Chapter 720, Sections 28-2(a)(1), (a)(2), and (a)(3) for exclusions to the definition of a gambling device.

Use applicable paragraphs.

20.01B
Definition Of Lottery

The word "lottery" means a scheme or procedure by which one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win such prizes, whether the scheme or procedure is called a lottery, raffle, gift, sale, or some other name.

Committee Note

720 ILCS 5/28-2(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §28-2(b) (1991)).

Give this instruction with paragraph [8], [10], or [11] of Instruction 20.01.

See People v. Eagle Food Centers, Inc., 31 Ill.2d 535, 202 N.E.2d 473 (1964).

20.01C
Definition Of Policy Game

The term "policy game" means any scheme or procedure by which a person promises or guarantees by any instrument, bill, certificate, writing, token, or other device that any particular number, character, ticket, or certificate shall, in the event of any contingency in the nature of a lottery, entitle the purchaser or holder to receive money, property, or evidence of debt.

Committee Note

720 ILCS 5/28-2(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §28-2(c) (1991)).

Give this instruction with paragraph [9] or [11] of Instruction 20.01.

20.02
Issues In Gambling

To sustain the charge of gambling, the State must prove the following proposition[s]:

[1] That the defendant played a game of chance or skill for money or other thing of value.

[or]

[2] That the defendant made a wager upon the result of any [(game) (contest) (political nomination) (political appointment) (political election)].

[or]

[3] That the defendant [(operated) (kept) (owned) (used) (purchased) (exhibited) (rented) (sold) (bargained for the sale or lease of) (manufactured) (distributed)] any gambling device.

[or]

[4] *First Proposition:* That the defendant contracted to [(have or give himself or another the option to buy or sell) (buy or sell, at a future time)] any [(grain or other commodity whatsoever) (stock or security of any company)]; and

Second Proposition: That, at the time of making such contract, both parties thereto intended that the contract to buy or sell, or the option whenever exercised, or the contract resulting therefrom, would be settled, not by the receipt or delivery of such property, but by the payment only of differences in prices.

[or]

[5] That the defendant knowingly [(owned) (possessed)] any [(book) (instrument) (apparatus)] by means of which bets or wagers [(had been) (were)] [(recorded) (registered)].

[or]

[6] That the defendant knowingly possessed any money which he had received in the course of a bet or wager.

[or]

[7] That the defendant sold polls upon the result of any [(game or contest of skill or chance) (political nomination) (political appointment) (political election)].

[or]

[8] That the defendant set up or promoted any lottery or [(sold) (offered to sell) (transferred)] any [(lottery ticket) (share of a lottery)].

[or]

[9] That the defendant [(set up) (promoted)] any policy game or [(sold) (offered to sell) (knowingly possessed) (knowingly transferred)] any [(policy ticket) (policy slip) (policy record) (policy document) [or similar device]].

[or]

[10] That the defendant knowingly [(drafted) (printed) (published)] any [(lottery ticket) (lottery share) (policy ticket) (policy slip) (policy record) (policy document) [or other similar device]].

[or]

[11] That the defendant knowingly advertised any [(lottery) (policy game)].

[or]

[12] *First Proposition:* That the defendant knowingly transmitted information as to [(wagers) (betting odds) (changes in betting odds)]; and

Second Proposition: That the defendant did so by [(telephone) (telegraph) (radio) (semaphore) [or similar means]].

[or]

[13] That the defendant knowingly [(installed) (maintained)] equipment for the [(transmission) (receipt)] of information as to [(wagers) (betting odds) (changes in betting odds)].

If you find from your consideration of all the evidence that [(this proposition) (each of these propositions)] has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that [(this proposition) (any one of these propositions)] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/28-1 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §28-1 (1991)).

Give Instruction 20.01.

When the charge alleges the use of similar devices or similar means, give all the types of devices or means within the brackets.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of the court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

20.03
Definition Of Keeping A Gambling Place

A person commits the offense of keeping a gambling place when he knowingly permits any real estate, vehicle, boat, or other property [(owned or occupied by him) (under his control)] to be used for the purpose of gambling.

Committee Note

720 ILCS 5/28-3 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §28-3 (1991)), as amended by P.A. 86-1029, effective February 7, 1990.

Give Instruction 20.01, defining gambling.

See Chapter 720, Section 28-3 for exclusions to the definition of keeping a gambling place.

Use applicable bracketed material.

20.04
Issues In Keeping A Gambling Place

To sustain the charge of keeping a gambling place, the State must prove the following propositions:

First Proposition: That the defendant knowingly permitted [(the premises at ____) (a ____)] to be used for the purposes of gambling; and

Second Proposition: That the ____ was [(owned or occupied by the defendant) (under the defendant's control)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/28-3 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §28-3 (1991)), as amended by P.A. 86-1089, effective February 7, 1990.

Give Instruction 20.03.

Insert in the blanks a description of the place in question.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

20.05
Definition Of Syndicated Gambling--Policy

A person commits the offense of syndicated gambling when he knowingly uses any [(premises) (property)] for the purpose of receiving or he knowingly does receive from what is commonly called "policy" any

[1] money from a person other than the bettor or player whose bets or plays are represented by such money.

[or]

[2] written "policy game" records, made or used over a period of time, from a person other than the bettor or player whose bets or plays are represented by such written record.

Committee Note

720 ILCS 5/28-1.1(b) and (c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §28-1.1(b) and (c) (1991)).

Give Instruction 20.06.

Give Instruction 20.01C, defining the term "policy game."

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

20.06
Issues In Syndicated Gambling--Policy

To sustain the charge of syndicated gambling, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(received) (used the premises at ____ for the purpose of receiving)] money from what is commonly known as "policy"; and

Second Proposition: That the person from whom defendant received such money was not the bettor or player whose bets or plays were represented by such money.

[or]

First Proposition: That the defendant knowingly [(received) (used the premises at ____ for the purpose of receiving)] written "policy game" records made or used over a period of time; and

Second Proposition: That the person from whom defendant received such written records was not the bettor or player whose bets or plays were represented by such written records.

If you find your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/28-1.1(b) and (c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §28-1.1(b) and (c) (1991)).

Give Instruction 20.05.

Insert in the blanks a description of the place in question.

Use applicable paragraphs and bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

20.07
Definition Of Syndicated Gambling--Bookmaking

A person commits the offense of syndicated gambling when he receives or accepts more than five bets or wagers upon the result of any trials or contests of skill, speed, or power of endurance or upon any lot, chance, casualty, unknown or contingent event whatsoever, when the bets or wagers are of such size that the total amounts of money paid or promises to be paid to such person on account thereof exceeds $2,000, regardless of the manner or form in which the bets or wagers are recorded.

Committee Note

720 ILCS 5/28-1.1(b) and (d) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §28-1.1(b) and (d) (1991)).

Note the exclusions in Sections 28-1.1(e)(1), (e)(2), (e)(3), and (e)(4).

20.08
Issues In Syndicated Gambling--Bookmaking

To sustain the charge of syndicated gambling, the State must prove the following propositions:

First Proposition: That the defendant received or accepted more than five bets or wagers upon the result of ____; and

Second Proposition: That such bets or wagers were of such size that the total amount of money paid or promised to be paid to defendant exceeded $2,000.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/28-1.1(b) and (d) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §28-1.1(b) and (d) (1991)).

Give Instruction 20.07.

Insert in the blank the type of gambling.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

21.00
BRIBERY

21.01 Definition Of Offering A Bribe--Athletic Contest

A person commits the offense of offering a bribe when he, with the intent to influence any person [(participating in) (officiating at) (connected with)] a [(professional) (amateur)] [(athletic contest) (sporting event) (sporting exhibition)], [(gives) (offers) (promises)] any [(money) (bribe) (thing of value) (advantage)] to induce that person not to use his best efforts in connection with the [(contest) (event) (exhibition)].

Committee Note

720 ILCS 5/29-1(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §29-1(a) (1991)), as amended by P.A. 85-665, effective January 1, 1988.

Give Instruction 21.02.

Note that the recipient of the alleged bribe need not be the person participating in, officiating at, or connected with the event at issue. The recipient may be a third person the defendant intended to use to influence the participant, official, or person otherwise connected with the event at issue.

Use applicable bracketed material.

21.02 Issues In Offering A Bribe--Athletic Contest

To sustain the charge of offering a bribe, the State must prove the following propositions:

First Proposition: That the defendant [(gave) (offered) (promised)] [(money) (a bribe) (a thing of value) (an advantage)]; and

Second Proposition: That the defendant did so with the intent to induce ____ not to use his best efforts in connection with [(an athletic contest) (a sporting event) (a sporting exhibition)]; and

Third Proposition: That ____ was [(participating in) (officiating at) (connected with)] the [(contest) (event) (exhibition)].

If you find from your considerations of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/29-1(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §29-1(a) (1991)), as amended by P.A. 85-665, effective January 1, 1988.

Give Instruction 21.01.

Note that the recipient of the alleged bribe need not be the person participating in, officiating at, or connected to the event at issue. The recipient may be a third person the defendant intended to use to influence the participant, official, or person otherwise connected with the event at issue.

Insert in the blanks the name of the participant, official, or person connected with the event at issue.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

21.03 Definition Of Accepting A Bribe--Athletic Contest

A person [(participating in) (officiating at) (connected with)] a [(professional) (amateur)] [(athletic contest) (sporting event or exhibition)] commits the offense of accepting a bribe when he [(accepts) (agrees to accept)] any [(money) (bribe) (thing of value) (advantage)] with the [(intent) (understanding) (agreement)] that he will not use his best efforts in connection with the [(contest) (event) (exhibition)].

Committee Note

720 ILCS 5/29-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §29-2 (1991)).

Give Instruction 21.04.

Use applicable bracketed material.

21.04 Issues In Accepting A Bribe--Athletic Contest

To sustain the charge of accepting a bribe, the State must prove the following propositions:

First Proposition: That the defendant was [(participating in) (officiating at) (connected with)] [(an athletic contest) (a sporting event or exhibition)]; and

Second Proposition: That the defendant [(accepted) (agreed to accept)] [(money) (a bribe) (a thing of value) (an advantage)]; and

Third Proposition: That the defendant did so with the [(intent) (understanding) (agreement)] that he would not use his best efforts in connection with the [(contest) (event) (exhibition)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/29-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §29-2 (1991)).

Give Instruction 21.03.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

21.05 Definition Of Failure To Report Offer Of Bribe--Athletic Contest

A person [(participating in) (officiating at) (connected with)] [(a professional) (an amateur)] [(athletic contest) (sporting event or exhibition)] commits the offense of failure to report the offer of a bribe when he fails to report forthwith to his employer, the promoter of the [(contest) (event) (exhibition)], the State's Attorney, or a peace officer any offer or promise of a bribe made to him.

Committee Note

720 ILCS 5/29-3 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §29-3 (1991)).

Give Instructions 21.01 and 21.06.

Use applicable bracketed material.

21.06 Issues In Failure To Report Offer Of Bribe--Athletic Contest

To sustain the charge of failure to report the offer of a bribe, the State must prove the following propositions:

First Proposition: That the defendant was [(participating in) (officiating at) (connected with)] [(an athletic contest) (a sporting event or exhibition)]; and

Second Proposition: That an offer or promise of a bribe was made to the defendant; and

Third Proposition: That the defendant failed to report the offer or promise of a bribe forthwith to his employer, or the promoter of the [(contest) (event) (exhibition)], or the State's Attorney, or a peace officer.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/29-3 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §29-3 (1991)).

Give Instruction 21.05.

Give Instruction 4.08 when the definition of the term “peace officer” is an issue.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

21.07 Definition Of Offering A Commercial Bribe

A person commits the offense of commercial bribery when he [(confers) (offers) (agrees to confer)] any benefit upon any [(employee) (agent) (fiduciary)] without the consent of the [(employer) (principal)] of the [(employee) (agent) (fiduciary)], with intent to influence the conduct of the [(employee) (agent) (fiduciary)], in relation to the affairs of his [(employer) (principal)].

Committee Note

720 ILCS 5/29A-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §29A-1 (1991)).

Use applicable bracketed material.

21.08 Issues In Offering A Commercial Bribe

To sustain the charge of commercial bribery, the State must prove the following propositions:

First Proposition: That the defendant [(conferred) (offered) (agreed to confer)] a benefit upon ____, who was a[n] [(employee) (agent) (fiduciary)] of ____, a[n] [(employer) (principal)]; and

Second Proposition: That the defendant did so without the consent of the [(employer) (principal)]; and

Third Proposition: That the defendant did so with the intent to influence the [(employee's) (agent's) (fiduciary's)] conduct in relation to his [(employer's) (principal's)] affairs.

If you find from your considerations of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/29A-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §29A-1 (1991)).

Give Instruction 21.07.

Insert in the first blank the name of the person to whom the bribe was offered.

Insert in the second blank the name of the employee or principal.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

21.09 Definition Of Accepting A Commercial Bribe

A[n] [(employee) (agent) (fiduciary)] commits the offense of receiving a commercial bribe when, without the consent of his [(employer) (principal)], he [(solicits) (accepts) (agrees to accept)] any benefit from another person upon an [(agreement) (understanding)] that such benefit will influence the [(employee's) (agent's) (fiduciary's)] conduct in relation to his [(employer's) (principal's)] affairs.

Committee Note

720 ILCS 5/29A-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §29A-2 (1991)).

Give Instruction 21.10.

Use applicable bracketed material.

21.10 Issues In Accepting A Commercial Bribe

To sustain the charge of receiving a commercial bribe, the State must prove the following propositions:

First Proposition: That the defendant was a[n] [(employee) (agent) (fiduciary)] of ____, his [(employer) (principal)]; and

Second Proposition: That the defendant [(solicited) (accepted) (agreed to accept)] a benefit from another person; and

Third Proposition: That the defendant did so upon an [(understanding) (agreement)] that such benefit would influence his conduct in relation to his [(employer's) (principal's)] affairs; and

Fourth Proposition: That the defendant did so without the consent of his [(employer) (principal)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

Committee Note

720 ILCS 5/29A-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §29A-2 (1991)).

Give Instruction 21.09.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

21.11 Definition Of Bribery--Official

A person commits the offense of bribery when he

[1] promises or tenders any [(property) (personal advantage)] to a [(public officer) (public employee) (juror) (witness)] with intent to influence the performance of any act related to the [(officer's) (employee's) (juror's) (witness')] employment or function.

[or]

[2] promises or tenders any [(property) (personal advantage)] to one whom he believes to be a [(public officer) (public employee) (juror) (witness)] with intent to influence the performance of any act related to the employment or function of a [(public officer) (public employee) (juror) (witness)].

[or]

[3] promises or tenders any [(property) (personal advantage)] to another person with intent to cause the other person to influence the performance of any act related to the employment or function of a [(public officer) (public employee) (juror) (witness)].

[or]

[4] [(receives) (retains) (agrees to accept)] any [(property) (personal advantage)] knowing that the [(property) (personal advantage)] [(was tendered) (promised)] with intent to cause him to influence the performance of any act related to the employment or function of a [(public officer) (public employee) (juror) (witness)].

[or]

[5] [(solicits) (receives) (retains) (agrees to accept)] any [(property) (personal advantage)] pursuant to an understanding that he shall [(improperly influence) (attempt to influence)] the performance of any act related to the employment or function of a [(public officer) (public employee) (juror) (witness)].

[The term "public officer" means a person who is elected to office pursuant to statute to discharge a public duty for [any political subdivision of] the State.]

[The term "public officer" means a person who is appointed to an office which is established, and the qualifications and duties of which are prescribed by statute, to discharge a public duty for [any political subdivision of] the State.]

[The term "public employee" is a person who is authorized to perform an official function on behalf of, and is paid by [any political subdivision of] the State.]

Committee Note

720 ILCS 5/33-1, 2-17, and 2-18 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§33-1, 2-17, and 2-18 (1991)).

When paragraph [1] is used, give Instruction 21.12. When paragraph [2] is used, give Instruction 21.12A. When paragraph [3] is used, give Instruction 21.12B. When paragraph [4] is used, give Instruction 21.12C. When paragraph [5] is used, give Instruction 21.12D.

Section 2-20, defining the word "solicit," is not applicable to Section 33-1(e).

In most instances, the provision in the statute that the payment or promise be of property or advantage "which he is not authorized by law to accept" presents a question of law rather than fact. If a fact dispute arises on this issue, give a special instruction including this element.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

21.12 Issues In Bribery--Official

To sustain the charge of bribery, the State must prove the following propositions:

First Proposition: That ____ was a [(public officer) (public employee) (juror) (witness)]; and

Second Proposition: That the defendant promised or tendered to ____[(property) (a personal advantage)]; and

Third Proposition: That the defendant did so with the intent to influence the performance of any act related to ____'s [(employment) (function)] as a [(public officer) (public employee) (juror) (witness)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/33-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §33-1 (1991)).

Give Instruction 21.11.

Insert in the blanks the name of the person allegedly bribed.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

21.12a Issues In Bribery--Belief In Official Status

To sustain the charge of bribery, the State must prove the following propositions:

First Proposition: That the defendant believed ____ to be a [(public officer) (public employee) (juror) (witness)]; and

Second Proposition: That the defendant promised or tendered to ____[(property) (a personal advantage)]; and

Third Proposition: That the defendant did so with the intent to influence the performance of any act related to the [(employment) (function)] of a [(public officer) (public employee) (juror) (witness)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/33-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §33-1 (1991)).

Give Instruction 21.11.

Insert in the blanks the name of the person allegedly bribed.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

21.12b Issues In Bribery--Official--Through An Intermediary

To sustain the charge of bribery, the State must prove the following propositions:

First Proposition: That the defendant promised or tendered [(property) (a personal advantage)] to ____; and

Second Proposition: That the defendant did so with the intent to cause ____ to influence the performance of any act related to the [(employment) (function)] of a [(public officer) (public employee) (juror) (witness)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/33-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §33-1 (1991)).

Give Instruction 21.11.

Insert in the blanks the name of the intermediary.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

21.12c Issues In Bribery--Official--Agreement By Intermediary

To sustain the charge of bribery, the State must prove the following propositions:

First Proposition: That the defendant [(received) (retained) (agreed to accept)] [(any property) (a personal advantage)] from ____; and

Second Proposition: That the defendant knew that the [(property) (personal advantage)] was [(tendered) (promised)] by ____ with intent to cause the defendant to influence the performance of any act related to the employment or function of a [(public officer) (public employee) (juror) (witness)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/33-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §33-1 (1991)).

Give Instruction 21.11.

Insert in the blanks the name of the person offering the bribe.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

21.12d Issues In Bribery--Official--Solicitation By Intermediary

To sustain the charge of bribery, the State must prove the following propositions:

First Proposition: That the defendant [(solicited) (received) (retained) (agreed to accept)] [(property) (a personal advantage)] from ____; and

Second Proposition: That the defendant did so pursuant to an understanding with ____ that the defendant would [(improperly influence) (attempt to influence)] the performance of an act or function of a [(public officer) (public employee) (juror) (witness)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/33-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §33-1 (1991)), as amended by P.A. 84-761, effective January 1, 1986.

Give Instruction 21.11.

Insert in the blanks the name of the person solicited.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

21.13 Failure To Report A Bribe--Official

A [(public officer) (public employee) (juror)] commits the offense of failure to report a bribe when he fails to report forthwith to the [(State's Attorney) (Department of State Police)] any offer of bribery.

[The term "public officer" means a person who is elected to office pursuant to statute to discharge a public duty for [any political subdivision of] the State.]

[The term "public officer" means a person who is appointed to an office which is established, and the qualifications and duties of which are prescribed by statute, to discharge a public duty for [any political subdivision of] the State.]

[The term "public employee" is a person who is authorized to perform an official function on behalf of, and is paid by [any political subdivision of] the State.]

Committee Note

720 ILCS 5/33-2, 2-17, and 2-18 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §33-2, 2-17, and 2-18 (1991)).

Give the appropriate portion of Instruction 21.11, defining the word "bribery."

In the first paragraph, if the defendant was a State employee, use the phrase "Department of State Police." In all other cases, use the term "State's Attorney." See Chapter 720, Section 33-2, as amended by P.A. 84-25, effective July 18, 1985.

Use applicable bracketed material.

21.14 Issues In Failure To Report A Bribe--Official

To sustain the charge of failure to report a bribe, the State must prove the following propositions:

First Proposition: That the defendant was a [(public officer) (public employee) (juror)]; and

Second Proposition: That the defendant was offered a bribe to influence the performance of an act related to his [(employment) (function)] as a [(public officer) (public employee) (juror)]; and

Third Proposition: That the defendant failed to report forthwith to the [(State's Attorney) (Department of State Police)] the offer of the bribe.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/33-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §33-2 (1991)).

Give Instruction 21.13.

In the Third Proposition, if the defendant was a State employee, use the phrase "Department of State Police." In all other cases, use the term "State's Attorney." See Chapter 720, Section 33-2, as amended by P.A. 84-25, effective July 18, 1985.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

21.15 Definition Of Official Misconduct

A [(public officer) (public employee)] commits the offense of official misconduct when, in his official capacity, he

[1] [(intentionally) (recklessly)] fails to perform any mandatory duty as required by law.

[or]

[2] knowingly performs an act which he knows he is forbidden by law to perform.

[or]

[3] performs an act in excess of his lawful authority with intent to obtain a personal advantage for [(himself) (another)].

[or]

[4] [(solicits) (knowingly accepts)] a fee or reward which he knows is not authorized by law, for the performance of any act.

[The term "public officer" means a person who is elected to office pursuant to statute to discharge a public duty for [any political subdivision of] the State.]

[The term "public officer" means a person who is appointed to an office which is established, and the qualifications and duties of which are prescribed by statute, to discharge a public duty for [any political subdivision of] the State.]

[The term "public employee" is a person who is authorized to perform an official function on behalf of, and is paid by [any political subdivision of] the State.]

Committee Note

720 ILCS 5/33-3, 2-17, and 2-18 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §33-3, 2-17, and 2-18 (1991)).

Give Instruction 21.16.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

21.16 Issues In Official Misconduct

To sustain the charge of official misconduct, the State must prove the following propositions:

First Proposition: That the defendant was a [(public officer) (public employee)]; and

Second Proposition: That when in his official capacity, the defendant [(intentionally) (recklessly)] failed to perform a mandatory duty required by law.

[or]

Second Proposition: That when in his official capacity, the defendant knowingly performed an act which he knew he was forbidden by law to perform.

[or]

Second Proposition: That when in his official capacity, the defendant performed an act in excess of his lawful authority with intent to obtain a personal advantage for [(himself) (another)].

[or]

Second Proposition: That when in his official capacity, the defendant [(solicited) (knowingly accepted)] for the performance of any act, a fee or reward which he knew was not authorized by law.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/33-3 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §33-3 (1991)).

Give Instruction 21.15.

Use applicable paragraphs and bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

21.17 Definition Of Offering A Bribe--Attendance At A Particular Institution

A person commits the offense of offering a bribe when he [(offers) (promises)] any [(money) (bribe) (thing of value) (advantage)] with the intent to induce any person to [(attend) (refrain from attending) (continue to attend)] a particular institution of [(secondary) (higher)] education for the purpose of [(participating) (not participating)] in interscholastic athletic competition for such institution.

Committee Note

720 ILCS 5/29-1(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §29-1(b) (1991)), amended by P.A. 85-665, effective January 1, 1988.

Give Instruction 21.18.

Note that the recipient of the alleged offer need not be the student athlete. The recipient may be a third person the defendant used with the intent to influence the student athlete's decision.

Section 5/29-1(b) excludes the following from subsection (b):

> "(1) offering or awarding to an individual any type of scholarship, grant or other bona fide financial aid or employment; (2) offering of any type of financial assistance by such individual's family; or (3) offering of any item of de minimis value by such institution's authorities if such item is of the nature of an item that is commonly provided to any or all students or prospective students."

Use applicable bracketed material.

21.18 Issues In Offering A Bribe--Attendance At A Particular Institution

To sustain the charge of offering a bribe, the State must prove the following propositions:

First Proposition: That the defendant [(offered) (promised)] [(money) (a bribe) (a thing of value) (an advantage)]; and

Second Proposition: That the defendant did so with the intent to influence ____ to [(attend) (refrain from attending) (continue to attend)] ____ for the purpose of [(participating) (not participating)] in interscholastic athletic competition for ____; and

Third Proposition: That ____ was an institution of [(higher) (secondary)] education.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/29-1(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §29-1(b) (1991)), amended by P.A. 85-665, effective January 1, 1988.

Give Instruction 21.17.

Note that the recipient of the alleged offer need not be the student athlete. The recipient may be a third person the defendant used with the intent to influence the student athlete's decision.

Insert in the appropriate blanks the name of the person the defendant was allegedly attempting to influence, and the name of the institution of secondary or higher education. The institution named in the second and third blanks of the Second Proposition must be the same.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

21.19 Definition Of Offering A Bribe--Sports Agents

A person commits the offense of offering a bribe when he gives any [(money) (goods) (thing of value)] to an individual enrolled in an institution of higher education who participates in interscholastic competition and [(represents) (attempts to represent)] that individual in future negotiations for employment with any professional sports team.

Committee Note

720 ILCS 5/29-1(c) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §29-1(c) (1991)), amended by P.A. 85-665, effective January 1, 1988.

Give Instruction 21.20.

Use applicable bracketed material.

21.20 Issues In Offering A Bribe--Sports Agents

To sustain the charge of offering a bribe, the State must prove the following propositions:

First Proposition: That the defendant gave [(money) (goods) (a thing of value)] to ____; and

Second Proposition: That ____ was enrolled at ____; and

Third Proposition: That ____ was an institution of higher education; and

Fourth Proposition: That ____ participated in interscholastic competition; and

Fifth Proposition: That the defendant [(represented) (attempted to represent)] ____ in future negotiations for employment with any professional sports team.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/29-1(c) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §29-1(c) (1991)), amended by P.A. 85-665, effective January 1, 1988.

Give Instruction 21.19.

Insert in the appropriate blanks the name of the student athlete and the name of the institution of higher education.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.00
INTERFERENCE WITH JUDICIAL AND OTHER GOVERNMENTAL FUNCTIONS

22.01 Definition Of Perjury

A person commits the offense of perjury when he, under [(oath) (affirmation)] knowingly makes a false statement, material to the issue or point in question, in [(a proceeding) (any matter)] where by law such [(oath) (affirmation)] is required, and at the time he makes the statement he does not believe the statement to be true.

Committee Note

720 ILCS 5/32-2(a) (West 2011) (formerly Ill.Rev.Stat. ch. 38, §32-2 (1991)).

Give Instruction 22.02.

Give Instruction 22.01A, defining "material".

Give Instruction 22.01B.

The materiality of the alleged false statement is a question of fact for the jury. United States v. Gaudin, 515 U.S. 506, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995).

The issue of whether an oath or affirmation is required is a question of law for the court. People v. Dyer, 51 Ill.App.3d 731, 734, 366 N.E.2d 572 (5th Dist. 1977).

The language of the perjury statute does not require the alleged false statement to be before the trier of fact or anyone else. People v. Davis, 164 Ill.2d 309, 311, 647 N.E.2d 977 (1995). The pertinent inquiry is not whether the statement did in fact influence the trier of fact, but whether it could have influenced the trier of fact. *Davis,* 164 Ill.2d at 316 (J. McMorrow concurring), citing 70 CJS, *Perjury* §13, at 262 (1987).

Knowledge of the falsity of the statement at the time it was made is an essential element of the crime of perjury. People v. Kang, 269 Ill.App.3d 546, 552, 646 N.E.2d 279 (4th Dist. 1995), citing People v. Taylor, 6 Ill.App.3d 961, 963, 286 N.E.2d 122 (4th Dist. 1972). In other words, the perjury statute requires the defendant not believe the false statement is true at the time he or she made the false statement. People v. Penn, 177 Ill.App.3d 179, 182, 533 N.E.2d 383 (5th Dist. 1988).

"Materiality is derived from the relationship between the proposition of the allegedly false statement and the issues in the case. The test of materiality for an allegedly perjured statement is whether the statement tends to prove or disprove an issue in the case." *Acevado,* 275 Ill.App.3d at 423 (internal citations omitted).

Use applicable bracketed material.

The brackets are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

22.01a Definition Of Material

A statement is material when it did influence or could have influenced [(the) (a)] [(trier of fact) (decision maker)] on any issue or point in question. In other words, the test for materiality is whether the statement tends to disprove or prove an issue in the case.

Materiality is, therefore, derived from the relationship between the proposition of the allegedly false statement(s) and the issue(s) in the case.

The materiality of a statement is to be determined at the time the statement was made and with reference to the circumstances existing at the time the statement was made without regard to subsequent events.

[The statement, however, does not have to be made in the presence of [(the) (a)] [(trier of fact) (decision maker)] or anyone else to be material.]

Committee Note

735 ILCS 5/32-2 (West 2011) (formerly Ill.Rev.Stat. ch. 38, §32-2 (1991)).

Give Instruction 22.01B.

The language of the perjury statute does not require the alleged false statement to be before the trier of fact or anyone else. People v. Davis, 164 Ill.2d 309, 311, 647 N.E.2d 977 (1995).

The materiality of the alleged false statement is a question of fact for the jury. United States v. Gaudin, 515 U.S. 506, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995).

The issue of whether an oath or affirmation is required is a question of law for the court. People v. Dyer, 51 Ill.App.3d 731, 734, 366 N.E.2d 572 (5th Dist. 1977).

The materiality of the false statement is to be determined at the time the statement was made. *Davis,* 164 Ill.2d at 316 (J. McMorrow concurring), quoting 70 C.J.S., *Perjury* §13, at 262. The rationale for this proposition derives from case law which holds that a statement is material when it did influence or could have influenced, the trier of fact. People v. Acevado, 275 Ill.App.3d 420, 423, 656 N.E.2d 118 (2d Dist. 1995); People v. Briddle, 84 Ill.App.3d 523, 527 (2d Dist. 1980); see also United States v. Novek, 273 U.S. 202, 206, 47 S.Ct. 341, 71 L.Ed. 610 (1927). "The crime of perjury is complete when the oath is taken with the necessary intent, although the false affidavit is never used", United States v. McKenna, 327 F.3d 830, 839 (9th Cir. 2003); United States v. Stone, 429 F.2d 138, 140-41 (2d Cir. 1970); 60A Am Jur 2d, Perjury §29.

"Materiality is derived from the relationship between the proposition of the allegedly false statement and the issues in the case. The test of materiality for an allegedly perjured statement is whether the statement tends to prove or disprove an issue in the case." *Acevado,* 275 Ill.App.3d at 423 (internal citations omitted).

"A statement can be neither material nor immaterial in itself, but its materiality must be determined in accordance with its relations to some extraneous matter." People v. Toner, 55 Ill.App.3d 688, 693, 371 N.E.2d 270 (1st Dist. 1977); People v. Harris, 102 Ill.App.2d 335, 337,

242 N.E.2d 782 (5th Dist. 1968), quoting 70 CJS, *Perjury*, par. 11, p. 466.

Use applicable bracketed material.

The brackets are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

22.01B An Oath Or Affirmation Was Required

In the [(proceeding) (matter)] in question, an [(oath) (affirmation)] was required.

Committee Note

The issue of whether an oath or affirmation was required is a question of law for the court rather than a question of fact for the jury. People v. Dyer, 51 Ill.App.3d 731, 734, 366 N.E.2d 572 (5th Dist. 1977). Though that portion of Dyer which holds that materiality is a question of law is no longer good law, the Committee believes that whether an oath or affirmation was required remains a question of law because this issue is governed by statute. The construction of a statute is a question of law. People v. Smith, 236 Ill.2d 162, 167, 923 N.E.2d 259 (2010).

22.02 Issues In Perjury

To sustain the charge of perjury, the State must prove the following propositions:

First Proposition: That while under [(oath) (affirmation)], the defendant knowingly made a false statement; and

Second Proposition: That the false statement was material to the issue or point in question when the statement was made; and

Third Proposition: That the defendant believed at the time he made the statement that the statement was not true.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/32-2(a) (West 2011) (formerly Ill.Rev.Stat. ch. 38, §32-2 (1991)).

Give Instruction 22.01.

Give Instruction 22.01A, defining "material".

Give Instruction 22.01B.

The materiality of the alleged false statement is a question of fact for the jury. United States v. Gaudin, 515 U.S. 506, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995).

The issue of whether an oath or affirmation is required is a question of law for the court. People v. Dyer, 51 Ill.App.3d 731, 734, 366 N.E.2d 572 (5th Dist. 1977).

The language of the perjury statute does not require the alleged false statement to be before the trier of fact or anyone else. People v. Davis, 164 Ill.2d 309, 311, 647 N.E.2d 977 (1995). The pertinent inquiry is not whether the statement did in fact influence the trier of fact, but whether it could have influenced the trier of fact. *Davis,* 164 Ill.2d at 316 (J. McMorrow concurring), citing 70 CJS, *Perjury* §13, at 262 (1987).

Knowledge of the falsity of the statement made at the time it was made is an essential element of the crime of perjury. People v. Kang, 269 Ill.App.3d 546, 552, 646 N.E.2d 279 (4th Dist. 1995), citing People v. Taylor, 6 Ill.App.3d 961, 963, 286 N.E.2d 122 (4th Dist. 1972). In other words, the perjury statute requires the defendant not believe the false statement is true at the time he or she made the false statement. People v. Penn, 177 Ill.App.3d 179, 182, 533 N.E.2d 383 (5th Dist. 1988).

"Materiality is derived from the relationship between the proposition of the allegedly false statement and the issues in the case. The test of materiality for an allegedly perjured statement is whether the statement tends to prove or disprove an issue in the case." *Acevado,* 275 Ill.App.3d at 423 (internal citations omitted).

Use applicable bracketed material.

The brackets are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

22.03 Definition Of Perjury--Contradictory Statements

A person commits the offense of perjury when he, under [(oath) (affirmation)], knowingly makes contradictory statements material to the issue or point in question, in [(the same proceeding) (different proceedings)] where by law such [(oath) (affirmation)] is required and at the time he made the statements he did not believe both statements to be true. The State need not establish which statement is false.

Committee Note

720 ILCS 5/32-2(b) (West 2011) (formerly Ill.Rev.Stat. ch. 38, §32-2 (1991)).

Give Instruction 22.04.

Give Instruction 22.01A, defining "material".

Give Instruction 22.01B.

Section (b) of the perjury statute is merely an alternative method of proving perjury, not a new or different offense. People v. Penn, 177 Ill.App.3d 179, 183, 533 N.E.2d 383 (5th Dist. 1988).

The materiality of the alleged false statement is a question of fact for the jury. United States v. Gaudin, 515 U.S. 506, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995).

The issue of whether an oath or affirmation is required is a question of law for the court. People v. Dyer, 51 Ill.App.3d 731, 734, 366 N.E.2d 572 (5th Dist. 1977).

The language of the perjury statute does not require the alleged false statement to be before the trier of fact or anyone else. People v. Davis, 164 Ill.2d 309, 311, 647 N.E.2d 977 (1995). The pertinent inquiry is not whether the statement did in fact influence the trier of fact, but whether it could have influenced the trier of fact. *Davis,* 164 Ill.2d at 316 (J. McMorrow concurring), citing 70 CJS, *Perjury* §13, at 262 (1987).

Knowledge of the falsity of the statement made at the time it was made is an essential element of the crime of perjury. People v. Kang, 269 Ill.App.3d 546, 552, 646 N.E.2d 279 (4th Dist. 1995), citing People v. Taylor, 6 Ill.App.3d 961, 963, 286 N.E.2d 122 (4th Dist. 1972). In other words, the perjury statute requires the defendant not believe the false statement is true at the time he or she made the false statement. People v. Penn, 177 Ill.App.3d 179, 182, 533 N.E.2d 383 (5th Dist. 1988).

"Materiality is derived from the relationship between the proposition of the allegedly false statement and the issues in the case. The test of materiality for an allegedly perjured statement is whether the statement tends to prove or disprove an issue in the case." *Acevado,* 275 Ill.App.3d at 423 (internal citations omitted).

Use applicable bracketed material.

The brackets are provided solely for the guidance of court and counsel and should not be

included in the instruction submitted to the jury.

22.04 Issues In Perjury--Contradictory Statements

To sustain the charge of perjury, the State must prove the following propositions:

First Proposition: That while under [(oath) (affirmation)] the defendant knowingly made contradictory statements; and

Second Proposition: That the contradictory statements were material to the issue or point in question; and

Third Proposition: That at the time the defendant made the statements he did not believe both statements to be true.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/32-2(a) and (b) (West 2011) (formerly Ill.Rev.Stat. ch. 38, §32-2(a) and (b) (1991)).

Give Instruction 22.03.

Give Instruction 22.01A, defining "material".

Give Instruction 22.01B.

Section (b) of the perjury statute is merely an alternative method of proving perjury, not a new or different offense. People v. Penn, 177 Ill.App.3d 179, 183, 533 N.E.2d 383 (5th Dist. 1988).

The materiality of the alleged false statement is a question of fact for the jury. United States v. Gaudin, 515 U.S. 506, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995).

The issue of whether an oath or affirmation is required is a question of law for the court. People v. Dyer, 51 Ill.App.3d 731, 734, 366 N.E.2d 572 (5th Dist. 1977).

The language of the perjury statute does not require the alleged false statement to be before the trier of fact or anyone else. People v. Davis, 164 Ill.2d 309, 311, 647 N.E.2d 977 (1995). The pertinent inquiry is not whether the statement did in fact influence the trier of fact, but whether it could have influenced the trier of fact. *Davis,* 164 Ill.2d at 316 (J. McMorrow concurring), citing 70 CJS, *Perjury* §13, at 262 (1987).

Knowledge of the falsity of the statement made at the time it was made is an essential element of the crime of perjury. People v. Kang, 269 Ill.App.3d 546, 552, 646 N.E.2d 279 (4th Dist. 1995), citing People v. Taylor, 6 Ill.App.3d 961, 963, 286 N.E.2d 122 (4th Dist. 1972). In other words, the perjury statute requires the defendant not believe the false statement is true at the time he or she made the false statement. People v. Penn, 177 Ill.App.3d 179, 182, 533 N.E.2d 383 (5th Dist. 1988).

"Materiality is derived from the relationship between the proposition of the allegedly

false statement and the issues in the case. The test of materiality for an allegedly perjured statement is whether the statement tends to prove or disprove an issue in the case." *Acevado*, 275 Ill.App.3d at 423 (internal citations omitted).

Use applicable bracketed material.

The brackets are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

22.05 Definition Of Subornation Of Perjury

A person commits the offense of subornation of perjury when:

He knowingly [(procures) (induces)] another to make a false statement under [(oath) (affirmation)], material to the issue or point in question, in [(a proceeding) (any other matter)] where by law such [(oath) (affirmation)] is required and that when defendant did so, he did not believe the statement(s) to be true.

[or] He knowingly [(procures) (induces)] another to make contradictory statements under [(oath) (affirmation)], material to the issue or point in question, in [(a proceeding) (any other matter)] where by law such [(oath) (affirmation)] is required and at the time he [(procures) (induces)] another to make contradictory statements he did not believe both statement(s) to be true. The State need not establish which statement is false.

Committee Note

720 ILCS 5/32-3 (West 2011) (formerly Ill.Rev.Stat. ch. 38, §32-3 (1991)).

Give Instruction 22.06.

Give Instruction 22.01A, defining "material".

Give Instruction 22.01B.

The first paragraph should be given when the State is alleging subornation by false statement or statements. The second paragraph should be given when the State is alleging subornation by contradictory statements.

Section (b) of the perjury statute is merely an alternative method of proving perjury, not a new or different offense. People v. Penn, 177 Ill.App.3d 179, 183, 533 N.E.2d 383 (5th Dist. 1988).

The materiality of the alleged false statement is a question of fact for the jury. United States v. Gaudin, 515 U.S. 506, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995).

The issue of whether an oath or affirmation is required is a question of law for the court. People v. Dyer, 51 Ill.App.3d 731, 734, 366 N.E.2d 572 (5th Dist. 1977).

The language of the perjury statute does not require the alleged false statement to be before the trier of fact or anyone else. People v. Davis, 164 Ill.2d 309, 311, 647 N.E.2d 977 (1995). The pertinent inquiry is not whether the statement did in fact influence the trier of fact, but whether it could have influenced the trier of fact. *Davis,* 164 Ill.2d at 316 (J. McMorrow concurring), citing 70 CJS, *Perjury* §13, at 262 (1987).

Knowledge of the falsity of the statement made at the time it was made is an essential element of the crime of perjury. People v. Kang, 269 Ill.App.3d 546, 552, 646 N.E.2d 279 (4th Dist. 1995), citing People v. Taylor, 6 Ill.App.3d 961, 963, 286 N.E.2d 122 (4th Dist. 1972). In other words, the perjury statute requires the defendant not believe the false statement is true at

the time he or she made the false statement. People v. Penn, 177 Ill.App.3d 179, 182, 533 N.E.2d 383 (5th Dist. 1988).

"Materiality is derived from the relationship between the proposition of the allegedly false statement and the issues in the case. The test of materiality for an allegedly perjured statement is whether the statement tends to prove or disprove an issue in the case." *Acevado,* 275 Ill.App.3d at 423 (internal citations omitted).

Use applicable bracketed materials.

The brackets are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

22.06 Issues In Subornation Of Perjury

To sustain the charge of subornation of perjury, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(procured) (induced)] ____ to make [(a false statement) (contradictory statements)] under [(oath) (affirmation)]; and

Second Proposition: That the [(false statement) (contradictory statements)] [(was) (were)] material to the issue or point in question; and

Third Proposition: That at the time the defendant [(procured) (induced)] ____ to make a false statement the defendant did not believe the statement(s) to be true.

[or]

Third Proposition: That at the time the defendant [(procured) (induced)] ____ to make contradictory statements he did not believe both statements to be true.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/32-3 (West 2011) (formerly Ill.Rev.Stat. ch 38, §32-3 (1991)).

Give Instruction 22.05

Give Instruction 22.01A, defining "material".

Give Instruction 22.01B.

Insert in the blank the name of the person whom the defendant induced to make the allegedly false statement.

The first alternative Third Proposition should be given when the State is alleging subornation by false statement or statements. The second alternative Third Proposition should be given when the State is alleging subornation by contradictory statements.

Section (b) of the perjury statute is merely an alternative method of proving perjury, not a new or different offense. People v. Penn, 177 Ill.App.3d 179, 183, 533 N.E.2d 383 (5th Dist. 1988).

The materiality of the alleged false statement is a question of fact for the jury. United States v. Gaudin, 515 U.S. 506, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995).

The issue of whether an oath or affirmation is required is a question of law for the court. People v. Dyer, 51 Ill.App.3d 731, 734, 366 N.E.2d 572 (5th Dist. 1977).

The language of the perjury statute does not require the alleged false statement to be

before the trier of fact or anyone else. People v. Davis, 164 Ill.2d 309, 311, 647 N.E.2d 977 (1995). The pertinent inquiry is not whether the statement did in fact influence the trier of fact, but whether it could have influenced the trier of fact. *Davis,* 164 Ill.2d at 316 (J. McMorrow concurring), citing 70 CJS, *Perjury* §13, at 262 (1987).

Knowledge of the falsity of the statement made at the time it was made is an essential element of the crime of perjury. People v. Kang, 269 Ill.App.3d 546, 552, 646 N.E.2d 279 (4th Dist. 1995), citing People v. Taylor, 6 Ill.App.3d 961, 963, 286 N.E.2d 122 (4th Dist. 1972). In other words, the perjury statute requires the defendant not believe the false statement is true at the time he or she made the false statement. People v. Penn, 177 Ill.App.3d 179, 182, 533 N.E.2d 383 (5th Dist. 1988).

"Materiality is derived from the relationship between the proposition of the allegedly false statement and the issues in the case. The test of materiality for an allegedly perjured statement is whether the statement tends to prove or disprove an issue in the case." *Acevado,* 275 Ill.App.3d at 423 (internal citations omitted).

Use applicable bracketed material.

The brackets are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. Give Instruction 5.03.

22.07 Definition Of Communicating With A Juror

A person commits the offense of communicating with a juror when he communicates directly or indirectly with a person whom he believes has been summoned as a juror, with intent to influence that person regarding any matter which [(is) (may be brought)] before him in his capacity as a juror.

Committee Note

720 ILCS 5/32-4(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §32-4(a) (1991)).

Give Instruction 22.08.

Use applicable bracketed material.

22.08 Issues In Communicating With A Juror

To sustain the charge of communicating with a juror, the State must prove the following propositions:

First Proposition: That the defendant communicated directly or indirectly with ____; and

Second Proposition: That when he did so, the defendant believed ____ had been summoned as a juror; and

Third Proposition: That when he did so, the defendant intended to influence ____ regarding a matter which [(was) (might have been brought)] before ____ in his capacity as a juror.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/32-4(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §32-4(a) (1991)).

Give Instruction 22.07.

Insert in the blank the name of the juror.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.09 Definition Of Communicating With A Witness (Until January 1, 1995)

A person commits the offense of communicating with a witness when he, with the intent to deter any party or witness from testifying freely, fully, and truthfully to any matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)],

forcibly detains the party or witness.

[or]

communicates directly or indirectly to the party or witness any [(knowingly false information) (threat of injury or damage to the property or person of [(the party or witness) (a relative of the party or witness)])].

[or]

[(offers) (delivers)] money [or other thing of value] to [(the party or witness) (a relative of the party or witness)].

Committee Note

720 ILCS 5/32-4(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §32-4(b) (1991)).

P.A. 88-680, effective January 1, 1995, substantively amended Section 32-4(b). As a result, this instruction may be used only in cases in which the alleged communication with a witness occurred before January 1, 1995. For offenses allegedly committed on or after January 1, 1995, use Instruction 22.09X.

Give Instruction 22.10.

Use applicable paragraphs and bracketed material.

22.09X Definition Of Communicating With A Witness (As Of January 1, 1995)

A person commits the offense of communicating with a witness when he, with the intent to deter any party or witness from testifying freely, fully, and truthfully to any matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)],

[1] forcibly detains the party or witness.

[or]

[2] communicates directly or indirectly to the party or witness any [(knowingly false information) (threat of injury or damage to the property or person of any individual)].

[or]

[3] [(offers) (delivers) (threatens to withhold)] money [or other thing of value] [(to) (from)] any individual.

Committee Note

720 ILCS 5/32-4(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §32-4(b) (1991)), amended by P.A. 88-680, effective January 1, 1995; and P.A. 89-377, effective August 18, 1995.

P.A. 88-680, effective January 1, 1995, substantively amended Section 32-4(b). As a result, use this instruction for cases in which the alleged communication with a witness occurred on or after January 1, 1995. For offenses allegedly committed prior to January 1, 1995, use Instruction 22.09.

Give Instruction 22.10X.

The bracketed numbers in this instruction correspond with the bracketed numbers in Instruction 22.10X. Select the alternative that corresponds to the alternative set of propositions selected in the issues instruction.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

22.10 Issues In Communicating With A Witness (Until January 1, 1995)

To sustain the charge of communicating with a witness, the State must prove the following propositions:

First Proposition: That the defendant forcibly detained [(party or witness)]; and

Second Proposition: That when the defendant did so, [(party or witness)] was a party or witness in a matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)]; and

Third Proposition: That when the defendant did so, he intended to deter [(party or witness)] from testifying freely, fully, and truthfully in the matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)].

[or]

First Proposition: That the defendant communicated directly or indirectly with [(party or witness)]; and

Second Proposition: That when the defendant did so, [(party or witness)] was a party or witness in a matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)]; and

Third Proposition: That the defendant communicated knowingly false information to [(party or witness)]; and

Fourth Proposition: That when the defendant did so, he intended to deter [(party or witness)] from testifying freely, fully, and truthfully to the matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)].

[or]

First Proposition: That the defendant communicated directly or indirectly with [(party or witness)]; and

Second Proposition: That when the defendant did so, [(party or witness)] was a party or witness in a matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)]; and

Third Proposition: That the defendant communicated a threat of injury or damage to the person or property of [(party or witness)]; and

Fourth Proposition: That when the defendant did so, he intended to deter [(party or witness)] from testifying freely, fully, and truthfully to the matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)].

[or]

First Proposition: That the defendant communicated directly or indirectly with [(party or witness)]; and

Second Proposition: That when the defendant did so, [(party or witness)] was a party or witness in a matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)]; and

Third Proposition: That the defendant communicated a threat of injury or damage to the person or property of [(relative)]; and

Fourth Proposition: That when the defendant did so, [(relative)] was a relative of [(party or witness)]; and

Fifth Proposition: That when the defendant did so, he intended to deter [(party or witness)] from testifying freely, fully, and truthfully to the matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)].

[or]

First Proposition: That the defendant [(offered) (delivered)] money [or other thing of value] to any individual; and

Second Proposition: That when he did so, [(party or witness)] was a party or witness in a matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)]; and

Third Proposition: That when he did so, the defendant intended to deter [(party or witness)] from testifying freely, fully, and truthfully in a matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all of the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/32-4(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §32-4(b) (1991)).

P.A. 88-680, effective January 1, 1995, substantively amended Section 32-4(b). As a result, this instruction may be used only in cases in which the alleged communication with a witness occurred before January 1, 1995. For offenses allegedly committed on or after January 1, 1995, use Instruction 22.10X.

Give Instruction 22.09.

Insert in the appropriate blanks the name of the party or witness and the relative of the party or witness.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.10X Issues In Communicating With A Witness (As Of January 1, 1995)

To sustain the charge of communicating with a witness, the State must prove the following propositions:

[1] *First Proposition:* That the defendant forcibly detained ____; and

Second Proposition: That when the defendant did so, ____ was a party or witness in a matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)]; and

Third Proposition: That when the defendant did so, he intended to deter ____ from testifying freely, fully, and truthfully in the matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)].

[or]

[2] *First Proposition:* That the defendant communicated directly or indirectly with ____; and

Second Proposition: That when the defendant did so, ____ was a party or witness in a matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)]; and

Third Proposition: That the defendant communicated [(knowingly false information to ____) (a threat of injury or damage to the person or property of any individual)]; and

Fourth Proposition: That when the defendant did so, he intended to deter ____ from testifying freely, fully, and truthfully to the matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)].

[or]

[3] *First Proposition:* That the defendant [(offered) (delivered) (threatened to withhold)] money [or other thing of value] [(to) (from)] any individual; and

Second Proposition: That when he did so, ____ was a party or witness in a matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)]; and

Third Proposition: That when he did so, the defendant intended to deter ____ from testifying freely, fully, and truthfully in a matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all of the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/32-4(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §32-4(b) (1991)), amended by P.A. 88-680, effective January 1, 1995; and P.A. 89-377,effective August 18, 1995.

P.A. 88-680, effective January 1, 1995, substantively amended Section 32-4(b). As a result, use this instruction for cases in which the alleged communication with a witness occurred on or after January 1, 1995. For offenses allegedly committed prior to January 1, 1995, use Instruction 22.10.

Give Instruction 22.09X.

The bracketed numbers in this instruction correspond with the bracketed numbers in Instruction 22.09X. Select the alternative set of propositions that corresponds to the alternative selected in the definitional instruction.

Insert in the blanks the name of the party or witness.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

22.11 Definition Of Harassment Of A Juror Or Witness--Communication Producing Mental Anguish Or Emotional Distress (Until January 1, 1995)

A person commits the offense of harassment of a [(juror) (witness)] when he, with the intent to harass or annoy one who [(has served as a juror, because of the verdict returned by the jury or the participation of the juror in the verdict) (has served as a witness, because of the testimony of the witness) (may be expected to serve as a witness in a pending legal proceeding, because of the potential testimony of the witness)], communicates directly or indirectly with the [(juror) (witness)] in such a manner as to produce mental anguish or emotional distress.

Committee Note

P.A. 88-680, effective January 1, 1995, substantively amended Section 32-4a. As a result, this instruction may be used only in cases in which the alleged harassment of a juror or witness occurred before January 1, 1995. For offenses allegedly committed on or after January 1, 1995, use Instruction 22.11Y.

720 ILCS 5/32-4a (West 1992) (formerly Ill.Rev.Stat. ch. 38, §32-4a (1991)), as amended by P.A. 88-276, effective January 1, 1994.

Give Instruction 22.12.

Use this instruction when a communication producing mental anguish or emotional distress to a juror or witness is the conduct charged. When conveying a threat to a juror or witness is the conduct charged, use Instruction 22.11X.

For offenses allegedly committed prior to January 1, 1995, use this instruction when a communication producing mental anguish or emotional distress to a juror or witness is the conduct charged. When conveying a threat to a juror or witness is the conduct charged, use Instruction 22.11X.

Use applicable bracketed material.

22.11X Definition Of Harassment Of A Juror Or Witness--Conveying A Threat (Until January 1, 1995)

A person commits the offense of harassment of a [(juror) (witness)] when he, with the intent to harass or annoy one who [(has served as a juror, because of the verdict returned by the jury or the participation of the juror in the verdict) (has served as a witness, because of the testimony of the witness) (may be expected to serve as a witness in a pending legal proceeding, because of the potential testimony of the witness)], conveys a threat of injury or damage to the property or person of [any relative of] the [(juror) (witness)].

Committee Note

P.A. 88-680, effective January 1, 1995, substantively amended Section 32-4a. As a result, this instruction may be used only in cases in which the alleged harassment of a juror or witness occurred before January 1, 1995. For offenses allegedly committed on or after January 1, 1995, use Instruction 22.11Y.

720 ILCS 5/32-4a (West 1992) (formerly Ill.Rev.Stat. ch. 38, §32-4a (1991)), as amended by P.A. 88-276, effective January 1, 1994.

Give Instruction 22.12X.

For offenses allegedly committed prior to January 1, 1995, use this instruction when conveying a threat to a juror or witness is the conduct charged. When a communication producing mental anguish or emotional distress to a juror or witness is the conduct charged, use Instruction 22.11.

Use applicable bracketed material.

22.11y Definition Of Harassment Of A Juror, Witness, Or Family Member Of A Juror Or Witness (As Of January 1, 1995)

A person commits the offense of harassment of a [(juror) (witness) [family member of a (juror) (witness)]] when he, with the intent to harass or annoy [(one) (a family member of one)] who [(has served or is serving as a juror, because of the verdict returned by the jury in a pending legal proceeding or the participation of the juror in the verdict) (has served or is serving as a witness in a pending legal proceeding, because of the testimony of the witness) (may be expected to serve as a witness in a pending legal proceeding, because of the potential testimony of the witness)],

[1] communicates directly or indirectly with the [(juror) (witness) [family member of a (juror) (witness)]] in such a manner as to produce mental anguish or emotional distress.

[or]

[2] conveys a threat of injury or damage to the property or person of such [(juror) (witness) [family member of a (juror) (witness)]].

Committee Note

720 ILCS 5/32-4a (West 1992) (formerly Ill.Rev.Stat. ch. 38, §32-4a (1991)), as amended by P.A. 88-276, effective January 1, 1994; and P.A. 88-680, effective January 1, 1995; P.A. 89-686, effective June 1, 1997; P.A. 90-126, effective January 1, 1998.

P.A. 88-680, effective January 1, 1995, substantively amended Section 32-4a. As a result, use this instruction for all cases in which the alleged harassment of a juror or witness occurred on or after January 1, 1995. For offenses allegedly committed prior to January 1, 1995, see Instruction 22.11 ad 22.11X.

P.A. 90-126, effective January 1, 1998, added family members of jurors and witnesses to those covered by the statute.

Give Instruction 22.12Y.

The bracketed numbers in this instruction correspond with the bracketed numbers in Instruction 22.12Y. Select the alternative that corresponds to the alternative selected from the issues instruction.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

Use applicable paragraphs and bracketed material.

22.11Z Definition Of Family Member

The term "family member" means a spouse, parent, child, stepchild, or other person related by blood or by present marriage; a person who has, or allegedly has, a child in common; and a person who shares, or allegedly shares, a blood relationship through a child.

Committee Note

720 ILCS 5/32-4a(c), added by P.A. 90-126, effective January 1, 1998.

22.11AA Definition Of Harassment Of A Child Representative Or Family Member Of A Child Representative

A person commits the offense of harassment of a [(child representative) (family member of a child representative)] when he, with the intent to harass or annoy [(one) (a family member of one)] who [(has served) (is serving)] as a representative for the child, because of the representative service of that capacity,

[1] communicates directly or indirectly with the [(representative) (family member of the representative)] in such manner as to produce mental anguish or emotional distress.

[or]

[2] conveys a threat of injury or damage to the property or person of any [(representative) (family member of a representative)].

Committee Note

720 ILCS 32-4a(b), effective June 1, 1997, amended by P.A. 90-126, effective January 1, 1998.

Give Instructions 22.11BB and 22.12AA.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

Use applicable paragraphs and bracketed material.

22.11bb Definition Of Representative For The Child

The term "representative for the child" includes a person appointed under Section 506 of the Illinois Marriage and Dissolution of Marriage Act; or appointed under Section 12 of the Uniform Child Custody Jurisdiction Act; or appointed under Section 2-502 of the Code of Civil Procedure.

Committee Note

720 ILCS 32-4a(b), effective June 1, 1997, amended by P.A. 90-126, effective January 1, 1998.

Give Instructions 22.11AA and 22.12AA.

Section 506 of the Illinois Marriage and Dissolution Act is found at 750 ILCS 5/506. Section 12 of the Uniform Child Custody Jurisdiction Act is found at 750 ILCS 35/12. Section 2-502 of the Code of Civil Procedure is found at 735 ILCS 5/2-502.

22.12 Issues In Harassment Of A Juror Or Witness--Communication Producing Mental Anguish Or Emotional Distress (Until January 1, 1995)

To sustain the charge of harassment of a [(juror) (witness)], the State must prove the following propositions:

First Proposition: That the defendant communicated directly or indirectly with ____; and

Second Proposition: That ____[(served as a juror) (served as a witness) (was expected to serve as a witness in a pending legal proceeding)]; and

Third Proposition: That the defendant made the communication with the intent to harass or annoy ____ because of the [(verdict returned by the jury or the participation of ____ in the verdict) (testimony of ____) (potential testimony of ____)]; and

Fourth Proposition: That the communication produced mental anguish or emotional distress to ____.

If you find from your consideration of all of the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all of the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

P.A. 88-680, effective January 1, 1995, substantively amended Section 32-4a. As a result, this instruction may be used only in cases in which the alleged harassment of a juror or witness occurred before January 1, 1995. For offenses allegedly committed on or after January 1, 1995, use Instruction 22.12Y.

720 ILCS 5/32-4a (West 1992) (formerly Ill.Rev.Stat. ch. 38, §32-4a (1991)), as amended by P.A. 88-276, effective January 1, 1994.

Give Instruction 22.11.

Insert in the blanks the name of the witness or juror.

For offenses allegedly committed prior to January 1, 1995, use this instruction when a communication producing mental anguish or emotional distress to a juror or witness is the conduct charged. When conveying a threat to a juror or witness is the conduct charged, use Instruction 22.12X.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.12X Issues In Harassment Of A Juror Or Witness--Conveying A Threat (Until January 1, 1995)

To sustain the charge of harassment of a [(juror) (witness)], the State must prove the following propositions:

First Proposition: That the defendant conveyed a threat of injury or damage to the property or person of [(____) (any relative of ____)]; and

Second Proposition: That ____[(served as a juror) (served as a witness) (was expected to serve as a witness in a pending legal proceeding)].

Third Proposition: That the defendant conveyed the threat with the intent to harass or annoy ____ because of the [(verdict returned by the jury or the participation of ____ in the verdict) (testimony of ____) (potential testimony of ____)].

If you find from your consideration of all of the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all of the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

P.A. 88-680, effective January 1, 1995, substantively amended Section 32-4a. As a result, this instruction may be used only in cases in which the alleged harassment of a juror or witness occurred before January 1, 1995. For offenses allegedly committed on or after January 1, 1995, use Instruction 22.12Y.

720 ILCS 5/32-4a (West 1992) (formerly Ill.Rev.Stat. ch. 38, §32-4a (1991)), as amended by P.A. 88-276, effective January 1, 1994.

Give Instruction 22.11X.

Insert in the blanks the name of the witness or juror.

For offenses allegedly committed prior to January 1, 1995, use this instruction when conveying a threat to a juror or witness is the conduct charged. When a communication producing mental anguish or emotional distress to a juror or witness is the conduct charged, use Instruction 22.12.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

22.12Y Issues In Harassment Of A Juror, Witness, Or Family Member Of A Juror Or Witness (As Of January 1, 1995)

To sustain the charge of harassment of a [(juror) (witness) [family member of a (juror) (witness)]], the State must prove the following propositions:

[1] *First Proposition*: That the defendant communicated directly or indirectly with ____; and

Second Proposition: That ____ [was a family member of one who] [(has served as a juror) (has served as a witness) (was expected to serve as a witness in a pending legal proceeding)]; and

Third Proposition: That the defendant made the communication with the intent to harass or annoy ____ because of the [(verdict returned by the jury or the participation of [(____) (____'s family member)] in the verdict) (testimony of [(____) (____'s family member)]; and

Fourth Proposition: That the communication produced mental anguish or emotional distress to ____.

[or]

[2] *First Proposition*: That the defendant conveyed a threat of injury or damage to the property or person of ____; and

Second Proposition: That ____ [was a family member of one who] [(served as a juror) (served as a witness) (was expected to serve as a witness in a pending legal proceeding)]; and

Third Proposition: That the defendant conveyed the threat with the intent to harass or annoy ____ because of the [(verdict returned by the jury or the participation of [(____) (____)'s family member)] in the verdict) (testimony of [(____) (____)'s family member)] (potential testimony of ____ [(____ (____)'s family member)].

If you find from your consideration of all of the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all of the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/32-4a (West 1992) (formerly Ill.Rev.Stat. ch. 38, §32-4a (1991)), as amended by P.A. 88-276, effective January 1, 1994; and P.A. 88-680, effective January 1, 1995; P.A. 89-686, effective June 1, 1997; P.A. 90-126, effective January 1, 1998.

P.A. 88-680, effective January 1, 1995, substantively amended Section 32-4a. As a result, use this instruction for all cases in which the alleged harassment of a juror or witness occurred on or after January 1, 1995. For offenses allegedly committed prior to January 1, 1995, see Instructions 22.12 and 22.12X.

P.A. 90-126, effective January 1, 1998, added family members of jurors and witnesses to those covered by the statute.

Give Instruction 22.11Y.

Insert in the blanks the name of the witness or juror.

The bracketed numbers in this instruction correspond with the bracketed numbers in Instruction 22.11Y. Select the alternative set of propositions that corresponds to the alternative selected from the definitional instruction.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.12AA Issues In Harassment Of A Child Representative Or Family Member Of A Child Representative

To sustain the charge of harassment of a [(child representative) (family member of a child representative)], the State must prove the following propositions:

[1] *First Proposition:* That the defendant communicated directly or indirectly with ____; and

Second Proposition: That ____ [was a family member of one who] [(had served) (was serving)] as a representative for a child;

Third Proposition: That the defendant made the communication with the intent to harass or annoy ____ because of the representative service of the child representative; and

Fourth Proposition: That the communication produced mental anguish or emotional distress to ____.

[or]

[2] *First Proposition:* That the individual conveyed a threat of injury or damage to the property or person of any [(child representative) (family member of a child representative)]; and

Second Proposition: That ____ [(was a family member of one who] served as a child representative; and

Third Proposition: That the defendant conveyed the threat with the intent to harass or annoy ____ because of the service rendered as a child representative by [(____) (____'s family member)].

If you find from your consideration of all the evidence that each one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 32-4a(b), effective June 1, 1997, amended by P.A. 90-126, effective January 1, 1998.

Give Instructions 22.11AA and 22.11BB.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

Use applicable paragraphs and bracketed material.

22.13 Definition Of Resisting Or Obstructing A Peace Officer Or Correctional Institution Employee

A person commits the offense of resisting or obstructing a [(peace officer) (correctional institution employee)] when he knowingly resists or obstructs the performance of any authorized act within the official capacity of one known to him to be a [(peace officer) (correctional institution employee)].

Committee Note

720 ILCS 5/31-1(a) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §31-1(a) (1991)), amended by P.A. 87-1198, effective September 25, 1992.

Give Instruction 22.14.

Give either Instruction 4.08, defining the term "peace officer," or Instruction 22.13A, defining the term "correctional institution employee."

22.13A Definition Of Correctional Institution Employee

The phrase "correctional institution employee" means any person employed to supervise and control inmates incarcerated in a [(penitentiary) (State farm) (reformatory) (prison) (jail) (house of correction) (police detention area) (half-way house) [or other institution or place for the incarceration or custody of persons [(under sentence for offenses) (awaiting trial or sentence for offenses) (under arrest for an offense) (under arrest for a violation of probation) (under arrest for a violation of parole) (under arrest for a violation of mandatory supervised release) (awaiting a bail setting hearing) (awaiting a preliminary hearing)]]].

Committee Note

720 ILCS 5/31-1(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §31-1(b) (1991)), added by P.A. 87-1198, effective September 25, 1992.

This definition applies only to violations of Section 5/31-1.

Use applicable bracketed material.

22.14 Issues In Resisting Or Obstructing A Peace Officer Or Correctional Institution Employee

To sustain the charge of resisting or obstructing a [(peace officer) (correctional institution employee)], the State must prove the following propositions:

First Proposition: That ____ was a [(peace officer) (correctional institution employee)]; and

Second Proposition: That the defendant knew ____ was a [(peace officer) (correctional institution employee)]; and

Third Proposition: That the defendant knowingly resisted or obstructed the performance by ____ of an authorized act within his official capacity.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/31-1(a) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §31-1(a) (1991)), amended by P.A. 87-1198, effective September 25, 1992.

Give Instruction 22.13.

Insert in the blanks the name of the peace officer or correctional institution employee.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.15 Definition Of Disarming A Peace Officer

A person commits the offense of disarming a peace officer when he knowingly disarms a person known to him to be a peace officer, while the peace officer is engaged in the performance of his official duties, by taking a firearm [(from the person of the peace officer) (from an area within the peace officer's immediate presence)] without the peace officer's consent.

Committee Note

720 ILCS 5/31-1a (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31-1a (1991)).

Give Instruction 22.16.

Give Instruction 4.08, defining the term "peace officer."

Use applicable bracketed material.

22.16 Issues In Disarming A Peace Officer

To sustain the charge of disarming a peace officer, the State must prove the following propositions:

First Proposition: That ____ was a peace officer; and

Second Proposition: That the defendant knew ____ was a peace officer; and

Third Proposition: That the defendant knowingly took a firearm [(from the person of ____) (from an area within ____'s immediate presence)] without ____'s consent; and

Fourth Proposition: That when the defendant did so, ____ was engaged in the performance of his official duties.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/31-1a (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31-1a (1991)).

Give Instruction 22.15.

Insert in the blanks the name of the peace officer.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.17 Definition Of Obstructing Service Of Process

A person commits the offense of obstructing service of process when he knowingly resists or obstructs the authorized service or execution of any [(civil) (criminal)] process or order of a court.

Committee Note

720 ILCS 5/31-3 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31-3 (1991)).

Give Instruction 22.18.

Use applicable bracketed material.

22.18 Issues In Obstructing Service Of Process

To sustain the charge of obstructing service of process, the State must prove the following proposition:

That the defendant knowingly resisted or obstructed authorized service or execution of any [(civil) (criminal)] process or order of a court.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/31-3 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31-3 (1991)).

Give Instruction 22.17.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.19 Definition Of Obstructing Justice

A person commits the offense of obstructing justice when, with intent to [(prevent the apprehension) (obstruct the prosecution) (obstruct the defense)] of any person, he knowingly

[1] [(destroys) (alters) (conceals) (disguises)] physical evidence.

[or]

[2] [(plants false evidence) (furnishes false information)].

[or]

[3] induces a witness, having knowledge of the subject at issue, to [(leave the State) (conceal himself)].

Committee Note

720 ILCS 5/31-4(a) and (b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31-4(a) and (b) (1991)).

Give Instruction 22.20.

The materiality of the witness' knowledge under paragraph [3] is a question of law for the court. People v. Powell, 160 Ill.App.3d 689, 513 N.E.2d 1162, 112 Ill.Dec. 553 (5th Dist.1987).

Use applicable paragraphs and bracketed material.

22.20 Issues In Obstructing Justice

To sustain the charge of obstructing justice, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(destroyed) (altered) (concealed) (disguised)] physical evidence; and

Second Proposition: That the defendant did so with intent to [(prevent the apprehension) (obstruct the prosecution) (obstruct the defense)] of ____.

[or]

First Proposition: That the defendant knowingly [(planted false evidence) (furnished false information)]; and

Second Proposition: That the defendant did so with intent to [(prevent the apprehension) (obstruct the prosecution) (obstruct the defense)] of ____.

[or]

First Proposition: That ____(witness) was a witness having knowledge of ____(subject at issue); and

Second Proposition: That the defendant induced ____(witness) [(to leave the State) (conceal himself)]; and

Third Proposition: That the defendant did so with intent to [(prevent the apprehension) (obstruct the prosecution) (obstruct the defense)] of ____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/31-4(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31-4(b) (1991)).

Give Instruction 22.19.

Insert in the appropriate blanks the name of the person whose apprehension, prosecution, or defense was obstructed, the name of the witness, or a description of the subject at issue.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.21 Definition Of Obstructing Justice--Flight Of Witness

A person commits the offense of obstructing justice when he has knowledge of the subject at issue and knowingly [(leaves the State) (conceals himself)] with the intent to [(prevent the apprehension) (obstruct the prosecution) (obstruct the defense)] of another person.

Committee Note

720 ILCS 5/31-4(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31-4(c) (1991)).

Give Instruction 22.22.

The materiality of the defendant's knowledge is a question of law for the court. People v. Powell, 160 Ill.App.3d 689, 513 N.E.2d 1162, 112 Ill.Dec. 553 (5th Dist.1987).

Use applicable bracketed material.

22.22 Issues In Obstructing Justice--Flight Of Witness

To sustain the charge of obstructing justice, the State must prove the following propositions:

First Proposition: That the defendant had knowledge of ____; and

Second Proposition: That the defendant knowingly [(left the State) (concealed himself)]; and

Third Proposition: That the defendant did so with intent to [(prevent the apprehension) (obstruct the prosecution) (obstruct the defense)] of ____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/31-4(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31-4(c) (1991)).

Give Instruction 22.21.

Insert in the first blank the description of the subject at issue.

Insert in the second blank the name of the person whose apprehension, prosecution, or defense was obstructed.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.23 Definition Of Concealing Or Aiding A Fugitive

A person who is not the husband, wife, parent, child, brother, or sister of the offender commits the offense of concealing or aiding a fugitive when he [(conceals his knowledge that an offense has been committed) (harbors, aids, or conceals the offender)] with intent to prevent the apprehension of the offender.

Committee Note

720 ILCS 5/31-5 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31-5 (1991)).

Give Instruction 22.24.

Use applicable bracketed material.

22.24 Issues In Concealing Or Aiding A Fugitive

To sustain the charge of concealing or aiding a fugitive, the State must prove the following propositions:

First Proposition: That the defendant is not a husband, wife, parent, child, brother, or sister to the offender; and

Second Proposition: That ____ had committed an offense; and

Third Proposition: That the defendant knew that ____ had committed an offense; and

Fourth Proposition: That the defendant concealed his knowledge that the offense of ____ had been committed;

[or]

Fourth Proposition: That the defendant [(harbored) (aided) (concealed)] ____;

and

Fifth Proposition: That the defendant did so with intent to prevent the apprehension of ____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/31-5 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31-5 (1991)).

Give Instruction 22.23.

Insert in the appropriate blanks the name of the fugitive and the offense.

Use applicable paragraphs and bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.25 Definition Of Escape--Penal Institution Or Work Release

A person [(convicted) (charged with the commission)] of ____, commits the offense of escape when he,

[1] intentionally escapes from [(any penal institution) (the custody of an employee of a penal institution)].

[or]

[2] knowingly fails to report [(to a penal institution) (for periodic imprisonment at any time)].

[or]

[3] knowingly fails to return from [(furlough) (work release) (day release)].

Committee Note

720 ILCS 5/31-6(a) and (b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31-6(a) and (b) (1991)).

Give Instruction 22.26.

Give Instruction 4.09, defining the term "penal institution."

If there is sufficient evidence for the defense of necessity, give Instructions 24-25.22 and 24-25.22A. See People v. Unger, 66 Ill.2d 333, 362 N.E.2d 319, 5 Ill.Dec. 848 (1977).

Insert in the blank the specific offense. See Committee Notes to Instructions 4.04 and 4.06.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

22.26 Issues In Escape--Penal Institution Or Work Release

To sustain the charge of escape, the State must prove the following propositions:

First Proposition: That the defendant was [(convicted) (charged with the commission)] of ____; and

Second Proposition: That the defendant intentionally escaped from [(any penal institution) (the custody of an employee of a penal institution)].

[or]

Second Proposition: That the defendant knowingly failed to report [(to a penal institution) (for periodic imprisonment at any time)].

[or]

Second Proposition: That the defendant knowingly failed to return from [(furlough) (work release) (day release)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/31-6(a) and (b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31-6(a) and (b) (1991)).

Give Instruction 22.25.

Insert in the blank the specific offense.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.27 Definition Of Escape--In Custody

A person in the lawful custody of a peace officer for the alleged commission of ____ commits the offense of escape when he intentionally escapes from custody.

Committee Note

720 ILCS 5/31-6(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31-6(c) (1991)), as amended by P.A. 86-335, effective January 1, 1990.

Give Instruction 22.28.

Give Instruction 4.08, defining the term "peace officer."

If there is sufficient evidence for the defense of necessity, give Instructions 24-25.22 and 24-25.22A. See People v. Unger, 66 Ill.2d 333, 362 N.E.2d 319, 5 Ill.Dec. 848 (1977).

Insert in the blank the specific offense.

22.28 Issues In Escape--In Custody

To sustain the charge of escape, the State must prove the following propositions:

First Proposition: That the defendant was in the lawful custody of a peace officer; and

Second Proposition: That the defendant was in custody for the alleged commission of ____; and

Third Proposition: That the defendant intentionally escaped from custody.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/31-6(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31-6(c) (1991)), as amended by P.A. 86-335, effective January 1, 1990.

Give Instruction 22.27.

Insert in the blank the specific offense.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.29 Definition Of Armed Escape--Penal Institution Or Work Release

A person [(convicted) (charged with the commission)] of ____, commits the offense of armed escape when he, while armed with a dangerous weapon,

[1] intentionally escapes from [(any penal institution) (the custody of an employee of a penal institution)].

[or]

[2] knowingly fails to report [(to a penal institution) (for periodic imprisonment at any time)].

[or]

[3] knowingly fails to return from [(furlough) (work release) (day release)].

Committee Note

720 ILCS 5/31-6(d) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31-6(d) (1991)), as amended by P.A. 86-335, effective January 1, 1990.

Give Instruction 22.30.

Give Instruction 4.09, defining the term "penal institution."

If there is sufficient evidence for the defense of necessity, give Instructions 24-25.22 and 24-25.22A. See People v. Unger, 66 Ill.2d 333, 362 N.E.2d 319, 5 Ill.Dec. 848 (1977).

Insert in the blank the specific offense.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

22.30 Issues In Armed Escape--Penal Institution Or Work Release

To sustain the charge of armed escape, the State must prove the following propositions:

First Proposition: That the defendant was [(convicted) (charged with the commission)] of ____; and

Second Proposition: That the defendant intentionally escaped from [(any penal institution) (the custody of an employee of a penal institution)];

[or]

Second Proposition: That the defendant knowingly failed to report [(to a penal institution) (for periodic imprisonment at any time)];

[or]

Second Proposition: That the defendant knowingly failed to return from [(furlough) (work release) (day release)];

and

Third Proposition: That when the defendant did so, he was armed with a dangerous weapon.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/31-6(d) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31-6(d) (1991)).

Give Instruction 22.29.

Insert in the blank the specific offense.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.31 Definition Of Armed Escape--In Custody

A person in the lawful custody of a peace officer for the alleged commission of ____ commits the offense of armed escape when he intentionally escapes from custody while armed with a dangerous weapon.

Committee Note

720 ILCS 5/31-6(d) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31-6(d) (1991)), as amended by P.A. 86-335, effective January 1, 1990.

Give Instruction 22.32.

Give Instruction 4.08, defining the term "peace officer."

Whether the defendant was armed with a dangerous weapon is a question for the jury when the character of the weapon is doubtful and the question depends upon the manner of its use. In such cases the term "dangerous weapon" should be defined in accordance with Instruction 4.17. See People v. Skelton, 83 Ill.2d 58, 414 N.E.2d 455, 46 Ill.Dec. 571 (1980). If the trial court has determined as a matter of law that the object, such as a gun, is an inherently dangerous weapon, the term "dangerous weapon" need not be defined. See People v. Estes, 37 Ill.App.3d 889, 346 N.E.2d 469 (4th Dist.1976). See also People v. Ford, 34 Ill.App.3d 79, 339 N.E.2d 293 (1st Dist.1975).

Insert in the blank the specific offense.

22.32 Issues In Armed Escape--In Custody

To sustain the charge of armed escape, the State must prove the following propositions:

First Proposition: That the defendant was in the lawful custody of a peace officer; and

Second Proposition: That the defendant was in custody for the alleged commission of ____; and

Third Proposition: That the defendant intentionally escaped from custody; and

Fourth Proposition: That when the defendant did so, he was armed with a dangerous weapon.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/31-6(d) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31-6(d) (1991)).

Give Instruction 22.31.

Insert in the blank the specific offense.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.33 Definition Of Aiding Escape

A person commits the offense of aiding escape when he

[1] with intent to aid a prisoner in escaping from a penal institution, [(conveys into the institution) (transfers to the prisoner)] anything for use in escaping.

[or]

[2] knowingly aids a person [(convicted) (charged with the commission)] of ____ in escaping from [the custody of an employee of] a penal institution.

[or]

[3] knowingly aids a person [(convicted) (charged with the commission)] of ____ in failing to return from [(furlough) (work release) (day release)].

[or]

[4] knowingly aids a person in escaping from [the custody of an employee of] a public institution other than a penal institution, in which he is lawfully detained.

[or]

[5] knowingly aids the escape of a person in the lawful custody of a peace officer for the alleged commission of ____.

Committee Note

720 ILCS 5/31-7 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31-7 (1991)), as amended by P.A. 83-248, effective January 1, 1984, and P.A. 86-335, effective January 1, 1990.

Give Instruction 22.34.

Insert in the blank the specific offense.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

22.34 Issues In Aiding Escape

To sustain the charge of aiding escape, the State must prove the following propositions:

First Proposition: That ____ was a prisoner in a penal institution; and

Second Proposition: That the defendant [(conveyed into the penal institution) (transferred to ____)] anything for use in escaping; and

Third Proposition: That the defendant did so with intent to aid ____ in escaping from the penal institution.

[or]

First Proposition: That ____ was [(convicted) (charged with the commission)] of ____; and

Second Proposition: That ____ was [(confined in) (in the custody of an employee of)] a penal institution; and

Third Proposition: That the defendant knowingly aided ____ in escaping from the [(confinement) (custody)].

[or]

First Proposition: That ____ was [(convicted) (charged with the commission)] of ____; and

Second Proposition: That ____ failed to return from [(furlough) (work release) (day release)]; and

Third Proposition: That the defendant knowingly aided ____ in failing to return from [(furlough) (work release) (day release)].

[or]

First Proposition: That ____ was lawfully detained in [the custody of an employee of] a public institution other than a penal institution; and

Second Proposition: That the defendant knowingly aided ____ in escaping from the detention.

[or]

First Proposition: That ____ was in the lawful custody of a peace officer for the alleged commission of ____; and

Second Proposition: That the defendant knowingly aided ____ in escaping from the custody.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/31-7 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31-7 (1991)), as amended by P.A. 83-248, effective January 1, 1984, and P.A. 86-335, effective January 1, 1990.

Give Instruction 22.33.

Give Instruction 4.08, defining the term "peace officer."

Insert in the appropriate blanks the name of the person confined or detained, and the specific offense.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.35 Definition Of Aiding Escape While Armed

A person commits the offense of aiding escape while armed when he, while armed with a dangerous weapon,

[1] with intent to aid a prisoner in escaping from a penal institution, [(conveys into the institution) (transfers to the prisoner)] anything for use in escaping.

[or]

[2] knowingly aids a person [(convicted) (charged with the commission)] of ____ in escaping from [the custody of an employee of] a penal institution.

[or]

[3] knowingly aids a person [(convicted) (charged with the commission)] of ____ in failing to return from [(furlough) (work release) (day release)].

[or]

[4] knowingly aids a person in escaping from [the custody of an employee of] a public institution, other than a penal institution, in which he is lawfully detained.

[or]

[5] knowingly aids the escape of a person in lawful custody of a peace officer for the alleged commission of ____.

Committee Note

720 ILCS 5/31-7(g) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31-7(g) (1991)), as amended by P.A. 86-335, effective January 1, 1990.

Give Instruction 22.36.

Insert in the blank the specific offense.

Whether the defendant was armed with a dangerous weapon is a question for the jury when the character of the weapon is doubtful and the question depends upon the manner of its use. In such cases the term "dangerous weapon" should be defined in accordance with Instruction 4.17. See People v. Skelton, 83 Ill.2d 58, 414 N.E.2d 455, 46 Ill.Dec. 571 (1980). If the trial court has determined as a matter of law that the object, such as a gun, is an inherently dangerous weapon, the term "dangerous weapon" need not be defined. See People v. Estes, 37 Ill.App.3d 889, 346 N.E.2d 469 (4th Dist.1976). See also People v. Ford, 34 Ill.App.3d 79, 339 N.E.2d 293 (1st Dist.1975).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

22.36 Issues In Aiding Escape While Armed

To sustain the charge of aiding escape while armed, the State must prove the following propositions:

First Proposition: That ____ was a prisoner in a penal institution; and

Second Proposition: That defendant [(conveyed into the institution) (transferred to ____)] anything for use in escaping; and

Third Proposition: That the defendant did so with intent to aid ____ in escaping from the penal institution; and

Fourth Proposition: That when he did so, the defendant was armed with a dangerous weapon.

[or]

First Proposition: That ____ was [(convicted) (charged with the commission)] of ____; and

Second Proposition: That ____ was [(confined in) (in the custody of an employee of)] a penal institution; and

Third Proposition: That the defendant knowingly aided ____ in escaping from the [(confinement) (custody)]; and

Fourth Proposition: That when he did so, the defendant was armed with a dangerous weapon.

[or]

First Proposition: That ____ was [(convicted) (charged with the commission)] of ____; and

Second Proposition: That ____ failed to return from [(furlough) (work release) (day release)]; and

Third Proposition: That the defendant knowingly aided ____ in failing to return from [(furlough) (work release) (day release)]; and

Fourth Proposition: That when he did so, the defendant was armed with a dangerous weapon.

[or]

First Proposition: That ____ was lawfully detained in [the custody of an employee of] a public institution other than a penal institution; and

Second Proposition: That the defendant knowingly aided ____ in escaping from the detention; and

Third Proposition: That when he did so, the defendant was armed with a dangerous weapon.

[or]

First Proposition: That ____ was in the lawful custody of a peace officer for the alleged

commission of ____; and

Second Proposition: That the defendant knowingly aided ____ in escaping from the custody; and

Third Proposition: That when he did so, the defendant was armed with a dangerous weapon.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/31-7(g) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31-7(g) (1991)), as amended by P.A. 86-335, effective January 1, 1990.

Give Instruction 22.35.

Give Instruction 4.08, defining the term "peace officer."

Insert in the appropriate blank the name of the person confined or detained, and the specific offense.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.37 Definition Of Aiding Escape--Officer Of A Penal Institution

An [(officer) (employee)] of a penal institution commits the offense of aiding escape when he recklessly permits a prisoner in his custody to escape.

Committee Note

720 ILCS 5/31-7(f) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31-7(f) (1991)).

Give Instruction 22.38.

Give Instruction 4.09, defining the term "penal institution."

Give Instruction 5.01, defining the word "recklessness."

Use applicable bracketed material.

22.38 Issues In Aiding Escape--Officer Of A Penal Institution

To sustain the charge of aiding escape, the State must prove the following propositions:

First Proposition: That the defendant was an [(officer) (employee)] of a penal institution; and

Second Proposition: That ____ was a prisoner in the custody of the defendant; and

Third Proposition: That the defendant recklessly permitted ____ to escape.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/31-7(f) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31-7(f) (1991)).

Give Instruction 22.37.

Insert in the blanks the name of the prisoner.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.39 Definition Of Refusing To Aid An Officer

A person commits the offense of refusing to aid an officer when, upon command, he [(refuses) (knowingly fails)] to reasonably aid a person known to him to be a peace officer in [(apprehending a person whom the officer is authorized to apprehend) (preventing the commission by another of any offense)].

Committee Note

720 ILCS 5/31-8 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31-8 (1991)).

Give Instruction 22.40.

Use applicable bracketed material.

22.40 Issues In Refusing To Aid An Officer

To sustain the charge of refusing to aid an officer, the State must prove the following propositions:

First Proposition: That ____ was a peace officer; and

Second Proposition: That the defendant knew that ____ was a peace officer; and

Third Proposition: That ____ commanded the defendant to aid ____ in [(apprehending a person whom ____ was authorized to apprehend) (preventing the commission of an offense by another person)]; and

Fourth Proposition: That the defendant [(refused) (knowingly failed)] to reasonably aid ____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/31-8 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31-8 (1991)).

Give Instruction 22.39.

Insert in the blanks the name of the officer.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.41 Definition Of Compounding A Crime

A person commits the offense of compounding a crime when he [(receives) (offers to another)] any consideration for a promise not to [(prosecute) (aid in the prosecution of)] an offender.

Committee Note

720 ILCS 5/32-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §32-1 (1991)).

Give Instruction 22.42.

Use applicable bracketed material.

22.42 Issues In Compounding A Crime

To sustain the charge of compounding a crime, the State must prove the following propositions:

First Proposition: That the defendant [(received) (offered to ____)] a consideration; and

Second Proposition: That the defendant did so in exchange for [(his) (____'s)] promise not to [(prosecute) (aid in the prosecution of)] ____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/32-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §32-1 (1991)).

Give Instruction 22.41.

Insert in the blanks the appropriate names.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.43 Definition Of False Personation Of A Judicial Or Governmental Official

A person commits the offense of false personation of a [(judicial) (governmental)] official when he falsely represents himself to be [(an attorney authorized to practice law) (a public officer) (a public employee)].

Committee Note

720 ILCS 5/32-5 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §32-5 (1991)).

Give Instruction 22.44.

Use applicable bracketed material.

22.44 Issue In False Personation Of A Judicial Or Governmental Official

To sustain the charge of personation of a [(judicial) (governmental)] official, the State must prove the following proposition:

That the defendant falsely represented himself to be [(an attorney authorized to practice law) (a public officer) (a public employee)].

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/32-5 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §32-5 (1991)).

Give Instruction 22.43.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.45 Definition Of Performance Of An Unauthorized Act

A person commits the offense of performance of an unauthorized act when he [(conducts a marriage ceremony) (acknowledges the execution of a document which by law may be recorded) (becomes a surety for a party in a [(civil) (criminal)] proceeding before a [(court) (public officer authorized to accept such surety)])] when he knows that he is not authorized by law to do so.

Committee Note

720 ILCS 5/32-6 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §32-6 (1991)).

Give Instruction 22.46.

Use applicable bracketed material.

22.46 Issues In Performance Of An Unauthorized Act

To sustain the charge of performance of an unauthorized act, the State must prove the following propositions:

First Proposition: That the defendant [(conducted a marriage ceremony) (acknowledged execution of a document which by law may be recorded) (became a surety for a party in a [(civil) (criminal)] proceeding before a [(court) (public officer authorized to accept such surety)])]; and

Second Proposition: That when the defendant did so, he knew that he was not authorized by law to do so.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/32-6 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §32-6 (1991)).

Give Instruction 22.45.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.47 Definition Of Simulating Legal Process

A person commits the offense of simulating legal process when he [(issues) (delivers)] a document which he knows falsely purports to be or simulates any [(civil) (criminal)] process.

Committee Note

720 ILCS 5/32-7 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §32-7 (1991)).

Give Instruction 22.48.

Use applicable bracketed material.

22.48 Issue In Simulating Legal Process

To sustain the charge of simulating legal process, the State must prove the following proposition:

That the defendant [(issued) (delivered)] a document which he knew falsely purported to be or simulated a [(civil) (criminal)] process.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/32-7 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §32-7 (1991)).

Give Instruction 22.47.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.49 Definition Of Tampering With Public Records

A person commits the offense of tampering with public records when he knowingly and without lawful authority [(alters) (destroys) (defaces) (removes) (conceals)] a public record.

Committee Note

720 ILCS 5/32-8 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §32-8 (1991)).

Give Instruction 22.50.

Use applicable bracketed material.

22.50 Issue In Tampering With Public Records

To sustain the charge of tampering with public records, the State must prove the following proposition:

That the defendant knowingly and without lawful authority [(altered) (destroyed) (defaced) (removed) (concealed)] a public record.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/32-8 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §32-8 (1991)).

Give Instruction 22.49.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.51 Definition Of Tampering With Public Notice

A person commits the offense of tampering with a public notice when he knowingly and without lawful authority [(alters) (destroys) (defaces) (removes) (conceals)] a public notice, posted according to law, during the time for which the notice was to remain posted.

Committee Note

720 ILCS 5/32-9 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §32-9 (1991)).

Give Instruction 22.52.

Use applicable bracketed material.

22.52 Issues In Tampering With Public Notice

To sustain the charge of tampering with a public notice, the State must prove the following propositions:

First Proposition: That the defendant knowingly and without lawful authority [(altered) (destroyed) (defaced) (removed) (concealed)] a public notice; and

Second Proposition: That the notice had been posted according to law; and

Third Proposition: That the defendant did so during the time for which the notice was to remain posted.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/32-9 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §32-9 (1991)).

Give Instruction 22.51.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.53 Definition Of Violation Of Bail Bond

A person commits the offense of violation of bail bond when he has been admitted to bail for appearance before a court in this State, and incurs a forfeiture of the bail, and wilfully fails to surrender himself within 30 days following the forfeiture of the bail.

Committee Note

720 ILCS 5/32-10 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §32-10 (1991)).

Give Instruction 22.54.

The purpose for which bail is posted controls the degree of the offense.

22.54 Issues In Violation Of Bail Bond

To sustain the charge of violation of bail bond, the State must prove the following propositions:

First Proposition: That the defendant had been admitted to bail for appearance before a court in this State; and

Second Proposition: That the bail was forfeited; and

Third Proposition: That the defendant wilfully failed to surrender himself within 30 days following the forfeiture of the bail.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/32-10 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §32-10 (1991)).

Give Instruction 22.53.

The State need not prove notice of forfeiture was sent to the defendant's last known address. People v. Ratliff, 65 Ill.2d 314, 357 N.E.2d 1172, 2 Ill.Dec. 729 (1976).

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

22.55 Definition Of Bringing Contraband Into A Penal Institution

A person commits the offense of bringing contraband into a penal institution when he, knowingly and without authority of any person [(designated) (authorized)] to grant such authority,

[1] brings an item of contraband into a penal institution.

[or]

[2] causes another to bring an item of contraband into a penal institution.

[or]

[3] places an item of contraband in such proximity to a penal institution as to give an inmate access to the contraband.

Committee Note

720 ILCS 5/31A-1.1(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31A-1.1(a) (1991)), as amended by P.A. 86-866, effective January 1, 1990.

Give Instruction 22.56.

Give Instruction 22.69C, defining the word "contraband," and Instruction 22.69, defining the term "penal institution." Do not use Instruction 4.09, which defines the term "penal institution" for other offenses.

Give applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

22.56 Issues In Bringing Contraband Into A Penal Institution

To sustain the charge of bringing contraband into a penal institution, the State must prove the following propositions:

First Proposition: That the defendant knowingly brought an item of contraband into a penal institution;

[or]

First Proposition: That the defendant knowingly caused another to bring an item of contraband into a penal institution;

[or]

First Proposition: That the defendant knowingly placed an item of contraband in such proximity to a penal institution as to give an inmate access to the contraband;

and

Second Proposition: That the defendant did so without authority from the person[s] [(designated) (authorized)] to grant such authority.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/31A-1.1(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31A-1.1(a) (1991)).

Give Instruction 22.55.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.57 Definition Of Possessing Contraband In A Penal Institution

A person commits the offense of possessing contraband in a penal institution when he knowingly possesses contraband in a penal institution, regardless of the intent with which he possesses it.

Committee Note

720 ILCS 5/31A-1.1(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §31A-1(b) (1991)).

Give Instruction 22.58.

In People v. Farmer, 165 Ill.2d 194, 207, 650 N.E.2d 1006, 1012, 209 Ill.Dec. 33, 39 (1995), the supreme court held that knowledge is the appropriate mental state required by Section 31A-1.1(b).

22.58 Issues In Possessing Contraband In A Penal Institution

To sustain the charge of possessing contraband in a penal institution, the State must prove the following propositions:

First Proposition: That the defendant knowingly possessed contraband, regardless of the intent with which he possessed it; and

Second Proposition: That when the defendant did so, he was in a penal institution.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/31A-1.1(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §31A-1(b) (1991)).

Give Instruction 22.57.

In People v. Farmer, 165 Ill.2d 194, 207, 650 N.E.2d 1006, 1012, 209 Ill.Dec. 33, 39 (1995), the supreme court held that knowledge is the appropriate mental state required by Section 31A-1.1(b).

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.59 Affirmative Defense To Possessing Contraband In A Penal Institution--Authorized Possession

It is a defense to the charge of possessing contraband in a penal institution that such possession was specifically authorized by [an order issued pursuant to] a [(rule) (regulation) (directive)] of the governing authority of the penal institution.

Committee Note

720 ILCS 5/31A-1.1(k) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31A-1.1(k) (1991)), as amended by P.A. 86-866, effective January 1, 1990.

Give Instruction 22.60.

Give Instruction 22.69C, defining the word "contraband," and Instruction 22.69, defining the term "penal institution." Do not give Instruction 4.09, which defines the term "penal institution" for other offenses.

Give this instruction when the issue is raised by the evidence. Modify the issues instruction in accordance with the Introduction to Chapter 24-25.00.

This defense is not available to a defendant charged with the offense of Bringing Contraband into a Penal Institution, Chapter 720, Section 31A-1.1(a).

Use applicable bracketed material.

22.60 Issues In Affirmative Defense To Possessing Contraband In A Penal Institution--Authorized Possession

____ *Proposition:* That at the time the defendant possessed contraband in a penal institution, such possession was not specifically authorized by [an order issued pursuant to] a [(rule) (regulation) (directive)] of the governing authority of the penal institution.

Committee Note

720 ILCS 5/31A-1.1(k) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31A-1.1(k) (1991)).

Give Instruction 22.59.

Insert in the blank the number of the proposition.

Use applicable bracketed material.

22.61 Affirmative Defense To Bringing Or Possessing Contraband In A Penal Institution--Possession At Arrest

It shall be a defense to the charge of [(bringing) (possessing)] contraband in a penal institution that the person [(bringing contraband into) (possessing contraband in)] a penal institution had been arrested, and that person possessed such contraband at the time of his arrest, and that such contraband was [(brought into) (possessed in)] the institution by that person as a direct and immediate result of his arrest.

Committee Note

720 ILCS 5/31A-1.1(*l*) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31A-1.1(*l*) (1991)), added by P.A. 86-1003, effective January 1, 1990.

Give Instruction 22.62.

Give Instruction 22.69C, defining the word "contraband," and Instruction 22.69, defining the term "penal institution." Do not give Instruction 4.09, which defines the term "penal institution" for other offenses.

Give this instruction when the issue is raised by the evidence. Modify the issues instruction in accordance with the Introduction to Chapter 24-25.00.

Use applicable bracketed material.

22.62 Issues In Affirmative Defense To Bringing Or Possessing Contraband In A Penal Institution--Possession At Arrest

____ *Proposition:* That at the time the defendant [(brought contraband into) (possessed contraband in)] a penal institution,

[1] he had not been arrested.

[or]

[2] he was not in possession of the contraband at the time of his arrest.

[or]

[3] the contraband was not [(brought into) (possessed in)] the penal institution as a direct and immediate result of defendant's arrest.

Committee Note

720 ILCS 5/31A-1.1(*l*) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31A-1.1(*l*) (1991)).

Give Instruction 22.61.

Insert in the blank the number of the proposition.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

22.63 Definition Of Unauthorized Bringing Of Contraband Into A Penal Institution By An Employee

A person commits the offense of unauthorized bringing of contraband into a penal institution by an employee when he, being an employee of a penal institution, knowingly and without authority of any person [(designated) (authorized)] to grant such authority

[1] [(brings) (attempts to bring)] an item of contraband into a penal institution.

[or]

[2] [(causes) (permits)] another to bring an item of contraband into a penal institution.

Committee Note

720 ILCS 5/31A-1.2(a) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §31A-1.2(a) (1991)), added by P.A. 86-866, effective January 1, 1990; amended by P.A. 86-1003, effective January 1, 1990; P.A. 87-905, effective August 14, 1992; and P.A. 88-678, effective July 1, 1995.

Give Instruction 22.64.

Give Instruction 22.69C, defining the word "contraband," Instruction 22.69, defining the term "penal institution", and Instruction 22.69A, defining the term "employee".

If the bracketed alternative "attempts to bring" is selected, give Instruction 22.69M, defining that phrase.

Do not give Instruction 4.09, which defines the term "penal institution" for other offenses, or Instruction 4.11, which defines the term "public employee" for other offenses.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

22.64 Issues In Unauthorized Bringing Of Contraband Into A Penal Institution By An Employee

To sustain the charge of unauthorized bringing of contraband into a penal institution by an employee, the State must prove the following propositions:

First Proposition: That the defendant was an employee of a penal institution; and

[1] *Second Proposition:* That the defendant knowingly [(brought) (attempted to bring)] an item of contraband into a penal institution; and

[or]

[2] *Second Proposition:* That the defendant knowingly [(caused) (permitted)] another to bring an item of contraband into a penal institution; and

Third Proposition: That the defendant did so without authority from the person[s] [(designated) (authorized)] to grant such authority.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/31A-1.2(a) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §31A-1.2(a) (1991)), added by P.A. 86-866, effective January 1, 1990; amended by P.A. 86-1003, effective January 1, 1990; P.A. 87-905, effective August 14, 1992; and P.A. 88-678, effective July 1, 1995.

Give Instruction 22.63.

The bracketed numbers [1] and [2] correspond to the alternatives of the same number in Instruction 22.63, the definitional instruction for this offense. Select the corresponding alternative Second Proposition to the alternative selected from the definitional instruction.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

22.65 Definition Of Unauthorized Possession Of Contraband In A Penal Institution By An Employee

A person commits the offense of unauthorized possession of contraband in a penal institution by an employee when he, being an employee of a penal institution, knowingly and without authority of any person [(designated) (authorized)] to grant such authority possesses [(cannabis) (a controlled substance) (a hypodermic syringe)] in a penal institution, regardless of the intent with which he possesses it.

Committee Note

720 ILCS 5/31A-1.2(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31A-1.2(b) (1991)), added by P.A. 86-866, effective January 1, 1990.

Give Instruction 22.66.

Give Instruction 22.69, defining the term "penal institution," and Instruction 22.69A, defining the word "employee."

Do not give Instruction 4.09, which defines the term "penal institution" for other offenses, or Instruction 4.11, which defines the term "public employee" for other offenses.

Use applicable bracketed material.

22.66 Issues In Unauthorized Possession Of Contraband In A Penal Institution By An Employee

To sustain the charge of unauthorized possession of contraband in a penal institution by an employee, the State must prove the following propositions:

First Proposition: That the defendant was an employee of a penal institution; and

Second Proposition: That the defendant knowingly possessed [(cannabis) (a controlled substance) (a hypodermic syringe)] regardless of the intent with which he possessed it; and

Third Proposition: That the defendant did so in a penal institution; and

Fourth Proposition: That the defendant did so without authority from the person[s] [(designated) (authorized)] to grant such authority.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/31A-1.2(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31A-1.2(b) (1991)).

Give Instruction 22.65.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.67 Definition Of Unauthorized Delivery Of Contraband In A Penal Institution By An Employee

A person commits the offense of unauthorized delivery of contraband by an employee when he, being an employee of a penal institution, knowingly and without authority of any person [(designated) (authorized)] to grant such authority,

[1] [(delivers) (possesses with intent to deliver)] an item of contraband to any inmate of a penal institution.

[or]

[2] [(conspires to deliver) (solicits the delivery of)] an item of contraband to any inmate of a penal institution.

[or]

[3] [(causes) (permits)] the delivery of an item of contraband to any inmate of a penal institution.

[or]

[4] permits another person to attempt to deliver an item of contraband to any inmate of a penal institution.

Committee Note

720 ILCS 5/31A-1.2(c) (formerly Ill.Rev.Stat. ch. 38, §31A-1.2(c) (1991)), added by P.A. 86-866, effective January 1, 1990; amended by P.A. 86-1003, effective January 1, 1990; P.A. 87-905, effective August 14, 1992; and P.A. 88-678, effective July 1, 1995.

Give Instruction 22.68.

Give Instruction 22.69C, defining the word "contraband", Instruction 22.69, defining the term "penal institution", and Instruction 22.69A, defining the word "employee".

If the bracketed alternative in paragraph [2] "conspires to deliver" is selected, give Instruction 22.69N, defining that phrase.

If the bracketed alternative in paragraph [2] "solicits the delivery of" is selected, give Instruction 22.69P, defining that phrase.

If paragraph [4] is used, give Instruction 22.69M, defining the word "attempt."

Do not give Instruction 4.09, which defines the term "penal institution" for other offenses, or Instruction 4.11, which defines the term "public employee" for other offenses.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

22.68 Issues In Unauthorized Delivery Of Contraband In A Penal Institution By An Employee

To sustain the charge of unauthorized delivery of contraband in a penal institution by an employee, the State must prove the following propositions:

First Proposition: That the defendant was an employee of a penal institution; and

[1] *Second Proposition:* That the defendant knowingly [(delivered) (possessed with intent to deliver)] an item of contraband to an inmate of a penal institution;

[or]

[2] *Second Proposition:* That the defendant knowingly [(conspired to deliver) (solicited the delivery of)] an item of contraband to an inmate of a penal institution;

[or]

[3] *Second Proposition:* That the defendant [(caused) (permitted)] the delivery of an item of contraband to an inmate of a penal institution;

[or]

[4] *Second Proposition:* That the defendant knowingly permitted another person to attempt to deliver an item of contraband to an inmate of a penal institution;

and

Third Proposition: That the defendant did so without authority of the person[s] [(designated) (authorized)] to grant such authority.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/31A-1.2(c) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §31A-1.2(c) (1991)), added by P.A. 86-866, effective January 1, 1990; amended by P.A. 86-1003, effective January 1, 1990; P.A. 87-905, effective August 14, 1992; and P.A. 88-678, effective July 1, 1995.

Give Instruction 22.67.

The bracketed numbers [1] through [4] correspond to the alternatives of the same number in Instruction 22.67, the definitional instruction for this offense. Select the corresponding alternative Second Proposition to the alternative selected from the definitional instruction.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.69 Definition Of Penal Institution

The term "penal institution" means any penitentiary, state farm, reformatory, prison, jail, house of corrections, police detention area, half-way house, or other institution or place for the incarceration or custody of persons under sentence for offenses, under arrest for an offense, a violation of probation, a violation of parole, or a violation of mandatory supervised release, or awaiting a bail setting hearing or preliminary hearing. However, where the place for incarceration or custody is housed within another public building, the term shall not apply to that part of such building unrelated to the incarceration or custody of persons.

Committee Note

720 ILCS 5/31A-1.1(c) and 31A-1.2(d)(1) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§31A-1.1(c) and 31A-1.2(d)(1) (1991)), as amended by P.A. 86-866, effective January 1, 1990.

This definition of the term "penal institution" differs from Instruction 4.09. This instruction applies only to violations of Chapter 720, Sections 31A-1.1 and 31A-1.2.

22.69a Definition Of Employee Of A Penal Institution

The word "employee" or term "employee of a penal institution" means any

[1] [(elected) (appointed)] [(officer) (trustee) (employee)] of [(a penal institution) (the governing authority of the penal institution)].

[or]

[2] person who performs services for the penal institution pursuant to a contract with the penal institution or its governing authority.

Committee Note

720 ILCS 5/31A-1.2(d)(2) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31A-1.2(d)(2) (1991)), added by P.A. 86-866, and amended by P.A. 86-1003, effective January 1, 1990.

This definition applies only to violations of Chapter 720, Section 31A-1.2.

Use applicable paragraphs and bracketed material.

The numbers appearing in brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

22.69B Definition Of Deliver Or Delivery

The word "deliver" or "delivery" means the actual, constructive, or attempted transfer of possession of an item of contraband, with or without consideration, whether or not there is an agency relationship.

Committee Note

720 ILCS 5/31A-1.2(d)(3) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §31A-1.2(d)(3) (1991)), added by P.A. 86-866, effective January 1, 1990.

This definition applies only to violations of Chapter 720, Section 31A-1.2.

See 720 ILCS 570/102(h) for a similar definition.

22.69C Definition Of Contraband

The word "contraband" means [(alcoholic liquor) (cannabis) (a controlled substance) (a hypodermic syringe) (a hypodermic needle) (any instrument adapted for use of controlled substances or cannabis by subcutaneous injection) (a weapon) (a firearm) (firearm ammunition) (an explosive) (a tool to defeat security mechanisms) (a cutting tool)].

Committee Note

720 ILCS 5/31A-1.1(c)(2) and 31A-1.2(d)(4) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §§31A-1.1(c)(2) and 31A-1.2(d)(4) (1991)), amended by P.A. 86-866, effective January 1, 1990; and P.A. 88-678, effective July 1, 1995.

This definition applies only to violations of Sections 31A-1.1 and 31A-1.2.

Use applicable bracketed material.

22.69D Definition Of Alcoholic Liquor

The term "alcoholic liquor" means alcohol, spirits, wine, and beer, and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer, which is capable of being consumed as a beverage by a human being.

Committee Note

720 ILCS 5/31A-1.1(c)(2)(i) and 31A-1.2(d)(4)(i) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§31A-1.1(c)(2)(i) and 31A-1.2(d)(4)(i) (1991)), as amended by P.A. 86-866, effective January 1, 1990.

This definition is based upon 235 ILCS 5/1-3.05, The Liquor Control Act of 1934, as amended.

22.69E Definition Of Cannabis

The word "cannabis" means marijuana, hashish, and other substances which are identified as including any parts of the plant Cannabis Sativa, whether growing or not; the seeds thereof, the resin extracted from any part of such plant; and any compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin, including tetrahydrocannabinol (THC) and all other cannabinol derivatives, including its naturally occurring or synthetically produced ingredients, whether produced directly or indirectly by extraction, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.

Committee Note

720 ILCS 5/31A-1.1(c)(2)(ii) and 31A-1.2(d)(4)(ii) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§31A-1.1(c)(2)(ii) and 31A-1.2(d)(4)(ii) (1991)), as amended by P.A. 86-866, effective January 1, 1990.

This definition is based upon 720 ILCS 550/3(a), as amended.

22.69F Definition Of Controlled Substance

The term "controlled substance" means ____.

Committee Note

720 ILCS 5/31A-1.1(c)(2)(iii) and 31A-1.2(d)(4)(iii) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§31A-1.1(c)(2)(iii) and 31A-1.2(d)(4)(iii) (1991)), as amended by P.A. 86-866, effective January 1, 1990.

Insert in the blank the name of the controlled substance as defined in 720 ILCS 570/100 *et seq*., the Illinois Controlled Substances Act, as amended.

22.69G Definition Of Weapon

The word "weapon" means a [(knife) (dagger) (dirk) (billy) (razor) (stiletto) (broken bottle) (piece of glass which could be used as a dangerous weapon) (____)].

Committee Note

720 ILCS 5/31A-1.1(c)(2)(v) and 31A-1.2(d)(4)(v) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§31A-1.1(c)(2)(v) and 31A-1.2(d)(4)(v) (1991)), as amended by P.A. 86-866, effective January 1, 1990.

Insert in the blank any device or implement designated in Chapter 720, Section 24-1(a)(1), (a)(3), or (a)(6), or any other dangerous weapon or instrument of like character.

Use applicable bracketed material.

22.69H Definition Of Firearm

The word “firearm” means any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas, or escape of gas, including, but not limited to,

[1] any pneumatic gun, spring gun, or B-B gun which expels a single globular projectile not exceeding .18 inch in diameter.

[or]

[2] any device used exclusively for signaling or safety and required or recommended by the United States Coast Guard or the Interstate Commerce Commission.

[or]

[3] any device used exclusively for the firing of stud cartridges, explosive rivets, or industrial ammunition.

[or]

[4] any device which is powered by electrical charging unit, such as batteries, and which fires one or several barbs attached to a length of wire and which, upon hitting a human, can send out current capable of disrupting the person's nervous system in such a manner as to render him incapable of normal functioning, commonly referred to as a stun gun or taser.

Committee Note

720 ILCS 5/31A-1.1(c)(2)(vi) and 31A-1.2(d)(4)(vi) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§31A-1.1(c)(2)(vi) and 31A-1.2(d)(4)(vi) (1991)), as amended by P.A. 86-866, effective January 1, 1990.

This definition applies only to violations of Chapter 720, Sections 31A-1.1 and 31A-1.2.

Use applicable paragraphs.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

22.69I Definition Of Firearm Ammunition

The term "firearm ammunition" means any self-contained cartridge or shotgun shell, by whatever name known, which is designed to be used or adaptable to use in a firearm, including, but not limited to,

[1] any ammunition exclusively designed for the use with a device used exclusively for signing or safety and required or recommended by the United States Coast Guard or the Interstate Commerce Commission.

[or]

[2] any ammunition designed exclusively for use with a stud or rivet driver or other similar industrial ammunition.

Committee Note

720 ILCS 5/31A-1.1(c)(2)(vii) and 31A-1.2(d)(4)(vii) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§31A-1.1(c)(2)(vii) and 31A-1.2(d)(4)(vii) (1991)), as amended by P.A. 86-866, effective January 1, 1990.

This definition applies only to violations of Chapter 720, Section 31A-1.1 and Section 31A-1.2.

Use applicable paragraphs.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

22.69J Definition Of Explosive

The word "explosive" means [(bomb) (bombshell) (grenade) (bottle or other container containing an explosive substance of over one-quarter ounce for like purpose such as black powder bombs and Molotov cocktails) (artillery projectiles) (____)].

Committee Note

720 ILCS 5/31A-1.1(c)(2)(viii) and 31A-1.2(d)(5)(viii) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§31A-1.1(c)(2)(viii) and 31A-1.2(d)(5)(viii) (1991)), as amended by P.A. 86-866, effective January 1, 1990.

This definition applies only to violations of Chapter 38, Sections 31A-1.1 and 31A-1.2.

Insert in the blank any other similar substance or device such as black powder bombs, Molotov cocktails, or artillery projectiles.

Use applicable bracketed material.

22.69K Definition Of Tool To Defeat Security Mechanisms

The phrase "tool to defeat security mechanisms" means, but is not limited to, a [(handcuff or security restraint key) (tool designed to pick locks) (device or instrument capable of unlocking [(handcuffs or security restraints) (doors to rooms) (doors to cells) (doors to gates) (doors to any area of the penal institution)] (____)].

Committee Note

720 ILCS 5/31A-1.1(c)(ix) and 31A-1.2(c)(ix) (West 1994), added by P.A. 88-678, effective July 1, 1995.

This definition applies only to violations of Section 31A-1.1 and Section 31A-1.2.

Insert in the blank any other similar tool or devise.

Use applicable bracketed material.

22.69L Definition Of Cutting Tool

The term "cutting tool" means, but is not limited to, a [(hacksaw blade) (wirecutter) (device, instrument, or file capable of cutting through metal)].

Committee Note

720 ILCS 5/31A-1.1(c)(x) and 31A-1.2(c)(x) (West 1994), added by P.A. 88-678, effective July 1, 1995.

This definition applies only to violations of Section 31A-1.1 and Section 31A-1.2.

Use applicable bracketed material.

22.69M Definition Of Attempt--Contraband Into A Penal Institution

A person attempts to [(bring contraband into) (deliver contraband in)] a penal institution when he, with the intent to [(bring contraband into) (deliver contraband in)] a penal institution, does any act which constitutes a substantial step toward [(bringing contraband into) (delivering contraband in)] a penal institution.

The [(bringing of contraband into) (delivery of contraband in)] a penal institution need not have been completed.

Committee Note

This definitional instruction applies only to the offenses of (1) unauthorized bringing of contraband into a penal institution by an employee, or (2) unauthorized delivery of contraband in a penal institution by an employee, 720 ILCS 5/31A-1.2(a)(1) and 31A-1.2(c)(4) (West 1994). Do not use this instruction in conjunction with any other offense.

Use applicable bracketed material.

22.69N Definition Of Conspiracy--Contraband In A Penal Institution

A person conspires to deliver when he, with intent that the offense of unauthorized delivery of contraband in a penal institution by an employee be committed, agrees with [(another) (others)] to the commission of the offense and an act in furtherance of the agreement is performed by any party to the agreement.

An agreement may be implied from the conduct of the parties although they acted separately or by different means and did not come together or enter into an express agreement.

It is not necessary that the conspirators succeed in delivering an item of contraband in a penal institution.

Committee Note

This definitional instruction applies only to violations of unauthorized delivery of contraband in a penal institution by an employee, 720 ILCS 5/31A-1.2(c)(2) (West 1994). Do *not* use this instruction in conjunction with any other offense.

See People v. Foster, 99 Ill.2d 48, 457 N.E.2d 405, 75 Ill.Dec. 411 (1983), regarding the distinction between unilateral and bilateral theories of conspiracy.

Use applicable bracketed material.

22.69P Definition Of Solicitation--Contraband In A Penal Institution

A person solicits the delivery of an item when, with intent that the offense of unauthorized delivery of contraband in a penal institution by an employee be committed, he [(commands) (encourages) (urges) (incites) (requests) (advises)] another to commit the offense of unauthorized delivery of contraband in a penal institution by an employee.

The delivery of contraband in a penal institution need not have been completed.

Committee Note

720 ILCS 5/2-20 (West 1994) (formerly Ill.Rev.Stat. ch. 38, §2-20 (1991)).

This definitional instruction applies only to violations of unauthorized delivery of contraband in a penal institution by an employee, 720 ILCS 5/31A-1.2(c)(2) (West 1994). Do not use this instruction in conjunction with any other offense.

Use applicable bracketed material.

22.70 Definition Of False Personation Of A Peace Officer

A person commits the offense of false personation of a peace officer when he knowingly and falsely represents himself to be a peace officer of any jurisdiction.

Committee Note

720 ILCS 5/32-5.1 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §32-5.1 (1991)).

Give Instruction 22.71.

Give Instruction 4.08, defining the term "peace officer".

22.71 Issue In False Personation Of A Peace Officer

To sustain the charge of false personation of a peace officer, the State must prove the following proposition:

That the defendant knowingly and falsely represented himself to be a peace officer of any jurisdiction.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all of the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/32-5.1 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §32-5.1 (1991)).

Give Instruction 22.70.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in the above proposition. See Instruction 5.03.

22.72 Definition Of Aggravated False Personation Of A Peace Officer

A person commits the offense of aggravated false personation of a peace officer when he knowingly and falsely represents himself to be a peace officer of any jurisdiction while [(attempting to commit) (committing)] a felony.

Committee Note

720 ILCS 5/32-5.2 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §32-5.2 (1991)).

Give Instruction 22.73.

Give Instruction 4.08, defining the term "peace officer".

Use applicable bracketed material.

22.73 Issues In Aggravated False Personation Of A Peace Officer

To sustain the charge of aggravated false personation of a peace officer, the State must prove the following propositions:

First Proposition: That the defendant knowingly and falsely represented himself to be a peace officer of any jurisdiction; and

Second Proposition: That when the defendant did so, he was [(committing) (attempting to commit)] the felony of _____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/32-5.2 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §32-5.2 (1991)).

Give Instruction 22.72.

Insert in the blank the name of the felony defendant is charged with committing or attempting to commit.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

22.74 Definition Of Violation Of Bail Bond By Possessing A Firearm

A person commits the offense of violation of bail bond [by possessing a firearm] when he has been admitted to bail and when he [(intentionally) (knowingly)] violates a condition of his bail bond that he not possess a firearm by [(intentionally) (knowingly)] possessing a firearm.

Committee Note

720 ILCS 5/32-10(a-5) (West 1994), added by P.A. 88-680, effective January 1, 1995.

Give Instruction 22.75.

Use the bracketed phrase "by possessing a firearm" when the defendant is charged with two different bail bond violations, and it is necessary to distinguish between the violations.

P.A. 88-680 amended Section 32-10 by adding Subsection a-5, which provides that a person who violates a condition of bail bond by possessing a firearm in violation of his conditions of bail commits a Class 4 felony for a first violation and a Class 3 felony for a second violation.

Because Subsection a-5 does not include a mental state, the Committee decided to provide two alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness.

In People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982), the supreme court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state. Consistent with these cases and the Committee's view that it would be inappropriate to speak of a defendant's "recklessly" possessing a firearm under Subsection a-5, the Committee has provided only the alternative mental states of "intentionally" and "knowingly." Select the mental state consistent with the charge.

Use applicable bracketed material.

22.75 Issues In Violation Of Bail Bond By Possessing A Firearm

To sustain the charge of violation of bail bond by possessing a firearm, the State must prove the following propositions:

First Proposition: That the defendant had been admitted to bail;

Second Proposition: That the defendant knew a condition of his bail was that he not possess a firearm; and

Third Proposition: That the defendant violated this condition by [(intentionally) (knowingly)] possessing a firearm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/32-10(a-5) (West 1994), added by P.A. 88-680, effective January 1, 1995.

Give Instruction 22.74.

P.A. 88-680 amended Section 32-10 by adding Subsection a-5, which provides that a person who violates a condition of bail bond by possessing a firearm in violation of his conditions of bail commits a Class 4 felony for a first violation and a Class 3 felony for a second violation.

Because Subsection a-5 does not include a mental state, the Committee decided to provide two alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness.

In People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982), the supreme court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state. Consistent with these cases and the Committee's view that it would be inappropriate to speak of a defendant's “recklessly” possessing a firearm under Subsection a-5, the Committee has provided only the alternative mental states of “intentionally” and “knowingly.” Select the mental state consistent with the charge.

The Committee also believes that the State must prove that defendant knew a condition of his bail was that he not possess a firearm.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

22.76 Definition Of Escape-Failure To Comply With A Condition Of Electronic Home Monitoring Detention Program

A person [(charged with) (convicted of)] a [(felony) (misdemeanor)] commits the offense of escape when he is conditionally released from a supervising authority through an electronic home monitoring detention program and [while armed with a dangerous weapon,] he knowingly violates a condition of the electronic home monitoring detention program by ____.

Committee Note

730 ILCS 5/5-8A-4.1 (West 1997), added by P.A. 89-848, effective January 1, 1997.

Give Instruction 22.77

Insert in the blank the appropriate condition.

When this offense is committed while armed with a dangerous weapon, this offense becomes a Class 1 felony. See Section 5/9A-4.1(c). Use the bracketed phrase "[while armed with a dangerous weapon,]" when the Class 1 felony version of this offense is charged.

For definitions of the terms "home detention" and "supervising authority," see 730 ILCS 5/5-8A-2 (West 1997).

22.77 Issues In Escape-Failure To Comply With A Condition Of Electronic Home Monitoring Detention Program

To sustain the charge of escape, the State must prove the following propositions:

First Proposition: That the defendant was [(charged with) (convicted of)] a [(felony)(misdemeanor)]; and

Second Proposition: That the defendant was conditionally released from a supervising authority through an electronic home monitoring detention program; and

Third Proposition: That the defendant knowingly violated a condition of the electronic home monitoring detention program by ____[(.)(; and

Fourth Proposition: That when the defendant did so, he was armed with a dangerous weapon.)]

If you find from your consideration of all the evidence that each one of these propositions has been proven beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proven beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

730 ILCS 5/5-8A-4.1 (West 1997), added by P.A. 89-894, effective January 1, 1997.

Give Instruction 22.76.

Insert in the blank the appropriate condition.

Use the bracketed Fourth Proposition only when the Class 1 felony version of this offense is charged. See Committee Note to Instruction 22.76.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.00
TRAFFIC

23.01 Definition Of Fleeing Or Attempting To Elude A Police Officer

A person commits the offense of fleeing or attempting to elude a police officer when, as a driver or operator of a motor vehicle, having been given a visual or audible signal by a peace officer directing him to bring his vehicle to a stop, he wilfully fails or refuses to obey the signal, increases his speed, extinguishes his lights, or otherwise flees or attempts to elude the officer. The signal given by the peace officer may be by hand, voice, siren, or by red or blue light. However, the officer giving the signal must be in police uniform[, and, if driving a vehicle, that vehicle must display illuminated, oscillating, rotating, or flashing red or blue lights, which when used in conjunction with an audible horn or siren, would indicate the vehicle to be an official police vehicle].

Committee Note

625 ILCS 5/11-204(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, §11-204(a) (1991)).

Give Instruction 23.02

Give Instruction 4.08, defining the term "peace officer."

720 ILCS 5/4-5(b) provides that conduct performed "knowingly" is performed "wilfully" unless the statute using the word "wilfully" clearly requires another meaning.

See People v. Marquis, 54 Ill.App.3d 209, 369 N.E.2d 372, 11 Ill.Dec. 918 (4th Dist.1977), and People v. Pena, 170 Ill.App.3d 347, 524 N.E.2d 671, 120 Ill.Dec. 641 (2d Dist.1988), concerning the required mental state of wilfulness.

Use bracketed material when applicable.

23.02 Issues In Fleeing Or Attempting To Elude A Police Officer

To sustain the charge of fleeing or attempting to elude a police officer, the State must prove the following propositions:

First Proposition: That the defendant was the driver or operator of a motor vehicle; and

Second Proposition: That the defendant was given a visual or audible signal by a police officer directing him to bring his vehicle to a stop; and

Third Proposition: That the peace officer was in police uniform[, and, if the officer was driving a vehicle, that the vehicle displayed illuminated, oscillating, rotating, or flashing red or blue lights, which when used in conjunction with an audible horn or siren, would indicate the vehicle to be an official police vehicle]; and

Fourth Proposition: That the defendant wilfully [(failed or refused to obey such signal) (increased his speed) (extinguished his lights) (____)] in order to flee or attempt to elude the officer.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-204(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, §11-204(a) (1991)).

Give Instruction 23.01.

Insert in the blank in the Fourth Proposition, when applicable, a description of the conduct not included in the statute by which it is charged that the defendant intended to flee or to elude the officer.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.03 Definition Of Aggravated Fleeing Or Attempting To Elude A Police Officer--Damage To Property

A person commits the offense of aggravated fleeing or attempting to elude a police officer [causing damage to property in excess of $300] when, in committing the offense of fleeing or attempting to elude a police officer, he willfully flees or attempts to elude the officer at a rate of speed at least 21 miles per hour over the legal speed limit and causes damage in excess of $300 to property.

Committee Note

625 ILCS 5/11-204.1 (West 2008) (formerly Ill.Rev.Stat. ch. 95 1/2, §11-204.1 (1991)), amended by P.A. 88-679, effective July 1, 1995.

Give Instruction 23.04.

Give Instruction 23.01, defining the term "fleeing or attempting to elude a police officer."

If the definition of "police officer" is an issue, give the definition in the Vehicle Code (625 ILCS 5/1-162 (West 2007)).

See Instruction 5.01B, defining the word "willfully".

P.A. 88-679, effective July 1, 1995, increased the penalty for this offense from a Class A misdemeanor to a Class 4 felony when the violation results in bodily injury. Thus, the element of causing bodily injury must be proved beyond a reasonable doubt independently from damage to property. As a result, this instruction should only be given when aggravated fleeing or attempting to elude police officer resulting in property damage over $300 is at issue. See Instruction 23.03X.

P.A. 90-134, effective July 22, 1997, deleted "private" preceding "property."

Include the bracketed material "[causing damage to property in excess of $300]" when the jury is also to be instructed upon this offense involving bodily injury. See Instruction 23.03X.

The brackets are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.03x Definition Of Aggravated Fleeing Or Attempting To Elude A Police Officer--Bodily Injury

With the changes to IPI 23.03 and 23.04 the Committee has now eliminated this instruction.

23.04 Issues In Aggravated Fleeing Or Attempting To Elude A Police Officer

To sustain the charge of aggravated fleeing or attempting to elude a police officer [causing damage to property in excess of $300], the State must prove the following propositions:

First Proposition: That the defendant was the driver or operator of a motor vehicle; and

Second Proposition: That the defendant was given a visual or audible signal by a police officer directing the defendant to bring his vehicle to a stop; and

Third Proposition: That the police officer was in police uniform [and, if the officer was driving a vehicle, that vehicle displayed illuminated, oscillating, rotating, or flashing red or blue lights, which when used in conjunction with an audible horn or siren, would indicate the vehicle to be an official police vehicle]; and

Fourth Proposition: That the defendant willfully fled or attempted to elude the police officer; and

Fifth Proposition: That, when willfully fleeing or attempting to elude the police officer, the defendant traveled at a rate of speed at least 21 miles per hour over the legal speed limit; and

Sixth Proposition: That, when willfully fleeing or attempting to elude the police officer, the defendant caused damage in excess of $300 to property.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-204.1 (West 2008) (formerly Ill.Rev.Stat. ch. 95 1/2, §11-204.1 (1991)), amended by P.A. 88-679, effective July 1, 1995.

Give Instruction 23.03.

P.A. 88-679, effective July 1, 1995, increased the penalty for this offense from a Class A misdemeanor to a Class 4 felony when the violation results in bodily injury. Thus, the element of causing bodily injury must be proved beyond a reasonable doubt independently from damage to property. As a result, this instruction should only be given when aggravated fleeing or attempting to elude police officer resulting in property damage over $300 is at issue. See Instruction 23.04X.

P.A. 90-134, effective July 22, 1997 deleted "private" preceding "property."

Include the bracketed material "[causing damage to property in excess of $300]" when the jury is also to be instructed upon this offense involving bodily injury. See Instruction 23.04X.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

Use applicable bracketed material.

The brackets are provided solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

23.04X Issues In Aggravated Fleeing Or Attempting To Elude A Police Officer--Bodily Injury

With the changes to IPI 23.03 and 23.04 the Committee has now eliminated this instruction.

23.05 Definition Of Leaving The Scene Of An Accident Involving Death Or Personal Injury

A person commits the offense of leaving the scene of an accident involving death or personal injury when he is the driver of a vehicle involved in a motor vehicle accident resulting in death or personal injury to any person and, with knowledge that an accident has occurred, he [(fails to immediately stop his vehicle at the scene of the accident) (fails to stop as close to the scene of the accident as possible without obstructing traffic more than necessary and forthwith return to the scene of the accident)] and remain there until he has performed the duty to give information and render aid.

Committee Note

625 ILCS 5/11-401(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, §11-401(a) (1991)).

Give Instruction 23.06.

When the issue is raised by the evidence, give Instruction 23.11, defining the phrase "duty to give information and render aid," and Instruction 23.12, defining the term "personal injury" in the context of this offense. The meaning of the phrase "involved in a motor vehicle accident" is discussed in People v. Kerger, 191 Ill.App.3d 405, 548 N.E.2d 36, 138 Ill.Dec. 806 (2d Dist.1989).

See People v. Nunn, 77 Ill.2d 243, 396 N.E.2d 27, 32 Ill.Dec. 914 (1979), and People v. Janik, 127 Ill.2d 390, 537 N.E.2d 756, 130 Ill.Dec. 427 (1989), concerning the required mental state.

Use applicable bracketed material.

23.06 Issues In Leaving The Scene Of An Accident Involving Death Or Personal Injury

To sustain the charge of leaving the scene of an accident involving death or personal injury, the State must prove the following propositions:

First Proposition: That the defendant was the driver of a vehicle involved in a motor vehicle accident; and

Second Proposition: That the motor vehicle accident resulted in a death or personal injury; and

Third Proposition: That the defendant knew an accident had occurred; and

Fourth Proposition: That the defendant [(failed to immediately stop his vehicle at the scene of the accident) (failed to stop as close to the scene of the accident as possible without obstructing traffic more than necessary and forthwith return to the scene of the accident)] and remain at the scene of the accident until he had performed the duty to give information and render aid.

If you find from your consideration of all of the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-401(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, §11-401(a) (1991)).

Give Instruction 23.05.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.07 Definition Of Aggravated Leaving The Scene Of An Accident Involving Death Or Personal Injury

A person commits the offense of aggravated leaving the scene of an accident involving death or personal injury when he is the driver of a vehicle involved in a motor vehicle accident resulting in death or personal injury to another and with knowledge that an accident has occurred, and with knowledge that the accident involved another person, he [(fails to immediately stop his vehicle at the scene of the accident) (fails to stop as close to the scene of the accident as possible without obstructing traffic more than necessary and forthwith return to the scene of the accident)] and remain at the scene of the accident until he has performed the duty to give information and render aid and [(fails to report the accident within one-half hour after the motor vehicle accident) (if hospitalized and incapacitated from reporting at any time within one-half hour of the motor vehicle accident fails to report the accident within one-half hour after being discharged from the hospital)] at a nearby police station or sheriff's office, giving the place of the accident, the date, the approximate time, the driver's name and address, the registration number of the vehicle driven, and the names of all other occupants of that vehicle.

Committee Note

625 ILCS 5/11-401(b) (West 2007) (formerly Ill.Rev.Stat. ch 95 1/2, §11-401(b) (1991)).

Give Instruction 23.08.

When the issue is raised by the evidence, give Instruction 23.11, defining the phrase "duty to give information and render aid," and Instruction 23.12, defining the term "personal injury" in the context of this offense. The meaning of the phrase "involved in a motor vehicle accident" is discussed in People v. Kerger, 191 Ill.App.3d 405, 548 N.E.2d 36, 138 Ill.Dec. 806 (2d Dist. 1989).

See People v. Nunn, 77 Ill.2d 243, 396 N.E.2d 27, 32 Ill.Dec. 914 (1979), and People v. Janik, 127 Ill.2d 390, 537 N.E.2d 756, 130 Ill.Dec. 427 (1989), concerning the required mental state.

Knowledge that the accident involved another person is an element of this offense. People v. Digirolamo, 179 Ill.2d 24, 688 N.E.2d 116, 227 Ill.Dec. 779 (1997).

Public Act 93-684, effective January 1, 2005, reduced the reporting period from one hour to one-half hour.

Use applicable bracketed material.

The brackets are provided solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

23.08 Issues In Aggravated Leaving The Scene Of An Accident Involving Death Or Personal Injury

To sustain the charge of aggravated leaving the scene of an accident involving death or personal injury, the State must prove the following propositions:

First Proposition: That the defendant was the driver of a vehicle involved in a motor vehicle accident; and

Second Proposition: That the motor vehicle accident resulted in a death or personal injury; and

Third Proposition: That the defendant knew an accident had occurred; and

Fourth Proposition: That the defendant knew that the accident involved another person; and

Fifth Proposition: That the defendant [(failed to immediately stop his vehicle at the scene of the accident) (failed to stop as close to the scene of the accident as possible without obstructing traffic more than necessary and forthwith return to the scene of the accident)] and remain at the scene of the accident until the defendant had performed the duty to give information and render aid; and

Sixth Proposition: That the defendant [(failed to report the accident within one-half hour after the motor vehicle accident)(if hospitalized and incapacitated from reporting at any time within one-half hour of the motor vehicle accident failed to report the accident within one-half hour after being discharged from the hospital)] at a nearby police station or sheriff's office, giving the place of the accident, the date, the approximate time, the defendant's name and address, the registration number of the vehicle driven, and the names of all other occupants of that vehicle.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-401(b) (West 2007) (formerly Ill.Rev.Stat. ch. 95 1/2, §11-401(b) (1991).

Give Instruction 23.07.

Knowledge that the accident involved another person is an element of this offense. People v. Digirolamo, 179 Ill.2d 24, 688 N.E.2d 116, 227 Ill.Dec. 779 (1997).

Public Act 93-684, effective January 1, 2005, reduced the reporting period from one hour to one-half hour.

Use applicable bracketed material.

The brackets are provided solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

23.09 Definition Of Leaving The Scene Of An Accident Involving Damage To A Vehicle

A person commits the offense of leaving the scene of an accident involving damage to a vehicle when he is the driver of a vehicle involved in a motor vehicle accident resulting in damage to a vehicle driven or attended by another and, with knowledge that an accident has occurred, he [(fails to immediately stop his vehicle at the scene of the accident) (fails to stop as close to the scene of the accident as possible without obstructing traffic more than necessary and forthwith return to the scene of the accident)] and remain at the scene of the accident until he has performed the duty to give information and render aid.

Committee Note

625 ILCS 5/11-402 (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, §11-402 (1991)).

Give Instruction 23.10.

When the issue is raised by the evidence, give Instruction 23.11, defining the phrase "duty to give information and render aid." The meaning of the phrase "involved in a motor vehicle accident" is discussed in People v. Kerger, 191 Ill.App.3d 405, 548 N.E.2d 36, 138 Ill.Dec. 806 (2d Dist.1989).

See People v. Hileman, 185 Ill.App.3d 510, 541 N.E.2d 700, 133 Ill.Dec. 489 (5th Dist.1989), concerning the required mental state.

Use applicable bracketed material.

23.10 Issues In Leaving The Scene Of An Accident Involving Damage To A Vehicle

To sustain the charge of leaving the scene of an accident involving damage to a vehicle, the State must prove the following propositions:

First Proposition: That the defendant was the driver of a vehicle involved in a motor vehicle accident; and

Second Proposition: That damage to a vehicle driven or attended by another person resulted from the accident; and

Third Proposition: That the defendant knew an accident had occurred; and

Fourth Proposition: That the defendant [(failed to immediately stop the vehicle at the scene of the accident) (failed to stop as close to the scene of the accident as possible without obstructing traffic more than necessary and forthwith return to the scene of the accident)] and remain at the scene of the accident until the defendant had performed the duty to give information and render aid.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-402 (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, §11-402 (1991)).

Give Instruction 23.09.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.11 Definition Of Duty To Give Information Or Render Aid

The phrase "the duty to give information and render aid" means that the driver of any vehicle involved in a motor vehicle accident resulting in [(death) (personal injury) (damage to a vehicle)] shall (1) supply the driver's name and address, (2) supply the registration number and the name of the owner of the vehicle the driver is operating, and (3) exhibit his driver's license upon request if the license is available. Such information is to be supplied to any person struck by a vehicle and to any person driving, occupying, or attending a vehicle involved in a collision. [If none of the persons entitled to this information is in a position to receive and understand such information, and no police officer is present, the driver shall forthwith report such accident at the nearest office of a duly authorized police authority, disclosing all this information.]

[In addition, the driver of any vehicle involved in a motor vehicle accident shall render to any person injured in such accident reasonable assistance[, including the carrying or the making of arrangements for the carrying of such person to a physician, surgeon, or hospital for medical or surgical treatment, if it is apparent that such treatment is necessary or if such carrying is requested by the injured person].]

Committee Note

625 ILCS 5/11-403 (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, §11-403 (1991)).

Give this instruction when a defendant is charged with leaving the scene of an accident and the duty to give information or render aid is at issue.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for court and counsel and should be in the instruction submitted to the jury.

23.12 Definition Of Personal Injury--Offense Of Leaving The Scene Of An Accident

The term "personal injury" means any injury requiring immediate professional treatment in a medical facility or doctor's office.

Committee Note

625 ILCS 5/11-401 (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, §11-401 (1991)).

Give this instruction when a defendant is charged with leaving the scene of an accident involving death or personal injury, or with aggravated leaving the scene of an accident involving death or personal injury, and there is an issue of fact as to whether the accident involved personal injury within the meaning of Section 11-401. This instruction is not intended to define the term "personal injury" for any other purpose.

23.13 Definition Of Driving Under The Influence Of Alcohol

A person commits the offense of driving under the influence of alcohol when he [(drives) (is in actual physical control of)] a vehicle while under the influence of alcohol.

Committee Note

625 ILCS 5/11-501(a)(2) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §11-501(a)(2) (1991)).

Give Instruction 23.14.

Give Instruction 23.29, defining the term "under the influence of alcohol".

When actual physical control is an issue, give Instruction 23.43.

Section 11-501(a) on its face appears to establish a single offense of driving under the influence, which could be proven by evidence showing consumption of alcohol, drugs, or both. The appellate court, however, has stated that subsections (a)(1) through (a)(4) create the four separate offenses of driving under the influence of alcohol, driving under the influence of drugs, driving under the combined influence of alcohol and drugs, and driving with an alcohol concentration of 0.10 percent or more. People v. Bitterman, 142 Ill.App.3d 1062, 492 N.E.2d 582, 97 Ill.Dec. 146 (1st Dist.1986). See also People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70, 74 Ill.Dec. 40 (1983); People v. Jacquith, 129 Ill.App.3d 107, 472 N.E.2d 107, 84 Ill.Dec. 357 (1st Dist.1984); People v. Utt, 122 Ill.App.3d 272, 461 N.E.2d 463, 77 Ill.Dec. 840 (3d Dist.1983). Subsection (a)(5), added by P.A. 89-1019, effective July 1, 1990, creates a fifth offense of driving with any amount of a drug, substance, or compound in blood or urine which resulted from the unlawful use or consumption of cannabis or a controlled substance. Accordingly, these instructions define five separate offenses based on Section 11-501(a).

In Ziltz, the supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42-43, 455 N.E.2d at 72, 74 Ill.Dec. at 42. The Committee believes that this holding extends to the offense of driving under the influence of alcohol under Section 11-501(a)(2) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893, 31 Ill.Dec. 691 (2d Dist.1979).

Section 11-501(d) provides that the offense of driving under the influence of alcohol is increased from a Class A misdemeanor to a Class 4 felony (recodified as "aggravated driving under the influence" effective January 1, 1992; see P.A. 87-274) when it: (1) constitutes the third or subsequent violation of Section 11-501(a); (2) is committed by a person while driving an occupied school bus; (3) results in an accident causing great bodily harm, permanent disability, or disfigurement to another; or (4) constitutes the defendant's second violation of Section 11-501(a) and the defendant has also been convicted of reckless homicide under 720 ILCS 5/9-3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §9-3 (1991)) based upon being under the influence of alcohol or drugs (Section 11-501(d)(4), added by P.A. 87-1198, effective September 25, 1992).

When enhancing factors found in Sections 11-501(d)(2) and (d)(3) as set forth above are at issue, use instruction 23.25 (school bus) or Instruction 23.27 (accident) if the offense was

committed before January 1, 1992. Use the instructions for "aggravated driving under the influence", Instruction 23.49 (school bus) or Instruction 23.51 (accident), if the offense was committed on or after January 1, 1992.

Section 111-3(c) of the Criminal Code of Procedure (725 ILCS 5/111-3(c) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §111-3(c) (1991))), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction used to enhance a sentence is not an element of an offense and may not be disclosed to the jury unless otherwise permitted by the issues. Thus, the enhancing factors found in Sections 11-501(d)(1) and (d)(4) as set forth above are matters solely for the trial court to consider when imposing sentence and consequently not included in the instructions to the jury. See People v. Bowman, 221 Ill.App.3d 663, 666, 583 N.E.2d 114, 116, 164 Ill.Dec. 560, 562 (4th Dist.1991). For an instruction based upon the enhancing factor in Section 11-501(d)(1) prior to July 1, 1990, see Instruction 23.23.

See People v. Brower, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist.1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

23.14 Issues In Driving Under The Influence Of Alcohol

To sustain the charge of driving under the influence of alcohol, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the influence of alcohol.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(2) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §11-501(a)(2) (1991)).

Give Instruction 23.13.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70, 72, 74 Ill.Dec. 40, 42 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. The Committee believes that this holding extends to the offense of driving under the influence of alcohol under Section 11-501(a)(2) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893, 31 Ill.Dec. 691 (2d Dist.1979).

Section 11-501(d) provides that the offense of driving under the influence of alcohol is increased from a Class A misdemeanor to a Class 4 felony (recodified as "aggravated driving under the influence" effective January 1, 1992; see P.A. 87-274) when it: (1) constitutes the third or subsequent violation of Section 11-501(a); (2) is committed by a person while driving an occupied school bus; (3) results in an accident causing great bodily harm, permanent disability, or disfigurement to another; or (4) constitutes the defendant's second violation of Section 11-501(a) and the defendant has also been convicted of reckless homicide under 720 ILCS 5/9-3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §9-3 (1991)) based upon being under the influence of alcohol or drugs (Section 11-501(d)(4), added by P.A. 87-1198, effective September 25, 1992).

When enhancing factors found in Sections 11-501(d)(2) and (d)(3) as set forth above are at issue, use Instruction 23.26 (school bus) or Instruction 23.28 (accident) if the offense was committed before January 1, 1992. Use the instructions for "aggravated driving under the influence", Instruction 23.50 (school bus) or Instruction 23.52 (accident), if the offense was committed on or after January 1, 1992.

Section 111-3(c) of the Criminal Code of Procedure (725 ILCS 5/111-3(c) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §111-3(c) (1991))), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction used to enhance a sentence is not an element of an offense and may not be disclosed to the jury unless otherwise permitted by the issues. Thus, the enhancing factors found in Sections 11-501(d)(1) and (d)(4) as set forth above are matters solely for the trial court to consider when imposing sentence and consequently not included in the

instructions to the jury. See People v. Bowman, 221 Ill.App.3d 663, 666, 583 N.E.2d 114, 116, 164 Ill.Dec. 560, 562 (4th Dist.1991). For an instruction based upon the enhancing factor in Section 11-501(d)(1) prior to July 1, 1990, see Instruction 23.23.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.15 Definition Of Driving Under The Influence Of Drugs

A person commits the offense of driving under the influence of drugs when he [(drives) (is in actual physical control of)] a vehicle while under the influence of any drug or combinations of drugs to a degree which renders such person incapable of safely driving.

Committee Note

625 ILCS 5/11-501(a)(3) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §11-501(a)(3) (1991)).

Give Instruction 23.16.

When actual physical control is an issue, give Instruction 23.43.

In People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845, 851, 190 Ill.Dec. 815, 821 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of driving under the influence of drugs under Section 11-501(a)(3) and accordingly has not included a mental state in this instruction. See also People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70, 72, 74 Ill.Dec. 40, 42 (1983).

Section 11-501(d) provides that the offense of driving under the influence of drugs is increased from a Class A misdemeanor to a Class 4 felony (recodified as "aggravated driving under the influence" effective January 1, 1992; see P.A. 87-274) when it: (1) constitutes the third or subsequent violation of Section 11-501(a); (2) is committed by a person while driving an occupied school bus; (3) results in an accident causing great bodily harm, permanent disability, or disfigurement to another; or (4) constitutes the defendant's second violation of Section 11-501(a) and the defendant has also been convicted of reckless homicide under 720 ILCS 5/9-3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §9-3 (1991)) based upon being under the influence of alcohol or drugs (Section 11-501(d)(4), added by P.A. 87-1198, effective September 25, 1992).

When enhancing factors found in Sections 11-501(d)(2) and (d)(3) as set forth above are at issue, use Instruction 23.25 (school bus) or Instruction 23.27 (accident) if the offense was committed before January 1, 1992. Use the instructions for "aggravated driving under the influence", Instruction 23.53 (school bus) or Instruction 23.55 (accident), if the offense was committed on or after January 1, 1992.

Section 111-3(c) of the Criminal Code of Procedure (725 ILCS 5/111-3(c) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §111-3(c) (1991))), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction used to enhance a sentence is not an element of an offense and may not be disclosed to the jury unless otherwise permitted by the issues. Thus, the enhancing factors found in Sections 11-501(d)(1) and (d)(4) as set forth above are matters solely for the trial court to consider when imposing sentence and consequently not included in the instructions to the jury. See People v. Bowman, 221 Ill.App.3d 663, 666, 583 N.E.2d 114, 116, 164 Ill.Dec. 560, 562 (4th Dist.1991). For an instruction based upon the enhancing factor in Section 11-501(d)(1) prior to July 1, 1990, see Instruction 23.23.

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section

11-501(a).

See People v. Brower, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist.1971), regarding the time frame when it must be shown that the defendant was under the influence of drugs.

Use applicable bracketed material.

23.16 Issues In Driving Under The Influence Of Drugs

To sustain the charge of driving under the influence of drugs, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the influence of any drug or combination of drugs to a degree which rendered the defendant incapable of safely driving.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(3) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §11-501(a)(3) (1991)).

Give Instruction 23.15.

In People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845, 851, 190 Ill.Dec. 815, 821 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of driving under the influence of drugs under Section 11-501(a)(3) and accordingly has not included a mental state in this instruction. See also People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70, 72, 74 Ill.Dec. 40, 42 (1983).

Section 11-501(d) provides that the offense of driving under the influence of drugs is increased from a Class A misdemeanor to a Class 4 felony (recodified as "aggravated driving under the influence" effective January 1, 1992; see P.A. 87-274) when it: (1) constitutes the third or subsequent violation of Section 11-501(a); (2) is committed by a person while driving an occupied school bus; (3) results in an accident causing great bodily harm, permanent disability, or disfigurement to another; or (4) constitutes the defendant's second violation of Section 11-501(a) and the defendant has also been convicted of reckless homicide under 720 ILCS 5/9-3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §9-3 (1991)) based upon being under the influence of alcohol or drugs (Section 11-501(d)(4), added by P.A. 87-1198, effective September 25, 1992).

When enhancing factors found in Sections 11-501(d)(2) and (d)(3) as set forth above are at issue, use Instruction 23.26 (school bus) or Instruction 23.28 (accident) if the offense was committed before January 1, 1992. Use the instructions for "aggravated driving under the influence", Instruction 23.54 (school bus) or Instruction 23.56 (accident), if the offense was committed on or after January 1, 1992.

Section 111-3(c) of the Criminal Code of Procedure (725 ILCS 5/111-3(c) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §111-3(c) (1991))), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction used to enhance a sentence is not an element of an offense and may not be disclosed to the jury unless otherwise permitted by the issues. Thus, the enhancing factors found in Sections 11-501(d)(1) and (d)(4) as set forth above are matters solely

for the trial court to consider when imposing sentence and consequently not included in the instructions to the jury. See People v. Bowman, 221 Ill.App.3d 663, 666, 583 N.E.2d 114, 116, 164 Ill.Dec. 560, 562 (4th Dist.1991). For an instruction based upon the enhancing factor in Section 11-501(d)(1) prior to July 1, 1990, see Instruction 23.23.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.17 Definition Of Driving Under The Combined Influence Of Alcohol And Drugs

A person commits the offense of driving under the combined influence of alcohol and drugs when he [(drives) (is in actual physical control of)] a vehicle while under the combined influence of alcohol and any other drug or drugs to a degree which renders such person incapable of safely driving.

Committee Note

625 ILCS 5/11-501(a)(4) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §11-501(a)(4) (1991)).

Give Instruction 23.18.

When actual physical control is an issue, give Instruction 23.43.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70, 72, 74 Ill.Dec. 40, 42 (1983), the supreme court held that the offense of driving under the influence of alcohol under Section 11-501(a)(1) is a strict liability offense, and in People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845, 851, 190 Ill.Dec. 815, 821 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of driving under the combined influence of alcohol and drugs under Section 11-501(a)(4) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893, 31 Ill.Dec. 691 (2d Dist.1979).

Section 11-501(d) provides that the offense of driving under the combined influence of alcohol and drugs is increased from a Class A misdemeanor to a Class 4 felony (recodified as "aggravated driving under the influence" effective January 1, 1992; see P.A. 87-274) when it: (1) constitutes the third or subsequent violation of Section 11-501(a); (2) is committed by a person while driving an occupied school bus; (3) results in an accident causing great bodily harm, permanent disability, or disfigurement to another; or (4) constitutes the defendant's second violation of Section 11-501(a) and the defendant has also been convicted of reckless homicide under 720 ILCS 5/9-3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §9-3 (1991)) based upon being under the influence of alcohol or drugs (Section 11-501(d)(4), added by P.A. 87-1198, effective September 25, 1992).

When enhancing factors found in Sections 11-501(d)(2) and (d)(3) as set forth above are at issue, use Instruction 23.25 (school bus) or Instruction 23.27 (accident) if the offense was committed before January 1, 1992. Use the instructions for "aggravated driving under the influence", Instruction 23.57 (school bus) or Instruction 23.59 (accident), if the offense was committed on or after January 1, 1992.

Section 111-3(c) of the Criminal Code of Procedure (725 ILCS 5/111-3(c) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §111-3(c) (1991))), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction used to enhance a sentence is not an element of an offense and may not be disclosed to the jury unless otherwise permitted by the issues. Thus, the enhancing factors found in Sections 11-501(d)(1) and (d)(4) as set forth above are matters solely for the trial court to consider when imposing sentence and consequently not included in the

instructions to the jury. See People v. Bowman, 221 Ill.App.3d 663, 666, 583 N.E.2d 114, 116, 164 Ill.Dec. 560, 562 (4th Dist.1991). For an instruction based upon the enhancing factor in Section 11-501(d)(1) prior to July 1, 1990, see Instruction 23.23.

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See People v. Bitterman, 142 Ill.App.3d 1062, 492 N.E.2d 582, 97 Ill.Dec. 146 (1st Dist.1986), on what must be proven in a combined alcohol and drug case; see also People v. Brower, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist.1971), regarding the time frame when it must be shown that the defendant was under the influence of a combination of alcohol and drugs.

Use applicable bracketed material.

23.18 Issues In Driving Under The Combined Influence Of Alcohol And Drugs

To sustain the charge of driving under the combined influence of alcohol and drugs, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the combined influence of alcohol and any drug or drugs to a degree which rendered the defendant incapable of safely driving.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(4) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §11-501(a)(4) (1991)).

Give Instruction 23.17.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70, 72, 74 Ill.Dec. 40, 42 (1983), the supreme court held that the offense of driving under the influence of alcohol under Section 11-501(a)(1) is a strict liability offense, and in People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845, 851, 190 Ill.Dec. 815, 821 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of driving under the combined influence of alcohol and drugs under Section 11-501(a)(4) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893, 31 Ill.Dec. 691 (2d Dist.1979).

Section 11-501(d) provides that the offense of driving under the combined influence of alcohol and drugs is increased from a Class A misdemeanor to a Class 4 felony (recodified as "aggravated driving under the influence" effective January 1, 1992; see P.A. 87-274) when it: (1) constitutes the third or subsequent violation of Section 11-501(a); (2) is committed by a person while driving an occupied school bus; (3) results in an accident causing great bodily harm, permanent disability, or disfigurement to another; or (4) constitutes the defendant's second violation of Section 11-501(a) and the defendant has also been convicted of reckless homicide under 720 ILCS 5/9-3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §9-3 (1991)) based upon being under the influence of alcohol or drugs (Section 11-501(d)(4), added by P.A. 87-1198, effective September 25, 1992).

When enhancing factors found in Sections 11-501(d)(2) and (d)(3) as set forth above are at issue, use Instruction 23.26 (school bus) or Instruction 23.28 (accident) if the offense was committed before January 1, 1992. Use the instructions for "aggravated driving under the influence", Instruction 23.58 (school bus) or Instruction 23.60 (accident), if the offense was committed on or after January 1, 1992.

Section 111-3(c) of the Criminal Code of Procedure (725 ILCS 5/111-3(c) (West 1992)

(formerly Ill.Rev.Stat. ch. 38, §111-3(c) (1991))), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction used to enhance a sentence is not an element of an offense and may not be disclosed to the jury unless otherwise permitted by the issues. Thus, the enhancing factors found in Sections 11-501(d)(1) and (d)(4) as set forth above are matters solely for the trial court to consider when imposing sentence and consequently not included in the instructions to the jury. See People v. Bowman, 221 Ill.App.3d 663, 666, 583 N.E.2d 114, 116, 164 Ill.Dec. 560, 562 (4th Dist.1991). For an instruction based upon the enhancing factor in Section 11-501(d)(1) prior to July 1, 1990, see Instruction 23.23.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.19 Definition Of Driving With An Alcohol Concentration Of 0.08 Or More

A person commits the offense of driving with an alcohol concentration of 0.08 or more when he [(drives) (is in actual physical control of)] a vehicle while the alcohol concentration in such person's blood or breath is 0.08 or more.

Committee Note

625 ILCS 5/11-501(a)(1) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §11-501(a)(1) (1991)).

Give Instruction 23.20.

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. See People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70, 74 Ill.Dec. 40 (1983). The supreme court also held that the offense of driving under the influence of alcohol under Section 11-501(a)(1) is a strict liability offense. *Ziltz,* 98 Ill.2d at 42-43, 455 N.E.2d at 72, 74 Ill.Dec. at 42. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893, 31 Ill.Dec. 691 (2d Dist.1979).

Section 11-501(d) provides that the offense of driving under the influence of alcohol is increased from a Class A misdemeanor to a Class 4 felony (recodified as "aggravated driving under the influence" effective January 1, 1992; see P.A. 87-274) when it: (1) constitutes the third or subsequent violation of Section 11-501(a); (2) is committed by a person while driving an occupied school bus; (3) results in an accident causing great bodily harm, permanent disability, or disfigurement to another; or (4) constitutes the defendant's second violation of Section 11-501(a) and the defendant has also been convicted of reckless homicide under 720 ILCS 5/9-3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §9-3 (1991)) based upon being under the influence of alcohol or drugs (Section 11-501(d)(4), added by P.A. 87-1198, effective September 25, 1992).

When enhancing factors found in Sections 11-501(d)(2) and (d)(3) as set forth above are at issue, use Instruction 23.25 (school bus) or Instruction 23.27 (accident) if the offense was committed before January 1, 1992. Use the instructions for "aggravated driving under the influence", Instruction 23.45 (school bus) or Instruction 23.47 (accident), if the offense was committed on or after January 1, 1992.

Section 111-3(c) of the Criminal Code of Procedure (725 ILCS 5/111-3(c) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §111-3(c) (1991))), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction used to enhance a sentence is not an element of an offense and may not be disclosed to the jury unless otherwise permitted by the issues. Thus, the enhancing factors found in Sections 11-501(d)(1) and (d)(4) as set forth above are matters solely for the trial court to consider when imposing sentence and consequently not included in the instructions to the jury. See People v. Bowman, 221 Ill.App.3d 663, 666, 583 N.E.2d 114, 116, 164 Ill.Dec. 560, 562 (4th Dist.1991). For an instruction based upon the enhancing factor in Section 11-501(d)(1) prior to July 1, 1990, see Instruction 23.23.

See Instruction 23.30A, defining the term "alcohol concentration".

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See People v. Brower, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist.1971), regarding the time frame when it must be shown that the alcohol concentration in the defendant's blood or breath was 0.10 or more.

Use applicable bracketed material.

23.20 Issues In Driving With An Alcohol Concentration Of 0.08 Or More

To sustain the charge of driving with an alcohol concentration of 0.08 or more, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the alcohol concentration in the defendant's blood or breath was 0.08 or more.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(1) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §11-501(a)(1) (1991)).

Give Instruction 23.19.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. See People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70, 74 Ill.Dec. 40 (1983). The supreme court also held that the offense of driving under the influence of alcohol under Section 11-501(a)(1) is a strict liability offense. *Ziltz,* 98 Ill.2d at 42-43, 455 N.E.2d at 72, 74 Ill.Dec. at 42. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893, 31 Ill.Dec. 691 (2d Dist.1979).

Section 11-501(d) provides that the offense of driving under the influence of alcohol is increased from a Class A misdemeanor to a Class 4 felony (recodified as "aggravated driving under the influence" effective January 1, 1992; see P.A. 87-274) when it: (1) constitutes the third or subsequent violation of Section 11-501(a); (2) is committed by a person while driving an occupied school bus; (3) results in an accident causing great bodily harm, permanent disability, or disfigurement to another; or (4) constitutes the defendant's second violation of Section 11-501(a) and the defendant has also been convicted of reckless homicide under 720 ILCS 5/9-3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §9-3 (1991)) based upon being under the influence of alcohol or drugs (Section 11-501(d)(4), added by P.A. 87-1198, effective September 25, 1992).

When enhancing factors found in Sections 11-501(d)(2) and (d)(3) as set forth above are at issue, use Instruction 23.26 (school bus) or Instruction 23.28 (accident) if the offense was committed before January 1, 1992. Use the instructions for "aggravated driving under the influence", Instruction 23.46 (school bus) or Instruction 23.48 (accident), if the offense was committed on or after January 1, 1992.

Section 111-3(c) of the Criminal Code of Procedure (725 ILCS 5/111-3(c) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §111-3(c) (1991))), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction used to enhance a sentence is not an element of an offense and may not be disclosed to the jury unless otherwise permitted by the issues. Thus, the enhancing factors found in Sections 11-501(d)(1) and (d)(4) as set forth above are matters solely

for the trial court to consider when imposing sentence and consequently not included in the instructions to the jury. See People v. Bowman, 221 Ill.App.3d 663, 666, 583 N.E.2d 114, 116, 164 Ill.Dec. 560, 562 (4th Dist.1991). For an instruction based upon the enhancing factor in Section 11-501(d)(1) prior to July 1, 1990, see Instruction 23.23.

See Instruction 23.30A, defining the term "alcohol concentration".

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.21 Definition Of Driving With A Drug, Substance, Or Compound In Blood Or Urine

A person commits the offense of driving with a drug, substance, or compound in blood or urine when he [(drives) (is in actual physical control of)] a vehicle while there is any amount of a drug, substance, or compound in his blood or urine resulting from the unlawful use or consumption of [(cannabis) (a controlled substance)].

Committee Note

625 ILCS 5/11-501(a)(5) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §11-501(a)(5) (1991)), added by P.A. 86-1019, effective July 1, 1990.

Give Instruction 23.22.

When actual physical control is an issue, give Instruction 23.43.

Section 11-501(a)(5) does not include actual impairment of the ability to drive as an element of the offense.

In People v. Gassman, 251 Ill.App.3d 681, 692-93, 622 N.E.2d 845, 853-54, 190 Ill.Dec. 815, 823-24 (2d Dist.1993), the court upheld the constitutionality of Section 11-501(a)(5). The court also held that the offense of driving with a drug, substance, or compound in blood or urine under Section 11-501(a)(5) is a strict liability offense. *Gassman,* 251 Ill.App.3d at 688-89, 622 N.E.2d at 851, 190 Ill.Dec. at 821.

Section 11-501(d) provides that the offense of driving with a drug, substance, or compound in blood or urine is increased from a Class A misdemeanor to a Class 4 felony (recodified as "aggravated driving under the influence" effective January 1, 1992; see P.A. 87-274) when it: (1) constitutes the third or subsequent violation of Section 11-501(a); (2) is committed by a person while driving an occupied school bus; (3) results in an accident causing great bodily harm, permanent disability, or disfigurement to another; or (4) constitutes the defendant's second violation of Section 11-501(a) and the defendant has also been convicted of reckless homicide under 720 ILCS 5/9-3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §9-3 (1991)) based upon being under the influence of alcohol or drugs (Section 11-501(d)(4), added by P.A. 87-1198, effective September 25, 1992).

When enhancing factors found in Sections 11-501(d)(2) and (d)(3) as set forth above are at issue, use Instruction 23.25 (school bus) or Instruction 23.27 (accident) if the offense was committed before January 1, 1992. Use the instructions for "aggravated driving under the influence", Instruction 23.61 (school bus) or Instruction 23.63 (accident), if the offense was committed on or after January 1, 1992.

Section 111-3(c) of the Criminal Code of Procedure (725 ILCS 5/111-3(c) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §111-3(c) (1991))), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction used to enhance a sentence is not an element of an offense and may not be disclosed to the jury unless otherwise permitted by the issues. Thus, the enhancing factors found in Sections 11-501(d)(1) and (d)(4) as set forth above are matters solely for the trial court to consider when imposing sentence and consequently not included in the instructions to the jury. See People v. Bowman, 221 Ill.App.3d 663, 666, 583 N.E.2d 114, 116,

164 Ill.Dec. 560, 562 (4th Dist.1991). For an instruction based upon the enhancing factor in Section 11-501(d)(1) prior to July 1, 1990, see Instruction 23.23.

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

23.22 Issues In Driving With A Drug, Substance, Or Compound In Blood Or Urine

To sustain the charge of driving with a drug, substance, or compound in blood or urine, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, there was any amount of a drug, substance, or compound in his blood or urine resulting from the unlawful use or consumption of [(cannabis) (____, a controlled substance)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(5) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §11-501(a)(5) (1991)), added by P.A. 86-1019, effective July 1, 1990.

Give Instruction 23.21.

In People v. Gassman, 251 Ill.App.3d 681, 692-93, 622 N.E.2d 845, 853-54, 190 Ill.Dec. 815, 823-24 (2d Dist.1993), the court upheld the constitutionality of Section 11-501(a)(5). The court also held that the offense of driving with a drug, substance, or compound in blood or urine under Section 11-501(a)(5) is a strict liability offense. *Gassman,* 251 Ill.App.3d at 688-89, 622 N.E.2d at 851, 190 Ill.Dec. at 821.

Section 11-501(d) provides that the offense of driving with a drug, substance, or compound in blood or urine is increased from a Class A misdemeanor to a Class 4 felony (recodified as "aggravated driving under the influence" effective January 1, 1992; see P.A. 87-274) when it: (1) constitutes the third or subsequent violation of Section 11-501(a); (2) is committed by a person while driving an occupied school bus; (3) results in an accident causing great bodily harm, permanent disability, or disfigurement to another; or (4) constitutes the defendant's second violation of Section 11-501(a) and the defendant has also been convicted of reckless homicide under 720 ILCS 5/9-3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §9-3 (1991)) based upon being under the influence of alcohol or drugs (Section 11-501(d)(4), added by P.A. 87-1198, effective September 25, 1992).

When enhancing factors found in Sections 11-501(d)(2) and (d)(3) as set forth above are at issue, use Instruction 23.26 (school bus) or Instruction 23.28 (accident) if the offense was committed before January 1, 1992. Use the instructions for "aggravated driving under the influence", Instruction 23.62 (school bus) or Instruction 23.64 (accident), if the offense was committed on or after January 1, 1992.

Section 111-3(c) of the Criminal Code of Procedure (725 ILCS 5/111-3(c) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §111-3(c) (1991))), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction used to enhance a sentence is not an element of an offense and may not be disclosed to the jury unless otherwise permitted by the issues. Thus, the

enhancing factors found in Sections 11-501(d)(1) and (d)(4) as set forth above are matters solely for the trial court to consider when imposing sentence and consequently not included in the instructions to the jury. See People v. Bowman, 221 Ill.App.3d 663, 666, 583 N.E.2d 114, 116, 164 Ill.Dec. 560, 562 (4th Dist.1991). For an instruction based upon the enhancing factor in Section 11-501(d)(1) prior to July 1, 1990, see Instruction 23.23.

Insert in the blank the name of the controlled substance.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.23-23.24 Reserved

These sections have been reserved. Please refer to the Table of Contents for your subject.

23.25 Definition Of Driving Under The Influence--Felony--Driving An Occupied School Bus As Enhancing Factor

A person commits the offense of [(driving under the influence of alcohol) (driving under the influence of drugs) (driving under the combined influence of alcohol and drugs) (driving with an alcohol concentration of 0.08 or more) (driving with a drug, substance, or compound in blood or urine)] while driving an occupied school bus when he [(drives) (is in actual physical control of)] a school bus with children on board while [(under the influence of alcohol) (under the influence of any drug or combination of drugs to a degree which renders him incapable of safely driving) (under the combined influence of alcohol and any drug or drugs to a degree which renders him incapable of safely driving) (the alcohol concentration in his blood or breath is 0.08 or more) (there is any amount of a drug, substance, or compound in his blood or urine resulting from the unlawful use or consumption of [(cannabis) (a controlled substance)])].

Committee Note

625 ILCS 5/11-501(d)(2) (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, §11-501(d)(2) (1991)), amended by P.A. 85-303, effective January 1, 1988.

Give Instruction 23.26.

When appropriate, give the following instructions: Instruction 23.29, defining the phrase "under the influence of alcohol"; Instruction 23.43, defining the phrase "actual physical control"; and Instruction 23.30A, defining the term "alcohol concentration."

Section 11-501(d)(2), effective January 1, 1988, provides that a violation of Section 11-501(a) is increased from a Class A misdemeanor to a Class 4 felony when committed while driving a school bus with children on board.

Use applicable bracketed material.

23.26 Issues In Driving Under The Influence--Felony--Driving An Occupied School Bus As Enhancing Factor

To sustain the charge of [(driving under the influence of alcohol) (driving under the influence of drugs) (driving under the combined influence of alcohol and drugs) (driving with an alcohol concentration of 0.08 or more) (driving with a drug, substance, or compound in blood or urine)] while driving an occupied school bus, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a school bus; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a school bus, the school bus had children on board; and

Third Proposition: That at the time the defendant [(drove) (was in actual physical control of)] the school bus, the defendant [(was under the influence of alcohol) (was under the influence of any drug or combination of drugs to a degree which rendered him incapable of safely driving) (was under the combined influence of alcohol and any drug or drugs to a degree which rendered him incapable of safely driving) (had an alcohol concentration in his blood or breath of 0.08 or more) (had any amount of a drug, substance, or compound in his blood or urine resulting from the unlawful use or consumption of [(cannabis) (____, a controlled substance)])].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(d)(2) (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, §11-501(d)(2) (1991)), amended by P.A. 85-303, effective January 1, 1988.

For the definition of alcohol concentration see Instruction 23.30A.

Give Instruction 23.25.

Insert in the blank the name of the controlled substance.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

23.27 Definition Of Driving Under The Influence--Felony--Accident As Enhancing Factor

A person commits the offense of [(driving under the influence of alcohol) (driving under the influence of drugs) (driving under the combined influence of alcohol and drugs) (driving with an alcohol concentration of 0.08 or more) (driving with a drug, substance, or compound in blood or urine)] involving a motor vehicle accident when he [(drives) (is in actual physical control of)] a vehicle while [(under the influence of alcohol) (under the influence of any drug or combination of drugs to a degree which renders him incapable of safely driving) (under the combined influence of alcohol and any drug or drugs to a degree which renders him incapable of safely driving) (the alcohol concentration in his blood or breath is 0.08 or more) (there is any amount of a drug, substance, or compound in his blood or urine resulting from the unlawful use or consumption of [(cannabis) (a controlled substance)])] and is involved in a motor vehicle accident resulting in [(great bodily harm) (permanent disability) (permanent disfigurement)] to another and his act of [(driving) (being in actual physical control of)] a vehicle while [(under the influence of alcohol) (under the influence of any drug or combination of drugs to a degree which renders him incapable of safely driving) (under the combined influence of alcohol and any drug or drugs to a degree which renders him incapable of safely driving) (the alcohol concentration in his blood or breath is 0.08 or more) (there is any amount of a drug, substance, or compound in his blood or urine resulting from the unlawful use or consumption of [(cannabis) (a controlled substance)])] is the proximate cause of the [(great bodily harm) (permanent disability) (permanent disfigurement)].

Committee Note

625 ILCS 5/11-501(d)(3) (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, §11-501(d)(3) (1991)), amended by P.A. 85-303, effective January 1, 1988.

Give Instruction 24.28.

When appropriate, give the following instructions: Instruction 23.29, defining the phrase "under the influence of alcohol"; Instruction 23.43, defining the phrase "actual physical control"; and Instruction 23.30A, defining the term "alcohol concentration."

This instruction is a slightly modified version of the instruction approved in People v. Haas, 203 Ill.App.3d 779, 560 N.E.2d 1365, 148 Ill.Dec. 667 (5th Dist.1990).

Section 11-501(d)(3), effective January 1, 1988, provides that a violation of Section 11-501(a) is increased from a Class A misdemeanor to a Class 4 felony when the defendant's conduct causes an accident resulting in great bodily harm or permanent disability or disfigurement to another.

Use applicable bracketed material.

23.28 Issues In Driving Under The Influence--Felony--Accident As Enhancing Factor

To sustain the charge of [(driving under the influence of alcohol) (driving under the influence of drugs) (driving under the combined influence of alcohol and drugs) (driving with an alcohol concentration of 0.08 or more) (driving with a drug, substance, or compound in blood or urine)] involving a motor vehicle accident, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] the vehicle, the defendant [(was under the influence of alcohol) (was under the influence of any drug or combination of drugs to a degree which rendered him incapable of safely driving) (was under the combined influence of alcohol and any drug or drugs to a degree which rendered him incapable of safely driving) (had an alcohol concentration in his blood or breath of 0.08 or more) (had any amount of a drug, substance, or compound in his blood or urine resulting from the unlawful use or consumption of [(cannabis) (____, a controlled substance)])]; and

Third Proposition: That the defendant was involved in a motor vehicle accident; and

Fourth Proposition: That the motor vehicle accident resulted in [(great bodily harm) (permanent disability) (permanent disfigurement)] to another; and

Fifth Proposition: That the defendant's act of [(driving) (being in actual physical control of)] a vehicle while [(under the influence of alcohol) (under the influence of any drug or combination of drugs to a degree which rendered him incapable of safely driving) (under the combined influence of alcohol and any drug or drugs to a degree which rendered him incapable of safely driving) (the alcohol concentration in his blood or breath was 0.08 or more) (there was any amount of a drug, substance, or compound in his blood or urine resulting from the unlawful use or consumption of [(cannabis) (____, a controlled substance)])] was the proximate cause of the [(great bodily harm) (permanent disability) (permanent disfigurement)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(d)(3) (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, §11-501(d)(3) (1991)), amended by P.A. 85-303, effective January 1, 1988.

For the definition of alcohol concentration see Instruction 23.30A.

Give Instruction 23.27.

See Committee Note to Instruction 23.28A on the question of whether a definition of the term “proximate cause” should be submitted to the jury.

Insert in the blanks the name of the controlled substance.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he

is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.28a Definition Of Proximate Cause In Aggravated Driving Under The Influence-Accident And Injury As Enhancing Factor

The term "proximate cause" means any cause which, in the natural or probable sequence, produced the [(bodily harm) (great bodily harm) (permanent disability) (permanent disfigurement) (death of another person)]. [It need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause which in combination with it, causes the [(bodily harm) (great bodily harm) (permanent disability) (permanent disfigurement) (death of another person)]].

Committee Note

Section 11-501(d)(1)(3) (625 ILCS 5/11-501(d)(3) (West 1992)), effective January 1, 1988, enhances a violation of section 11-501(a) from a Class A misdemeanor to a Class 4 felony when the violation is the proximate cause of great bodily harm, permanent disability, or disfigurement to another. By Public Act 88-680, effective January 1, 1995, section 11-501(d)(3) was renumbered as section 11-501(d)(1)(C) (625 ILCS 5/11-501(d)(1)(C)).

In People v. Martin, 266 Ill.App.3d 369, 378-79, 640 N.E.2d 638 (4th Dist. 1994), the court held that an instruction very similar to this instruction was properly given when a DUI is subject to enhancement pursuant to section 11-501(d)(3). The Committee based this instruction upon IPI Civil Instruction 15.01 (definition of proximate cause), but modified it for use in this context.

The first part of this instruction should be given where the evidence shows that the sole cause of the injury or death was the conduct of the defendant. The instruction in its entirety, however, should be given when there is evidence of a concurring or contributing cause of the injury or death.

Section 11-501(d)(1)(C)(E) and (F) (635 ILCS 5/11-501(d)(1)(C)(E) and (F)) use the wording "a proximate cause." Section 11-501(d)(1)(J) (635 ILCS 5/11-501(d)(1)(J)) uses the wording "the proximate cause." The Committee believes that there is no significance to the variation in the phraseology that affects the applicability of this definition with one possible exception. When using 635 ILCS 5/11-501(d)(1)(J)) (the proximate cause) the Committee directs the user to Sibenaller v. Milschewski, 379 Ill. App. 3d 717, 721-22 (2nd Dist. 2008), where the appellate court discusses a principle of statutory construction when "the" is used instead of "a." The Committee takes no position as to whether the bracketed second sentence should be given when defining "the proximate cause."

The aggravating factor of an accident resulting in great bodily harm, permanent disability, or disfigurement has been part of section 11-501 since 1986. However, the legislature redefined the offense as "aggravated" effective January 1, 1992. Thus, this instruction applies to aggravated DUI prosecutions based upon acts occurring on or after January 1, 1992, and felony DUI prosecutions based upon acts occurring before January 1, 1992.

This instruction should not be given when causation is an issue in intentional, knowing, or reckless homicide cases. Instruction 7.15 should be given under those circumstances.

This instruction should not be given when causation is an issue in felony murder cases.

Instruction 7.15A should be given under those circumstances.

For the definition of "proximate cause" in all other cases see Instruction 4.24.

Use applicable bracketed material.

The brackets are provided solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

23.29 Definition Of Under The Influence Of Alcohol

A person is under the influence of alcohol when, as a result of drinking any amount of alcohol, his mental or physical faculties are so impaired as to reduce his ability to think and act with ordinary care.

Committee Note

See People v. Schneider, 362 Ill. 478, 200 N.E. 321 (1936); Mills v. Edgar, 178 Ill.App.3d 1054, 534 N.E.2d 187, 128 Ill.Dec. 167 (4th Dist.1989); People v. Frazier, 123 Ill.App.3d 563, 463 N.E.2d 165, 79 Ill.Dec. 27 (4th Dist.1984); Shore v. Turman, 63 Ill.App.2d 315, 210 N.E.2d 232 (4th Dist.1965).

23.30 Presumptions On Being Under The Influence Of Alcohol

If you find that at the time the defendant [(drove) (was in actual physical control of)] a vehicle that the alcohol concentration in the defendant's blood or breath was 0.05 or less, you shall presume that the defendant was not under the influence of alcohol.

If you find that at the time the defendant [(drove) (was in actual physical control of)] a vehicle that the alcohol concentration in the defendant's blood or breath was more than 0.05 but less than 0.08, this does not give rise to any presumption that the defendant was or was not under the influence of alcohol. You should consider all of the evidence in determining whether the defendant was under the influence of alcohol.

If you find [beyond a reasonable doubt] that at the time the defendant [(drove) (was in actual physical control of)] a vehicle that the amount of alcohol concentration in the defendant's blood or breath was 0.08 or more, you may presume that the defendant was under the influence of alcohol. You never are required to make this presumption. It is for the jury to determine whether the presumption should be drawn. You should consider all of the evidence in determining whether the defendant was under the influence of alcohol. [This presumption, however, has no application to the offense of driving with an alcohol concentration of 0.08 or more. Therefore, you should not consider this presumption in your deliberations on the offense of driving with an alcohol concentration of 0.08 or more.]

Committee Note

625 ILCS 5/11-501.2(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 95 1/2, §11-501.2(b) (1991)).

When actual physical control is an issue, give Instruction 23.43.

See People v. Hester, 131 Ill.2d 91, 544 N.E.2d 797, 136 Ill.Dec. 111 (1989).

The term "alcohol concentration" is defined in Instruction 23.30A. See Committee Note to Instruction 23.30A.

These presumptions do not apply to prosecutions for driving with an alcohol concentration of 0.08 or more. People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70, 74 Ill.Dec. 40 (1983); 625 ILCS 5/11-501(a)(1). Therefore, the bracketed portion at the end of the third paragraph of this instruction should be given only when that offense is charged along with an offense to which the instruction is applicable.

With the exception of the second bracketed portion of the third paragraph, the entire instruction should be given when any part of it is given. For constitutional reasons, a presumption in a criminal case may not be mandatory when it operates against a defendant, and it may not shift the burden of proof. The Committee considered and rejected a proposal to add at the end of the first paragraph the sentence: "You should consider all of the evidence in determining whether the defendant was under the influence of alcohol."

The Committee has extensively discussed the presumption which is explained to the jury in this instruction. The discussions have focused on People v. Hester, 178 Ill.App.3d 360, 532 N.E.2d 1344, 127 Ill.Dec. 335 (1st Dist.1988), rev'd 131 Ill.2d 91, 544 N.E.2d 797, 136 Ill.Dec. 111 (1989). The appellate court held that the jury instruction denied defendant due process of

law because (1) the instruction given to the jury in that case, a modified IPI instruction, contained a mandatory presumption and the jury was not instructed to find beyond a reasonable doubt that defendant's blood alcohol level was 0.08 or more before it could rely on the presumption, and (2) the trial court's substitution of the word “may” for “shall” was tantamount to judicial legislation. See Hester, 131 Ill.2d at 97-98, 544 N.E.2d at 800-01, 136 Ill.Dec. at 114-15. The Illinois Supreme Court reversed, finding (1) the instruction was in fact permissive, and (2) the instructions given to the jury, taken as a whole, correctly instructed the jury as to the State's burden of proof. Hester, 131 Ill.2d at 101-02, 544 N.E.2d at 802, 136 Ill.Dec. at 116.

Despite extensive discussion, the Committee was unable to reach a final consensus before publication of the Third Edition on whether the predicate fact had to be proved beyond a reasonable doubt. While the appellate court opinion found error when the jury was not so instructed, the Supreme Court did not reach this issue. Therefore, it was decided to place the phrase “beyond a reasonable doubt” in brackets in the third paragraph of this instruction and to inform users of the problems in this area.

Use applicable bracketed material.

23.30A Definition Of Alcohol Concentration

The term "alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. [Alcohol concentration may be determined by analysis of a person's breath, blood, urine, or other bodily substance.]

Committee Note

625 ILCS 5/11-501.2 (West 1998).

This instruction should be given when scientific testimony or other evidence raises an issue concerning the grams of alcohol per milliliters of the defendant's blood or the grams of alcohol per liter of the defendant's breath and the instruction would be of aid to the jury.

Note that the Illinois Vehicle Code defines "alcohol concentration" in terms of whole blood, not blood serum. People v. Green, 294 Ill.App.3d 139, 689 N.E.2d 385, 228 Ill.Dec. 513 (1997), 294 Ill.App.3d 139, 689 N.E.2d 385, 228 Ill.Dec. 513 (1997).

Use bracketed material when applicable.

23.30b Prescription Not A Defense

The fact that a person was legally entitled to use [(drugs) (alcohol) (any combination of drugs and alcohol)] is not a defense to a charge of [(driving under the influence of drugs) (driving under the influence of alcohol) (driving under the combined influence of alcohol and drugs) (driving with an alcohol concentration of 0.08 or more)].

Committee Note

625 ILCS 5/11-501(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, §11-501(b) (1991)).

For the definition of alcohol concentration see Instruction 23.30A.

The Committee believes that this instruction cannot be used when the charge is based upon Section 11-501(a)(5) which provides that a person cannot drive while there is any amount of a drug, substance, or compound in his blood or urine resulting from the unlawful use of cannabis or a controlled substance.

Use applicable bracketed material.

23.31 Definition Of Reckless Driving

A person commits the offense of reckless driving when he drives a vehicle with a wilful or wanton disregard for the safety of persons or property.

[or]

A person commits the offense of reckless driving when he drives a vehicle and knowingly uses an incline in a roadway, such as a railroad crossing, bridge approach, or hill, to cause the vehicle to become airborne.

Committee Note

625 ILCS 5/11-503(a) (West 1999), amended by P.A. 93-682, effective January 1, 2005.

Give Instruction 23.32.

See Instruction 5.01, defining the word "wanton."

See Instruction 5.01B, defining the word "wilful."

The Committee has placed the word "knowingly" in this instruction before the phrase "uses an incline" rather than before the phrase "drives a vehicle" as set forth in 625 ILCS 5/11-503(a)(2). This change from the statutory language conforms with the legislature's intent as reflected in the legislative history reported at the time the statute was amended.

Use applicable paragraph.

23.31X Definition Of Aggravated Reckless Driving

A person commits the offense of aggravated reckless driving when he drives a vehicle with a willful or wanton disregard for the safety of persons or property and causes [(great bodily harm) (permanent disability or disfigurement)] to another.

Committee Note

625 ILCS 5/11-503 (West 1994), amended by P.A. 88-679, effective July 1, 1995.

Give Instruction 23.32X.

See Instruction 5.01, defining the word "wanton."

See Instruction 5.01B, defining the word "willful."

Use applicable bracketed material.

23.32 Issue In Reckless Driving

To sustain the charge of reckless driving, the State must prove the following proposition:

That the defendant drove a vehicle with a wilful or wanton disregard for the safety of persons or property.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[or]

To sustain the charge of reckless driving, the State must prove the following proposition:

That the defendant drove a vehicle and knowingly used an incline in a roadway to cause the vehicle to become airborne.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-503(a) (West 1999) (formerly Ill.Rev.Stat. ch. 95 1/2, §11-503(a) (1991)), amended by P.A. 93-682, effective January 1, 2005.

Give Instruction 23.31.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in the proposition. See Instruction 5.03.

See Instruction 5.01, defining the word "wanton."

See Instruction 5.01B, defining the word "wilful."

The Committee has placed the word "knowingly" in this instruction before the phrase "uses an incline" rather than before the phrase "drives a vehicle" as set forth in 625 ILCS 5/11-503(a)(2). This change from the statutory language conforms with the legislature's intent as reflected in the legislative history reported at the time the statute was amended.

Use applicable paragraphs.

23.32x Issues In Aggravated Reckless Driving

To sustain the charge of aggravated reckless driving, the State must prove the following propositions:

First Proposition: That the defendant drove a vehicle with a willful or wanton disregard for the safety of persons or property, and

Second Proposition: That in doing so, the defendant caused [(great bodily harm) (permanent disability or disfigurement)] to another.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-503 (West 1994), amended by P.A. 88-679, effective July 1, 1995.

Give Instruction 23.31X.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.33 Definition Of Drag Racing

A person commits the offense of drag racing when, while operating a motor vehicle on a street or highway, he is

[1] one of two or more individuals competing or racing in a situation in which one of the motor vehicles is beside or to the rear of a motor vehicle operated by a competing driver, and one driver attempts to prevent the competing driver from passing or overtaking him either by acceleration or maneuver.

[or]

[2] competing in a race against time.

Committee Note

625 ILCS 5/11-504 (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, §11-504 (1991)).

Give Instruction 23.34.

See 625 ILCS 5/1-125, defining the word "highway." See 625 ILCS 5/1-201, defining the word "street."

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.34 Issues In Drag Racing

To sustain the charge of drag racing, the State must prove the following propositions:

First Proposition: That the defendant operated a motor vehicle upon a street or highway; and

Second Proposition: That the defendant was one of two or more competing or racing drivers in a situation in which one of the motor vehicles was beside or to the rear of a motor vehicle operated by a competing driver and one driver attempted to prevent the competing driver from passing or overtaking him either by acceleration or maneuver.

[or]

Second Proposition: That the defendant competed in a race against time.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-504 (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, §11-504 (1991)).

Give Instruction 23.33.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.35 Definition Of Possession Of Stolen Or Converted Vehicle

A person commits the offense of possession of a stolen or converted vehicle when that person [(receives) (possesses) (conceals) (sells) (disposes of) (transfers)] [(a vehicle) (an essential part of a vehicle)] when not entitled to possession of the [(vehicle) (essential part of a vehicle)] and when knowing it to have been stolen or converted.

Committee Note

625 ILCS 5/4-103(a)(1) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §4-103(a)(1) (1991)).

Give Instructions 23.36 and 23.36A.

When the defendant is charged with possessing stolen vehicles or essential parts of vehicles, give Instructions 13.33G (Definition of Stolen Property) and 13.01 (Definition of Theft). Because stolen property is defined as "property over which control has been obtained by *theft,*" the definition of theft must accompany the definition of stolen property. (Emphasis added.) See People v. Cozart, 235 Ill.App.3d 1076, 601 N.E.2d 1325, 176 Ill.Dec. 627 (2d Dist.1992). Although the court in People v. Bradley, 192 Ill.App.3d 387, 548 N.E.2d 743, 139 Ill.Dec. 358 (1st Dist.1989), held that the word "stolen" implies the definition of theft and the intent to permanently deprive--and that the jury therefore *need not* be instructed on those terms--Bradley did not hold it impermissible or error to do so. Therefore, in part to comply with Cozart, the Committee decided that the instructions should include the definitions of stolen property and theft.

When the defendant is charged with possession of converted vehicles or converted essential parts of vehicles, give Instruction 23.35A, defining the term "converted" property.

When the defendant is charged with possession of the essential parts of a vehicle, give Instruction 23.35B, defining the term "essential parts".

See Instructions 23.71 and 23.72 regarding the aggravated versions of this offense.

Use applicable bracketed material.

23.35a Definition Of Converted

Property has been "converted" if a person lawfully entitled to possession of that property has been wrongfully deprived of it.

Committee Note

In People v. Washington, 184 Ill.App.3d 703, 540 N.E.2d 1014, 133 Ill.Dec. 148 (2d Dist.1989), the court approved the use of a non-IPI instruction defining the term "converted property" on the basis that it was not substantially different than the definition set forth in this instruction. See also Yardley v. Yardley, 137 Ill.App.3d 747, 484 N.E.2d 873, 92 Ill.Dec. 142 (2d Dist.1985); Bender v. Consolidated Mink Ranch, Inc., 110 Ill.App.3d 207, 441 N.E.2d 1315, 65 Ill.Dec. 801 (2d Dist.1982).

23.35b Definition Of Essential Parts

The term "essential parts" means all integral and body parts of a vehicle of a type required to be registered, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

"Essential parts" include the following: [(vehicle hulks) (vehicle shells) (vehicle chassis) (vehicle frames) (front end assemblies[, which may consist of the headlight, grill, fenders, and hood]) (front clip[, the front end assembly with cowl attached]) (rear clip[, which may consist of quarter panels, fenders, floor, and top]) (doors) (hatchbacks) (fenders) (cabs) (cab clips) (cowls) (hoods) (trunk lids) (deck lids) (T-tops) (sunroofs) (moon roofs) (astro roofs) (transmissions of vehicles of the second division) (seats) (aluminum wheels) (engines) (stereo radios) (cassette radios) (compact disc radios) (cassette/compact disc radios) (compact disc players and compact disc changers that are either installed in dash or trunk-mounted)] [and other similar parts].

Committee Notes

625 ILCS 5/1-118 (1992) (formerly Ill.Rev.Stat. ch. 951/2, §1-118 (1991)), amended by P.A. 86-1209, effective January 1, 1991.

The statute defining the term "component part," former Ill.Rev.Stat. Chapter 951/2, §1-111.3, has been repealed by P.A. 83-1473, effective January 1, 1985.

Use applicable bracketed material.

23.36 Issues In Possession Of Stolen Or Converted Vehicle

To sustain the charge of possession of a stolen or converted vehicle, the State must prove the following propositions:

First Proposition: That the defendant [(received) (possessed) (concealed) (sold) (disposed of) (transferred)] [(a vehicle) (an essential part of a vehicle)]; and

Second Proposition: That the defendant was not entitled to possession of the [(vehicle) (essential part of a vehicle)]; and

Third Proposition: That the defendant knew that the [(vehicle) (essential part of a vehicle)] was stolen or converted.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/4-103(a)(1) (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, §4-103(a)(1) (1991)).

Give Instruction 23.35.

When appropriate, give Instruction 23.35A, defining the word "converted."

When a defendant is charged with possession of a stolen or converted vehicle and it is alleged, or the evidence shows, that he participated in the actual taking of the vehicle, it may be necessary to include the phrase "intent to permanently deprive" in the definition and issues instructions. See People v. Cramer, 85 Ill.2d 92, 421 N.E.2d 189, 51 Ill.Dec. 681 (1981); People v. Washington, 184 Ill.App.3d 703, 540 N.E.2d 1014, 133 Ill.Dec. 148 (2d Dist.1989). But see People v. Bradley, 192 Ill.App.3d 387, 548 N.E.2d 743, 139 Ill.Dec. 358 (1st Dist.1989), wherein it was held that the word "stolen" implies an intent to permanently deprive.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.36a Inference From Possession Of Stolen Or Converted Vehicle

Under the law, you may infer that a person exercising exclusive unexplained possession over [(a stolen or converted vehicle) (an essential part of a stolen or converted vehicle)] has knowledge that such [(vehicle) (essential part)] is stolen or converted.

You never are required to make this inference. It is for the jury to determine whether the inference should be drawn. During your deliberations on your verdict you should consider all the evidence in the case.

[Exclusive possession of [(a stolen or converted vehicle) (an essential part of a stolen or converted vehicle)] may be reasonably explained by facts and circumstances in evidence. In considering whether such exclusive possession has been reasonably explained, you are reminded that, in the exercise of constitutional rights, the accused need not take the stand or produce evidence.]

Committee Note

625 ILCS 5/4-103(a)(1) (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, §4-103(a)(1) (1991)).

This instruction may be given when the defendant is charged with possession of a stolen or converted vehicle and there is evidence that the defendant had exclusive unexplained possession over a vehicle or essential part of a vehicle.

However, under some circumstances, use of an inference in a criminal case may raise constitutional problems. The final paragraph of this instruction should be given only when requested by the defendant. The second sentence of the final paragraph may be omitted if the defendant has testified, and should be omitted if the defendant requests that it be omitted.

See Instruction 23.35A, defining the word “converted,” and Instruction 23.35B, defining the term “essential parts.”

Use applicable bracketed material.

23.37 Definition Of Possession Of A Vehicle With An Altered Identification Number

A person commits the offense of possession of a vehicle with an altered identification number when he [(buys) (receives) (possesses) (sells) (disposes of)] [(the vehicle) (an essential part of a vehicle)] with the intent to defraud or commit a crime and with knowledge that the identification number on [(the vehicle) (an essential part of the vehicle)] has been removed or falsified.

Committee Note

625 ILCS 5/4-103(a)(4) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §4-103(a)(4) (1991)).

Give Instructions 23.38.

The phrase "with the intent to defraud or commit a crime and" has been added to this instruction to comply with People v. DePalma, 256 Ill.App.3d 206, 211, 627 N.E.2d 1236, 1240, 194 Ill.Dec. 594, 598 (2d Dist.1994). In DePalma, the court held that the knowledge element for this felony offense means "criminal knowledge", which the court defined as "knowledge with an intent to defraud or commit a crime." Accordingly, the Committee added the above phrase to this instruction in order to convey this holding to the jury.

The instructions for this offense contained in the bound volume of IPI-Criminal Third Edition also applied to the misdemeanor offense under Section 4-102(a)(3) of the Vehicle Code (Ill.Rev.Stat. ch. 951/2, §4-102(a)(3) (1989)). However, P.A. 86-1209, effective January 1, 1991, deleted this misdemeanor offense.

See Instruction 23.35B, defining the term "essential parts".

Use applicable bracketed material.

23.37a Definition Of Identification Number

The term "identification number" means the numbers and letters on a vehicle or essential part, affixed by the manufacturer, the Illinois Secretary of State, or the Illinois Department of State Police, for the purpose of identifying the vehicle or essential part, or which is required to be affixed to the vehicle or part by federal or state law.

Committee Note

625 ILCS 5/1-129 (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, §1-129 (1991)), amended by P.A. 84-1302 and P.A. 84-1304, effective January 1, 1987.

23.38 Issues In Possession Of A Vehicle With An Altered Identification Number

To sustain the charge of possession of a vehicle with an altered identification number, the State must prove the following propositions:

First Proposition: That the defendant [(bought) (received) (possessed) (sold) (disposed of)] [(a vehicle) (an essential part of a vehicle)]; and

Second Proposition: That the manufacturer's identification number on [(the vehicle) (an essential part of the vehicle)] had been removed or falsified; and

Third Proposition: That the defendant, with the intent to defraud or commit a crime, had knowledge that the manufacturer's identification number had been removed or falsified.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/4-103(a)(4) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §4-103(a)(4) (1991)).

Give Instruction 23.37.

The Third Proposition has been revised to comply with People v. DePalma, 256 Ill.App.3d 206, 211, 627 N.E.2d 1236, 1240, 194 Ill.Dec. 594, 598 (2d Dist.1994). See the Committee Note to Instruction 23.37.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

23.39 Definition Of Driving While Driver's License Is Suspended Or Revoked

A person commits the offense of driving while driver's license is [(suspended) (revoked)] when he [(drives) (is in actual physical control of)] a motor vehicle on a highway [of this State] at a time when his [(driver's license) (driver's permit) (privilege to drive) (privilege to obtain a driver's license) (privilege to obtain a driver's permit)] is [(suspended) (revoked)] as provided by the Illinois Vehicle Code or the law of another state.

Committee Note

625 ILCS 5/6-303(a) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §6-303 (1991)).

Give Instruction 23.40.

When actual physical control is an issue, give Instruction 23.43.

The word “highway” is defined in 625 ILCS 5/1-126 (West 1994).

Use applicable bracketed material.

23.40 Issues In Driving While Driver's License Is Suspended Or Revoked

To sustain the charge of driving while driver's license is [(suspended) (revoked)], the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a motor vehicle on a highway [of this State]; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a motor vehicle, his [(driver's license) (driver's permit) (privilege to drive) (privilege to obtain a driver's license) (privilege to obtain a driver's permit)] was [(suspended) (revoked)] as provided by the Illinois Vehicle Code or the law of another state.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/6-303(a) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §6-303 (1991)), amended by P.A. 89156, effective January 1, 1995.

Give Instruction 23.39.

When actual physical control is an issue, give Instruction 23.43.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

23.41 Definition Of Subsequent Offense Of Driving While Driver's License Is Suspended Or Revoked

See section 23.42.

23.42 Issues In Subsequent Offense Of Driving While Driver's License Is Suspended Or Revoked

[These instructions have been deleted; see the Committee Note below.]

Committee Note

625 ILCS 5/6-303(a) and (d) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §6-303(a) and (d) (1991)).

The Committee no longer believes that instructions on this offense are appropriate because of its reliance on a defendant's prior convictions. Section 111-3(c) of the Criminal Code of Procedure (725 ILCS 5/111-3(c) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §111-3(c) (1991))) provides that a prior conviction used to enhance a sentence is not an element of the offense, should only be considered by the trial court imposing sentence, and should not be disclosed to the jury unless otherwise permitted by the issues. See People v. Bowman, 221 Ill.App.3d 663, 666, 583 N.E.2d 114, 116, 164 Ill.Dec. 560, 562 (4th Dist.1991). Accordingly, the Committee has deleted this set of instructions.

23.43 Definition Of Actual Physical Control

The phrase "actual physical control" means that the defendant was in the vehicle and in a position to exercise control over the vehicle by starting the engine and causing the vehicle to move.

Committee Note

See People v. Barlow, 163 Ill.App.3d 281, 516 N.E.2d 982, 114 Ill.Dec. 827 (5th Dist.1987); People v. Heimann, 142 Ill.App.3d 197, 491 N.E.2d 872, 96 Ill.Dec. 593 (3d Dist.1986).

23.43a Definition Of Vehicle

The word "vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a street or highway. [However, [(bicycles) (devices moved by human power) (devices used exclusively upon stationary rails or tracks) (snowmobiles)] are not included within the definition of the word "vehicle."] [An animal or a conveyance drawn by an animal may be included within the definition of the word "vehicle."]

Committee Note

625 ILCS 5/1-217 and 11-206 (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, §1-217 and 11-206 (1991)).

Under 625 ILCS 5/11-1502, bicycle riders are under a duty to obey all applicable traffic laws. Nothing in this instruction is meant to imply that bicycle riders are exempt from such laws. When a person is charged with violating a traffic law while riding a bicycle, the word "bicycle" may be substituted for the word "vehicle" in the appropriate instructions.

The definition of the word "vehicle" is discussed in People v. Borst, 162 Ill.App.3d 830, 516 N.E.2d 854, 114 Ill.Dec. 699 (2d Dist.1987), which suggests that an automobile remains a vehicle until a junking certificate is issued for it.

Use applicable bracketed material.

23.43b Definition Of Motor Vehicle

The term “motor vehicle” means every vehicle which is [(self-propelled) (propelled by electric power obtained from overhead trolley wires, but not operated upon rails)] [except for [(vehicles moved solely by human power) (motorized wheelchairs) (low-speed electric bicycles) (low-speed gas bicycles)]].

Committee Note

Instruction and Committee Note Approved April 4, 2014.

625 ILCS 5/1-146 (West 2013), amended by P.A. 96-125, § 5, effective January 1, 2010.

Use applicable bracketed material.

The last clause of this definition is bracketed because in most cases the exception contained within that clause will not be an issue.

23.45 Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More--Driving A School Bus

A person commits the offense of aggravated driving with an alcohol concentration of 0.08 or more when he drives a school bus with children on board while the alcohol concentration in his blood or breath is 0.08 or more.

Committee Note

625 ILCS 5/11-501(a)(1) and (d)(1)(B) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992.

Give Instruction 23.46.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. See People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70, 74 Ill.Dec. 40 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz,* 98 Ill.2d at 42-43, 455 N.E.2d at 72, 74 Ill.Dec. at 42; People v. Avery, 277 Ill.App.3d 824, 661 N.E.2d 361, 214 Ill.Dec. 507 (1st Dist.1995). The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893, 31 Ill.Dec. 691 (2d Dist.1979).

See Instruction 23.30A, defining the term "alcohol concentration".

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See People v. Brower, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist.1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

23.46 Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More--Driving A School Bus

To sustain the charge of aggravated driving with an alcohol concentration of 0.08 or more, the State must prove the following propositions:

First Proposition: That the defendant drove a school bus; and

Second Proposition: That at the time defendant drove the school bus, children were on board; and

Third Proposition: That at the time the defendant drove the school bus, the alcohol concentration in the defendant's blood or breath was 0.08 or more.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(1) and (d)(1)(B) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992.

For the definition of alcohol concentration see Instruction 23.30A.

Give Instruction 23.45.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70, 72, 74 Ill.Dec. 40, 42 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. See also People v. Avery, 277 Ill.App.3d 824, 661 N.E.2d 361, 214 Ill.Dec. 507 (1st Dist.1995). The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893, 31 Ill.Dec. 691 (2d Dist.1979).

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.47 Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More--Accident Resulting In Injuries

A person commits the offense of aggravated driving with an alcohol concentration of 0.08 or more when he [(drives) (is in actual physical control of)] a vehicle while the alcohol concentration in his blood or breath is 0.08 or more, and in [(so driving) (being in actual physical control of)] a vehicle, he is involved in a motor vehicle accident which resulted in [(great bodily harm) (permanent disability) (disfigurement)] to another, and his [(driving) (being in actual physical control of)] a vehicle while having an alcohol concentration in his blood or breath of 0.08 or more is the proximate cause of the [(great bodily harm) (permanent disability) (disfigurement)] to the other person.

Committee Note

625 ILCS 5/11-501(a)(1) and 11-501(d)(1)(C) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§11-501(a)(1) and 11-501(d)(3) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as "aggravated" until P.A. 86-1475, effective January 1, 1992.

Give Instruction 23.48.

Give Instruction 23.28A, defining the term "proximate cause." In People v. Martin, 266 Ill.App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist.1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were the proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. See People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70, 74 Ill.Dec. 40 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz,* 98 Ill.2d at 42-43, 455 N.E.2d at 72, 74 Ill.Dec. at 42; People v. Avery, 277 Ill.App.3d 824, 661 N.E.2d 361, 214 Ill.Dec. 507 (1st Dist.1995). The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.10 or more under Section 11-501(d)(1)(C) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893, 31 Ill.Dec. 691 (2d Dist.1979).

See Instruction 23.30A, defining the term "alcohol concentration".

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See People v. Brower, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist.1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

23.47a Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More--Accident Resulting In Death

A person commits the offense of aggravated driving with an alcohol concentration of 0.08 or more when he [(drives) (is in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)], and in [(so driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while the alcohol concentration in his blood or breath is 0.08 or more, he is involved in an accident which resulted in death to another, and his [(driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while the alcohol concentration in his blood or breath is 0.08 or more is a proximate cause of the death to the other person.

Committee Note

625 ILCS 5/11-501(a)(1) and 11-501(d)(1)(F) (West 1994) (formerly Ill.Rev.Stat. ch. 95 1/2, §11-501(a)(1) (1991)), amended by P.A. 93-1093, effective March 29, 2005. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as "aggravated" until P.A. 86-1475, effective January 1, 1992.

Give Instruction 23.48A.

Give Instruction 23.28A, defining the term "proximate cause." In People v. Martin, 266 Ill. App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist. 1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were a proximate cause of the great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. See People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70, 74 Ill.Dec. 40 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz,* 98 Ill.2d at 42-43, 455 N.E.2d at 72, 74 Ill.Dec. at 42; People v. Avery, 277 Ill.App.3d 824, 661 N.E.2d 361, 214 Ill.Dec. 507 (1st Dist. 1995). The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(F) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893, 31 Ill.Dec. 691 (2d Dist. 1979).

Give Instruction 23.30A, defining the term "alcohol concentration."

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See People v. Brower, 131 Ill. App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

23.48 Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More--Accident Resulting In Injuries

To sustain the charge of aggravated driving with an alcohol concentration of 0.08 or more, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the alcohol concentration in the defendant's blood or breath was 0.08 or more; and

Third Proposition: That the defendant, in [(so driving) (being in the actual physical control of)] a vehicle, was involved in a motor vehicle accident; and

Fourth Proposition: That the motor vehicle accident in which defendant was involved resulted in [(great bodily harm) (permanent disability) (disfigurement)] to another person; and

Fifth Proposition: That the defendant's [(driving) (being in actual physical control of)] a vehicle while having an alcohol concentration in his blood or breath of 0.08 or more was the proximate cause of the [(great bodily harm) (permanent disability) (disfigurement)] to the other person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(1) and 11-501(d)(1)(C) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§11-501(a)(1) and 11-501(d)(3) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as "aggravated" until P.A. 86-1475, effective January 1, 1992.

For the definition of alcohol concentration see Instruction 23.30A.

Give Instruction 23.47.

Give Instruction 23.28A, defining the term "proximate cause." In People v. Martin, 266 Ill.App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist.1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were the proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70, 72, 74 Ill.Dec. 40, 42 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. See also People v. Avery, 277 Ill.App.3d 824, 661 N.E.2d 361, 214 Ill.Dec. 507 (1st Dist.1995). The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(C) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893, 31 Ill.Dec. 691 (2d Dist.1979).

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.48A Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More--Accident Resulting In Death

To sustain the charge of aggravated driving with an alcohol concentration of 0.08 or more, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)]; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)], the alcohol concentration in the defendant's blood or breath was 0.08 or more; and

Third Proposition: That the defendant, in [(so driving) (being in the actual physical control of)] [(a)(an)] [(motor vehicle)(snowmobile) (all terrain vehicle) (watercraft)], was involved in an accident; and

Fourth Proposition: That the accident in which defendant was involved resulted in death to another person; and

Fifth Proposition: That the defendant's [(driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while the alcohol concentration in his blood or breath is 0.08 or more was a proximate cause of the death to the other person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(1) and 11-501(d)(1)(F) (West 1994) (formerly Ill.Rev.Stat. ch. 95 1/2, §11-501(a)(1) (1991)), amended by P.A. 93-1093, effective March 29, 2005. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as "aggravated" until P.A. 86-1475, effective January 1, 1992.

For the definition of "alcohol concentration" give Instruction 23.30A.

Give Instruction 23.47A.

Give Instruction 23.28A, defining the term "proximate cause." In People v. Martin, 266 Ill. App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist. 1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were a proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70, 72, 74 Ill.Dec. 40, 42 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. See also People v. Avery, 277 Ill. App.3d 824, 661 N.E.2d 361, 214 Ill.Dec. 507 (1st Dist. 1995). The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(F) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill. App.3d 124, 394 N.E.2d 893, 31 Ill.Dec. 691 (2d Dist. 1979).

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

23.49 Definition Of Aggravated Driving Under The Influence Of Alcohol--Driving A School Bus

A person commits the offense of aggravated driving under the influence of alcohol when he drives a school bus with children on board while he is under the influence of alcohol.

Committee Note

625 ILCS 5/11-501(a)(2) and 11-501(d)(1)(B) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§11-501(a)(2) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992.

Give Instruction 23.50.

Give Instruction 23.29, defining the term "under the influence of alcohol."

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70, 72, 74 Ill.Dec. 40, 42 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893, 31 Ill.Dec. 691 (2d Dist.1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See People v. Brower, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist.1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

23.50 Issues In Aggravated Driving Under The Influence Of Alcohol--Driving A School Bus

To sustain the charge of aggravated driving under the influence of alcohol, the State must prove the following propositions:

First Proposition: That the defendant drove a school bus; and

Second Proposition: That at the time the defendant drove the school bus, children were on board; and

Third Proposition: That at the time the defendant drove the school bus, the defendant was under the influence of alcohol.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(2) and 11-501(d)(1)(B) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§11-501(a)(2) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992.

Give Instruction 23.49.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70, 72, 74 Ill.Dec. 40, 42 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893, 31 Ill.Dec. 691 (2d Dist.1979).

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.51 Definition Of Aggravated Driving Under The Influence Of Alcohol--Accident Resulting In Injuries

A person commits the offense of aggravated driving under the influence of alcohol when he [(drives) (is in actual physical control of)] a vehicle while under the influence of alcohol, and in [(so driving) (being in the actual physical control of)] a vehicle, he is involved in a motor vehicle accident which resulted in [(great bodily harm) (permanent disability) (disfigurement)] to another, and his [(driving) (being in actual physical control of)] a vehicle while being under the influence of alcohol is the proximate cause of the [(great bodily harm) (permanent disability) (disfigurement)] to the other person.

Committee Note

625 ILCS 5/11-501(a)(2) and 11-501(d)(1)(C) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§11-501(a)(2) and 11-501(d)(3) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as "aggravated" until P.A. 86-1475, effective January 1, 1992.

Give Instruction 23.52.

Give Instruction 23.29, defining the term "under the influence of alcohol."

Give Instruction 23.28A, defining the term "proximate cause." In People v. Martin, 266 Ill.App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist.1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were the proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

When actual physical control is an issue, give Instruction 23.43.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70, 72, 74 Ill.Dec. 40, 42 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(C) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893, 31 Ill.Dec. 691 (2d Dist.1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See People v. Brower, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist.1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

23.51A Definition Of Aggravated Driving Under The Influence Of Alcohol--Accident Resulting In Death

A person commits the offense of aggravated driving under the influence of alcohol when he [(drives) (is in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while under the influence of alcohol, and in [(so driving) (being in the actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)], he is involved in an accident which resulted in death to another, and his [(driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while being under the influence of alcohol is a proximate cause of the death to the other person.

Committee Note

625 ILCS 5/11-501(a)(2) and 11-501(d)(1)(F) (West 1994) (formerly Ill.Rev.Stat. ch. 95 1/2, §11-501(a)(2) (1991)), amended by P.A. 93-1093, effective March 29, 2005. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as "aggravated" until P.A. 93-213, effective July 18, 2003.

Give Instruction 23.52A.

Give Instruction 23.29, defining the term "under the influence of alcohol."

Give Instruction 23.28A, defining the term "proximate cause." In People v. Martin, 266 Ill. App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist. 1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were a proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

When actual physical control is an issue, give Instruction 23.43.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70, 72, 74 Ill.Dec. 40, 42 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(F) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill. App.3d 124, 394 N.E.2d 893, 31 Ill.Dec. 691 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See People v. Brower, 131 Ill. App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

23.52 Issues In Aggravated Driving Under The Influence Of Alcohol--Accident Resulting In Injuries

To sustain the charge of aggravated driving under the influence of alcohol, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the influence of alcohol; and

Third Proposition: That the defendant, in [(so driving) (being in the actual physical control of)] a vehicle, was involved in a motor vehicle accident; and

Fourth Proposition: That the motor vehicle accident in which defendant was involved resulted in [(great bodily harm) (permanent disability) (disfigurement)] to another person; and

Fifth Proposition: That the defendant's [(driving) (being in actual physical control of)] a vehicle while under the influence of alcohol was the proximate cause of the [(great bodily harm) (permanent disability) (disfigurement)] to the other person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(2) and 11-501(d)(1)(C) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§11-501(a)(2) and 11-501(d)(3) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as "aggravated" until P.A. 86-1475, effective January 1, 1992.

Give Instruction 23.51.

Give Instruction 23.28A, defining the term "proximate cause." In People v. Martin, 266 Ill.App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist.1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were the proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70, 72, 74 Ill.Dec. 40, 42 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(C) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893, 31 Ill.Dec. 691 (2d Dist.1979).

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.52A Issues In Aggravated Driving Under The Influence Of Alcohol--Accident Resulting In Death

To sustain the charge of aggravated driving under the influence of alcohol, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)]; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)], the defendant was under the influence of alcohol; and

Third Proposition: That the defendant, in [(so driving) (being in the actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)], was involved in an accident; and

Fourth Proposition: That the accident in which defendant was involved resulted in death to another person; and

Fifth Proposition: That the defendant's [(driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while under the influence of alcohol was a proximate cause of the death to the other person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(2) and 11-501(d)(1)(F) (West 1994) (formerly Ill.Rev.Stat. ch. 95 1/2, §11-501(a)(2) (1991)), amended by P.A. 93-1093, effective March 29, 2005. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as "aggravated" until P.A. 86-1475, effective January 1, 1992.

Give Instruction 23.51A.

Give Instruction 23.28A, defining the term "proximate cause." In People v. Martin, 266 Ill. App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist. 1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were a proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70, 72, 74 Ill.Dec. 40, 42 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(F) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill. App.3d 124, 394 N.E.2d 893, 31 Ill.Dec. 691 (2d Dist. 1979).

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

23.53 Definition Of Aggravated Driving Under The Influence Of Drugs--Driving A School Bus

A person commits the offense of aggravated driving under the influence of drugs when he drives a school bus with children on board while he is under the influence of any drug or combination of drugs to a degree which renders such person incapable of safely driving.

Committee Note

625 ILCS 5/11-501(a)(3) and 11-501(d)(1)(B) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§11-501(a)(3) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992.

Give Instruction 23.54.

In People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845, 851, 190 Ill.Dec. 815, 821 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70, 72, 74 Ill.Dec. 40, 42 (1983).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See People v. Brower, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist.1971), regarding the time frame when it must be shown that the defendant was under the influence of drugs.

23.54 Issues In Aggravated Driving Under The Influence Of Drugs--Driving A School Bus

To sustain the charge of aggravated driving under the influence of drugs, the State must prove the following propositions:

First Proposition: That the defendant drove a school bus; and

Second Proposition: That at the time the defendant drove the school bus, children were on board; and

Third Proposition: That at the time the defendant drove the school bus, the defendant was under the influence of any drug or combination of drugs to a degree which rendered the defendant incapable of safely driving.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(3) and 11-501(d)(1)(B) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§11-501(a)(3) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992.

Give Instruction 23.53.

In People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845, 851, 190 Ill.Dec. 815, 821 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70, 72, 74 Ill.Dec. 40, 42 (1983).

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.55 Definition Of Aggravated Driving Under The Influence Of Drugs--Accident Resulting In Injuries

A person commits the offense of aggravated driving under the influence of drugs when he [(drives) (is in actual physical control of)] a vehicle while under the influence of any drug or combination of drugs to a degree which renders such person incapable of safely driving, and in [(so driving) (being in actual physical control of)] a vehicle, he is involved in a motor vehicle accident which resulted in [(great bodily harm) (permanent disability) (disfigurement)] to another, and his [(driving) (being in actual physical control of)] a vehicle while under the influence of any drug or combination of drugs to a degree which renders him incapable of safely driving is the proximate cause of the [(great bodily harm) (permanent disability) (disfigurement)] to the other person.

Committee Note

625 ILCS 5/11-501(a)(3) and 11-501(d)(1)(C) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§11-501(a)(3) and 11-501(d)(3) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of an accident resulting in injuries has been part of Section 11-501 since 1986, the offense was not defined as "aggravated" until P.A. 86-1475, effective January 1, 1992.

Give Instruction 23.56.

Give Instruction 23.28A, defining the term "proximate cause." In People v. Martin, 266 Ill.App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist.1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were the proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

When actual physical control is an issue, give Instruction 23.43.

In People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845, 851, 190 Ill.Dec. 815, 821 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs under Section 11-501(d)(1)(C) and accordingly has not included a mental state in this instruction. See also People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70, 72, 74 Ill.Dec. 40, 42 (1983).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See People v. Brower, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist.1971), regarding the time frame when it must be shown that the defendant was under the influence of drugs.

23.55a Definition Of Aggravated Driving Under The Influence Of Drugs-- Accident Resulting In Death

A person commits the offense of aggravated driving under the influence of drugs when he [(drives) (is in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile)(all terrain vehicle) (watercraft)] while under the influence of any drug or combination of drugs to a degree which renders such person incapable of safely driving, and in [(so driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)], he is involved in an accident which resulted in death to another, and his [(driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while under the influence of any drug or combination of drugs to a degree which renders him incapable of safely driving is a proximate cause of the death to the other person.

Committee Note

625 ILCS 5/11-501(a)(4) and 11-501(d)(1)(F) (West 1994) (formerly Ill.Rev.Stat. ch. 95 1/2, §11-501(a)(4) (1991)), amended by P.A. 93-1093, effective March 29, 2005. Although the aggravating factor of an accident resulting in great bodily harm has been part of Section 11-501 since 1986, the offense was not defined as "aggravated" until P.A. 86-1475, effective January 1, 1992.

Give Instruction 23.56A.

Give Instruction 23.28A, defining the term "proximate cause." In People v. Martin, 266 Ill. App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist. 1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were a proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

When actual physical control is an issue, give Instruction 23.43.

In People v. Gassman, 251 Ill. App.3d 681, 688-89, 622 N.E.2d 845, 851, 190 Ill.Dec. 815, 821 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs under Section 11-501(d)(1)(F) and accordingly has not included a mental state in this instruction. See also People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70, 72, 74 Ill.Dec. 40, 42 (1983).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See People v. Brower, 131 Ill. App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of drugs.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

23.56 Issues In Aggravated Driving Under The Influence Of Drugs--Accident Resulting In Injuries

To sustain the charge of aggravated driving under the influence of drugs, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the influence of any drug or combination of drugs to a degree which rendered the defendant incapable of safely driving; and

Third Proposition: That the defendant, in [(so driving) (being in actual physical control of)] a vehicle, was involved in a motor vehicle accident; and

Fourth Proposition: That the motor vehicle accident in which defendant was involved resulted in [(great bodily harm) (permanent disability) (disfigurement)] to another person; and

Fifth Proposition: That the defendant's [(driving) (being in actual physical control of)] a vehicle while under the influence of any drug or combination of drugs to a degree which rendered him incapable of safely driving was the proximate cause of the [(great bodily harm) (permanent disability) (disfigurement)] to the other person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(3) and 11-501(d)(1)(C) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§11-501(a)(3) and 11-501(d)(3) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as "aggravated" until P.A. 86-1475, effective January 1, 1992.

Give Instruction 23.55.

Give Instruction 23.28A, defining the term "proximate cause." In People v. Martin, 266 Ill.App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist.1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were the proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

In People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845, 851, 190 Ill.Dec. 815, 821 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs under Section 11-501(d)(1)(C) and accordingly has not included a mental state in this instruction. See also People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70, 72, 74 Ill.Dec. 40, 42 (1983).

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he

is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.56a Issues In Aggravated Driving Under The Influence Of Drugs--Accident Resulting In Death

To sustain the charge of aggravated driving under the influence of drugs, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)]; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)], the defendant was under the influence of any drug or combination of drugs to a degree which rendered the defendant incapable of safely driving; and

Third Proposition: That the defendant, in [(so driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)], was involved in an accident; and

Fourth Proposition: That the accident in which defendant was involved resulted in death to another person; and

Fifth Proposition: That the defendant's [(driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while under the influence of any drug or combination of drugs to a degree which rendered him incapable of safely driving was a proximate cause of the death to the other person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(4) and 11-501(d)(1)(F) (West 1994) (formerly Ill.Rev.Stat. ch. 95 1/2, §11-501(a)(4) (1991)), amended by P.A. 93-1093, effective March 29, 2005. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as "aggravated" until P.A. 86-1475, effective January 1, 1992.

Give Instruction 23.55A.

Give Instruction 23.28A defining the term "proximate cause." In People v. Martin, 266 Ill. App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist. 1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were a proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

In People v. Gassman, 251 Ill. App.3d 681, 688-89, 622 N.E.2d 845, 851, 190 Ill.Dec. 815, 821 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs under Section 11-501(d)(1)(F) and accordingly has not included a mental state in this instruction. See also People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70, 72, 74 Ill.Dec. 40, 42 (1983).

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he

is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

23.57 Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs--Driving A School Bus

A person commits the offense of aggravated driving under the combined influence of alcohol and drugs when he drives a school bus with children on board while such person is under the combined influence of alcohol and any other drug or drugs to a degree which renders such person incapable of safely driving.

Committee Note

625 ILCS 5/11-501(a)(4) and 11-501(d)(1)(B) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§11-501(a)(4) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992.

Give Instruction 23.58.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70, 72, 74 Ill.Dec. 40, 42 (1983), the supreme court held that the offense of driving under the influence of alcohol under Section 11-501(a)(1) is a strict liability offense, and in People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845, 851, 190 Ill.Dec. 815, 821 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893, 31 Ill.Dec. 691 (2d Dist.1979).

See People v. Bitterman, 142 Ill.App.3d 1062, 492 N.E.2d 582, 97 Ill.Dec. 146 (1st Dist.1986), concerning what must be proven in a combined alcohol and drug case; see also People v. Brower, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist.1971), regarding the time frame when it must be shown that the defendant was under the influence of a combination of alcohol and drugs.

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

23.58 Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs--Driving A School Bus

To sustain the charge of aggravated driving under the combined influence of alcohol and drugs, the State must prove the following propositions:

First Proposition: That the defendant drove a school bus; and

Second Proposition: That at the time the defendant drove the school bus, children were on board; and

Third Proposition: That at the time the defendant drove the school bus, the defendant was under the combined influence of alcohol and any drug or drugs to a degree which rendered the defendant incapable of safely driving.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(4) and 11-501(d)(1)(B) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§11-501(a)(4) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992.

Give Instruction 23.57.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70, 72, 74 Ill.Dec. 40, 42 (1983), the supreme court held that the offense of driving under the influence of alcohol under Section 11-501(a)(1) is a strict liability offense, and in People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845, 851, 190 Ill.Dec. 815, 821 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893, 31 Ill.Dec. 691 (2d Dist.1979).

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.59 Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs--Accident Resulting In Injuries

A person commits the offense of aggravated driving under the combined influence of alcohol and drugs when he [(drives) (is in actual physical control of)] a vehicle while under the combined influence of alcohol and any other drug or drugs to a degree which renders him incapable of safely driving, and in [(so driving) (being in actual physical control of)] a vehicle, he is involved in a motor vehicle accident which resulted in [(great bodily harm) (permanent disability) (disfigurement)] to another, and his [(driving) (being in actual physical control of)] a vehicle while under the combined influence of alcohol and any other drug or drugs to a degree which renders such person incapable of safely driving is the proximate cause of the [(great bodily harm) (permanent disability) (disfigurement)] to the other person.

Committee Note

625 ILCS 5/11-501(a)(4) and 11-501(d)(1)(C) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§11-501(a)(4) and 11-501(d)(3) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as "aggravated" until P.A. 86-1475, effective January 1, 1992.

Give Instruction 23.60.

Give Instruction 23.28A, defining the term "proximate cause." In People v. Martin, 266 Ill.App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist.1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were the proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70, 72, 74 Ill.Dec. 40, 42 (1983), the supreme court held that the offense of driving under the influence of alcohol under Section 11-501(a)(1) is a strict liability offense, and in People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845, 851, 190 Ill.Dec. 815, 821 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(C) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893, 31 Ill.Dec. 691 (2d Dist.1979).

See People v. Bitterman, 142 Ill.App.3d 1062, 492 N.E.2d 582, 97 Ill.Dec. 146 (1st Dist.1986), concerning what must be proven in a combined alcohol and drug case; see also People v. Brower, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist.1971), regarding the time frame when it must be shown that the defendant was under the influence of a combination of alcohol and drugs.

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

23.59a Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs Or Intoxicating Compound Or Compounds--Accident Resulting In Death

A person commits the offense of aggravated driving under the combined influence of alcohol and drugs or intoxicating compound or compounds when he [(drives) (is in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which renders him incapable of safely driving, and in [(so driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile)(all terrain vehicle) (watercraft)], he is involved in an accident which resulted in death to another, and his [(driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which renders such person incapable of safely driving is a proximate cause of the death to the other person.

Committee Note

625 ILCS 5/11-501(a)(5) and 11-501(d)(1)(F) (West 1994) (formerly Ill.Rev.Stat. ch. 95 1/2, §11-501(a)(5) (1991)), amended by P.A. 93-1093, effective March 29, 2005. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as "aggravated" until P.A. 86-1475, effective January 1, 1992.

Give Instruction 23.60A.

Give Instruction 23.28A defining the term "proximate cause." In People v. Martin, 266 Ill. App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist. 1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were a proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70, 72, 74 Ill.Dec. 40, 42 (1983), the supreme court held that the offense of driving under the influence of alcohol under Section 11-501(a)(1) is a strict liability offense, and in People v. Gassman, 251 Ill. App.3d 681, 688-89, 622 N.E.2d 845, 851, 190 Ill.Dec. 815, 821 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(F) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill. App.3d 124, 394 N.E.2d 893, 31 Ill.Dec. 691 (2d Dist. 1979).

See People v. Bitterman, 142 Ill. App.3d 1062, 492 N.E.2d 582, 97 Ill.Dec. 146 (1st Dist. 1986), concerning what must be proven in a combined alcohol and drug case; see also People v. Brower, 131 Ill. App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of a combination of alcohol and drugs.

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

23.60 Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs--Accident Resulting In Injuries

To sustain the charge of aggravated driving under the combined influence of alcohol and drugs, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the combined influence of alcohol and any drug or drugs to a degree which rendered the defendant incapable of safely driving; and

Third Proposition: That the defendant, in [(so driving) (being in actual physical control of)] a vehicle, was involved in a motor vehicle accident; and

Fourth Proposition: That the motor vehicle accident in which defendant was involved resulted in [(great bodily harm) (permanent disability) (disfigurement)] to another person; and

Fifth Proposition: That the defendant's [(driving) (being in actual physical control of)] a vehicle while under the combined influence of alcohol and any drug or drugs to a degree which rendered the defendant incapable of safely driving was the proximate cause of the [(great bodily harm) (permanent disability) (disfigurement)] to the other person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(4) and 11-501(d)(1)(C) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§11-501(a)(1) and 11-501(d)(3) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992.

Give Instruction 23.59.

Give Instruction 23.28A, defining the term "proximate cause." In People v. Martin, 266 Ill.App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist.1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were the proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70, 72, 74 Ill.Dec. 40, 42 (1983), the supreme court held that the offense of driving under the influence of alcohol under Section 11-501(a)(1) is a strict liability offense, and in People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845, 851, 190 Ill.Dec. 815, 821 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(C) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893, 31 Ill.Dec. 691 (2d Dist.1979).

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.60A Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs Or Intoxicating Compound Or Compounds--Accident Resulting In Death

To sustain the charge of aggravated driving under the combined influence of alcohol and drugs, or intoxicating compound or compounds the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)]; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] the defendant was under the combined influence of alcohol and any drug or drugs or intoxicating compound or compounds to a degree which rendered the defendant incapable of safely driving; and

Third Proposition: That the defendant, in [(so driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)], was involved in a motor vehicle accident; and

Fourth Proposition: That the accident in which defendant was involved resulted in death to another person; and

Fifth Proposition: That the defendant's [(driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while under the combined influence of alcohol and any drug or drugs or intoxicating compound or compounds to a degree which rendered the defendant incapable of safely driving was a proximate cause of the death to the other person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(5) and 11-501(d)(1)(F) (West 1994) (formerly Ill.Rev.Stat. ch. 95 1/2, §11-501(a)(1) and 11-501(d)(3) (1991)), amended by P.A. 93-1093, effective March 29, 2005. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since1986, the offense was not defined as “aggravated” until P.A. 87-274, effective January 1, 1992.

Give Instruction 23.59A.

Give Instruction 23.28A defining the term “proximate cause.” In People v. Martin, 266 Ill. App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist. 1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were a proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70, 72, 74 Ill.Dec. 40, 42 (1983), the supreme court held that the offense of driving under the influence of alcohol under Section 11-501(a)(1) is a strict liability offense, and in People v. Gassman, 251 Ill. App.3d 681, 688-89, 622 N.E.2d 845, 851, 190 Ill.Dec. 815, 821 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the

combined influence of alcohol and drugs under Section 11-501(d)(1)(F) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill. App.3d 124, 394 N.E.2d 893, 31 Ill.Dec. 691 (2d Dist. 1979).

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

23.61 Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Blood Or Urine--Driving A School Bus

A person commits the offense of aggravated driving with a drug, substance, or compound in blood or urine when he drives a school bus with children on board while there is any amount of a drug, substance, or compound in his blood or urine resulting from the unlawful use or consumption of [(cannabis) (a controlled substance)].

Committee Note

625 ILCS 5/11-501(a)(5) and 11-501(d)(1)(B) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§11-501(a)(5) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992.

Give Instruction 23.62.

When actual physical control is an issue, give Instruction 23.43.

Section 11-501(a)(5) does not include actual impairment of the ability to drive as an element of the offense.

In People v. Gassman, 251 Ill.App.3d 681, 692-93, 622 N.E.2d 845, 853-54, 190 Ill.Dec. 815, 823-24 (2d Dist.1993), the court upheld the constitutionality of Section 11-501(a)(5). The court also held that the offense of driving with a drug, substance, or compound in blood or urine under Section 11-501(a)(5) is a strict liability offense. *Gassman,* 251 Ill.App.3d at 688-89, 622 N.E.2d at 851, 190 Ill.Dec. at 821. The Committee believes that this holding extends to the offense of aggravated driving with a drug, substance, or compound in blood or urine under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction.

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

23.62 Issues In Aggravated Driving With A Drug, Substance, Or Compound In Blood Or Urine--Driving A School Bus

To sustain the charge of aggravated driving with a drug, substance, or compound in blood or urine, the State must prove the following propositions:

First Proposition: That the defendant drove a school bus; and

Second Proposition: That at the time the defendant drove the school bus, children were on board; and

Third Proposition: That at the time the defendant drove the school bus, there was any amount of a drug, substance, or compound in his blood or urine resulting from the unlawful use of [(cannabis) (____, a controlled substance)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(5) and 11-501(d)(1)(B) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§11-501(a)(5) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992.

Give Instruction 23.61.

In People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845, 851, 190 Ill.Dec. 815, 821 (2d Dist.1993), the court held that the offense of driving with a drug, substance, or compound in blood or urine under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving with a drug, substance, or compound in blood or urine under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction.

Insert in the blank the name of the controlled substance.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.63 Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Blood Or Urine--Accident Resulting In Injuries

A person commits the offense of aggravated driving with a drug, substance, or compound in blood or urine when he [(drives) (is in actual physical control of)] a vehicle while there is any amount of a drug, substance, or compound in his blood or urine resulting from the unlawful use of [(cannabis) (a controlled substance)], and in [(so driving) (being in actual physical control of)] a vehicle, he is involved in a motor vehicle accident which resulted in [(great bodily harm) (permanent disability) (disfigurement)] to another, and his [(driving) (being in actual physical control of)] a vehicle while under the combined influence of alcohol and any other drug or drugs to a degree which renders such person incapable of safely driving is the proximate cause of the [(great bodily harm) (permanent disability) (disfigurement)] to the other person.

Committee Note

625 ILCS 5/11-501(a)(5) and 11-501(d)(1)(C) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§11-501(a)(5) and 11-501(d)(3) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as "aggravated" until P.A. 86-1475, effective January 1, 1992.

Give Instruction 23.64.

Give Instruction 23.28A, defining the term "proximate cause." In People v. Martin, 266 Ill.App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist.1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were the proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

When actual physical control is an issue, give Instruction 23.43.

Section 11-501(a)(5) does not include actual impairment of the ability to drive as an element of the offense.

In People v. Gassman, 251 Ill.App.3d 681, 692-93, 622 N.E.2d 845, 853-54, 190 Ill.Dec. 815, 823-24 (2d Dist.1993), the court upheld the constitutionality of Section 11-501(a)(5). The court also held that the offense of driving with a drug, substance, or compound in blood or urine under Section 11-501(a)(5) is a strict liability offense. *Gassman,* 251 Ill.App.3d at 688-89, 622 N.E.2d at 851, 190 Ill.Dec. at 821. The Committee believes that this holding extends to the offense of aggravated driving with a drug, substance, or compound in blood or urine under Section 11-501(d)(1)(C) and accordingly has not included a mental state in this instruction.

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

23.63A Definition Of Aggravated Driving With A Drug, Substance, Or Intoxicating Compound In Breath, Blood Or Urine--Accident Resulting In Death

A person commits the offense of aggravated driving with a drug, substance, or intoxicating compound in breath, blood, or urine when he [(drives) (is in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while there is any amount of a drug, substance, or intoxicating compound in his breath, blood, or urine resulting from the unlawful use or consumption of [(cannabis) (a controlled substance) (an intoxicating compound)], and in [(so driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)], he is involved in an accident which resulted in death to another, and his [(driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while there is any amount of a drug, substance or intoxicating compound in his breath, blood or urine is a proximate cause of the death to the other person.

Committee Note

625 ILCS 5/11-501(a)(6) and 11-501(d)(1)(F) (West 1994) (formerly Ill.Rev.Stat. ch. 95 1/2, §11-501(a)(5) (1991)), amended by P.A. 93-1093, effective March 29, 2005. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as "aggravated" until P.A. 86-1475, effective January 1, 1992.

Give Instruction 23.64A.

Give Instruction 23.28A defining the term "proximate cause." In People v. Martin, 266 Ill. App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist. 1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were a proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

When actual physical control is an issue, give Instruction 23.43.

It may be necessary to give other instructions defining terms used in this instruction. See 720 ILCS 570/102(f) defining the term "controlled substance"; 720 ILCS 690/1 defining the term "intoxicating compound."

In People v. Gassman, 251 Ill. App.3d 681, 692-93, 622 N.E.2d 845, 853-54, 190 Ill.Dec. 815, 823-24 (2d Dist. 1993), the court upheld the constitutionality of Section 11-501(a)(6). The court also held that the offense of driving with a drug, substance, or compound in blood or urine under Section 11-501(a)(6) is a strict liability offense. *Gassman,* 251 Ill.App.3d at 688-89, 622 N.E.2d at 851, 190 Ill.Dec. at 821. The Committee believes that this holding extends to the offense of aggravated driving with a drug, substance, or compound in blood or urine under Section 11-501(d)(1)(F) and accordingly has not included a mental state in this instruction.

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

23.64 Issues In Aggravated Driving With A Drug, Substance, Or Compound In Blood Or Urine--Accident Resulting In Injuries

To sustain the charge of aggravated driving with a drug, substance, or compound in blood or urine, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, there was any amount of a drug, substance, or compound in his blood or urine resulting from the unlawful use or consumption of [(cannabis) (____, a controlled substance)]; and

Third Proposition: That the defendant, in [(so driving) (being in actual physical control of)] a vehicle, was involved in a motor vehicle accident; and

Fourth Proposition: That the motor vehicle accident in which defendant was involved resulted in [(great bodily harm) (permanent disability) (disfigurement)] to another person; and

Fifth Proposition: That the defendant's [(driving) (being in actual physical control of)] a vehicle while under the combined influence of alcohol and any drug or drugs to a degree which rendered the defendant incapable of safely driving was the proximate cause of the [(great bodily harm) (permanent disability) (disfigurement)] to the other person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(5) and 11-501(d)(1)(C) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§11-501(a)(5) and 11-501(d)(3) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992.

Give Instruction 23.63.

Give Instruction 23.28A, defining the term "proximate cause." In People v. Martin, 266 Ill.App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist.1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were the proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

In People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845, 851, 190 Ill.Dec. 815, 821 (2d Dist.1993), the court held that the offense of driving with a drug, substance, or compound in blood or urine under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving with a drug, substance, or compound in blood or urine under Section 11-501(d)(1)(C) and accordingly has not included a mental state in this instruction.

Insert in the blank the name of the controlled substance.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.64A Issues In Aggravated Driving With A Drug, Substance, Or Intoxicating Compound In Breath, Blood Or Urine--Accident Resulting In Death

To sustain the charge of aggravated driving with a drug, substance, or intoxicating compound in breath, blood or urine, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)]; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)], there was any amount of a drug, substance, or intoxicating compound in his breath, blood or urine resulting from the unlawful use or consumption of [(cannabis)(____, a controlled substance) (an intoxicating compound)]; and

Third Proposition: That the defendant, in [(so driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)], was involved in an accident; and

Fourth Proposition: That the accident in which defendant was involved resulted in death to another person; and

Fifth Proposition. That the defendant's [(driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while there was any amount of a drug, substance, or intoxicating compound in his breath, blood, or urine was a proximate cause of the death to the other person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(6) and 11-501(d)(1)(F) (West 1994) (formerly Ill.Rev.Stat. ch. 95 1/2, §11-501(a)(5) (1991)), amended by P.A. 93-1093, effective March 29, 2005. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992.

Give Instruction 23.63A.

Give Instruction 23.28A defining the term "proximate cause." In People v. Martin, 266 Ill. App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist. 1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were a proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

It may be necessary to give other instructions defining terms used in this instruction. See 720 ILCS 570/102(f) defining the term "controlled substances" or 720 ILCS 690/1 defining the term "intoxicating compound."

In People v. Gassman, 251 Ill. App.3d 681, 688-89, 622 N.E.2d 845, 851, 190 Ill.Dec. 815, 821 (2d Dist. 1993), the court held that the offense of driving with a drug, substance, or intoxicating compound in breath, blood or urine under Section 11-501(a)(5) is a strict liability

offense. The Committee believes that this holding extends to the offense of aggravated driving with a drug, substance, or intoxicating compound in breath, blood or urine under Section 11-501(d)(1)(F) and accordingly has not included a mental state in this instruction.

Insert in the blank the name of the controlled substance.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

23.65 Definition Of Speeding

A person commits the offense of speeding when he drives a vehicle upon a highway
[1] at a speed which is greater than the applicable maximum speed limit.

[or]

[2] at a speed that is 40 miles per hour or more in excess of the applicable maximum speed limit.

[or]

[3] at a speed that is 30 miles per hour or more but less than 40 miles per hour in excess of the applicable maximum speed limit.

[or]

[4] at a speed which is greater than is reasonable and proper with regard to traffic conditions and the use of the highway.

[or]

[5] at a speed which endangers the safety of any person or property.

[or]

[6] and fails to decrease his speed as may be necessary to avoid colliding with a [(person) (vehicle)] on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.

Committee Note

625 ILCS 5/11-601(a) and (b) (West 2011) (formerly Ill.Rev.Stat. ch. 95 1/2, §11-601 (a) and (b) (1991); 625 ILCS 5/11-601.5 (a) and (b) (West 2011), amended by P.A. 96-1002, effective January 1, 2011.

Give Instruction 23.66.

Select the paragraph that is consistent with the facts alleged in the charging instrument.

The offense defined in paragraph [4] is sometimes referred to as "driving too fast for conditions". See People v. Foster, 176 Ill.App.3d 406, 411, 531 N.E.2d 93 (5th Dist. 1988).

The offense defined in paragraph [6] is sometimes referred to as "failure to reduce

speed", In re Vitale, 71 Ill.2d 229, 238, 375 N.E.2d 87 (1978), vacated and remanded on other grounds sub nom., Illinois v. Vitale, 447 U.S. 410, 100 S.Ct. 2260, 65 L.Ed.2d 228 (1980), or "failure to reduce speed to avoid an accident", People v. Smith, 99 Ill.2d 467, 459 N.E.2d 1357 (1984).

For a definition of the terms "highway", "traffic", and "vehicle", see 625 ILCS 5/1-126, 5/1-207, 5/1-217 (West 2010) (formerly Ill.Rev.Stat. ch. 95 1/2, §§ 1-126, 1-207, and 1-217 (1991), respectively.

Use applicable paragraphs and bracketed material.

The brackets and numbers are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.65A Definition Of Speeding While Passing School

A person commits the offense of speeding while passing schools when he drives a motor vehicle at a speed in excess of 20 miles per hour while [(passing through a school zone) (traveling on a roadway on public school property) (upon any public thoroughfare where children pass going to and from school)] on a school day between the hours of 7 a.m. and 4 p.m. when school children are present and so close thereto that a potential hazard exists because of the close proximity of the motorized traffic and where appropriate signs have been posted and maintained upon streets and highways which give proper due warning that a school zone is being approached and which indicate the school zone and the maximum speed limit in effect during school days when school children are present.

"School" means a [(public or private primary or secondary school) (primary or secondary school operated by a religious institution) (public, private, or religious nursery school)].

Committee Note

625 ILCS 5/11-605 (West 2009) (formerly Ill.Rev.Stat. ch. 95 1/2 §11-605 (1991)).

Give Instruction 23.66A.

Use applicable bracketed material.

The brackets are provided solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

23.65B Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More--Accident Resulting In Bodily Harm To A Child Under The Age Of 16

A person commits the offense of aggravated driving with an alcohol concentration of 0.08 or more when he [(drives) (is in actual physical control of)] a vehicle while the alcohol concentration in his blood or breath is 0.08 or more, and in [(so driving) (being in actual physical control of)] a vehicle, he is involved in a motor vehicle accident that results in bodily harm to a child under the age of 16 being transported by him, and his [(driving) (being in actual physical control of)] a vehicle while having an alcohol concentration in his blood or breath of 0.08 or more is the proximate cause of the bodily harm to the child under the age of 16.

Committee Note

625 ILCS 5/11-501(a)(1) and 625 ILCS 5/11-501(d)(1)(J) (West 2010). Section 11-501 was amended by P.A. 95-578 which added Section 11-501(d)(1)(J), effective June 1, 2008.

Give Instruction 23.66B.

Give Instruction 23.30A, defining "alcohol concentration".

Give Instruction 23.28A, defining "proximate cause".

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a) (1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz,* 98 Ill.2d at 42-43. The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(J) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.65C Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More--Accident While Driving In A School Speed Zone As Enhancing Factor

A person commits the offense of aggravated driving with an alcohol concentration of 0.08 or more when he drives a vehicle at any speed in a school speed zone at a time when a speed limit of 20 miles per hour was in effect while the alcohol concentration in his blood or breath is 0.08 or more and he is involved in a motor vehicle accident that results in bodily harm to another person and his act of driving a vehicle while the alcohol concentration in his blood or breath is 0.08 or more is a proximate cause of the bodily harm.

Committee Note

625 ILCS 5/11-501(a)(1) and 625 ILCS 5/11-501(d)(1)(E) (West 2010) amended by P.A. 95-578, effective January 1, 2008. Section 11-501 was amended by P.A. 92-429 which added Section 11-501(d)(1)(E), effective January 1, 2002.

Give Instruction 23.66C.

Give Instruction 23.30A, defining "alcohol concentration".

Give Instruction 4.23, defining "school speed zone".

Give Instruction 23.28A, defining "proximate cause".

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. See People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The Illinois Supreme Court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42-43; People v. Avery, 277 Ill.App.3d 824, 830, 661 N.E.2d 361 (1st Dist. 1995). The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(E) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E. 2d 893 (2d Dist. 1979).

Section 11-501(d)(1)(E), effective January 1, 2008, provides that a violation of Section 11-501(a) is increased from a Class A misdemeanor to a Class 4 felony when the defendant, while driving at any speed in a school speed zone at a time when the speed limit of 20 miles per hour was in effect is involved in a motor vehicle accident that resulted in bodily harm to another person and the violation of subsection (a) was a proximate cause of the bodily harm.

23.65D Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More--Driving Without Liability Insurance

A person commits the offense of aggravated driving with an alcohol concentration of 0.08 or more when he [(drives) (is in actual physical control of)] a vehicle while the alcohol concentration in his blood or breath is 0.08 or more, and in [(so driving) (being in actual physical control of)] a vehicle, he [(knew) (should have known)] that the vehicle he was [(driving) (in actual physical control of)] was not covered by a liability insurance policy.

Committee Note

625 ILCS 5/11-501(a)(1) and 625 ILCS 5/11-501(d)(1)(I) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(I), effective January 1, 2006.

Give Instruction 23.66D.

Give Instruction 23.30A, defining "alcohol concentration".

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz,* 98 Ill.2d at 42-43. The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(I) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See People v. Brower, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.65E Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More--Defendant Does Not Possess Drivers License

A person commits the offense of aggravated driving with an alcohol concentration of 0.08 or more when he [(drives) (is in actual physical control of)] a vehicle while the alcohol concentration in his blood or breath is 0.08 or more, and in [(so driving) (being in actual physical control of)] a vehicle, he does not possess a drivers license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit.

Committee Note

625 ILCS 5/11-501(a)(1) and 625 ILCS 5/11-501(d)(1)(H) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(H), effective January 1, 2006.

Give Instruction 23.66E.

Give Instruction 23.30A, defining "alcohol concentration".

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz,* 98 Ill.2d at 42-43. The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(H) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.65F Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More--Driving A School Bus With Persons 18 Years Of Age Or Younger On Board

A person commits the offense of aggravated driving with an alcohol concentration of 0.08 or more when he drives a school bus while the alcohol concentration in his blood or breath is 0.08 or more, and in so driving a school bus, there are persons 18 years of age or younger on board.

Committee Note

625 ILCS 5/11-501(a)(1) and 625 ILCS 5/11-501(d)(1)(B) (West 2010) (formerly Ill. Rev. Stat. ch. 95 1/2 §§11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A.88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992. P.A. 93-800, effective January 1, 2005, changed "children" to "persons 18 years of age or younger".

Give Instruction 23.66F.

Give Instruction 23.30A, defining "alcohol concentration".

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz,* 98 Ill.2d at 42-43. The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

23.66 Issues In Speeding

To sustain the charge of speeding, the State must prove the following propositions:

First Proposition: That the defendant drove a vehicle upon a highway; and

Second Proposition: That when the defendant did so, he drove at a speed which was greater than the applicable maximum speed limit.

[or]

Second Proposition: That when the defendant did so, he drove at a speed that was 40 miles per hour or more in excess of the applicable maximum speed limit.

[or]

Second Proposition: That when the defendant did so, he drove at a speed that was 30 miles per hour or more but less than 40 miles per hour in excess of the applicable maximum speed limit.

[or]

Second Proposition: That when the defendant did so, he drove at a speed which was greater than is reasonable and proper with regard to traffic conditions and the use of the highway.

[or]

Second Proposition: That when the defendant did so, he drove at a speed which endangered the safety of any person or property.

[or]

Second Proposition: That when the defendant did so, he failed to decrease his speed as was necessary to avoid colliding with a [(person) (vehicle)] on or entering the highway in compliance with legal requirements and the duty of all persons to use due case.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-601(a) and (b) (West 2011) (formerly Ill.Rev.Stat. ch. 95 1/2, §11-601 (a) and (b) (1991); 625 ILCS 5/11-601.5 (a) and (b) (West 2011), amended by P.A. 96-1002, effective January 1, 2011.

Give Instruction 23.65.

Select the Second Proposition that is consistent with the definitional instruction and charging instrument.

Use applicable bracketed material.

The brackets and numbers are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.66A Issues In Speeding While Passing School

To sustain the charge of speeding while passing a school, the State must prove the following propositions:

First Proposition: That the defendant drove a motor vehicle at a speed in excess of 20 miles per hour; and

Second Proposition: That at the time the defendant drove the motor vehicle he was [(passing through a school zone) (traveling on a roadway on public school property) (upon any public thoroughfare where children pass going to and from school)]; and

Third Proposition: That at the time the defendant drove the motor vehicle it was a school day between the hours of 7 a.m. and 4 p.m.; and

Fourth Proposition: That at the time the defendant drove the motor vehicle school children were present and so close thereto that a potential hazard existed because of the close proximity of the motorized traffic; and

Fifth Proposition: That at the time the defendant drove the motor vehicle appropriate signs had been posted and maintained upon the streets and highways which gave proper due warning that a school zone was being approached and which indicated the school zone and the maximum speed limit in effect during school days when school children are present.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-605 (West 2009) (formerly Ill.Rev.Stat. ch. 95 1/2 §11-605 (1991)).

Give Instruction 23.65A.

Use applicable bracketed material.

The brackets are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.66B Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More--Accident Resulting In Bodily Harm To A Child Under He Age Of 16

To sustain the charge of aggravated driving with an alcohol concentration of 0.08 or more, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the alcohol concentration in the defendant's blood or breath was 0.08 or more; and

Third Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was transporting a child under the age of 16; and

Fourth Proposition: That the defendant, in [(so driving) (being in actual physical control of)] a vehicle, was involved in a motor vehicle accident; and

Fifth Proposition: That the motor vehicle accident in which defendant was involved resulted in bodily harm to the child under the age of 16 being transported by the defendant; and

Sixth Proposition: That the defendant's [(driving) (being in actual physical control of)] a vehicle while having an alcohol concentration in his blood or breath of 0.08 or more was the proximate cause of the bodily harm to the child under the age of 16 being transported by the defendant.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(1) and 625 ILCS 5/11-501(d)(1)(J) (West 2010). Section 11-501 was amended by P.A. 95-578 which added Section 11-501(d)(1)(J), effective June 1, 2008.

Give Instruction 23.65B.

Give Instruction 23.30A, defining “alcohol concentration”.

Give Instruction 23.28A, defining “proximate cause”.

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a) (1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz,* 98 Ill.2d at 42-43. The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(J) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.66C Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More--Accident While Driving In A School Speed Zone As Enhancing Factor

To sustain the charge of aggravated driving with an alcohol concentration of 0.08 or more when there is a motor vehicle accident while driving in a school speed zone, the State must prove the following propositions:

First Proposition: That the defendant drove a vehicle at any speed in a school speed zone at a time when a speed limit of 20 miles per hour was in effect; and

Second Proposition: That at the time the defendant drove a vehicle the alcohol concentration in the defendant's blood or breath was 0.08 or more; and

Third Proposition: That at the time the defendant drove a vehicle the defendant was involved in a motor vehicle accident; and

Fourth Proposition: That the accident in which defendant was involved resulted in bodily harm to another person; and

Fifth Proposition: That the defendant's act of driving a vehicle while the alcohol concentration in his blood or breath is 0.08 or more was a proximate cause of the bodily harm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(1) and 625 ILCS 5/11-501(d)(1)(E) (West 2010) amended by P.A. 95-578, effective January 1, 2008. Section 11-501 was amended by P.A. 92-429 which added Section 11-501(d)(1)(E), effective January 1, 2002.

Give Instruction 23.65C.

Give Instruction 23.30A, defining “alcohol concentration”.

Give Instruction 4.23, defining “school speed zone”.

Give Instruction 23.28A, defining “proximate cause”.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983), the Illinois Supreme Court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. See also People v. Avery, 277 Ill.App.3d 824, 661 N.E.2d 361 (1st Dist. 1995). The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(E) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

23.66D Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More--Driving Without Liability Insurance

To sustain the charge of aggravated driving with an alcohol concentration of 0.08 or more, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the alcohol concentration in the defendant's blood or breath was 0.08 or more; and

Third Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant [(knew) (should have known)] that the vehicle he was [(driving) (in actual physical control of)] was not covered by a liability insurance policy.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(1) and 625 ILCS 5/11-501(d)(1)(I) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(I), effective January 1, 2006.

Give Instruction 23.65D.

Give Instruction 23.30A, defining “alcohol concentration”.

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz,* 98 Ill.2d at 42-43. The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(I) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.66E Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More--Defendant Does Not Possess Drivers License

To sustain the charge of aggravated driving with an alcohol concentration of 0.08 or more, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the alcohol concentration in the defendant's blood or breath was 0.08 or more; and

Third Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant did not possess a drivers license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(1) and 625 ILCS 5/11-501(d)(1)(H) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(H), effective January 1, 2006.

Give Instruction 23.65E.

Give Instruction 23.30A, defining “alcohol concentration”.

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz,* 98 Ill.2d at 42-43. The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(H) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.66F Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More--Driving A School Bus With Persons 18 Years Of Age Or Younger On Board

To sustain the charge of aggravated driving with an alcohol concentration of 0.08 or more, the State must prove the following propositions:

First Proposition: That the defendant drove a school bus; and

Second Proposition: That at the time the defendant drove a school bus, the alcohol concentration in the defendant's blood or breath was 0.08 or more; and

Third Proposition: That at the time the defendant drove a school bus, there were persons 18 years of age or younger on board.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(1) and 625 ILCS 5/11-501(d)(1)(B) (West 2010) (formerly Ill. Rev. Stat. ch. 95 1/2 §§11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992. P.A. 93-800, effective January 1, 2005, changed "children" to "persons 18 years of age or younger".

Give Instruction 23.65F.

Give Instruction 23.30A, defining "alcohol concentration".

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz,* 98 Ill.2d at 42-43. The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

23.67 Definition Of Transportation Of Alcoholic Liquor In A Motor Vehicle--Driver

A person commits the offense of transportation of alcoholic liquor in a motor vehicle when, as a driver of a motor vehicle upon a highway, he [(transports) (carries) (possesses) (has)] any alcoholic liquor not in its original container with its seal unbroken, within the passenger area of the motor vehicle.

Committee Note

625 ILCS 5/11-502(a) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §11-502(a) (1991)).

Give Instruction 23.68.

Use this instruction when a driver of a motor vehicle is charged. Use Instruction 23.69 when a passenger of a motor vehicle is charged.

Section 11-502 does not contain a mental state and has been construed to impose strict liability upon the driver of a motor vehicle in People v. Angell, 184 Ill.App.3d 712, 540 N.E.2d 1106, 133 Ill.Dec. 240 (2d Dist.1989), and People v. Graven, 124 Ill.App.3d 990, 464 N.E.2d 1132, 80 Ill.Dec. 149 (4th Dist.1984). However, in People v. DeVoss, 150 Ill.App.3d 38, 501 N.E.2d 840, 103 Ill.Dec. 523 (3d Dist.1986), the court held that Section 11-502 does not impose strict liability and that knowledge of the open alcohol is required before the statute is violated. The Committee takes no position on the issue of whether a mental state is an element of the offense. If the trial court determines that a mental state is required when a driver is charged, this instruction should be modified by adding the word "knowingly" after the word "he."

For a definition of the terms "driver," "highway," and "motor vehicle," see 625 ILCS 5/1-116, 5/1-126, 5/1-146 (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §§1-116, 1-126, and 1-146 (1991)), respectively.

Use applicable bracketed material.

23.67B Definition Of Aggravated Driving Under The Influence Of Alcohol--Accident Resulting In Bodily Harm To A Child Under The Age Of 16

A person commits the offense of aggravated driving under the influence of alcohol when he [(drives) (is in actual physical control of)] a vehicle while under the influence of alcohol, and in [(so driving) (being in actual physical control of)] a vehicle, he is involved in a motor vehicle accident that results in bodily harm to a child under the age of 16 being transported by him, and his [(driving) (being in actual physical control of)] a vehicle while being under the influence of alcohol is the proximate cause of the bodily harm to the child under the age of 16.

Committee Note

625 ILCS 5/11-501(a)(2) and 625 ILCS 5/11-501(d)(1)(J) (West 2010). Section 11-501 was amended by P.A. 95-578 which added Section 11-501(d)(1)(J), effective June 1, 2008.

Give Instruction 23.68B.

Give Instruction 23.29, defining "under the influence of alcohol".

Give Instruction 23.28A, defining "proximate cause".

When actual physical control is an issue, give Instruction 23.43.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(J) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See People v. Brower, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.67C Definition Of Aggravated Driving Under The Influence Of Alcohol--Accident While Driving In A School Speed Zone As Enhancing Factor

A person commits the offense of aggravated driving under the influence of alcohol when he drives a vehicle at any speed in a school speed zone at a time when a speed limit of 20 miles per hour was in effect while under the influence of alcohol and he is involved in a motor vehicle accident that results in bodily harm to another person and his act of driving a vehicle under the influence of alcohol is a proximate cause of the bodily harm.

Committee Note

625 ILCS 5/11-501(a)(2) and 625 ILCS 5/11-501(d)(1)(E) (West 2010) amended by P.A. 95-578, effective January 1, 2008. Section 11-501 was amended by P.A. 92-429 which added Section 11-501(d)(1)(E), effective January 1, 2002.

Give Instruction 23.68C.

Give Instruction 23.29, defining "under the influence of alcohol".

Give Instruction 4.23, defining "school speed zone".

Give Instruction 23.28A, defining "proximate cause".

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983), the Illinois Supreme Court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(E) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See People v. Brower, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

23.67D Definition Of Aggravated Driving Under The Influence Of Alcohol--Driving Without Liability Insurance

A person commits the offense of aggravated driving under the influence of alcohol when he [(drives) (is in actual physical control of)] a vehicle while under the influence of alcohol, and in [(so driving) (being in actual physical control of)] a vehicle, he [(knew) (should have known)] that the vehicle he was [(driving) (in actual physical control of)] was not covered by a liability insurance policy.

Committee Note

625 ILCS 5/11-501(a)(2) and 625 ILCS 5/11-501(d)(1)(I) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(I), effective January 1, 2006.

Give Instruction 23.68D.

Give Instruction 23.29, defining "under the influence of alcohol".

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz,* 98 Ill.2d at 42-43. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(I) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See People v. Brower, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.67E Definition Of Aggravated Driving Under The Influence Of Alcohol--Defendant Does Not Possess Drivers License

A person commits the offense of aggravated driving under the influence of alcohol when he [(drives) (is in actual physical control of)] a vehicle while under the influence of alcohol, and in [(so driving) (being in actual physical control of)] a vehicle, he does not possess a drivers license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit.

Committee Note

625 ILCS 5/11-501(a)(2) and 625 ILCS 5/11-501(d)(1)(H) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(H), effective January 1, 2006.

Give Instruction 23.68E.

Give Instruction 23.29, defining "under the influence of alcohol".

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz,* 98 Ill.2d at 42-43. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(H) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See People v. Brower, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.67F Definition Of Aggravated Driving Under The Influence Of Alcohol--Driving A School Bus With Persons 18 Years Of Age Or Younger On Board

A person commits the offense of aggravated driving under the influence of alcohol when he drives a school bus while under the influence of alcohol, and in so driving a school bus, there are persons 18 years of age or younger on board.

Committee Note

625 ILCS 5/11-501(a)(2) and 625 ILCS 5/11-501(d)(1)(B) (West 2010) (formerly Ill. Rev. Stat. ch. 95 1/2 §§11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992. P.A. 93-800, effective January 1, 2005, changed "children" to "persons 18 years of age or younger".

Give Instruction 23.68F.

Give Instruction 23.29, defining "under the influence of alcohol".

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz,* 98 Ill.2d at 42-43. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See People v. Brower, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

23.68 Issues In Transportation Of Alcoholic Liquor In A Motor Vehicle--Driver

To sustain the charge of transportation of alcoholic liquor in a motor vehicle, the State must prove the following propositions:

First Proposition: That the defendant was the driver of a motor vehicle upon a highway; and

Second Proposition: That at the time the defendant was the driver of the motor vehicle, he [(transported) (carried) (possessed) (had)] alcoholic liquor within the passenger area of the motor vehicle; and

Third Proposition: That the alcoholic liquor was not in its original container with its seal unbroken.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-502(a) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §11-502(a) (1991)).

Give Instruction 23.67.

Use this instruction when a driver of a vehicle is charged. Use Instruction 23.70 when a passenger of a motor vehicle is charged.

The Committee takes no position on the issue of whether a mental state is an element of the offense. If the trial court determines that a mental state is required, this instruction should be modified by adding the word "knowingly" after the word "he" in the Second Proposition. See Committee Note to Instruction 23.67 concerning the absence of a mental state in Section 11-502.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.68B Issues In Aggravated Driving Under The Influence Of Alcohol--Accident Resulting In Bodily Harm To A Child Under The Age Of 16

To sustain the charge of aggravated driving under the influence of alcohol, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the influence of alcohol; and

Third Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was transporting a child under the age of 16; and

Fourth Proposition: That the defendant, in [(so driving) (being in actual physical control of)] a vehicle, was involved in a motor vehicle accident; and

Fifth Proposition: That the motor vehicle accident in which defendant was involved resulted in bodily harm to the child under the age of 16 being transported by the defendant; and

Sixth Proposition: That the defendant's [(driving) (being in actual physical control of)] a vehicle while under the influence of alcohol was the proximate cause of the bodily harm to the child under the age of 16 being transported by the defendant.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(2) and 625 ILCS 5/11-501(d)(1)(J) (West 2010). Section 11-501 was amended by P.A. 95-578 which added Section 11-501(d)(1)(J), effective June 1, 2008.

Give Instruction 23.67B.

Give Instruction 23.29, defining “under the influence of alcohol”.

Give Instruction 23.28A, defining “proximate cause”.

When actual physical control is an issue, give Instruction 23.43.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(J) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.68C Issues In Aggravated Driving Under The Influence Of Alcohol--Accident While Driving In A School Speed Zone As Enhancing Factor

To sustain the charge of aggravated driving under the influence of alcohol when there is a motor vehicle accident while driving in a school speed zone, the State must prove the following propositions:

First Proposition: That the defendant drove a vehicle at any speed in a school speed zone at a time when a speed limit of 20 miles per hour was in effect; and

Second Proposition: That at the time the defendant drove a vehicle the defendant was under the influence of alcohol; and

Third Proposition: That at the time the defendant drove a vehicle the defendant was involved in a motor vehicle accident; and

Fourth Proposition: That the accident in which defendant was involved resulted in bodily harm to another person; and

Fifth Proposition: That the defendant's act of driving a vehicle while under the influence of alcohol was a proximate cause of the bodily harm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501 (a)(2) and 625 ILCS 5/11-501(d)(1)(E) (West 2010) amended by P.A. 95-578, effective January 1, 2008. Section 11-501 was amended by P.A. 92-429 which added Section 11-501(d)(1)(E), effective January 1, 2002.

Give Instruction 23.67C.

Give Instruction 23.29, defining “under the influence of alcohol”.

Give Instruction 4.23, defining “school speed zone”.

Give Instruction 23.28A, defining “proximate cause”.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983), the Illinois Supreme Court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(E) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See People v. Brower, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

23.68D Issues In Aggravated Driving Under The Influence Of Alcohol--Driving Without Liability Insurance

To sustain the charge of aggravated driving under the influence of alcohol, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the influence of alcohol: and

Third Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant [(knew) (should have known)] that the vehicle he was [(driving) (in actual physical control of)] was not covered by a liability insurance policy.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(2) and 625 ILCS 5/11-501(d)(1)(I) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(I), effective January 1, 2006.

Give Instruction 23.67D.

Give Instruction 23.30A, defining "under the influence of alcohol".

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz,* 98 Ill.2d at 42-43. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(I) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.68E Issues In Aggravated Driving Under The Influence Of Alcohol--Defendant Does Not Possess Drivers License

To sustain the charge of aggravated driving under the influence of alcohol, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the influence of alcohol; and

Third Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant did not possess a drivers license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(2) and 625 ILCS 5/11-501(d)(1)(H) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(H), effective January 1, 2006.

Give Instruction 23.67E.

Give Instruction 23.30A, defining "under the influence of alcohol".

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz,* 98 Ill.2d at 42-43. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(H) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.68F Issues In Aggravated Driving Under The Influence Of Alcohol--Driving A School Bus With Persons 18 Years Of Age Or Younger On Board

To sustain the charge of aggravated driving under the influence of alcohol, the State must prove the following propositions:

First Proposition: That the defendant drove a school bus; and

Second Proposition: That at the time the defendant drove a school bus, the defendant was under the influence of alcohol; and

Third Proposition: That at the time the defendant drove a school bus, there were persons 18 years of age or younger on board.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(2) and 625 ILCS 5/11-501(d)(1)(B) (West 2010) (formerly Ill. Rev. Stat. ch. 95 1/2 §§11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992. P.A. 93-800, effective January 1, 2005, changed "children" to "persons 18 years of age or younger".

Give Instruction 23.67F.

Give Instruction 23.30A, defining "under the influence of alcohol".

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz,* 98 Ill.2d at 42-43. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

23.69 Definition Of Possession Of Alcoholic Liquor In A Motor Vehicle--Passenger

A person commits the offense of possession of alcoholic liquor in a motor vehicle when he, as a passenger of a motor vehicle upon a highway, knowingly [(carries) (possesses) (has)] any alcoholic liquor not in its original container with its seal unbroken, within the passenger area of the motor vehicle.

Committee Note

625 ILCS 5/11-502(b) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §11-502(b) (1991)).

Give Instruction 23.70.

Use this instruction when a passenger of a motor vehicle is charged. Use Instruction 23.67 when a driver of a motor vehicle is charged.

Although Section 11-502 does not include a mental state, it has been held that a passenger must knowingly carry, possess or have open alcohol in order to violate the statute. See People v. Angell, 184 Ill.App.3d 712, 540 N.E.2d 1106, 133 Ill.Dec. 240 (2d Dist.1989), People v. DeVoss, 150 Ill.App.3d 38, 501 N.E.2d 840, 103 Ill.Dec. 523 (3d Dist.1986), and People v. Rascher, 223 Ill.App.3d 847, 585 N.E.2d 1153, 166 Ill.Dec. 131 (4th Dist.1992). As a result, a knowledge element has been included in this instruction.

For a definition of the terms "highway" and "motor vehicle," see 625 ILCS 5/1-126, 5/1-146 (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §§1-126 and 1-146 (1991)), respectively.

Use applicable bracketed material.

23.69B Definition Of Aggravated Driving Under The Influence Of Intoxicating Compound--Accident Resulting In Bodily Harm To A Child Under The Age Of 16

A person commits the offense of aggravated driving under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] when he [(drives) (is in actual physical control of)] a vehicle while under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which renders such person incapable of safely driving, and in [(so driving) (being in actual physical control of)] a vehicle, he is involved in a motor vehicle accident that results in bodily harm to a child under the age of 16 being transported by him, and his [(driving) (being in actual physical control of)] a vehicle while under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which renders him incapable of safely driving is the proximate cause of the bodily harm to the child under the age of 16.

Committee Note

625 ILCS 5/11-501(a)(3) and 625 ILCS 5/11-501(d)(1)(J) (West 2010). Section 11-501 was amended by P.A. 95-578 which added Section 11-501(d)(1)(J), effective June 1, 2008.

Give Instruction 23.70B.

Give Instruction 23.28A, defining "proximate cause".

Give Instruction 4.25, defining "intoxicating compound".

When actual physical control is an issue, give Instruction 23.43.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the influence of an intoxicating compound or combination of intoxicating compounds under Section 11-501(d)(1)(J) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.69C Definition Of Aggravated Driving Under The Influence Of Intoxicating Compound--Accident While Driving In A School Speed Zone As Enhancing Factor

A person commits the offense of aggravating driving under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] when he drives a vehicle while under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which renders such person incapable of safely driving while driving a vehicle in a school speed zone at a time when a speed limit of 20 miles per hour was in effect and in so driving he is involved in a motor vehicle accident that results in bodily harm to another person and his act of driving a vehicle under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which renders him incapable of safely driving is a proximate cause of the bodily harm.

Committee Note

625 ILCS 5/11-501 (a)(3) and 625 ILCS 5/11-501(d)(1)(E) (West 2010) amended by P.A. 95-578, effective January 1, 2008. Section 11-501 was amended by P.A. 92-429 which added Section 11-501(d)(1)(E), effective January 1, 2002.

Give Instruction 23.70C.

Give Instruction 4.23, defining "school speed zone".

Give Instruction 4.25, defining "intoxicating compound".

Give Instruction 23.28A, defining "proximate cause".

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz,* 98 Ill.2d at 42-43. The Committee believes that this holding extends to the offense of aggravated driving under the influence of an intoxicating compound or combination of intoxicating compounds under Section 11-501(d)(1)(E) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.69D Definition Of Aggravated Driving Under The Influence Of Intoxicating Compound--Driving Without Liability Insurance

A person commits the offense of aggravated driving under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] when he [(drives) (is in actual physical control of)] a vehicle while under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which renders such person incapable of safely driving, and in [(so driving) (being in actual physical control of)] a vehicle, he [(knew) (should have known)] that the vehicle he was [(driving) (in actual physical control of)] was not covered by a liability insurance policy.

Committee Note

625 ILCS 5/11-501(a)(3) and 625 ILCS 5/11-501(d)(1)(I) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(I), effective January 1, 2006.

Give Instruction 23.70D.

Give Instruction 4.25, defining "intoxicating compound".

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz,* 98 Ill.2d at 42-43. The Committee believes that this holding extends to the offense of aggravated driving under the influence of an intoxicating compound or combination of intoxicating compounds under Section 11-501(d)(1)(I) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.69E Definition Of Aggravated Driving Under The Influence Of Intoxicating Compound--Defendant Does Not Possess Drivers License

A person commits the offense of aggravated driving under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] when he [(drives) (is in actual physical control of)] a vehicle while under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which renders such person incapable of safely driving, and in [(so driving) (being in actual physical control of)] a vehicle, he does not possess a drivers license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit.

Committee Note

625 ILCS 5/11-501(a)(3) and 625 ILCS 5/11-501(d)(1)(H) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(H), effective January 1, 2006.

Give Instruction 23.70E.

Give Instruction 4.25, defining "intoxicating compound".

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz,* 98 Ill.2d at 42-43. The Committee believes that this holding extends to the offense of aggravated driving under the influence of an intoxicating compound or combination of intoxicating compounds under Section 11-501(d)(1)(I) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.69F Definition Of Aggravated Driving Under The Influence Of Intoxicating Compound--Driving A School Bus With Persons 18 Years Of Age Or Younger On Board

A person commits the offense of aggravated driving under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] when he drives a school bus while under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which renders such person incapable of safely driving, and in so driving a school bus, there are persons 18 years of age or younger on board.

Committee Note

625 ILCS 5/11-501(a)(3) and 625 ILCS 5/11-501(d)(1)(B) (West 2010) (formerly Ill. Rev. Stat. ch. 95 1/2 §§11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992. P.A. 93-800, effective January 1, 2005, changed "children" to "persons 18 years of age or younger".

Give Instruction 23.70F.

Give Instruction 4.25, defining "intoxicating compound".

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz,* 98 Ill.2d at 42-43. The Committee believes that this holding extends to the offense of aggravated driving under the influence of an intoxicating compound or combination of intoxicating compounds under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.70 Issues In Possession Of Alcoholic Liquor In A Motor Vehicle--Passenger

To sustain the charge of possession of alcoholic liquor in a motor vehicle, the State must prove the following propositions:

First Proposition: That the defendant was a passenger in a motor vehicle upon a highway; and

Second Proposition: That at the time the defendant was a passenger in the motor vehicle he knowingly [(carried) (possessed) (had)] alcoholic liquor within the passenger area of the motor vehicle; and

Third Proposition: That the alcoholic liquor was not in its original container with its seal unbroken.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-502(b) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §11-502(b) (1991)).

Give Instruction 23.69.

Use this instruction when a passenger of a motor vehicle is charged. Use Instruction 23.68 when a driver of a motor vehicle is charged.

See Committee Note to Instruction 23.69 for a discussion of the applicable mental state.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.70B Issues In Aggravated Driving Under The Influence Of Intoxicating Compound--Accident Resulting In Bodily Harm To A Child Under The Age Of 16

To sustain the charge of aggravated driving under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)], the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which rendered the defendant incapable of safely driving; and

Third Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was transporting a child under the age of 16; and

Fourth Proposition: That the defendant, in [(so driving) (being in actual physical control of)] a vehicle, was involved in a motor vehicle accident; and

Fifth Proposition: That the motor vehicle accident in which defendant was involved resulted in bodily harm to the child under the age of 16 being transported by the defendant; and

Sixth Proposition: That the defendant's [(driving) (being in actual physical control of)] a vehicle while under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which rendered the defendant incapable of safely driving was the proximate cause of the bodily harm to the child under the age of 16 being transported by the defendant.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(3) and 625 ILCS 5/11-501(d)(1)(J) (West 2010). Section 11-501 was amended by P.A. 95-578 which added Section 11-501(d)(1)(J), effective June 1, 2008.

Give Instruction 23.69B.

Give Instruction 23.28A, defining “proximate cause”.

Give Instruction 4.25, defining “intoxicating compound”.

When actual physical control is an issue, give Instruction 23.43.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the influence of any intoxicating compound or a combination of intoxicating compounds under Section 11-501(d)(1)(J) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.70C Issues In Aggravated Driving Under The Influence Of Intoxicating Compound--Accident While Driving In A School Speed Zone As Enhancing Factor

To sustain the charge of aggravated driving under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] when there is a motor vehicle accident while driving in a school speed zone, the State must prove the following propositions:

First Proposition: That the defendant drove a vehicle at any speed in a school speed zone at a time when a speed limit of 20 miles per hour was in effect; and

Second Proposition: That at the time the defendant drove a vehicle the defendant was under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which rendered the defendant incapable of safely driving; and

Third Proposition: That at the time the defendant drove a vehicle the defendant was involved in a motor vehicle accident; and

Fourth Proposition: That the accident in which the defendant was involved resulted in bodily harm to another person; and

Fifth Proposition: That the defendant's act of driving a vehicle while under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which rendered him incapable of safely driving was a proximate cause of the bodily harm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501 (a)(3) and 625 ILCS 5/11-501(d)(1)(E) (West 2010) amended by P.A. 95-578, effective January 1, 2008. Section 11-501 was amended by P.A. 92-429 which added Section 11-501(d)(1)(E), effective January 1, 2002.

Give Instruction 23.69C.

Give Instruction 4.23, defining “school speed zone”.

Give Instruction 4.25, defining “intoxicating compound”.

Give Instruction 23.28A, defining “proximate cause”.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983), the Illinois Supreme Court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(E) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.70D Issues In Aggravated Driving Under The Influence Of Intoxicating Compound--Driving Without Liability Insurance

To sustain the charge of aggravated driving under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)], the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which rendered him incapable of safely driving; and

Third Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant [(knew) (should have known)] that the vehicle he was [(driving) (in actual physical control of)] was not covered by a liability insurance policy.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(3) and 625 ILCS 5/11-501(d)(1)(I) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(I), effective January 1, 2006.

Give Instruction 23.69D.

Give Instruction 4.25, defining "intoxicating compound".

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz,* 98 Ill.2d at 42-43. The Committee believes that this holding extends to the offense of aggravated driving under the influence of any intoxicating compound or a combination of intoxicating compounds under Section 11-501(d)(1)(I) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.70E Issues In Aggravated Driving Under The Influence Of Intoxicating Compound--Defendant Does Not Possess Drivers License

To sustain the charge of aggravated driving under the influence of [(any intoxicating compound)(a combination of intoxicating compounds)], the State must prove the following propositions:

First Proposition: That the defendant [(drove)(was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which rendered the defendant incapable of safely driving; and

Third Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant did not possess a drivers license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(3) and 625 ILCS 5/11-501(d)(1)(H) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(H), effective January 1, 2006.

Give Instruction 23.69E.

Give Instruction 4.25, defining "intoxicating compound".

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz,* 98 Ill.2d at 42-43. The Committee believes that this holding extends to the offense of aggravated driving under the influence of any intoxicating compound or a combination of intoxicating compounds under Section 11-501(d)(1)(H) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.70F Issues In Aggravated Driving Under The Influence Of Intoxicating Compound--Driving A School Bus With Persons 18 Years Of Age Or Younger On Board

To sustain the charge of aggravated driving under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)], the State must prove the following propositions:

First Proposition: That the defendant drove a school bus; and

Second Proposition: That at the time the defendant drove a school bus, the defendant was under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which rendered the defendant incapable of safely driving; and

Third Proposition: That at the time the defendant drove a school bus, there were persons 18 years of age or younger on board.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(3) and 625 ILCS 5/11-501(d)(1)(B) (West 2010) (formerly Ill. Rev. Stat. ch. 95 1/2 §§11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992. P.A. 93-800, effective January 1, 2005, changed "children" to "persons 18 years of age or younger".

Give Instruction 23.69F.

Give Instruction 4.25, defining "intoxicating compound".

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz,* 98 Ill.2d at 42-43. The Committee believes that this holding extends to the offense of aggravated driving under the influence of any intoxicating compound or a combination of intoxicating compounds under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.71 Definition Of Aggravated Possession Of Stolen Or Converted Motor Vehicles

A person commits the offense of aggravated possession of stolen or converted motor vehicles when he

[1] [(receives) (possesses) (conceals) (sells) (disposes of) (transfers)] [(3 or more vehicles) (essential parts of 3 or more different vehicles) (a combination of 3 or more vehicles or essential parts of different vehicles)] [(at the same time) (within a one year period)], when he is not entitled to possession of [(those vehicles) (those essential parts of a vehicle)] and he knows that these [(vehicles) (essential parts)] were stolen or converted.

[or]

[2] [(buys) (receives) (possesses) (sells) (disposes of)] [(3 or more vehicles) (3 or more essential parts of different vehicles) (a combination of 3 or more vehicles or essential parts of different vehicles)] [(at the same time) (within a one year period)] knowing that the identification numbers of the [(vehicles) (essential parts with an identification number)] have been [(removed) (falsified)].

[or]

[3] [(receives) (possesses) (conceals) (sells) (disposes of) (transfers)] a vehicle valued at $25,000 or more, when he is not entitled to the possession of that vehicle and he knows that the vehicle has been [(stolen) (converted)].

[or]

[4] [(receives) (possesses) (conceals) (sells) (disposes of) (transfers)] any [[(engine) (transmission) (cab) (cab clip) (vehicle cowl)] of a] [(second division vehicle) (semitrailer) (farm tractor) (tow truck) (rescue squad vehicle) (medical transport vehicle) (fire engine) (special mobile equipment) (dump truck) (truck mounted transit mixer) (crane)], when he is not entitled to the possession of that [[(engine) (transmission) (cab) (cab clip) (vehicle cowl)] of a] [(second division vehicle) (semitrailer) (farm tractor) (tow truck) (rescue squad vehicle) (medical transport vehicle) (fire engine) (special mobile equipment) (dump truck) (truck mounted transit mixer) (crane)] and he knows that it is [(stolen) (converted)].

[or]

[5] [(receives) (possesses) (conceals) (sells) (disposes of) (transfers)] any vehicle which is owned or operated by a law enforcement agency, when he is not entitled to the possession of that vehicle, he knows that it is the property of a law enforcement agency, and knows that it is [(stolen) (converted)].

[or]

[6] wilfully [(fails or refuses to obey) (increases his speed after receiving) (extinguishes his lights after receiving)] a peace officer's signal to bring a vehicle to a stop [or otherwise flees or attempts to elude the officer] and
[a] he is the driver or operator of that vehicle, he is not entitled to the possession of that vehicle, and he knows that the vehicle is [(stolen) (converted)].

[or]

[b] he is the driver or operator of that vehicle, the vehicle is being used to transport or haul [(another vehicle) (an essential part of a vehicle)], he is not entitled to possession of that [(other vehicle) (essential part of a vehicle)] being transported or hauled, and he knows that the transported or hauled [(vehicle) (essential part)] is [(stolen) (converted)].
[The signal given by the peace officer may be by hand, voice, siren, or red or blue light, but an officer driving a vehicle must display the vehicle's illuminated, oscillating, rotating or flashing red or blue lights which, when used in conjunction with an audible horn or siren, would indicate that the vehicle is an official police vehicle.]

Committee Note

625 ILCS 5/4-103.2(a) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §4-103.2(a) (1991)).

Give Instruction 23.72.

When the defendant is charged with possessing stolen vehicles or essential parts of vehicles, give Instructions 13.33G (Definition of Stolen Property) and 13.01 (Definition of Theft). Because this instruction uses the term "stolen vehicle," the definition of "stolen property" should accompany this instruction. Because "stolen property" is defined as "property over which control has been obtained by *theft*," the definition of theft should accompany the definition of stolen property. (Emphasis added.) See People v. Cozart, 235 Ill.App.3d 1076, 601 N.E.2d 1325, 176 Ill.Dec. 627 (2d Dist.1992). Although the court in People v. Bradley, 192 Ill.App.3d 387, 548 N.E.2d 743, 139 Ill.Dec. 358 (1st Dist.1989), held that the word "stolen" implies the definition of theft and the intent to permanently deprive--and that the jury therefore *need not* be instructed on those terms--Bradley did not hold it impermissible or error to do so. Therefore, in part to comply with Cozart, the Committee has decided that the instructions should include the definitions of stolen property and theft.

When the defendant is charged with possessing converted vehicles or essential parts of vehicles, give Instruction 23.35A, defining the term "converted" property.

When the defendant is charged with possessing the essential parts of three or more vehicles, give Instruction 23.25B.

Bracketed paragraphs [1] through [3] correspond to the respective subsection numbers in Section 4-103.2. However, when the defendant is charged with violating subsection (5), use bracketed paragraph [4]. When the defendant is charged with violating subsection (6), use

bracketed paragraph [5]. When the defendant is charged with violating subsection (7), use bracketed paragraph [6].

The bracketed paragraph at the end of this instruction pertains only to bracketed paragraph [6]. Use this paragraph only when the defendant is charged with refusing or failing to obey a police officer's signal to stop a stolen vehicle or a vehicle hauling or transporting a stolen vehicle, and the mode of signalling the defendant to stop is an issue.

Section 4-103(a)(1) (non-aggravated possession of a stolen motor vehicle) contains a provision that allows the jury to infer knowledge that the vehicle is stolen based on the mere fact that the defendant possessed the vehicle or essential parts in question. See Instruction 23.36A. However, Section 4-103.2(a)(1) (aggravated possession of stolen or converted motor vehicles) does not contain this language, but instead merely describes the offense. Therefore, the Committee has not provided an instruction on this inference for aggravated possession of stolen or converted motor vehicles.

See Instructions 23.35 and 23.36 regarding the non-aggravated version of this offense.

When using bracketed paragraph [6], see People v. Marquis, 54 Ill.App.3d 209, 369 N.E.2d 372, 11 Ill.Dec. 918 (4th Dist.1977), concerning the required mental state of wilfullness; see also 720 ILCS 5/4-5 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §4-5 (1991)).

Use applicable bracketed material.

23.71B Definition Of Aggravated Driving Under The Influence Of Drugs--Accident Resulting In Bodily Harm To A Child Under The Age Of 16

A person commits the offense of aggravated driving under the influence of drugs when he [(drives) (is in actual physical control of)] a vehicle while under the influence of any drug or combination of drugs to a degree which renders such person incapable of safely driving, and in [(so driving) (being in the actual physical control of)] a vehicle, he is involved in a motor vehicle accident that results in bodily harm to a child under the age of 16 being transported by him, and his [(driving) (being in actual physical control of)] a vehicle while under the influence of any drug or combination of drugs to a degree which renders him incapable of safely driving is the proximate cause of the bodily harm to the child under the age of 16.

Committee Note

625 ILCS 5/11-501(a)(4) and 625 ILCS 5/11-501(d)(1)(J) (West 2010). Section 11-501 was amended by P.A. 95-578 which added Section 11-501(d)(1)(J), effective June 1, 2008.

Give Instruction 23.72B.

Give Instruction 23.28A, defining "proximate cause".

When actual physical control is an issue, give Instruction 23.43.

In People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs under Section 11-501(d)(1)(J) and accordingly has not included a mental state in this instruction. See also People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.71C Definition Of Aggravated Driving Under The Influence Of Drugs--Accident While Driving In A School Speed Zone As Enhancing Factor

A person commits the offense of aggravated driving under the influence of drugs when he drives a vehicle while under the influence of any drug or combination of drugs to a degree which renders such person incapable of safely driving while driving in a school speed zone at a time when a speed limit of 20 miles per hour was in effect, and in so driving a vehicle, he is involved in a motor vehicle accident that results in bodily harm to another person and his act of driving a vehicle while under the influence of any drug or combination of drugs to a degree which renders him incapable of safely driving is a proximate cause of the bodily harm.

Committee Note

625 ILCS 5/11-501(a)(4) and 625 ILCS 5/11-501(d)(1)(E) (West 2010) amended by P.A. 95-578, effective January 1, 2008. Section 11-501 was amended by P.A. 92-429 which added Section 11-501(d)(1)(E), effective January 1, 2002.

Give Instruction 23.72C.

Give Instruction 4.23, defining "school speed zone".

Give Instruction 23.28A, defining "proximate cause".

In People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs under Section 11-501(d)(1)(E) and accordingly has not included a mental state in this instruction. See also People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70, 72 (1983).

23.71D Definition Of Aggravated Driving Under The Influence Of Drugs--Driving Without Liability Insurance

A person commits the offense of aggravated driving under the influence of drugs when he [(drives) (is in actual physical control of)] a vehicle while under the influence of any drug or combination of drugs to a degree that renders such person incapable of safely driving, and in [(so driving) (being in actual physical control of)] a vehicle, he [(knew) (should have known)] that the vehicle he was [(driving) (in actual physical control of)] was not covered by a liability insurance policy.

Committee Note

625 ILCS 5/11-501(a)(4) and 625 ILCS 5/11-501(d)(1)(I) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(I), effective January 1, 2006.

Give Instruction 23.72D.

When actual physical control is an issue, give Instruction 23.43.

In People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs or combination of drugs to a degree which renders him incapable of safely driving under Section 11-501(d)(1)(I) and accordingly has not included a mental state in this instruction. See also People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.71E Definition Of Aggravated Driving Under The Influence Of Drugs--Defendant Does Not Possess Drivers License

A person commits the offense of aggravated driving under the influence of drugs when he [(drives) (is in actual physical control of)] a vehicle while under the influence of any drug or combination of drugs to a degree which renders such person incapable of safely driving, and in [(so driving) (being in actual physical control of)] a vehicle, he does not possess a drivers license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit.

Committee Note

625 ILCS 5/11-501(a)(4) and 625 ILCS 5/11-501(d)(1)(H) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(H), effective January 1, 2006.

Give Instruction 23.72E.

When actual physical control is an issue, give Instruction 23.43.

In People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs or combination of drugs to a degree which renders him incapable of safely driving under Section 11-501(d)(1)(H) and accordingly has not included a mental state in this instruction. See also People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.71F Definition Of Aggravated Driving Under The Influence Of Drugs--Driving A School Bus With Persons 18 Years Of Age Or Younger On Board

A person commits the offense of aggravated driving under the influence of drugs when he drives a school bus while under the influence of any drug or combination of drugs to a degree which renders such person incapable of safely driving, and in so driving a school bus, there are persons 18 years of age or younger on board.

Committee Note

625 ILCS 5/11-501(a)(4) and 625 ILCS 5/11-501(d)(1)(B) (West 2010) (formerly Ill. Rev. Stat. ch. 95 1/2 §§11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A.88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992. P.A. 93-800, effective January 1, 2005, changed "children" to "persons 18 years of age or younger".

Give Instruction 23.72F.

In People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs or combination of drugs to a degree which renders him incapable of safely driving under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

23.72 Issues In Aggravated Possession Of Stolen Or Converted Motor Vehicles

To sustain the charge of aggravated possession of stolen or converted motor vehicles, the State must prove the following propositions:

[1] *First Proposition:* That the defendant [(received) (possessed) (concealed) (sold) (disposed of) (transferred)] [(3 or more vehicles) (the essential parts of 3 or more different vehicles) (a combination of 3 or more vehicles or essential parts of different vehicles)]; and

Second Proposition: That the defendant did so [(at the same time) (within a one year period)]; and

Third Proposition: That the defendant was not entitled to possession of those [(vehicles) (essential parts)]; and

Fourth Proposition: That when the defendant did so, he knew that those [(vehicles) (essential parts)] were stolen or converted.

[or]

[2] *First Proposition:* That the defendant [(bought) (received) (possessed) (sold) (disposed of)] [(3 or more vehicles) (3 or more essential parts of different vehicles) (a combination of 3 or more vehicles or essential parts of different vehicles)]; and

Second Proposition: That the defendant did so [(at the same time) (within a one year period)]; and

Third Proposition: That when the defendant did so, he knew that the identification numbers of the [(vehicles) (essential parts with an identification number)] had been [(removed) (falsified)].

[or]

[3] *First Proposition:* That the defendant [(received) (possessed) (concealed) (sold) (disposed of) (transferred)] a vehicle; and

Second Proposition: That the defendant was not entitled to the possession of that vehicle; and

Third Proposition: That the vehicle was valued at $25,000 or more; and

Fourth Proposition: That when the defendant did so, he knew that the vehicle was [(stolen) (converted)].

[or]

[4] *First Proposition:* That the defendant [(received) (possessed) (concealed) (sold) (disposed of) (transferred)] any [[(engine) (transmission) (cab) (cab clip) (vehicle cowl)] of a] [(second division vehicle) (semitrailer) (farm tractor) (tow truck) (rescue squad vehicle) (medical transport vehicle) (fire engine) (special mobile equipment) (dump truck) (truck mounted transit mixer) (crane)]; and

Second Proposition: That the defendant was not entitled to the possession of that [[(engine) (transmission) (cab) (cab clip) (vehicle cowl)] of a] [(second division vehicle) (semitrailer) (farm tractor) (tow truck) (rescue squad vehicle) (medical transport vehicle) (fire engine) (special mobile equipment) (dump truck) (truck mounted transit mixer) (crane)]; and

Third Proposition: That when the defendant did so, he knew that the [[(engine) (transmission) (cab) (cab clip) (vehicle cowl)] of a] [(second division vehicle) (semitrailer) (farm tractor) (tow truck) (rescue squad vehicle) (medical transport vehicle) (fire engine) (special mobile equipment) (dump truck) (truck mounted transit mixer) (crane)] was [(stolen) (converted)].

[or]

[5] *First Proposition:* That the defendant [(received) (possessed) (concealed) (sold) (disposed of) (transferred)] a vehicle; and

Second Proposition: That the defendant was not entitled to the possession of that vehicle; and

Third Proposition: That a law enforcement agency owned or operated that vehicle; and

Fourth Proposition: That when the defendant did so, he knew that the vehicle was the property of a law enforcement agency; and

Fifth Proposition: That when the defendant did so, he also knew that the vehicle was [(stolen) (converted)].

[or]

[6] *First Proposition:* That the defendant drove or operated a vehicle; and

Second Proposition: That a peace officer signalled the defendant to stop that vehicle; and

Third Proposition: That the defendant wilfully [(failed or refused to obey a peace officer's signal to bring that vehicle to a stop) (increased his speed) (extinguished his lights)] [or otherwise fled or attempted to elude the officer]; and

[a] *Fourth Proposition:* That the defendant was not entitled to the possession of the vehicle he drove or operated; and

Fifth Proposition: That when the defendant did so, he knew that the vehicle was [(stolen) (converted)].

[or]

[b] *Fourth Proposition:* That the vehicle the defendant drove or operated was being used to transport or haul [(a vehicle) (an essential part of a vehicle)]; and

Fifth Proposition: That the defendant was not entitled to possession of that [(vehicle) (essential part of a vehicle)] being transported or hauled; and

Sixth Proposition: That when the defendant did so, he knew that the transported or hauled [(vehicle) (essential part)] was [(stolen) (converted)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/4-103.2(a) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §4-103.2(a)

(1991)).

Give Instructions 23.71 and see the Committee Note to that instruction.

The bracketed numbers in this instruction correspond to the bracketed numbers in Instruction 23.71. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.72B Issues In Aggravated Driving Under The Influence Of Drugs--Accident Resulting In Bodily Harm To A Child Under The Age Of 16

To sustain the charge of aggravated driving under the influence of drugs, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of) a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the influence of any drug or combination of drugs to a degree which rendered the defendant incapable of safely driving; and

Third Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was transporting a child under the age of sixteen; and

Fourth Proposition: That the defendant, in [(so driving) (being in actual physical control of)] a vehicle, was involved in a motor vehicle accident; and

Fifth Proposition: That the motor vehicle accident in which defendant was involved resulted in bodily harm to the child under the age of sixteen being transported by the defendant; and

Sixth Proposition: That the defendant's [(driving) (being in actual physical control of)] a vehicle while under the influence of any drug or combination of drugs to a degree which rendered him incapable of safely driving was the proximate cause of the bodily harm to the child under the age of sixteen being transported by the defendant.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(4) and 625 ILCS 5/11-501(d)(1)(J) (West 2010). Section 11-501 was amended by P.A. 95-578 which added Section 11-501(d)(1)(J), effective June 1, 2008.

Give Instruction 23.71B.

Give Instruction 23.28A, defining “proximate cause”.

When actual physical control is an issue, give Instruction 23.43.

In People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs under Section 11-501(d)(1)(J) and accordingly has not included a mental state in this instruction. See also People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.72C Issues In Aggravated Driving Under The Influence Of Drugs--Accident While Driving In A School Speed Zone As An Enhancing Factor

To sustain the charge of aggravated driving under the influence of drugs when there is an accident while driving in a school speed zone, the State must prove the following propositions:

First Proposition: That the defendant drove a vehicle at any speed in a school speed zone at a time when a speed limit of 20 miles per hour was in effect; and

Second Proposition: That at the time the defendant drove a vehicle the defendant was under the influence of any drug or combination of drugs to a degree which rendered the defendant incapable of safely driving; and

Third Proposition: That at the time the defendant drove a vehicle the defendant was involved in a motor vehicle accident; and

Fourth Proposition: That the accident in which defendant was involved resulted in bodily harm to another person; and

Fifth Proposition: That the defendant's act of driving a vehicle while under the influence of any drug or combination of drugs to a degree which rendered him incapable of safely driving was a proximate cause of the bodily harm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501 (a)(4) and 625 ILCS 5/11-501(d)(1)(E) (West 2010), amended by P.A. 95-578, effective January 1, 2008. Section 11-501 was amended by P.A. 92-429 which added Section 11-501(d)(1)(E), effective January 1, 2002.

Give Instruction 23.71C.

Give Instruction 4.23, defining “school speed zone”.

Give Instruction 23.28A, defining “proximate cause”.

In People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs under Section 11-501(d)(1)(E) and accordingly has not included a mental state in this instruction. See also People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983).

23.72D Issues In Aggravated Driving Under The Influence Of Drugs--Driving Without Liability Insurance

To sustain the charge of aggravated driving under the influence of drugs, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the influence of any drug or combination of drugs to a degree which rendered the defendant incapable of safely driving; and

Third Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant [(knew) (should have known)] that the vehicle he was [(driving) (in actual physical control of)] was not covered by a liability insurance policy.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(4) and 625 ILCS 5/11-501(d)(1)(I) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(I), effective January 1, 2006.

Give Instruction 23.71D.

When actual physical control is an issue, give Instruction 23.43.

In People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs or combination of drugs to a degree which renders him incapable of safely driving under Section 11-501(d)(1)(I) and accordingly has not included a mental state in this instruction. See also People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.72E Issues In Aggravated Driving Under The Influence Of Drugs--Defendant Does Not Possess Drivers License

To sustain the charge of aggravated driving under the influence of drugs, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the influence of any drug or combination of drugs to a degree which rendered the defendant incapable of safely driving; and

Third Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant did not possess a drivers license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(4) and 625 ILCS 5/11-501(d)(1)(H) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(H), effective January 1, 2006.

Give Instruction 23.71E.

When actual physical control is an issue, give Instruction 23.43.

In People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs or combination of drugs to a degree which renders him incapable of safely driving under Section 11-501(d)(1)(H) and accordingly has not included a mental state in this instruction. See also People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.72F Issues In Aggravated Driving Under The Influence Of Drugs--Driving A School Bus With Persons 18 Years Of Age Or Younger On Board

To sustain the charge of aggravated driving under the influence of drugs, the State must prove the following propositions:

First Proposition: That the defendant drove a school bus; and

Second Proposition: That at the time the defendant drove a school bus, the defendant was under the influence of any drug or combination of drugs to a degree which rendered the defendant incapable of safely driving; and

Third Proposition: That at the time the defendant drove a school bus, there were persons 18 years of age or younger on board.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(4) and 625 ILCS 5/11-501(d)(1)(B) (West 2010) (formerly Ill. Rev. Stat. ch. 95 1/2 §§11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A.88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992. P.A. 93-800, effective January 1, 2005, changed "children" to "persons 18 years of age or younger".

Give Instruction 23.71F.

In People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs or combination of drugs to a degree which renders him incapable of safely driving under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

23.73 Definition Of Possession Or Use Of Radar Detection Devices

A person commits the offense of possession or use of a radar detection device when he [(operates) (is in actual physical control of)] a commercial motor vehicle while the motor vehicle is equipped with any instrument designed to detect the presence of police radar for the purpose of monitoring vehicular speed.

Committee Note

625 ILCS 5/12-712(a) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §12-712(a) (1992)), added by P.A. 87-1202, effective January 1, 1993.

Give Instruction 23.74.

Give Instruction 23.73A, defining the term "equipped".

Give the definition of the term "commercial motor vehicle" (see 625 ILCS 5/6-500(6) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §6-500(6) (1991))) when appropriate.

Section 12-712(b) excludes the possession of a radar detection device that is contained in a locked opaque box or similar container or that is not in the passenger compartment of the vehicle and is not in operation.

Use applicable bracketed material.

23.73A Definition Of Equipped--Possession Or Use Of Radar Detection Devices Or Radar Jamming Devices

The term "equipped" means possession or use within a commercial motor vehicle.

Committee Note

625 ILCS 5/12-712(a) and 12-713(a) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §§12-712(a) and 12-713(a) (1992)), added by P.A. 87-1202, effective January 1, 1993.

For a definition of the term "commercial motor vehicle", see 625 ILCS 5/6-500(6) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §6-500(6) (1991)).

23.73 B Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs--Accident Resulting In Bodily Harm To A Child Under The Age Of 16

A person commits the offense of aggravated driving under the combined influence of alcohol and drugs when he [(drives) (is in actual physical control of)] a vehicle while under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which renders such person incapable of safely driving, and in [(so driving) (being in actual physical control of)] a vehicle, he is involved in a motor vehicle accident that results in bodily harm to a child under the age of 16 being transported by him, and his [(driving) (being in actual physical control of)] a vehicle while under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which renders him incapable of safely driving is the proximate cause of the bodily harm to the child under the age of 16.

Committee Note

625 ILCS 5/11-501(a)(5) and 625 ILCS 5/11-501(d)(1)(J) (West 2010). Section 11-501 was amended by P.A. 95-578 which added Section 11-501(d)(1)(J), effective June 1, 2008.

Give Instruction 23.74B.

Give Instruction 23.28A, defining "proximate cause".

When applicable, give Instruction 4.25, defining "intoxicating compound".

When actual physical control is an issue, give Instruction 23.43.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(J) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See People v. Bitterman, 142 Ill.App.3d 1062, 492 N.E.2d 582 (1st Dist. 1986), concerning what must be proven in a combined alcohol and drug case; see also People v. Brower, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.73C Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs Or Intoxicating Compound Or Compounds--Accident While Driving In A School Speed Zone As Enhancing Factor

A person commits the offense of aggravated driving under the combined influence of alcohol and drugs or intoxicating compound or compounds when he drives a vehicle while under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which renders him incapable of safely driving while driving a vehicle at any speed in a school speed zone at a time when a speed limit of 20 miles per hour was in effect, and in so driving a vehicle he is involved in a motor vehicle accident that results in bodily harm to another person, and his act of driving a vehicle while under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which renders such person incapable of safely driving is a proximate cause of the bodily harm.

Committee Note

625 ILCS 5/11-501 (a)(5) and 625 ILCS 5/11-501(d)(1)(E) (West 2010), amended by P.A. 95-578, effective January 1, 2008. Section 11-501 was amended by P.A. 92-429 which added Section 11-501(d)(1)(E), effective January 1, 2002.

Give Instruction 23.74C.

Give Instruction 4.23, defining "school speed zone".

When applicable, give Instruction 4.25, defining "intoxicating compound".

Give Instruction 23.28A, defining "proximate cause".

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983), the Illinois Supreme Court held that the offense of driving under the influence of alcohol under Section 11-501(a)(1) is a strict liability offense, and in People v. Gassman, 251 Ill. App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(E) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124**,** 394 N.E.2d 893 (2d Dist. 1979).

See People v. Bitterman, 142 Ill.App.3d 1062**,** 492 N.E.2d 582 (1st Dist. 1986), concerning what must be proven in a combined alcohol and drug case; see also People v. Brower, 131 Ill.App.2d 548**,** 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of a combination of alcohol and drugs.

23.73D Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs--Driving Without Liability Insurance

A person commits the offense of aggravated driving under the combined influence of alcohol and drugs when he [(drives) (is in actual physical control of)] a vehicle while under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which renders such person incapable of safely driving, and in [(so driving) (being in actual physical control of)] a vehicle, he [(knew) (should have known)] that the vehicle he was [(driving) (in actual physical control of)] was not covered by a liability insurance policy.

Committee Note

625 ILCS 5/11-501(a)(5) and 625 ILCS 5/11-501(d)(1)(I) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(I), effective January 1, 2006.

Give Instruction 23.74D.

When actual physical control is an issue, give Instruction 23.43.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(I) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See People v. Bitterman, 142 Ill.App.3d 1062, 492 N.E.2d 582 (1st Dist. 1986), concerning what must be proven in a combined alcohol and drug case; see also People v. Brower, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.73E Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs--Defendant Does Not Possess Drivers License

A person commits the offense of aggravated driving under the combined influence of alcohol and drugs when he [(drives) (is in actual physical control of)] a vehicle while under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which renders such person incapable of safely driving, and in [(so driving) (being in actual physical control of)] a vehicle, he does not possess a drivers license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit.

Committee Note

625 ILCS 5/11-501(a)(5) and 625 ILCS 5/11-501(d)(1)(H) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(H), effective January 1, 2006.

Give Instruction 23.74E.

When actual physical control is an issue, give Instruction 23.43.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(H) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See People v. Bitterman, 142 Ill.App.3d 1062, 492 N.E.2d 582 (1st Dist. 1986), concerning what must be proven in a combined alcohol and drug case; see also People v. Brower, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.73F Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs--Driving A School Bus With Persons 18 Years Of Age Or Younger On Board

A person commits the offense of aggravated driving under the combined influence of alcohol and drugs when he drives a school bus while under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which renders such person incapable of safely driving, and in so driving a school bus, there are persons 18 years of age or younger on board.

Committee Note

625 ILCS 5/11-501(a)(5) and 625 ILCS 5/11-501(d)(1)(B) (West 2010) (formerly Ill. Rev. Stat. ch. 95 1/2 §§11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A.88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992. P.A. 93-800, effective January 1, 2005, changed "children" to "persons 18 years of age or younger".

Give Instruction 23.74F.

When applicable, give Instruction 4.25, defining "intoxicating compound".

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See People v. Bitterman, 142 Ill.App.3d 1062, 492 N.E.2d 582 (1st Dist. 1986), concerning what must be proven in a combined alcohol and drug case; see also People v. Brower, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

23.74 Issues In Possession Or Use Of Radar Detection Devices

To sustain the charge of possession or use of a radar detection device, the State must prove the following propositions:

First Proposition: That the defendant [(operated) (was in actual physical control of)] a commercial motor vehicle; and

Second Proposition: That the commercial motor vehicle was equipped with any instrument designed to detect the presence of police radar for the purpose of monitoring vehicular speed.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/12-712(a) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §12-712(a) (1992)), added by P.A. 87-1202, effective January 1, 1993.

Give Instruction 23.73.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.74B Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs--Accident Resulting In Bodily Harm To A Child Under The Age Of 16

To sustain the charge of aggravated driving under the combined influence of alcohol and drugs, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which rendered the defendant incapable of safely driving; and

Third Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was transporting a child under the age of 16; and

Fourth Proposition: That the defendant, in [(so driving) (being in actual physical control of)] a vehicle, was involved in a motor vehicle accident; and

Fifth Proposition: That the motor vehicle accident in which defendant was involved resulted in bodily harm to the child under the age of 16 being transported by the defendant; and

Sixth Proposition: That the defendant's [(driving) (being in actual physical control of)] a vehicle while under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which rendered the defendant incapable of safely driving was the proximate cause of the bodily harm to the child under the age of 16 being transported by the defendant.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(5) and 625 ILCS 5/11-501(d)(1)(J) (West 2010). Section 11-501 was amended by P.A. 95-578 which added Section 11-501(d)(1)(J), effective June 1, 2008.

Give Instruction 23.73B.

Give Instruction 23.28A, defining “proximate cause”.

When applicable, give Instruction 4.25, defining “intoxicating compound”.

When actual physical control is an issue, give Instruction 23.43.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(J) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2nd Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.74C Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs Or Intoxicating Compound Or Compounds--Accident While Driving In A School Speed Zone As Enhancing Factor

To sustain the charge of aggravated driving under the combined influence of alcohol and drugs, or intoxicating compound or compounds when there is an accident while driving in a school speed zone, the State must prove the following propositions:

First Proposition: That the defendant drove a vehicle at any speed in a school speed zone at a time when a speed limit of 20 miles per hour was in effect; and

Second Proposition: That at the time the defendant drove a vehicle the defendant was under the combined influence of alcohol and any drug or drugs or intoxicating compound or compounds to a degree which rendered the defendant incapable of safely driving; and

Third Proposition: That the defendant, in so driving a vehicle, was involved in a motor vehicle accident; and

Fourth Proposition: That the accident in which defendant was involved resulted in bodily harm to another person; and

Fifth Proposition: That the defendant's driving a vehicle while under the combined influence of alcohol and any drug or drugs or intoxicating compound or compounds to a degree which rendered the defendant incapable of safely driving was a proximate cause of the bodily harm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(5) and 625 ILCS 5/11-501(d)(1)(E) (West 2010), amended by P.A. 95-578, effective January 1, 2008. Section 11-501 was amended by P.A. 92-429 which added Section 11-501(d)(1)(E), effective January 1, 2002.

Give Instruction 23.73C.

Give Instruction 4.23, defining “school speed zone”.

When applicable, give Instruction 4.24, defining “intoxicating compound”.

Give Instruction 23.28A, defining “proximate cause”.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983), the Illinois Supreme Court held that the offense of driving under the influence of alcohol under Section 11-501(a)(1) is a strict liability offense, and in People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(E) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

23.74D Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs--Driving Without Liability Insurance

To sustain the charge of aggravated driving under the combined influence of alcohol and drugs, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which rendered the defendant incapable of safely driving; and

Third Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant [(knew) (should have known)] that the vehicle he was [(driving) (in actual physical control of)] was not covered by a liability insurance policy.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(6) and 625 ILCS 5/11-501(d)(1)(I) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(I), effective January 1, 2006.

Give Instruction 23.73D.

When applicable, give Instruction 4.25, defining "intoxicating compound".

When actual physical control is an issue, give Instruction 23.43.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(I) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See People v. Bitterman, 142 Ill.App.3d 1062, 492 N.E.2d 582 (1st Dist. 1986), concerning what must be proven in a combined alcohol and drug case; see also People v. Brower, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.74E Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs--Defendant Does Not Possess Drivers License

To sustain the charge of aggravated driving under the combined influence of alcohol and drugs, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which rendered the defendant incapable of safely driving; and

Third Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant did not possess a drivers license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(5) and 625 ILCS 5/11-501(d)(1)(H) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(H), effective January 1, 2006.

Give Instruction 23.73E.

When applicable, give Instruction 4.25 defining "intoxicating compound".

When actual physical control is an issue, give Instruction 23.43.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(H) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See People v. Bitterman, 142 Ill.App.3d 1062, 492 N.E.2d 582 (1st Dist. 1986), concerning what must be proven in a combined alcohol and drug case; see also People v. Brower, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.74F Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs--Driving A School Bus With Persons 18 Years Of Age Or Younger On Board

To sustain the charge of aggravated driving under the combined influence of alcohol and drugs, the State must prove the following propositions:

First Proposition: That the defendant drove a school bus; and

Second Proposition: That at the time the defendant drove a school bus, the defendant was under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which rendered the defendant incapable of safely driving; and

Third Proposition: That at the time the defendant drove a school bus, there were persons 18 years of age or younger on board.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(5) and 625 ILCS 5/11-501(d)(1)(B) (West 2010) (formerly Ill. Rev. Stat. ch. 95 1/2 §§11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A.88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992. P.A. 93-800, effective January 1, 2005, changed "children" to "persons 18 years of age or younger".

Give Instruction 23.73F.

When applicable, give Instruction 4.25, defining "intoxicating compound".

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See People v. Bitterman, 142 Ill.App.3d 1062, 492 N.E.2d 582 (1st Dist. 1986), concerning what must be proven in a combined alcohol and drug case; see also People v. Brower, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

23.75 Definition Of Possession Or Use Of Radar Jamming Devices

A person commits the offense of possession or use of a radar jamming device when he [(operates) (is in actual physical control of)] a commercial motor vehicle while the motor vehicle is equipped with any instrument designed to interfere with microwaves at frequencies used by police radar for the purpose of monitoring vehicular speed.

Committee Note

625 ILCS 5/12-713(a) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §12-713(a) (1992)), added by P.A. 87-1202, effective January 1, 1993.

Give Instruction 23.76.

Give Instruction 23.73A, defining the term "equipped".

Give the definition of the term "commercial motor vehicle" (see 625 ILCS 5/6-500(6) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §6-500(6) (1991))) when appropriate.

Section 12-713(b) excludes the possession of a radar jamming device that is contained in a locked opaque box or similar container or that is not in the passenger compartment of the vehicle and is not in operation.

Use applicable bracketed material.

23.75B Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine--Accident Resulting In Bodily Harm To A Child Under The Age Of 16

A person commits the offense of aggravated driving with a drug, substance, or compound in breath, blood, or urine when he [(drives) (is in actual physical control of)] a vehicle while there is any amount of a drug, substance, or compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of [(cannabis) (a controlled substance) (an intoxicating compound) (methamphetamine)] and in [(so driving) (being in the actual physical control of)] a vehicle, he is involved in a motor vehicle accident that results in bodily harm to a child under the age of 16 being transported by him, and his [(driving) (being in actual physical control of)] a vehicle while there is any amount of a drug, substance, or compound in his breath, blood, or urine resulting from the unlawful use or consumption of [(cannabis) (a controlled substance) (an intoxicating compound) (methamphetamine)] is the proximate cause of the bodily harm to the child under the age of 16.

Committee Note

625 ILCS 5/11-501(a)(6) and 625 ILCS 5/11-501(d)(1)(J) (West 2010). Section 11-501 was amended by P.A. 95-578 which added Section 11-501(d)(1)(J), effective June 1, 2008. Section 11-501 was also amended by P.A. 95-355, effective January 1, 2008 (adding "methamphetamine") and Section 11-501(a)(1) was amended by P.A. 90-779, effective January 1, 1999 (adding "breath").

Give Instruction 23.76B.

Give Instruction 23.28A, defining "proximate cause".

When applicable, give Instruction 4.25, defining "intoxicating compound".

When actual physical control is an issue, give Instruction 23.43.

In People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2nd Dist. 1993), the court upheld the constitutionality of Section 11-501(a)(5). The court also held that the offense of driving with a drug, substance, or compound in breath, blood or urine under Section 11-501(a)(5) is a strict liability offense. *Gassman,* 251 Ill.App.3d at 688-89. The Committee believes that these holdings extend to the offense of aggravated driving with a drug, substance, or compound in breath, blood, or urine under Section 11-501(d)(1)(J) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2nd Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.75C Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine--Accident While Driving In A School Speed Zone As Enhancing Factor

A person commits the offense of aggravated driving with a drug, substance, or compound in the persons' breath, blood, or urine when he drives a vehicle while there is any amount of a drug, substance, or compound in his breath, blood, or urine resulting from the unlawful use or consumption of [(cannabis) (a controlled substance) (an intoxicating compound) (methamphetamine)] while driving a vehicle at any speed in a school speed zone at a time when a speed limit of 20 miles per hour was in effect, and in so driving a vehicle he is involved in a motor vehicle accident that results in bodily harm to another person, and his driving a vehicle while there is any amount of a drug, substance, or compound in his breath, blood, or urine resulting from his unlawful use or consumption of [(cannabis) (a controlled substance) (an intoxicating compound) (methamphetamine)] is a proximate cause of the bodily harm.

Committee Note

625 ILCS 5/11-501(a)(6) and 625 ILCS 5/11-501(d)(1)(E) (West 2010), amended by P.A. 95-578, effective January 1, 2008. Section 11-501 was amended by P.A. 92-429 which added Section 11-501(d)(1)(E), effective January 1, 2002. Section 11-501 was also amended by P.A. 95-355, effective January 1, 2008 (adding "methamphetamine") and Section 11-501(a)(1) was amended by P.A. 90-779, effective January 1, 1999 (adding "breath").

Give Instruction 23.76C.

Give Instruction 4.23, defining "school speed zone".

When applicable, give Instruction 4.25, defining "intoxicating compound".

Give Instruction 23.28A, defining "proximate cause".

In People v. Gassman, 251 Ill.App.3d 681, 692-93, 622 N.E.2d 845 (2d Dist. 1993), the court upheld the constitutionality of Section 11-501(a)(6). The court also held that the offense of driving with a drug, substance, or compound in blood or urine under Section 11-501(a)(6) is a strict liability offense. *Gassman*, 251 Ill.App.3d at 688-89. The Committee believes that this holding extends to the offense of aggravated driving with a drug, substance, or compound in breath, blood, or urine under Section 11-501(d)(1)(E) and accordingly has not included a mental state in this instruction.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

23.75D Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine--Driving Without Liability Insurance

A person commits the offense of aggravated driving with a drug, substance, or compound in breath, blood, or urine when he [(drives) (is in actual physical control of)] a vehicle while there is any amount of a drug, substance, or compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of [(cannabis) (a controlled substance) (an intoxicating compound) (methamphetamine)] and in [(so driving) (being in actual physical control of)] a vehicle, he [(knew) (should have known)] that the vehicle he was [(driving) (in actual physical control of)] was not covered by a liability insurance policy.

Committee Note

625 ILCS 5/11-501(a)(6) and 625 ILCS 5/11-501(d)(1)(I) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(I), effective January 1, 2006. Section 11-501 was also amended by P.A. 95-355, effective January 1, 2008 (adding "methamphetamine"), and Section 11-501(a)(1) was amended by P.A. 90-779, effective January 1, 1999 (adding "breath").

Give Instruction 23.76D.

When applicable, give Instruction 4.25, defining "intoxicating compound".

When actual physical control is an issue, give Instruction 23.43.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving with a drug, substance, or compound in breath, blood, or urine under Section 11-501(d)(1)(I) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.75E Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine--Defendant Does Not Possess Drivers License

A person commits the offense of aggravated driving with a drug, substance, or compound in breath, blood, or urine when he [(drives) (is in actual physical control of)] a vehicle while there is any amount of a drug, substance, or compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of [(cannabis) (a controlled substance) (an intoxicating compound) (methamphetamine)] and in [(so driving) (being in actual physical control of)] a vehicle, he does not possess a drivers license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit.

Committee Note

625 ILCS 5/11-501(a)(6) and 625 ILCS 5/11-501(d)(1)(H) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(H), effective January 1, 2006. Section 11-501 was also amended by P.A. 95-355, effective January 1, 2008 (adding "methamphetamine"), and Section 11-501(a)(1) was amended by P.A. 90-779, effective January 1, 1999 (adding "breath").

Give Instruction 23.76E.

When applicable, give Instruction 4.25, defining "intoxicating compound".

When actual physical control is an issue, give Instruction 23.43.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving with a drug, substance, or compound in breath, blood, or urine under Section 11-501(d)(1)(H) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.75F Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine--Driving A School Bus With Persons 18 Years Of Age Or Younger On Board

A person commits the offense of aggravated driving with a drug, substance, or compound in breath, blood, or urine when he drives a school bus while there is any amount of a drug, substance, or compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of [(cannabis) (a controlled substance) (an intoxicating compound) (methamphetamine)] and in so driving a school bus, there are persons 18 years of age or younger on board.

Committee Note

625 ILCS 5/11-501(a)(6) and 625 ILCS 5/11-501(d)(1)(B) (West 2010) (formerly Ill. Rev. Stat. ch. 95 1/2 §§11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A.88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992. P.A. 93-800, effective January 1, 2005, changed "children" to "persons 18 years of age or younger". Section 11-501 was also amended by P.A. 95-355, effective January 1, 2008 (adding "methamphetamine"), and Section 11-501(a)(1) was amended by P.A. 90-779, effective January 1, 1999 (adding "breath").

Give Instruction 23.76F.

When applicable, give Instruction 4.25, defining "intoxicating compound".

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving with a drug, substance, or compound in breath, blood, or urine under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.76 Issues In Possession Or Use Of Radar Jamming Devices

To sustain the charge of possession or use of a radar jamming device, the State must prove the following propositions:

First Proposition: That the defendant [(operated) (was in actual physical control of)] a commercial motor vehicle; and

Second Proposition: That the commercial motor vehicle was equipped with any instrument designed to interfere with microwaves at frequencies used by police radar for the purpose of monitoring vehicular speed.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/12-713(a) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §12-713(a) (1992)), added by P.A. 87-1202, effective January 1, 1993.

Give Instruction 23.75.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

23.76B Issues In Aggravated Driving With A Drug, Substance Or Compound In Breath, Blood, Or Urine--Accident Resulting In Bodily Harm To A Child Under The Age Of 16

To sustain the charge of aggravated driving with a drug, substance, or compound in breath, blood, or urine, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, there was any amount of a drug, substance, or compound in his breath, blood, or urine resulting from the unlawful use or consumption of [(cannabis) (____, a controlled substance) (an intoxicating compound) (methamphetamine)]; and

Third Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was transporting a child under the age of 16; and

Fourth Proposition: That the defendant, in [(so driving) (being in actual physical control of)] a vehicle, was involved in a motor vehicle accident; and

Fifth Proposition: That the motor vehicle accident in which defendant was involved resulted in bodily harm to the child under the age of 16 being transported by the defendant; and

Sixth Proposition: That the defendant's [(driving) (being in actual physical control of)] a vehicle while there was any amount of a drug, substance, or compound in his breath, blood or urine resulting from the unlawful use or consumption of [(cannabis) (____, a controlled substance) (an intoxicating compound) (methamphetamine)] was the proximate cause of the bodily harm to the child under the age of 16 being transported by the defendant.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(6) and 625 ILCS 5/11-501(d)(1)(J) (West 2010). Section 11-501 was amended by P.A. 95-578 which added Section 11-501(d)(1)(J), effective June 1, 2008. Section 11-501 was also amended by P.A. 95-355, effective January 1, 2008 (adding "methamphetamine"), 11-501(a)(1) amended by P.A. 90-779, effective January 1, 1999 (adding "breath").

When applicable, insert in the blank the name of the controlled substance.

Give Instruction 23.75B.

Give Instruction 23.28A, defining "proximate cause".

When applicable, give Instruction 4.25, defining "intoxicating compound".

When actual physical control is an issue, give Instruction 23.43.

In People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court upheld the constitutionality of Section 11-501(a)(5). The court also held that the offense of driving with a drug, substance, or compound in breath, blood or urine under Section 11-501(a)(5) is a strict liability offense. *Gassman,* 251 Ill.App.3d at 688-89. The Committee believes that

these holdings extend to the offense of aggravated driving with a drug, substance, or compound in breath, blood, or urine under Section 11-501(d)(1)(J) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.76C Issues In Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine--Accident While Driving In A School Speed Zone As Enhancing Factor

To sustain the charge of aggravated driving with a drug, substance, or compound in breath, blood or urine when there is an accident while driving in a school speed zone, the State must prove the following propositions:

First Proposition: That the defendant drove a vehicle at any speed in a school speed zone at a time when a speed limit of 20 miles per hour was in effect; and

Second Proposition: That at the time the defendant drove a vehicle there was any amount of a drug, substance, or compound in his breath, blood or urine resulting from the unlawful use or consumption of [(cannabis) (____, a controlled substance) (an intoxicating compound) (methamphetamine)]; and

Third Proposition: That the defendant, in so driving a vehicle, was involved in a motor vehicle accident; and

Fourth Proposition: That the accident in which defendant was involved resulted in bodily harm to another person; and

Fifth Proposition: That the defendant's driving a vehicle while there was any amount of a drug, substance, or compound in his breath, blood, or urine resulting from the unlawful use or consumption of [(cannabis) (____, a controlled substance) (an intoxicating compound) (methamphetamine)] was a proximate cause of the bodily harm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(6) and 625 ILCS 5/11-501(d)(1)(E) (West 2010), amended by P.A. 95-578, effective January 1, 2008. Section 11-501 was amended by P.A. 92-429 which added Section 11-501(d)(1)(E), effective January 1, 2002. Section 11-501 was also amended by P.A. 95-355, effective January 1, 2008 (adding "methamphetamine") and Section 11-501(a)(1) was amended by P.A. 90-779, effective January 1, 1999 (adding "breath").

Give Instruction 23.75C.

Give Instruction 4.23, defining "school speed zone".

When applicable, give Instruction 4.25, defining "intoxicating compound".

Give Instruction 23.28A, defining "proximate cause".

When applicable, insert in the blank the name of the controlled substance.

In People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving with a drug, substance, or intoxicating compound in blood or urine under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving with a drug, substance, or intoxicating compound in breath, blood, or urine under Section 11-501(d)(1)(E) and accordingly has not included a mental state in this instruction.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

23.76D Issues In Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine--Driving Without Liability Insurance

To sustain the charge of aggravated driving with a drug, substance, or compound in breath, blood, or urine, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, there was any amount of a drug, substance, or compound in his breath, blood, or urine resulting from the unlawful consumption of [(cannabis) (____, a controlled substance) (any intoxicating compound) (methamphetamine); and

Third Proposition: That at the time the defendant [(drove)(was in actual physical control of)] a vehicle, the defendant [(knew)(should have known)] that the vehicle he was [(driving) (in actual physical control of)] was not covered by a liability insurance policy.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(6) and 625 ILCS 5/11-501(d)(1)(I) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(I), effective January 1, 2006. Section 11-501 was also amended by P.A. 95-355, effective January 1, 2008 (adding "methamphetamine"), and Section 11-501(a)(1) was amended by P.A. 90-779, effective January 1, 1999 (adding "breath").

Give Instruction 23.75D.

When applicable, insert in the blank the name of the controlled substance.

When applicable, give Instruction 4.25, defining "intoxicating compound".

When actual physical control is an issue, give Instruction 23.43.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving with a drug, substance, or compound in breath, blood, or urine under Section 11-501(d)(1)(I) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.76E Issues In Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine--Defendant Does Not Possess Drivers License

To sustain the charge of aggravated driving with a drug, substance, or compound in breath, blood, or urine, the State must prove the following propositions:

First Proposition: That the defendant [(drove) (was in actual physical control of)] a vehicle; and

Second Proposition: That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, there was any amount of a drug, substance, or compound in his breath, blood, or urine resulting from the unlawful use or consumption of [(cannabis) (____, a controlled substance) (an intoxicating compound) (methamphetamine)]; and

Third Proposition: That at the time the defendant [(drove)(was in actual physical control of)] a vehicle, the defendant did not possess a drivers license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(6) and 625 ILCS 5/11-501(d)(1)(H) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(H), effective January 1, 2006. Section 11-501 was also amended by P.A. 95-355, effective January 1, 2008 (adding "methamphetamine"), and Section 11-501(a)(1) was amended by P.A. 90-779, effective January 1, 1999 (adding "breath").

Give Instruction 23.75E.

When applicable, give Instruction 4.25, defining "intoxicating compound".

When applicable, insert in the blank the name of the controlled substance.

When actual physical control is an issue, give Instruction 23.43.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving with a drug, substance, or compound in breath, blood, or urine under Section 11-501(d)(1)(H) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.76F Issues In Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine--Driving A School Bus With Persons 18 Years Of Age Or Younger On Board

To sustain the charge of aggravated driving with a drug, substance, or compound in breath, blood, or urine, the State must prove the following propositions:

First Proposition: That the defendant drove a school bus; and

Second Proposition: That at the time the defendant drove a school bus, there was any amount of a drug, substance, or compound in his breath, blood, or urine resulting from the unlawful use or consumption of [(cannabis) (____, a controlled substance) (an intoxicating compound) (methamphetamine)]; and

Third Proposition: That at the time the defendant drove a school bus, there were persons 18 years of age or younger on board.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-501(a)(6) and 625 ILCS 5/11-501(d)(1)(B) (West 2010) (formerly Ill. Rev. Stat. ch. 95 1/2 §§11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A.88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992. P.A. 93-800, effective January 1, 2005, changed "children" to "persons 18 years of age or younger". Section 11-501 was also amended by P.A. 95-355, effective January 1, 2008 (adding "methamphetamine"), 11-501(a)(1) amended by P.A. 90-779, effective January 1, 1999 (adding "breath").

Give Instruction 23.75F.

When applicable, give Instruction 4.25, defining "intoxicating compound".

When applicable, insert in the blank the name of the controlled substance.

In People v. Ziltz, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in People v. Gassman, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving with a drug, substance, or compound in breath, blood, or urine under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also People v. Teschner, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

23.77 Definition Of Improper Lane Usage

A person commits the offense of improper lane usage when he drives a vehicle on a roadway which has been divided into two or more clearly marked lanes for traffic and he [(does not drive as nearly as practicable entirely within a single lane) (moves from his lane of traffic without first ascertaining that such movement can be made with safety)].

Committee Note

625 ILCS 5/11-709(a) (West 1995) (formerly Ill.Rev.Stat. ch. 951/2, §11-709(a)).

Give Instruction 23.78.

In People v. Smith, 172 Ill.2d 289, 665 N.E.2d 1215, 216 Ill.Dec. 658 (1996), the Court held that section 11-709(a) establishes two separate requirements for proper lane usage.

Section 11-709 of the Vehicle Code is titled "Driving on Roadways Laned for Traffic," but is commonly referred to as "improper lane usage." See People v. Smith, 269 Ill.App.3d 962, 647 N.E.2d 310, 207 Ill.Dec. 348 (4th Dist. 1995).

For a definition of the terms "roadway" and "vehicle," see 625 ILCS 5/1-179 and 1-217 (West 1995) (formerly Ill.Rev.Stat. ch. 951/2, §§1-179 and 1-217).

Use applicable bracketed material.

23.78 Issues In Improper Lane Usage

To sustain the charge of improper lane usage, the State must prove the following propositions:

First Proposition: That the defendant drove a vehicle on a roadway which was divided into two or more clearly marked lanes for traffic; and

Second Proposition: That when the defendant did so, he [(did not drive as nearly as practicable entirely within a single lane) (moved from his lane of traffic without first ascertaining that such movement could be made with safety)].

If you find from your consideration of all the evidence that each one of these propositions has been proven beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proven beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/11-709(a) (West 1995) (formerly Ill.Rev.Stat. ch. 951/2, §11-709(a)).

Give Instruction 23.77.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

24-25.00.
DEFENSES

INTRODUCTION

Chapters 24 and 25 of the original IPI instructions are combined in this edition into one chapter. This has been done to bring the presentation of affirmative defense instructions into conformity with the general format followed in most of this edition (*i.e.*, the definitional instruction followed immediately by the issues instruction).

The Committee believes that elements or issues of an affirmative defense should be treated in two ways: *first*, by definition following the definition of the crime with which the defendant is charged; *second*, in the same instruction with the issues or elements of the crime and the State's burden of proof. See Chapters 6 through 23, *supra*. The appropriate issues and burden of proof defenses instruction should be superimposed upon the appropriate issues and burden of proof crimes instruction so that the jury receives a single instruction covering all of the issues in the case. See Chapter 27, *infra*, for examples.

24-25.01 Definition Of Insanity

A person is insane and not criminally responsible for his conduct if at the time of the conduct, as a result of mental disease or mental defect, he lacks substantial capacity [either] to appreciate the criminality of his conduct [or to conform his conduct to the requirements of the law

[Abnormality manifested only by repeated criminal, or otherwise anti-social conduct, is not mental disease or mental defect.]

Committee Note

720 ILCS 5/6-2 (West 1994) (formerly Ill.Rev.Stat. ch. 38, §6-2), amended by P.A. 89-404, effective August 20, 1995.

Give this instruction when the issue is properly one for the jury. See Introduction to this Chapter.

P.A. 89-404, effective August 20, 1995, modified the insanity defense by eliminating the volitional prong, which provided that a person is insane if, as a result of a mental disease or defect, he lacks substantial capacity to conform his conduct to the requirements of law. Accordingly, for offenses allegedly committed on or after August 20, 1995, do not use the bracketed material in the first paragraph of this instruction. P.A. 89-404 also changed the defendant's burden to establish the insanity defense from “preponderance of the evidence” to “clear and convincing evidence.”

Give the bracketed second paragraph only when the evidence shows repeated criminal or other anti-social conduct. People v. Fierer, 124 Ill.2d 176, 529 N.E.2d 972, 124 Ill.Dec. 855 (1988); People v. Foster, 43 Ill.App.3d 490, 356 N.E.2d 1288, 2 Ill.Dec. 1 (5th Dist.1976); People v. Bourlef, 52 Ill.App.2d 437, 202 N.E.2d 46 (3d Dist.1964).

Give Instruction 2.03B, concerning burden of proof in insanity cases.

24-25.01A Issues In Defense Of Insanity

[Place at the top of this instruction the issues for the offense charged.]

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of ____], your deliberations [on this charge] should end, and you should return the verdict of not guilty [of ____].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations [on this charge] to decide whether the defendant has proved by a preponderance of the evidence that he is not guilty by reason of insanity [of ____].

You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity until and unless you have first determined that the State has proved the defendant guilty beyond a reasonable doubt [of ____].

If you find from your consideration of all the evidence that the defendant has proved by [(clear and convincing evidence) (a preponderance of the)] evidence that he is not guilty by reason of insanity [of ____], your deliberations [on this charge] should end, and you should return the verdict of not guilty by reason of insanity [of ____].

If you find from your consideration of all the evidence that the defendant has not proved by [(clear and convincing evidence) (a preponderance of the)] evidence that he is not guilty by reason of insanity, you should find the defendant guilty [of ____].

Committee Note

720 ILCS 5/6-2(e) (West, 1999) formerly Ill.Rev.Stat. ch. 38, §6-2(e) (1991).

Give Instruction 24-25.01, defining "insanity" and Instruction 4.18, defining the phrase "preponderance of the evidence."

These paragraphs should be included in the issues instructions for each charge when the defense of insanity has been raised. These paragraphs should be substituted for the two concluding paragraphs which otherwise are present in the issues instructions for all charges. Give these admonitions to the jury immediately following the listing of the propositions which the State must prove. When the jury is instructed on both insanity and the guilty but mentally ill verdict, do not use this instruction; instead, use Instruction 24-25.01D. When both first degree murder and second degree murder also are in issue, give the appropriate instructions chosen from 24-25.01E through 24-25.01K.

The Committee takes no position on the question of whether the special verdict form of guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See People v. Gurga, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986); People v. Fields, 170 Ill.App.3d 1, 523 N.E.2d 1196, 120 Ill.Dec. 285 (1st Dist.1988)

For crimes committed on or after January 1, 1984 up to August 19, 1995, P.A. 83-288 places the burden on a defendant to prove his insanity by a preponderance of the evidence. *See* People v. Skorka, 147 Ill.App.3d 976, 498 N.E.2d 607, 101 Ill.Dec. 283 (1st Dist. 1986); People v. Hickman, 143 Ill.App.3d 195, 492 N.E.2d 1041, 97 Ill.Dec. 382 (5th Dist. 1986). For these offenses, use the bracketed phrase "preponderance of the evidence." Give Instruction 4.18 defining the phrase "preponderance of the evidence."

However, for crimes committed August 20, 1995 and after, P.A. 89-404 places the burden on the defendant to establish the insanity defense by "clear and convincing evidence." Accordingly, for offenses allegedly committed on August 20, 1995 and after, use the bracketed phrase "clear and convincing evidence." Give Instruction 4.19 defining the phrase "clear and convincing evidence."

Use applicable bracketed material.

24-25.01b Guilty But Mentally Ill

A person may be found guilty but mentally ill and is not relieved of criminal responsibility for his conduct if at the time of the commission of the offense he was not insane but was suffering from a mental illness.

Committee Note

720 ILCS 5/6-2(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38,§6-2(c) (1991)).

For an example of the use of this instruction, see Sample Sets 27.04A and 27.04B.

24-25.01C Definition Of Mentally Ill

A person is mentally ill if, at the time of the commission the offense, he was afflicted by a substantial disorder of thought, mood, or behavior which impaired his judgment, but not to the extent that he was unable to appreciate the wrongfulness of his behavior [or was unable to conform his conduct to the requirements of the law].

Committee Note

720 ILCS 5/6-2 (West 1994) (formerly Ill.Rev.Stat. ch. 38, §6-21), amended by P.A. 89-404, effective August 20, 1995.

P.A. 89-404, effective August 20, 1995, modified the definition of mentally ill, by eliminating the volitional prong of the insanity defense, which provided that a person is insane if, as a result of a mental disease or defect, he lacks substantial capacity to conform his conduct to the requirements of the law. Accordingly, for offenses committed on or after August 20, 1995, do not use the bracketed material.

24-25.01D Issues In Defense Of Insanity When Jury Is To Be Instructed On Guilty But Mentally Ill Verdict

[Place at the top of this instruction the issues for the offense charged.]

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of ____], your deliberations [on this charge] should end, and you should return the verdict of not guilty [of ____].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations [on this charge] to decide whether the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity [of ____].

You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity until and unless you have first determined that the State has proved the defendant guilty beyond a reasonable doubt [of ____].

If you find from your consideration of all the evidence that the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity [of ____], your deliberations [on this charge] should end, and you should return the verdict of not guilty by reason of insanity [of ____].

If you find from your consideration of all the evidence that the defendant has not proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity [of ____], then you should continue your deliberations [on this charge] to determine whether the defendant is guilty but mentally ill [of ____].

A special verdict of guilty but mentally ill may be returned by you instead of a general verdict of guilty if you find each of the following circumstances to be present in this case:

First: That the State has proved beyond a reasonable doubt that the defendant is guilty of ____; and

Second: That the defendant has not proved by [(clear and convincing) (a preponderance of the)] evidence that he was insane at the time he committed the offense of ____; and

Third: That the defendant has proved by a preponderance of the evidence that he was mentally ill at the time he committed the offense of ____.

If you find from your consideration of all the evidence that each one of these circumstances is present, you may return the special verdict finding the defendant guilty but mentally ill [of ____].

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt that the defendant is guilty of ____ and if you find that either the second or third circumstance concerning the guilty but mentally ill verdict is not present, you should return the general verdict finding the defendant guilty [of ____].

Committee Note

720 ILCS 5/6-2(e) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §§6-2(e) and 115-4(j)), amended by P.A. 89-404, effective August 20, 1995.

P.A. 86-392, effective January 1, 1990, amended Section 115-4(j) by (1) repealing the previous requirement of Section 115-4(j) that the State had to prove beyond a reasonable doubt that the defendant was not insane, and (2) placing the burden on the defendant to prove by a preponderance of the evidence that he was mentally ill. The first of these changes makes Section 115-4(j) consistent with Section 6-2(e). See People v. Fierer, 124 Ill.2d 176, 529 N.E.2d 972,

124 Ill.Dec. 855 (1988), for the court's discussion of the problems presented by the previous statute. The Committee takes no position as to whether P.A. 86-392 applies to offenses committed before January 1, 1990, but tried after that date.

P.A. 89-404, effective August 20, 1995, modified the insanity defense by eliminating the volitional prong, which provided that a person is insane if, as a result of a mental disease or defect, he lacks substantial capacity to conform his conduct to the requirements of law. P.A. 89-404 also changed the defendant's burden to establish the insanity defense from "preponderance of the evidence" to "clear and convincing evidence." Accordingly, for offenses allegedly committed on or after August 20, 1995, use the bracketed phrase "clear and convincing."

For offenses allegedly occurring before August 20, 1995, give Instruction 4.18, defining the phrase "preponderance of the evidence." For offenses allegedly occurring on or after August 20, 1995, give Instruction 4.19, defining the phrase "clear and convincing evidence."

Give Instruction 24-25.01, defining "insanity," Instruction 24-25.01B, defining "guilty but mentally ill," and Instruction 24-25.01C, defining "mentally ill."

When insanity or guilty but mentally ill is an issue in a first degree murder and second degree murder case, give the appropriate instruction to be chosen from Instructions 24-25.01E through 24-25.01K.

These paragraphs should be included in the issues instructions for each charge when the defense of insanity has been raised and the evidence warrants providing the jury with a special verdict form of guilty but mentally ill as to each offense charged. These paragraphs should be substituted for the two concluding paragraphs which otherwise are present in the issues instructions for all charges. Give these admonitions to the jury immediately following the listing of the propositions which the State must prove.

Do not use this instruction if the jury is to be instructed on the insanity defense, but, for whatever reason, the special verdict form of guilty but mentally ill is not to be provided to the jury. The Committee takes no position on the question of whether the special verdict form of guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See People v. Gurga, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986); People v. Fields, 170 Ill.App.3d 1, 523 N.E.2d 1196, 120 Ill.Dec. 285 (1st Dist.1988). The Committee takes no position on whether the phrase "may be returned" is permissive or mandatory. See Gurga.

Use applicable bracketed material if more than one charge is at issue.

24-25.01E Issues In Defense Of Insanity When Jury Is To Be Instructed On Both First Degree Murder And Second Degree Murder (Provocation)--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict

[Place at the top of this instruction the issues for the offense charged.]

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of first degree murder], your deliberations [on these charges] should end, and you should return the verdict of not guilty [of first degree murder].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is probably more true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of ____, acted under a sudden and intense passion resulting from serious provocation by [(the deceased) (some other person he endeavored to kill, but he negligently or accidentally killed the deceased)].

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity on the charge of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity on the charge of first degree murder.

You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity on either the charge of first degree murder or the charge of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

If you find from your consideration of all the evidence that the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity, then you should find the defendant not guilty by reason of insanity of whichever murder charge, either first degree murder or second degree murder, you found earlier to be applicable, your deliberations [on that charge] should end, and you should return a verdict of not guilty by reason of insanity on that murder charge.

If you find from your consideration of all the evidence that the defendant has not proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity, you should find the defendant guilty of whichever murder charge, either first degree murder or second degree murder, you found earlier to be applicable, and you should return a verdict of guilty on that murder charge.

If you find from your consideration of all the evidence that the defendant has not proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity, you should find the defendant guilty of whichever murder charge, either first degree murder or second degree murder, you found earlier to be applicable, and you should return a verdict of guilty on that murder charge.

Committee Note

720 ILCS 5/6-2(c) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §6-2(e)), amended by P.A. 89-404, effective August 20, 1995.

Give Instruction 24-25.01, defining "insanity."

P.A. 89-404, effective August 20, 1995, modified the insanity defense by eliminating the volitional prong, which provided that a person is insane if, as a result of mental disease or defect, he lacks substantial capacity to conform his conduct to the requirements of law. P.A. 89-404 also changed the burden on the defendant to establish the insanity defense from "preponderance of the evidence" to "clear and convincing evidence." Accordingly, for offenses allegedly committed on or after August 20, 1995, use the bracketed phrase "clear and convincing."

For offenses allegedly occurring before August 20, 1995, give Instruction 4.18, defining the phrase "preponderance of the evidence." For offenses allegedly occurring on or after August 20, 1995, give Instruction 4.19, defining the phrase "clear and convincing evidence."

These paragraphs should be included in the issues instructions for first degree murder when the court has determined that the jury should be instructed on both the insanity defense and second degree murder based upon provocation. Give these paragraphs to the jury immediately following the listing of the propositions which the State must prove in Instruction 7.04A.

When the jury is to be instructed on the insanity defense and second degree murder (provocation), and is also to receive the special verdict form of guilty but mentally ill, do not use this instruction; instead, use Instruction 24-25.01F. The Committee takes no position on the question of whether the special verdict form on guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See People v. Gurga, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986); People v. Fields, 170 Ill.App.3d 1, 523 N.E.2d 1196, 120 Ill.Dec. 285 (1st Dist.1988).

See Committee Notes for Instructions 7.04A, 24-25.01, 24-25.01A, and 24-25.01D.

Use bracketed material if there is more than one charge at issue.

24-25.01F Issues In Defense Of Insanity When Jury Is To Be Instructed On First And Second Degree Murder (Provocation) And The Guilty But Mentally Ill Verdict

[Place at the top of this instruction the issues for the offense charged.]

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of first degree murder], your deliberations [on these charges] should end, and you should return the verdict of not guilty [of first degree murder].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of ____, acted under a sudden and intense passion resulting from serious provocation by [(the deceased) (some other person he endeavored to kill, but he negligently or accidentally killed the deceased)].

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity on the charge of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity on the charge of first degree murder.

You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity on either the charge of first degree murder or the charge of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

If you find from your consideration of all the evidence that the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity, then you should find the defendant not guilty by reason of insanity of whichever murder charge, either first degree murder or second degree murder, you found earlier to be applicable, your deliberations [on that charge] should end, and you should return a verdict of not guilty by reason of insanity on that murder charge.

If you find from your consideration of all the evidence that the defendant has not proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity of first degree or second degree murder, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill on that murder charge.

A special verdict of guilty but mentally ill may be returned by you instead of a general verdict of guilty if you find each of the following circumstances to be present in this case:

First: That the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder; and

Second: That the defendant has not proved by [(clear and convincing) (a preponderance of the)] evidence that he was insane at the time he committed whichever murder you found earlier to apply; and

Third: That the defendant has proved by a preponderance of the evidence that he was mentally ill at the time he committed that murder.

If you find from your consideration of all the evidence that each one of these circumstances concerning the guilty but mentally ill verdict is present, you may return the special verdict finding the defendant guilty but mentally ill of the murder charge that you found earlier to be applicable.

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder and if you find that either the second or third circumstance concerning the guilty but mentally ill verdict is not present, you should return the general verdict finding the defendant guilty of the murder charge that you found earlier to be applicable.

Committee Note

720 ILCS 5/6-2(e), 9-2(a)(1), 9-2(b), 9-2(c) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §§6-2(e), 9-2(a)(1), 9-2(b), 9-2(c), and 115-4(j), amended by P.A. 89-404, effective August 20, 1995. P.A. 86-392, effective January 1, 1990, amended Section 115-4(j) by (1) repealing the previous requirement of Section 115-4(j) that the State had to prove beyond a reasonable doubt the defendant was not insane, and (2) placing the burden on the defendant to prove by a preponderance of the evidence that he was mentally ill. The first of these changes makes Section 115-4(j) consistent with Section 6-2(e). See People v. Fierer, 124 Ill.2d 176, 529 N.E.2d 972, 124 Ill.Dec. 855 (1988), for the court's discussion of the problems presented by the previous statute. The Committee takes no position as to whether P.A. 86-392 applies to offenses committed before January 1, 1990, but tried after that date.

P.A. 89-404, effective August 20, 1995, modified the insanity defense by eliminating the volitional prong, which provided that a person is insane if, as a result of a mental disease or defect, he lacks substantial capacity to conform his conduct to the requirements of law. P.A. 89-404 also changed the defendant's burden to establish the insanity defense from "preponderance of the evidence" to "clear and convincing evidence." Accordingly, for offenses allegedly committed on or after August 20, 1995, use the bracketed phrase "clear and convincing."

Give Instruction 24-25.01, defining "insanity," Instruction 24-25.01B, defining "guilty but mentally ill," and Instruction 24-25.01C, defining "mentally ill."

For offenses allegedly occurring before August 20, 1995, give Instruction 4.18, defining the phrase "preponderance of the evidence." For offenses allegedly occurring on or after August 20, 1995, give Instruction 4.19, defining the phrase "clear and convincing evidence."

These paragraphs should be included in the issues instructions for first degree murder when the jury is to be instructed on second degree murder (provocation) and the insanity defense,

and is also to receive the special verdict form of guilty but mentally ill. Give these admonitions to the jury immediately following the listing of the propositions in Instruction 7.04A which the State must prove.

See Committee Notes for Instructions 7.04A, 24-25.01D, and 24-25.01E.

Use bracketed material if more than one charge is at issue.

24-25.01G Issues In Defense Of Insanity When Jury Is To Be Instructed On Both First Degree Murder And Second Degree Murder (Belief In Justification)--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict

[Place at the top of this instruction the issues for the offense charged.]

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of first degree murder], your deliberations [on these charges] should end, and you should return the verdict of not guilty [of first degree murder].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of ____, believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable.

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity on the charge of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity on the charge of first degree murder.

You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity on either the charge of first degree murder or the charge of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

If you find from your consideration of all the evidence that the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity, then you should find the defendant not guilty by reason of insanity of whichever murder charge, either first degree murder or second degree murder, you found earlier to be applicable, your deliberations [on that charge] should end, and you should return a verdict of not guilty by reason of insanity on that murder charge.

If you find from your consideration of all the evidence that the defendant has not proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity, you should find the defendant guilty of whichever murder charge, either first degree murder or second degree murder, you found earlier to be applicable, and you should return a verdict of guilty on that murder charge.

Committee Note

720 ILCS 5/6-2 (West 1994) (formerly Ill.Rev.Stat. ch. 38, §§6-2(e), 9-2(a)(1), 9-2(b), 9-2(c), and 115-4(j), amended by P.A. 89-404, effective August 20, 1995.

Give Instruction 24-25.01, defining "insanity."

P.A. 89-404, effective August 20, 1995, modified the insanity defense by eliminating the volitional prong, which provided that a person is insane if, as a result of a mental disease or defect, he lacks substantial capacity to conform his conduct to the requirements of law. P.A. 89-404 also changed the defendant's burden to establish the insanity defense from "preponderance of the evidence" to "clear and convincing evidence." Accordingly, for offenses allegedly committed on or after August 20, 1995, use the bracketed phrase "clear and convincing."

For offenses allegedly occurring before August 20, 1995, give Instruction 4.18, defining the phrase "preponderance of the evidence." For offenses allegedly occurring on or after August 20, 1995, give Instruction 4.19, defining the phrase "clear and convincing evidence."

These paragraphs should be included in the issues instructions for first degree murder when the court has determined that the jury should be instructed on both the insanity defense and second degree murder based upon provocation. Give these paragraphs to the jury immediately following the listing of the propositions which the State must prove in Instruction 7.04A.

When the jury is to be instructed on the insanity defense and second degree murder (provocation), and is also to receive the special verdict form of guilty but mentally ill, do not use this instruction; instead, use Instruction 24-25.01F. The Committee takes no position on the question of whether the special verdict form on guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See People v. Gurga, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986); People v. Fields, 170 Ill.App.3d 1, 523 N.E.2d 1196, 120 Ill.Dec. 285 (1st Dist.1988).

See Committee Notes for Instructions 7.04A, 24-25.01, 24-25.01A, and 24-25.01D.

Use bracketed material if more than one charge is at issue.

24-25.01H Issues In Defense Of Insanity When Jury Is To Be Instructed On First And Second Degree Murder (Belief In Justification) And The Guilty But Mentally Ill Verdict

[Place at the top of this instruction the issues for the offense charged.]

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of first degree murder], your deliberations [on these charges] should end, and you should return a verdict of not guilty [of first degree murder].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of ____, believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable.

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity on the charge of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity on the charge of first degree murder.

You may not consider whether the defendant has met the burden of proving that he is not guilty by reason of insanity on either the charge of first degree murder or the charge of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

If you find from your consideration of all the evidence that the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity, then you should find the defendant not guilty by reason of insanity of whichever murder charge, either first degree murder or second degree murder, you found earlier to be applicable, your deliberations [on that charge] should end, and you should return a verdict of not guilty by reason of insanity on that murder charge.

If you find from your consideration of all the evidence that the defendant has not proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity of first degree murder or second degree murder, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill on that murder charge.

A special verdict of guilty but mentally ill may be returned by you instead of a general verdict of guilty if you find each of the following circumstances to be present in this case:

First: That the State has proved beyond a reasonable doubt each of the previously stated

propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder; and

Second: That the defendant has not proved by [(clear and convincing) (a preponderance of the)] evidence that he was insane at the time he committed whichever murder you found earlier to apply; and

Third: That the defendant has proved by a preponderance of the evidence that he was mentally ill at the time he committed that murder.

If you find from your consideration of all the evidence that each one of these circumstances concerning the guilty but mentally ill verdict is present, you may return the special verdict finding the defendant guilty but mentally ill of the murder charge that you found earlier to apply.

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder and if you find that either the second or third circumstance concerning the guilty but mentally ill verdict is not present, you should return a general verdict finding the defendant guilty of the murder charge that you found earlier to be applicable.

Committee Note

720 ILCS 5/6-2(e), 9-2(a)(2), 9-2(c) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §§6-2(e), 9-2(a)(2), 9-2(c), and 115-4(j), amended by P.A. 89-404, effective August 20, 1995. P.A. 86-392, effective January 1, 1990, amended Section 115-4(j) by (1) repealing the previous requirement of Section 115-4(j) that the State had to prove beyond a reasonable doubt that the defendant was not insane, and (2) placing the burden on the defendant to prove by a preponderance of the evidence that he was mentally ill. The first of these changes makes Section 115-4(j) consistent with Section 6-2(e). See People v. Fierer, 124 Ill.2d 176, 529 N.E.2d 972, 124 Ill.Dec. 855 (1988), for the court's discussion of the problems presented by the previous statute. The Committee takes no position as to whether P.A. 86-392 applies to offenses committed before January 1, 1990, but tried after that date.

P.A. 89-404, effective August 20, 1995, modified the insanity defense by eliminating the volitional prong, which provided that a person is insane if, as a result of a mental disease or defect, he lacks substantial capacity to conform his conduct to the requirements of law. P.A. 89-404 also changed the defendant's burden to establish the insanity defense from "preponderance of the evidence" to "clear and convincing evidence." Accordingly, for offenses allegedly committed on or after August 20, 1995, use the bracketed phrase "clear and convincing."

Give Instruction 24-25.01, defining "insanity," Instruction 24-25.01B, defining "guilty but mentally ill," and Instruction 24-25.01C, defining "mentally ill."

For offenses allegedly occurring before August 20, 1995, give Instruction 4.18, defining the phrase "preponderance of the evidence." For offenses allegedly occurring on or after August 20, 1995, give Instruction 4.19, defining the phrase "clear and convincing evidence."

These paragraphs should be included in the issues instruction for first degree murder when the jury is also to be instructed on second degree murder (belief of justification) and the insanity defense, and is also to receive the special verdict form of guilty but mentally ill. Give

these admonitions to the jury immediately following the listing of the propositions in Instruction 7.06A which the State must prove.

See Committee Notes for Instructions 7.06A, 24-25.01D, and 24-25.01G.

Use bracketed material if more than one charge is at issue.

24-25.01I Issues When Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On The Insanity Defense

[Place at top of this instruction the issues for the offense charged.]

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of ____], your deliberations [on this charge] should end, and you should return a verdict of not guilty [of ____].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill [on this charge].

A special verdict of guilty but mentally ill may be returned by you instead of a general verdict of guilty if you find each of the following circumstances to be present in this case:

First: That the State has proved beyond a reasonable doubt that the defendant is guilty of ____; and

Second: That the defendant has not proved by a preponderance of the evidence that he was insane at the time he committed ____; and

Third: That the defendant has proved by a preponderance of the evidence that he was mentally ill at the time he committed ____.

If you find from your consideration of all the evidence that each one of these circumstances is present, you may return the special verdict finding the defendant guilty but mentally ill [of ____].

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt that the defendant is guilty of ____ and if you find that either the second or third circumstances concerning the guilty but mentally ill verdict is not present, you should return the general verdict finding the defendant guilty [of ____].

Committee Note

Chapter 38, Section 115-4(j). P.A. 86-392, effective January 1, 1990, amended Section 115-4(j) by (1) repealing the previous requirement of Section 115-4(j) that the State had to prove beyond a reasonable doubt the defendant was not insane, and (2) placing the burden on the defendant to prove by a preponderance of the evidence that he was mentally ill. The first of these changes makes Section 115-4(j) consistent with Section 6-2(e). See People v. Fierer, 124 Ill.2d 176, 529 N.E.2d 972, 124 Ill.Dec. 855 (1988), for the court's discussion of the problems presented by the previous statute. The Committee takes no position as to whether P.A. 86-392 applies to offenses committed before January 1, 1990, but tried after that date.

Give Instruction 24-25.01, defining “insanity,” Instruction 24-25.01B, defining “guilty but mentally ill,” Instruction 4.18, defining the phrase “preponderance of the evidence,” and Instruction 24-25.01C, defining “mentally ill.”

Do not use this instruction if the jury is to be instructed on the insanity defense.

Do not use this instruction if the jury is to be instructed on second degree murder.

These paragraphs should be included in the issues instructions for each charge when the evidence warrants providing the jury with a special verdict form of guilty but mentally ill as to each offense charged. These paragraphs should be substituted for the two concluding paragraphs

which otherwise are present in the issues instructions for all charges. Give these admonitions to the jury immediately following the listing of the propositions which the State must prove.

The Committee takes no position on whether the phrase “may be returned” is permissive or mandatory. People v. Gurga, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986).

For crimes committed on or after January 1, 1984, P.A. 83-288 places the burden on a defendant to prove his insanity by a preponderance of the evidence. See People v. Skorka, 147 Ill.App.3d 976, 498 N.E.2d 607, 101 Ill.Dec. 283 (1st Dist.1986); People v. Hickman, 143 Ill.App.3d 195, 492 N.E.2d 1041, 97 Ill.Dec. 382 (5th Dist.1986).

Use bracketed material if there is more than one charge at issue.

24-25.01J Issues When The Jury Is To Be Instructed On First And Second Degree Murder (Provocation) And The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On The Insanity Defense

[Place at the top of this instruction the issues for the offense charged.]

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of first degree murder], your deliberations [on this charge] should end, and you should return a verdict of not guilty [of first degree murder].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of ____, acted under a sudden and intense passion resulting from serious provocation by [(the deceased) (some other person he endeavors to kill, but he negligently or accidentally kills the deceased)].

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that he is guilty of the lesser offense of second degree murder instead of first degree murder, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill of the offense of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that he is guilty of the lesser offense of second degree murder instead of first degree murder, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill of the offense of first degree murder.

A special verdict of guilty but mentally ill may be returned by you instead of a general verdict of guilty if you find each of the following circumstances to be present in this case:

First: That the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder; and

Second: That the defendant has not proved by a preponderance of the evidence that he was insane at the time he committed whichever murder you found earlier to apply; and

Third: That the defendant has proved by a preponderance of the evidence that he was mentally ill at the time he committed that murder.

If you find from your consideration of all the evidence that each one of these circumstances concerning the guilty but mentally ill verdict is present, you may return the special verdict finding the defendant guilty but mentally ill of the murder charge that you found earlier to apply.

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder and if you find that either the second or third circumstance concerning the guilty but mentally ill verdict is not present, you

should return the general verdict finding the defendant guilty of the murder charge that you found earlier to be applicable.

Committee Note

Chapter 38, Section 9-2(a)(1), 9-2(b), 9-2(c), and 115-4(j). P.A. 86-392, effective January 1, 1990, amended Section 115-4(j) by (1) repealing the previous requirement of Section 115-4(j) that the State had to prove beyond a reasonable doubt that the defendant was not insane, and (2) placing the burden on the defendant to prove by a preponderance of the evidence that he was mentally ill. The first of these changes makes Section 115-4(j) consistent with Section 6-2(e). See People v. Fierer, 124 Ill.2d 176, 529 N.E.2d 972, 124 Ill.Dec. 855 (1988), for the court's discussion of the problems presented by the previous statute. The Committee takes no position as to whether P.A. 86-392 applies to offenses committed before January 1, 1990, but tried after that date.

Give Instruction 24-25.01B, defining "guilty but mentally ill," Instruction 24-25.01C, defining "mentally ill," Instruction 4.18, defining the phrase "preponderance of the evidence," and Instruction 24-25.01, defining "insanity."

Do not use this instruction if the jury is to be instructed on the insanity defense.

The Committee takes no position on whether the phrase "may be returned" is permissive or mandatory. See People v. Gurga, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986).

See Committee Notes for Instructions 7.04A and 24-25.01D.

Use bracketed material if there is more than one charge at issue.

24-25.01K Issues When Jury Is To Be Instructed On First And Second Degree Murder (Belief In Justification) And The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On The Insanity Defense

[Place at the top of this instruction the issues for the offense charged.]

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of first degree murder], your deliberations [on this charge] should end, and you should return a verdict of not guilty [of first degree murder].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of ____, believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable.

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that he is guilty of the lesser offense of second degree murder instead of first degree murder, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill of the offense of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that he is guilty of the lesser offense of second degree murder instead of first degree murder, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill of the offense of first degree murder.

A special verdict of guilty but mentally ill may be returned by you instead of a general verdict of guilty if you find each of the following circumstances to be present in this case:

First: That the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder; and

Second: That the defendant has not proved by a preponderance of the evidence that he was insane at the time he committed whichever murder you found earlier to apply; and

Third: That the defendant has proved by a preponderance of the evidence that he was mentally ill at the time he committed that murder.

If you find from your consideration of all the evidence that each one of these circumstances concerning the guilty but mentally ill verdict is present, you may return the special verdict finding the defendant guilty but mentally ill of the murder charge that you found earlier to apply.

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder and if you find that either the second or third circumstances concerning the guilty but mentally ill verdict is not present, you should return the general verdict finding the defendant guilty of the murder charge that you

found earlier to be applicable.

Committee Note

Chapter 38, Section 9-2(a)(2), 9-2(c), and 115-4(j). P.A. 86-392, effective January 1, 1990, amended Section 115-4(j) by (1) repealing the previous requirement of Section 115-4(j) that the State had to prove beyond a reasonable doubt that the defendant was not insane, and (2) placing the burden on the defendant to prove by a preponderance of the evidence that he was mentally ill. The first of these changes makes Section 115-4(j) consistent with Section 6-2(e). See People v. Fierer, 124 Ill.2d 176, 529 N.E.2d 972, 124 Ill.Dec. 855 (1988), for the court's discussion of the problems presented by the previous statute. The Committee takes no position as to whether P.A. 86-392 applies to offenses committed before January 1, 1990, but tried after that date.

Give Instruction 24-25.01B, defining "guilty but mentally ill," Instruction 24-25.01C, defining "mentally ill," Instruction 4.18, defining the phrase "beyond a reasonable doubt," and Instruction 24-25.01, defining "insanity."

Do not use this instruction if the jury is to be instructed on the insanity defense.

The Committee takes no position on whether the phrase "may be returned" is permissive or mandatory. See People v. Gurga, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986).

See Committee Notes for Instructions 7.06A and 24-25.01D.

Use bracketed material if there is more than one charge at issue.

24-25.02 Definition Of Voluntary Intoxication Or Drugged Condition

A voluntarily [(intoxicated) (drugged)] person is criminally responsible for his conduct unless his [(intoxication) (drugged condition)] is so extreme as to suspend the power of reason and render him incapable of forming a specific intent which is an element of the offense of ____.

[A voluntarily [(intoxicated) (drugged)] condition is not a defense to the charge of ____.]

Committee Note

Committee Note Approved July 29, 2016

720 ILCS 5/6-3(a) (West, 2002).

Give Instruction 24-25.02A.

Public Act 92-466, effective January 1, 2002, amended Section 6-3 of the Criminal Code to delete voluntary intoxication or drugged condition as an affirmative defense.

Public Act 85-670, effective January 1, 1988, amended Section 6-3(a) of the Criminal Code to change the definition of voluntarily intoxicated or drugged condition. For offenses allegedly committed before that date, use the form of this instruction as it appeared in the IPI-Criminal Second Edition (1981). *See People v. Marinez*, 196 Ill.App.3d 316, 553 N.E.2d 765, 143 Ill.Dec. 58 (3d Dist.1990).

Under the statute before January 1, 1988, a voluntarily intoxicated or drugged condition was not a defense where the mental state involved is recklessness or wilfulness. *See People v. Arndt*, 50 Ill.2d 390, 280 N.E.2d 230 (1972); *People v. Olson*, 60 Ill.App.3d 535, 377 N.E.2d 371, (4th Dist.1978). Since January 1, 1988, it is a defense only to crimes with an element of specific intent. Accordingly, the Committee believes use of the bracketed paragraph might be appropriate in a case in which the jury is to be instructed both on (1) an offense to which voluntary intoxication or drugged condition is a defense, and (2) an offense to which voluntary intoxication or drugged condition is *not* a defense. In this situation, the latter offense should be inserted in the blank in the bracketed paragraph.

This instruction does not relate to involuntary intoxication or drugged condition. See Instructions 24-25.03 and 24-25.03A.

Insert in the first blank the name of the appropriate offense to which this instruction applies.

Use applicable bracketed material.

24-25.02A Issue In Defense Of Voluntary Intoxication Or Drugged Condition

____ *Proposition:* That at the time of the offense, the defendant's voluntarily intoxicated or drugged condition was not so extreme as to suspend the power of reason and render him incapable of forming a specific intent which is an element of the offense of ____.

Committee Note

Committee Note Approved July 29, 2016

720 ILCS 5/6-3(a) (West,2002).

Public Act 92-466, effective January 1, 2002, amended Section 6-3 of the Criminal Code to delete voluntary intoxication or drugged condition as an affirmative defense.

Give Instruction 24-25.02 and see its Committee Note.

Give this issue as the final proposition in the issues instruction for the offense charged.

For offenses allegedly committed before January 1, 1988, use the form of this instruction as it appeared in the IPI-Criminal Second Edition (1981).

Insert in the blank the number of the proposition.

24-25.03 Involuntary Intoxication Or Drugged Condition

A person who is in [(an intoxicated) (a drugged)] condition which has been involuntarily produced is not criminally responsible for his conduct if the condition deprives him of substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

Committee Note

720 ILCS 5/6-3(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §6-3(b) (1991)).

Give Instruction 24-25.03A.

Give this instruction when the issue is properly one for the jury. See Introduction to this Chapter. See People v. King, 58 Ill.App.3d 199, 373 N.E.2d 1045, 15 Ill.Dec. 573 (4th Dist.1978).

Use applicable bracketed material.

24-25.03A Issue In Defense Of Involuntary Intoxication Or Drugged Condition

____ *Proposition:* That at the time of the offense, the defendant had substantial capacity to appreciate the criminality of his conduct and to conform his conduct to the requirements of law.

Committee Note

720 ILCS 5/6-3(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §6-3(b) (1991)).

Give Instruction 24-25.03.

Give this issue as the final proposition in the issues instruction for the offense charged.

Insert in the blank the number of the proposition.

24-25.04 Definition Of Entrapment

It is a defense to the charge made against the defendant that he was entrapped, that is, that for the purpose of obtaining evidence against the defendant, he was incited or induced by [(a public officer) (a public employee) (an agent of a public officer) (an agent of a public employee)] to commit an offense.

However, the defendant was not entrapped if he was predisposed to commit the offense and [(a public officer) (a public employee) (an agent of a public officer) (an agent of a public employee)] merely afforded to the defendant the opportunity or facility for committing an offense.

Committee Note

720 ILCS 5/7-12 (West 1994) (formerly Ill.Rev.Stat. ch. 38, §7-12 (1991)), amended by P.A. 89-332, effective August 17, 1995, which added that a defendant was not entrapped if "he was predisposed to commit the offense."

Give Instruction 24-25.04A.

Give this instruction when the issue is properly one for the jury. See Introduction to this Chapter.

The defense of entrapment is not available to a defendant who denies having committed or participated in the unlawful transaction. People v. Landwer, 166 Ill.2d 475, 655 N.E.2d 848, 211 Ill.Dec. 465 (1995); People v. Fleming, 50 Ill.2d 141, 277 N.E.2d 872 (1971); People v. Calcaterra, 33 Ill.2d 541, 213 N.E.2d 270 (1965).

Use applicable bracketed material.

24-25.04A Issues In Defense Of Entrapment

____ *Proposition:* That the defendant was not entrapped.

Committee Note

720 ILCS 5/7-12 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §7-12 (1991)).

Give Instruction 24-25.04.

Give this issue as the final proposition in the issues instruction for the offense charged.

Insert in the blank the number of the proposition.

24-25.05 Alibi

Committee Note

The Committee recommends that no instruction be given on this subject.

Alibi is not an affirmative defense. People v. Pearson, 19 Ill.2d 609, 169 N.E.2d 252 (1960); People v. Shelton, 33 Ill.App.3d 871, 338 N.E.2d 585 (3d Dist.1975). See Chapter 38, Section 3-2.

The Committee decided to omit instructions on this subject because of its view that instructions should avoid commenting on particular types of evidence. See People v. Poe, 48 Ill.2d 506, 272 N.E.2d 28 (1971). See also People v. Therriault, 42 Ill.App.3d 876, 356 N.E.2d 999, 1 Ill.Dec. 717 (1st Dist.1976).

24-25.06 Use Of Force In Defense Of A Person

A person is justified in the use of force when and to the extent that he reasonably believes that such conduct is necessary to defend [(himself) (another)] against the imminent use of unlawful force.

[However, a person is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent [(imminent death or great bodily harm to [(himself) (another)]) (the commission of ____)].]

Committee Note

720 ILCS 5/7-1, 7-14, and 3-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§7-1, 7-14, and 3-2 (1991)).

Give Instruction 24-25.06A.

Use the bracketed paragraph when there is some evidence that the force used by the defendant was likely to cause death or great bodily harm. See People v. Kite, 153 Ill.2d 40, 44-45, 605 N.E.2d 563, 565, 178 Ill.Dec. 769, 771 (1992); People v. Everette, 141 Ill.2d 147, 565 N.E.2d 1295, 152 Ill.Dec. 377 (1990).

Give this instruction when the issue is properly one for the jury. See Introduction to this Chapter.

When applicable, insert in the blank the forcible felony.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Sets 27.01 and 27.05.

24-25.06A Issue In Defense Of Justifiable Use Of Force

____ *Proposition:* That the defendant was not justified in using the force which he used.

Committee Note

720 ILCS 5/7-1 through 7-9 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§7-1 through 7-9 (1991)).

Give Instruction 24-25.06.

Give this issue as the final proposition in the issues instruction for the offense charged.

Insert in the blank number of the proposition.

For an example of the use of this instruction, see Sample Set 27.06.

24-25.07 Use Of Force In Defense Of Dwelling

A person is justified in the use of force when and to the extent that he reasonably believes that such conduct is necessary to [(prevent) (terminate)] another's unlawful [(entry into) (attack upon)] a dwelling.

[However, a person is justified in the use of force which is intended or likely to cause death or great bodily harm only if

[1] the entry is made or attempted in a violent, riotous, or tumultuous manner and he reasonably believes that such force is necessary to prevent an [(assault upon) (offer of personal violence to)] himself or another then in the dwelling.

[or]

[2] he reasonably believes that such force is necessary to prevent the commission of a felony in the dwelling.]

Committee Note

720 ILCS 5/7-2, 7-14, and 3-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§7-2, 7-14, and 3-2 (1991)).

Give Instruction 24-25.06A.

Give this instruction when the trial court has determined there is some evidence as to use of force in defense of a dwelling. See People v. Kite, 153 Ill.2d 40, 44-45, 605 N.E.2d 563, 565, 178 Ill.Dec. 769, 771 (1992); People v. Everette, 141 Ill.2d 147, 565 N.E.2d 1295, 152 Ill.Dec. 377 (1990).

Use the bracketed paragraph when there is some evidence that the force used by the defendant was likely to cause death or great bodily harm.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

24-25.08 Use Of Force In Defense Of Property

A person is justified in the use of force when and to the extent that he reasonably believes that such conduct is necessary to [(prevent) (terminate)] another's [(trespass on) (wrongful interference with)] [(real property other than a dwelling) (personal property)] lawfully [(in his possession) (in the possession of another who is a member of his [(immediate family) (household)]) (in the possession of a person whose property he has a legal duty to protect)].

[However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent the commission of ____.]

Committee Note

720 ILCS 5/7-3, 7-4, and 3-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§7-3, 7-4, and 3-2 (1991)).

Give Instruction 24-25.06A.

Give this instruction when the trial court has determined there is some evidence as to use of force in defense of a property such that the issue is properly one for the jury. See People v. Kite, 153 Ill.2d 40, 44-45, 605 N.E.2d 563, 565, 178 Ill.Dec. 769, 771 (1992); People v. Everette, 141 Ill.2d 147, 565 N.E.2d 1295, 152 Ill.Dec. 377 (1990).

Use the bracketed paragraph when there is some evidence that the force used by the defendant was likely to cause death or great bodily harm.

When applicable, insert in the blank the forcible felony.

Use applicable paragraphs and bracketed material.

24-25.09 Initial Aggressor's Use Of Force

A person who initially provokes the use of force against himself is justified in the use of force only if

[1] the force used against him is so great that he reasonably believes he is in imminent danger of death or great bodily harm, and he has exhausted every reasonable means to escape the danger other than the use of force which is likely to cause death or great bodily harm to the other person.

[or]

[2] in good faith, he withdraws from physical contact with the other person and indicates clearly to the other person that he desires to withdraw and terminate the use of force, but the other person continues or resumes the use of force.

Committee Note

720 ILCS 5/7-4(c), 7-14, and 3-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§7-4(c), 7-14, and 3-2 (1991)).

See People v. Barnett, 48 Ill.App.3d 121, 362 N.E.2d 420, 5 Ill.Dec. 949 (4th Dist.1977); People v. Crue, 47 Ill.App.3d 771, 362 N.E.2d 430, 6 Ill.Dec. 1 (4th Dist.1977).

Use applicable paragraphs.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Sets 27.01 and 27.05.

24-25.09X Non-Initial Aggressor--No Duty To Retreat

A person who has not initially provoked the use of force against himself has no duty to attempt to escape the danger before using force against the aggressor.

Committee Note

See People v. Hughes, 46 Ill.App.3d 490, 360 N.E.2d 1363, 4 Ill.Dec. 930 (1st Dist.1977); People v. Miller, 259 Ill.App.3d 257, 630 N.E.2d 1125, 197 Ill.Dec. 1 (1st Dist. 1994)

Give either 24-25.06 or 24-25.07 or 24-25.08.

In appropriate cases, both instruction 24-25.09 and 24-25.09X should be given. In other cases only one or the other instruction should be given.

24-25.10 Forcible Felon Not Entitled To Use Force

A person is not justified in the use of force if he is [(attempting to commit) (committing) (escaping after the commission of)] ____.

Committee Note

720 ILCS 5/7-4(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §7-4(a) (1991)).

Insert in the blank the forcible felony committed or attempted.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.05.

24-25.11 Provocation Of First Force As Excuse For Retaliation

A person is not justified in the use of force if he initially provokes the use of force against himself with the intent to use that force as an excuse to inflict bodily harm upon the other person.

Committee Note

720 ILCS 5/7-4(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §7-4(b) (1991)).

24-25.12 Peace Officer's Use Of Force In Making Arrest

A peace officer need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest or to defend [(himself) (another)] from bodily harm while making the arrest.

[However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent

[1] death or great bodily harm to [(himself) (another)].

[or]

[2] the arrest from being defeated by resistance or escape and the person to be arrested has committed or attempted ____ which involves the infliction or threatened infliction of great bodily harm.

[or]

[3] the arrest from being defeated by resistance or escape and the person to be arrested is attempting to escape by use of a deadly weapon or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.]

[A peace officer making an arrest pursuant to an invalid warrant is justified in the use of any force which he would be justified in using if the warrant were valid, unless he knows that such warrant is invalid.]

Committee Note

720 ILCS 5/7-5(a) and 2-13 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§7-5(a) and 2-13 (1991)), as amended by P.A. 84-1426, effective September 24, 1986.

Give Instruction 24-25.06A.

Use the first bracketed paragraph when there is some evidence that the force used by the defendant was likely to cause death or great bodily harm. See People v. Kite, 153 Ill.2d 40, 44-45, 605 N.E.2d 563, 565, 178 Ill.Dec. 769, 771 (1992); People v. Everette, 141 Ill.2d 147, 565 N.E.2d 1295, 152 Ill.Dec. 377 (1990). If used, also give Instruction 24-25.15.

Use the final bracketed paragraph when there is some evidence to present the issue to the jury.

Give Instruction 4.08, defining the term “peace officer,” and Instruction 4.09, defining the term “penal institution,” when appropriate.

See Instructions 24-25.13 and 24-25.14.

See People v. Taylor, 53 Ill.App.3d 810, 368 N.E.2d 950, 11 Ill.Dec. 342 (5th Dist.1977).

Insert in the blank in paragraph [2] the forcible felony committed or attempted.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

24-25.13 Peace Officer's Use Of Force To Prevent Escape From Custody

A peace officer who has an arrested person in his custody is justified in the use of any force which he reasonably believes to be necessary to prevent the escape of the arrested person or to defend [(himself) (another)] from bodily harm while preventing the escape.

[However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force

[1] is necessary to prevent death or great bodily harm to [(himself) (another)].

[or]

[2] is necessary to prevent the escape and the person attempting to escape has committed or attempted ____.

[or]

[3] is necessary to prevent the escape and the person is attempting to escape by use of a deadly weapon or otherwise indicates that he will endanger human life or inflict bodily harm unless prevented from escaping without delay.]

Committee Note

720 ILCS 5/7-5, 7-9, and 2-13 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§7-5, 7-9, and 2-13 (1991)).

Give Instruction 24-25.06A.

Use the bracketed paragraph when there is some evidence that the force used by the defendant was likely to cause death or great bodily harm. See People v. Kite, 153 Ill.2d 40, 44-45, 605 N.E.2d 563, 565, 178 Ill.Dec. 769, 771 (1992); People v. Everette, 141 Ill.2d 147, 565 N.E.2d 1295, 152 Ill.Dec. 377 (1990).

Give Instruction 4.08, defining the term “peace officer,” and Instruction 4.09, defining the term “penal institution,” when appropriate.

See Instruction 24-25.14 and 24-25.15.

When appropriate, insert in the blank the forcible felony committed or attempted.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

24-25.14 Peace Officer's Use Of Force To Prevent Escape From Penal Institution

A guard or other peace officer is justified in the use of force, including force likely to cause death or great bodily harm, which he reasonably believes to be necessary to prevent the escape from a penal institution of a person whom the officer reasonably believes to be lawfully detained in the institution [(under sentence for an offense) (awaiting trial for an offense) (awaiting commitment for an offense)].

Committee Note

720 ILCS 5/7-9(b), 2-13, and 2-14 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§7-9(b), 2-13, and 2-14 (1991)).

Give Instruction 24-25.06A.

Give Instruction 4.08, defining the term “peace officer,” and Instruction 4.09, defining the term “penal institution,” when appropriate.

Give Instruction 24-25.15 when appropriate.

Use applicable bracketed material.

24-25.15 Definition Of Force Likely To Cause Death Or Great Bodily Harm

Force which is likely to cause death or great bodily harm includes [(the firing of a firearm in the direction of the person to be arrested, even though no intent exists to kill or inflict great bodily harm) (the firing of a firearm at a vehicle in which the person to be arrested is riding)].

Committee Note

720 ILCS 5/7-8 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §7-8 (1991)).

Use applicable bracketed material.

24-25.16 Private Person's Use Of Force In Making Arrest--Not Summoned By Peace Officer

A private person who [(makes) (assists another private person in making)] a lawful arrest need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend [(himself) (another)] from bodily harm while making the arrest.

[However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to [(himself) (another)].]

Committee Note

720 ILCS 5/7-5(a) and 7-6(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§7-5(a) and 7-6(a) (1991)).

Give Instruction 24-25.06A.

Use the bracketed paragraph when there is some evidence that the force used by the defendant was likely to cause death or great bodily harm. See People v. Kite, 153 Ill.2d 40, 44-45, 605 N.E.2d 563, 565, 178 Ill.Dec. 769, 771 (1992); People v. Everette, 141 Ill.2d 147, 565 N.E.2d 1295, 152 Ill.Dec. 377 (1990).

Give Instruction 24-25.15 when appropriate.

Use applicable bracketed material.

24-25.17 Private Person's Use Of Force In Making Arrest--Summoned By Peace Officer

A private person who is summoned or directed by a peace officer to assist him need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest or to defend [(himself) (another)] from bodily harm while making the arrest.

[However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes

[1] that such force is necessary to prevent death or great bodily harm to [(himself) (another)].

[or]

[2] that such force is necessary to prevent the arrest from being defeated by resistance or escape and the person to be arrested has committed or attempted ____.

[or]

[3] that such force is necessary to prevent the arrest from being defeated by resistance or escape and the person to be arrested is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.]

[A private person who is summoned or directed by a peace officer to assist in making an arrest which is unlawful, is justified in the use of any force which he would be justified in using if the arrest were lawful, unless he knows that the arrest is unlawful.]

Committee Note

720 ILCS 5/7-5(a), 7-6(b), and 2-13 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§7-5(a), 7-6(b), and 2-13 (1991)).

Give Instruction 24-25.06A.

Give Instruction 24-25.15 when appropriate.

Use the first bracketed paragraph when there is some evidence that the force used by the defendant was likely to cause death or great bodily harm. See People v. Kite, 153 Ill.2d 40, 44-45, 605 N.E.2d 563, 565, 178 Ill.Dec. 769, 771 (1992); People v. Everette, 141 Ill.2d 147, 565 N.E.2d 1295, 152 Ill.Dec. 377 (1990).

Use the final bracketed paragraph when there is some evidence to make that paragraph an issue for the jury.

When applicable, insert in the blank the forcible felony committed or attempted.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

24-25.18 Private Person's Use Of Force To Prevent Escape--Not Summoned By Peace Officer

A private person who has an arrested person in his custody is justified in the use of any force which he reasonably believes to be necessary to prevent the escape of the arrested person, or to defend [(himself) (another)] from bodily harm while preventing the escape.

[However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to [(himself) (another)].]

Committee Note

720 ILCS 5/7-9(a), 7-5(a), and 7-6(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§7-9(a), 7-5(a), and 7-6(a) (1991)).

Give Instruction 24-25.06A.

Use the bracketed paragraph when there is some evidence that the force used by the defendant was likely to cause death or great bodily harm. See People v. Kite, 153 Ill.2d 40, 44-45, 605 N.E.2d 563, 565, 178 Ill.Dec. 769, 771 (1992); People v. Everette, 141 Ill.2d 147, 565 N.E.2d 1295, 152 Ill.Dec. 377 (1990).

Give Instruction 24-25.15 when appropriate.

Use applicable bracketed material.

24-25.19 Private Person's Use Of Force To Prevent Escape--Summoned By Peace Officer

A private person who is summoned or directed by a peace officer to assist him in preventing the escape of an arrested person is justified in the use of any force which he reasonably believes to be necessary to prevent the escape or to defend [(himself) (another)] from bodily harm while preventing the escape.

[However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes

[1] that such force is necessary to prevent death or great bodily harm to [(himself) (another)].

[or]

[2] that such force is necessary to prevent the escape and the person escaping has committed or attempted ____.

[or]

[3] that such force is necessary to prevent the escape and the person is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless prevented from escaping without delay.]

[A private person who is summoned or directed by a peace officer to assist in preventing an escape from an arrest which is unlawful, is justified in the use of any force which he would be justified in using if the arrest were lawful, unless he knows that the arrest is unlawful.]

Committee Note

720 ILCS 5/7-5(a), 7-6(b), and 7-9(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§7-5(a), 7-6(b), and 7-9(a) (1991)).

Give Instruction 24-25.06A.

Give Instruction 24-25.15 when appropriate.

Use the first bracketed paragraph when there is some evidence that the force used by the defendant was likely to cause death or great bodily harm. See People v. Kite, 153 Ill.2d 40, 44-45, 605 N.E.2d 563, 565, 178 Ill.Dec. 769, 771 (1992); People v. Everette, 141 Ill.2d 147, 565 N.E.2d 1295, 152 Ill.Dec. 377 (1990).

Use the final bracketed paragraph when there is some evidence to present that issue to the jury.

When applicable, insert in the blank the forcible felony committed or attempted.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and

should not be included in the instruction submitted to the jury.

24-25.20 Private Person's Use Of Force In Resisting Arrest

A person is not authorized to use force to resist an arrest which he knows is being made by a [(peace officer) (private person summoned and directed by a peace officer to make the arrest)], even if he believes that the arrest is unlawful and the arrest in fact is unlawful.

Committee Note

720 ILCS 5/7-7(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §7-7(a) (1991)).

Use applicable bracketed material.

24-25.21 Definition Of Compulsion

It is a defense to the charge made against the defendant that he acted under the compulsion of threat or menace of the imminent infliction of death or great bodily harm, if he reasonably believed death or great bodily harm would be inflicted upon him if he did not perform the conduct with which he is charged.

Committee Note

720 ILCS 5/7-11 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §7-11 (1991)).

Give Instruction 24-25, 21A.

This defense is not available when the charge is murder. People v. Gleckler, 82 Ill.2d 145, 411 N.E.2d 849, 44 Ill.Dec. 483 (1980).

Give this instruction when the issue is properly one for the jury. See Introduction to this Chapter.

24-25.21A Issue In Defense Of Compulsion

____ *Proposition:* That the defendant did not act under compulsion.

Committee Note

720 ILCS 5/7-11 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §7-11 (1991)).

Give Instruction 24-25.21.

Give this issue as the final proposition in the issues instruction for the offense charged.

Insert in the blank the number of the proposition.

24-25.22 Necessity

Conduct which would otherwise be an offense is justifiable by reason of necessity if the defendant was without blame in occasioning or developing the situation and reasonably believed that such conduct was necessary to avoid a public or private injury greater than the injury which might reasonably result from his own conduct.

Committee Note

720 ILCS 5/7-13 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §7-13 (1991)).

Give Instruction 24-25.22A.

Give this instruction when the issue is properly one for the jury. See Introduction to this Chapter in the bound volume.

In a prosecution for the offense of escape, see People v. Unger, 66 Ill.2d 333, 362 N.E.2d 319, 5 Ill.Dec. 848 (1977).

This defense is not available for the offense of unlawful possession of a weapon by a person in custody of the Department of Corrections facilities, as set forth in 720 ILCS 5/24-1.1(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §24-1.1(b) (1991)). See 720 ILCS 5/24-1.1(d) (West 1992).

24-25.22A Issue In Defense Of Necessity

____ *Proposition:* That the defendant did not act out of necessity.

Committee Note

720 ILCS 5/7-13 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §7-13 (1991)).

Give Instruction 24-25.22.

Give this issue as the final proposition in the issues instruction for the offense charged.

Insert in the blank the number of the proposition.

24-25.23 Prosecutions Brought Under Exceptions To The Statute Of Limitations Normally Applicable

A prosecution for ____ must be commenced within [(3 years) (18 months)] after the alleged commission of that offense unless the following exception[s] [(is) (are)] present: ____.

The State has the burden of proving beyond a reasonable doubt that the above exception[s] [(is) (are)] present in this case.

Committee Note

720 ILCS 5/3-5, 3-6, 3-7, and 3-8 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§3-5, 3-6, 3-7, and 3-8 (1991)).

Give Instruction 24-25.23A.

In People v. Morris, 135 Ill.2d 540, 546, 554 N.E.2d 150, 153, 143 Ill.Dec. 215, 218 (1990), the supreme court wrote the following:

> "Where an indictment on its face shows that an offense was not committed within the applicable limitation period, it becomes an element of the State's case to allege and prove the existence of facts which invoke an exception to the limitation period. [Citation omitted.] As with other elements which the State must prove, such as the elements of the offense with which a defendant is being charged, '[t]he grounds upon which the People seek to wrest from a defendant the protection of section 3-5 of the Criminal Code [the statute of limitations] should be stated in the information with sufficient specificity to enable him to defend against them.' "

Insert in the first blank the name of the offense charged.

Insert in the second blank the exception relied upon by the State.

Use applicable bracketed material.

24-25.23A Issue In Statute Of Limitations Exceptions

____ *Proposition:* That an exception permitting this prosecution is present in this case.

Committee Note

720 ILCS 5/3-5, 3-6, 3-7, and 3-8 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§3-5, 3-6, 3-7, and 3-8 (1991)).

Give this proposition as the final proposition in the issues instruction for the offense charged.

Give Instruction 24-25.23, and see the Committee Note to that instruction.

Insert in the blank the number of the proposition.

24-25.24 Definition Of Defense Of Mistake Of Fact

A defendant's mistake as to a matter of fact is a defense if the mistake shows that the defendant did not have the [(intent) (knowledge) (recklessness)] necessary for the offense charged.

Committee Note

720 ILCS 5/4-8(a) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §4-8(a) (1991)).

Give Instruction 24-25.24A.

Give this instruction when the issue is properly one for the jury. See the Introduction to this Chapter in the bound volume.

In People v. Crane, 145 Ill.2d 520, 585 N.E.2d 99, 165 Ill.Dec. 703 (1991), the Illinois Supreme Court held that when the defendant presented some evidence supporting a mistake of fact defense and requested an instruction on that defense, it was reversible error for the trial court to not instruct the jury on the defendant's mistake of fact defense. The Committee thus decided that this instruction was necessary.

This instruction relates to the general affirmative defense instruction which tracks Section 4-8(a). That section provides as follows:

> "A person's ... mistake as to a matter of [fact] ... is a defense if it negates the existence of the mental state which [is] an element of the offense."

Select the mental state consistent with the charge.

24-25.24A Issues In Defense Of Mistake Of Fact

____ *Proposition:* That the defendant was not mistaken as to a matter of fact that would show he did not have the [(intent) (knowledge) (recklessness)] necessary for the offense charged.

Committee Note

720 ILCS 5/4-8(a) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §4-8(a) (1991)).

Give Instruction 24-25.24.

See Committee Note to Instruction 24-25.24 regarding the Illinois Supreme Court's decision in People v. Crane, 145 Ill.2d 520, 585 N.E.2d 99, 165 Ill.Dec. 703 (1991).

Insert in the blank the number of the proposition.

24-25.25 Defense To Home Invasion

It is a defense to the charge of home invasion that the defendant who knowingly enters the dwelling place of another and remains in such dwelling place until he [(knows) (has reason to know)] one or more persons is present [(immediately leaves such premises) (surrenders to the person or persons lawfully present therein)] without [(attempting to cause) (causing)] serious bodily injury to any person present therein.

Committee Note

720 ILCS 5/12-11(b) (West, 2003) (formerly Ill.Rev.Stat. ch. 38, Sec. 12-11(b)).

Give Instruction 24-25.25A.

Use applicable bracketed material.

24-25.25A Issue In Defense To Home Invasion

____ *Proposition:* That the defendant, when he [(knew) (had reason to know)] that one or more persons was present in such dwelling place, did not [(immediately leave such premises) (surrender to the person or persons lawfully present therein)] without [(attempting to cause) (causing)] serious bodily injury to any person present therein.

Committee Note

720 ILCS 5/12-11(b) (West, 2003) (formerly Ill.Rev.Stat. ch. 38, Sec. 12-11(b)).

Give Instruction 24-25.25.

Use applicable bracketed material.

Give this instruction as the final proposition in the issues instruction for the offense charged.

Insert in the blank the number of the proposition.

24-25.26 Exemption To Perjury--Contradictory Statements

Committee Note

720 ILCS 32-2(c) (West 2011) (formerly Ill.Rev.Stat. ch. 38, §32-2(c) (1991)).

The Committee recommends that no instruction be given on this subject.

Though the statute bars a prosecution where contradictory statements are made in the same continuous trial and the alleged offender admits in that same continuous trial the falsity of a contradictory statement, the decision whether the prosecution is barred is a question of law which should be decided by a trial court. Generally, bars to prosecution (*e.g.* speedy trial violations) are questions of law for the court, not the jury.

26.00
CONCLUDING INSTRUCTIONS AND FORMS OF VERDICTS

INTRODUCTORY NOTE

The instructions in this chapter should be given at the conclusion of the court's charge to the jury.

The Committee is aware of instances where a confused jury has returned logically or legally inconsistent verdicts. (For examples of problems the Committee is seeking to avoid, see People v. Hoffer, 106 Ill.2d 186, 478 N.E.2d 335, 88 Ill.Dec. 20 (1985) (guilty of murder, voluntary manslaughter, and involuntary manslaughter); People v. Spears, 130 Ill.App.3d 1006, 475 N.E.2d 8, 86 Ill.Dec. 202 (3d Dist.1985), judgment affirmed 112 Ill.2d 396, 493 N.E.2d 1030, 98 Ill.Dec. 9 (1986) (guilty of attempt murder, armed violence, and reckless conduct); People v. Coleman, 131 Ill.App.3d 76, 475 N.E.2d 565, 86 Ill.Dec. 351 (1st Dist.1985) (guilty of attempt murder and reckless conduct).) To avoid such confusion in future cases, the Committee has expanded these concluding instructions to be given to the jury and has made them more specific depending upon the particular charges to be considered by the jury and the relationship of those charges to each other.

As part of the Committee's plan to avoid jury confusion, the Committee has similarly expanded Chapter 2.00. (See Introductory Note to Chapter 2.00 and Instruction 2.01 *et seq.*) Thus the form of the 2.01 charging instruction should always correlate to the form of the 26.01 concluding instruction. For example, if Instruction 2.01E is given, then Instruction 26.01E must be given as well.

The Committee is aware that choosing among the 26.01 *et seq.* instructions at first may seem confusing and difficult. However, the Committee decided that having these options available to cover as many fact situations as possible would ultimately prove to be of great benefit to the bench and bar. Were these options not available, counsel and the court would be required in an appropriate case to concoct modifications of those instructions in IPI-Criminal closest to the case at hand. Devising instructions in the midst of a complex, perhaps hard-fought trial is not a desirable course of action. It is far preferable to permit the court and counsel to choose from among the detailed instructions provided by the Committee.

In the 28 instructions that comprise the 26.01 series, the Committee has attempted to provide a particular concluding instruction to meet any factual variation present when the jury is to be instructed about one or more of the following areas: second degree murder, involuntary manslaughter, lesser included offenses, the guilty but mentally ill verdict, and the insanity defense.

Only one instruction of the 26.01 series (and its corresponding partner from the 2.01 series) should be appropriate to any given set of facts. The Committee has attempted to anticipate and include all potential factual situations. If, however, the court determines that the Committee has failed to provide an instruction in the 26.01 series that is appropriate to the factual situation of the case on trial, the court should then utilize Instruction 26.01 and modify it as may be needed.

In People v. Reddick, 123 Ill.2d 184, 526 N.E.2d 141, 122 Ill.Dec. 1 (1988), the Illinois

Supreme Court changed how a jury should be instructed when it is to consider both murder and voluntary manslaughter as those offenses were defined prior to P.A. 84-1450, which created the offense of second degree murder. (See Committee Note to Instruction 7.02A.) The Committee believes that the instructions contained in parts II and III of the 26.01 series, dealing with first and second degree murder and involuntary manslaughter in various combinations, are fully applicable and useable to murder-voluntary manslaughter cases being tried under the statute in effect before amendments contained in P.A. 84-1450, with only three slight modifications: (1) any reference in a 26.01 instruction to first degree murder should be changed to murder, (2) any reference to second degree murder should be changed to voluntary manslaughter, and (3) the paragraph from each 26.01 instruction that refers to the defendant's burden of proving that he is guilty of the lesser offense of second degree murder should be deleted entirely. There is no need to substitute any language for the deleted paragraph.

Guidelines for Choosing Among the 26.01 Series Instructions

The 26.01 series has been divided into five parts to reduce the difficulty of finding the appropriate instruction for use in any given factual setting.

NEW TO THE FOURTH EDITION: THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM

The Committee has determined that in certain circumstances it would be valuable for the trial court to have the option to provide the alternative jury verdict choices for each charge on a single page. The Committee believes this would be particularly valuable where the jury is instructed as to lesser-included charges.

For example, in cases in which the jury is asked to select only one verdict from among several possible alternatives, the current practice is to present the jury with a separate page for each possible verdict. The trial judge instructs the jury to choose only one of the alternatives. The jury is told to sign only that one form and to leave the other pages blank. All the instructions in Chapter 26 are premised on this use of multiple forms printed on multiple pages.

As an alternative to this system, the Committee suggests that all alternative verdicts could be placed on one page. Jurors would then be told to check off the verdict they have chosen and then sign the form.

For example, assume a jury is faced with issues of first-degree murder and second-degree murder in the case of Arthur Fletcher. (This example is drawn from Sample Set 27.01 that appears in the next chapter.) Under the current system, the jury would receive the three alternative verdicts on three separate pages: one page for "not guilty"; one page for "guilty of first-degree murder"; and one page for "guilty of second-degree murder". The jury is then asked to return only one signed form.

The proposed new system would consolidate these three alternative verdicts on one page. It would read:

> "We, the jury, find the defendant:
> 1. ____ Arthur Fletcher not guilty.
> 2. ____ Arthur Fletcher guilty of first degree murder.
> 3. ____ Arthur Fletcher guilty of second degree murder.
> Indicate your unanimous verdict by checking only one of the choices above.
> [12 lines for the signatures of the Foreperson and eleven other jurors.]"

Throughout the Sample Sets in Chapter 27, an example of an alternative, single page, multiple verdict form is provided whenever applicable.

Please note that the use of this single page verdict form is merely optional. The instructions in Chapter 26 continue to assume the use of a separate page for each alternative verdict.

THEREFORE, IF THE TRIAL COURT DECIDES TO USE THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM, IT WILL BE NECESSARY TO REVISE THE INSTRUCTIONS FROM CHAPTER 26. The instructions should be revised to reflect the fact that the verdict options all appear on one page; that the jury must unanimously agree on one of those options; that the jury should indicate its choice by checking off the appropriate verdict; and that the form should then be signed by the jurors.

PART I.
GENERAL CONCLUDING INSTRUCTION

INTRODUCTORY NOTE

Instruction 26.01 is the general concluding instruction (with some modifications) that previously appeared in earlier editions of IPI-Criminal. It should be used when none of the 27 other, more specific, instructions from the 26.01 series is applicable.

26.01 Concluding Instruction--Jury Is Not To Be Instructed On A Lesser Included Offense--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Second Degree Murder

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict[s].

Your agreement on a verdict must be unanimous. Your verdict[s] must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of ____. You will receive two forms of verdict [as to each defendant]. You will be provided with both a "not guilty" and "guilty" form of verdict [as to each defendant]. From these two verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other verdict form [as to that defendant]. Sign only one verdict form [as to each defendant].

[or]

[2] The defendant[s] [(is) (are)] charged with the offenses of ____ and ____. You will receive ____ forms of verdict. As to each charge [and for each defendant], you will be provided with both a "not guilty" and "guilty" form of verdict. From these two verdict forms with regard to a particular charge, you should select the one verdict form that reflects your verdict on that charge [(as to each defendant) (as to a defendant so charged)] and sign it as I have stated. Do not write on the other verdict form on that charge [as to that defendant]. Sign only one verdict form on that charge [as to that defendant].

[or]

[3] The defendant[s] [(is) (are)] charged in different ways with the offense of ____. You will receive two forms of verdict pertaining to each particular way that the offense of ____ is charged. As to each particular way the offense of ____ is charged [and as to each defendant], you will be provided with both a "not guilty" and "guilty" form of verdict. >From these two verdict forms as to each particular way that the offense of ____ is charged, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other verdict form [as to that defendant]. Sign only one verdict form as to each particular way that the offense of ____ is charged [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01 must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on a lesser offense, (2) the jury is to be instructed on the insanity defense, (3) the jury is to be instructed on the guilty but mentally ill verdict, or (4) the jury is to be instructed on second degree murder.

The "offenses" named in the blanks should reflect those charges the jury will consider. Do not use this instruction, however, if the jury is to be instructed on a lesser included offense; instead, use one of the instructions from Part III of the 26.01 series (Instructions 26.01Q through 26.01X).

See Introductory Note at 26.00.

Use paragraph [1] when there is a single charge. Use paragraph [2] when there are multiple offenses charged.

When a defendant is charged in multiple counts with an offense that can be charged with different elements, paragraph [3] may be used if the court believes its use will assist the jury in deciding the issues. An example would be a defendant charged in three separate counts with aggravated battery based upon his alleged (1) causing great bodily harm, (2) causing bodily harm to a police officer, and (3) committing a battery upon a public way. Each of these charges is called aggravated battery, but each contains an element that must be proved beyond a reasonable doubt that neither of the other charges contains. Accordingly, a court may choose to distinguish on the verdict forms between the ways in which aggravated battery can be committed. If the court so chooses, then the opening sentence of the issues instructions as well as the guilty and not guilty verdict forms should be expanded to distinguish among the different ways a particular charge is before the jury. Examples are the following:

1) "To sustain the charge of aggravated battery *causing great bodily harm, ...*" (opening clause of an issues instruction); "We, the jury, find the defendant ____ not guilty of aggravated battery *causing great bodily harm*" (not guilty verdict form); "We, the jury, find the defendant ____ guilty of aggravated battery *causing great bodily harm*" (guilty verdict form).

2) "To sustain the charge of aggravated battery *upon a police officer, ...*" (opening clause of an issues instruction); "We, the jury, find the defendant ____ not guilty of aggravated battery *upon a police officer*" (not guilty verdict form); "We, the jury, find the defendant ____ guilty of aggravated battery *upon a police officer*" (guilty verdict form).

3) "To sustain the charge of aggravated battery *upon a public way, ...*" (opening clause of an issues instruction); "We, the jury, find the defendant ____ not guilty of aggravated battery *upon a public way*" (not guilty verdict form); "We, the jury, find the defendant ____ guilty of aggravated battery *upon a public way*" (guilty verdict form).

The emphasis in each of the previous examples is added for clarification to point out the distinguishing language in each example. No emphasis should be present in the actual instructions or verdict forms when they are submitted to the jury.

The Committee wishes to emphasize that distinguishing among the various ways in which a given charge is brought is not required by law. In People v. Travis, 170 Ill.App.3d 873, 525 N.E.2d 1137, 121 Ill.Dec. 830 (4th Dist.1988), the court rejected the argument that such distinctions were mandatory and stated the following: "the best rule is that the jury need only be unanimous with respect to the ultimate question of defendant's guilt or innocence of the crime charged, and unanimity is not required concerning alternate ways in which the crime can be committed . . . ." *Travis,* 170 Ill.App.3d at 890, 525 N.E.2d at 1147, 121 Ill.Dec. at 841. (But see *Unhappy Birthday: Illinois' "One Good Count" Rule is 160 and Unconstitutional,* 76 Ill.B.J. 604 (1988), in which Professor O'Neill argues that distinguishing among the various ways a charge is brought when the jury deliberates is constitutionally required.) Even though use of paragraph [3] is not mandatory in view of the Travis decision, the Committee believes that the court has the discretion to utilize that paragraph whenever the court believes such use would assist the jury.

When multiple offenses are charged and one of the charges is brought in multiple counts with different elements (like the aggravated battery charges discussed above), the court may use either paragraph [1] or paragraph [2], whichever may be applicable, in combination with paragraph [3]. Under these circumstances, the first sentence of paragraph [3] should be amended to read as follows: "The defendant[s] [(is) (are)] also charged in different ways with the offense of ____."

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.03.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

PART II.
FIRST AND SECOND DEGREE MURDER--NO INVOLUNTARY MANSLAUGHTER

26.01A Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty of second degree murder.

Accordingly, you will be provided with three verdict forms [as to each defendant]: "not guilty", "guilty of first degree murder", and "guilty of second degree murder".

From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other two verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01A must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever the jury is to be instructed only on first and second degree murder.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the insanity defense, (2) the jury is to be instructed on the guilty but mentally ill verdict, or (3) the jury is to be instructed on some charge other than first degree murder and second degree murder.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 26.01I.

See Introductory Note at 26.00.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well

as for court and counsel and should be in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.01A.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

Amendment to Committee Note to 26.01A

This instruction requires the trial court to provide the jury with a general "not guilty" verdict as well as a "guilty of first degree murder" and "guilty of second degree murder" verdict. There is no such verdict form as "not guilty of second degree murder" under our present statutory scheme. People v. Parker, 358 Ill. App. 3d 371, 832 N.E.2d 858, 295 Ill. Dec. 408 (1st Dist. 2005). See the discussion concerning this issue in the Committee Note to Instruction 26.01B.

26.01B Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) guilty of first degree murder; or (3) guilty of second degree murder.

[2] Accordingly, you will be provided with three verdict forms [as to each defendant]: "not guilty of first degree murder", "guilty of first degree murder", and "guilty of second degree murder".

[3] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other two verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[4] The defendant[s] [(is) (are)] also charged with the offense of ____. You will receive two forms of verdict [as to each defendant] as to this charge. You will be provided with both a "not guilty of ____", and a "guilty of ____" form of verdict [as to each defendant].

[5] From these two verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of ____ and sign it as I have stated. You should not write at all on the other verdict form pertaining to the charge of ____.

Committee Note

Whenever this instruction is given, Instruction 2.01B must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, and (2) the jury is to be instructed on some other charge or charges.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the insanity defense, or (2) the jury is to be instructed on the guilty but mentally ill verdict.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 26.01J.

See Introductory Note at 26.00.

Paragraphs [1], [2], and [3] should refer only to first degree murder and second degree murder.

Paragraphs [4] and [5] should be repeated for each separate charge that the jury is to be instructed upon. Insert in the blanks in those paragraphs the charge other than first and second degree murder about which the jury is to be instructed. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a

lesser offense included within that greater offense, then do not use paragraphs [4] and [5]; instead, use paragraphs [1], [2], and [3] of Instruction 26.01R in place of paragraphs [4] and [5], modifying the first sentence of paragraph [1] of Instruction 26.01R to read, "The defendant[s] [(is) (are)] also charged with the offense of [greater offense**]."**

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder and not guilty of second degree murder." Under the present statutory scheme concerning homicide offenses, there can be no such verdict as, "not guilty of second degree murder." See Sections 9-1 and 9-2. Only after the State has first proved the defendant guilty of first degree murder may the jury consider whether the defendant has met his burden of proving the existence of a mitigating factor to reduce his crime to the lesser offense of second degree murder. Thus, a finding by the jury that the defendant is not guilty of first degree murder bars the jury from considering second degree murder at all. Accordingly, the jury need be provided only with a verdict form of "not guilty of first degree murder".

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.05.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

26.01C Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty but mentally ill of first degree murder; or (4) guilty of second degree murder; or (5) guilty but mentally ill of second degree murder.

Accordingly, you will be provided with five verdict forms [as to each defendant]: "not guilty", "guilty of first degree murder", "guilty but mentally ill of first degree murder", "guilty of second degree murder", and "guilty but mentally ill of second degree murder".

From these five verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other four verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01C must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, and (2) the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the insanity defense, or (2) the jury is to be instructed on some charge other than first and second degree murder.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 26.01K.

See Introductory Note at 26.00.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

26.01D Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) guilty of first degree murder; or (3) guilty but mentally ill of first degree murder; or (4) guilty of second degree murder; or (5) guilty but mentally ill of second degree murder.

[2] Accordingly, you will be provided with five verdict forms [as to each defendant]: "not guilty of first degree murder", "guilty of first degree murder", "guilty but mentally ill of first degree murder", "guilty of second degree murder", and "guilty but mentally ill of second degree murder".

[3] From these five verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other four verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[4] The defendant[s] [(is) (are)] also charged with the offense of ____. Accordingly, you will be provided with three forms of verdict [as to each defendant] pertaining to the charge of ____: "not guilty of ____", "guilty of ____", and "guilty but mentally ill of ____".

[5] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of ____ and sign it as I have stated. You should not write at all on the other verdict forms pertaining to the charge of ____. Only one of these three verdict forms [as to each defendant] is to be signed by you.

Committee Note

Whenever this instruction is given, Instruction 2.01D must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on the guilty but mentally ill verdict, and (3) the jury is to be instructed on some other charge or charges.

This instruction should *not* be used when the jury is to be instructed on the insanity defense.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 26.01L.

See Introductory Note at 26.00.

Paragraphs [1], [2], and [3] should refer only to first degree murder and second degree murder.

Paragraphs [4] and [5] should be repeated for each separate charge that the jury is to be

instructed upon. Insert in the blanks in those paragraphs the charge other than first and second degree murder about which the jury is to be instructed. If an additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use paragraphs [4] and [5]; instead, use paragraphs [1], [2], and [3] of Instruction 26.01T in place of paragraphs [4] and [5], modifying the first sentence of paragraph [1] of Instruction 26.01T to read, "The defendant[s] [(is) (are)] also charged with the offense of [greater offense]."

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder and not guilty of second degree murder." Under the present statutory scheme concerning homicide offenses, there can be no such verdict as, "not guilty of second degree murder." Only after the State has first proved the defendant guilty of first degree murder may the jury consider whether the defendant has met his burden of proving the existence of a mitigating factor to reduce his crime to the lesser offense of second degree murder. Thus, a finding by the jury that the defendant is not guilty of first degree murder bars the jury from considering second degree murder at all. Accordingly, the jury need be provided only with a verdict form of "not guilty of first degree murder."

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

26.01E Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) not guilty by reason of insanity of second degree murder; or (5) guilty of second degree murder.

If you find that the State has proved the defendant[s] guilty beyond a reasonable doubt of the offense of first degree murder, you must then decide whether the defendant[s] [(has) (have)] proved by a preponderance of the evidence that [(the defendant) (either or both defendants)] [(is) (are)] guilty of the lesser offense of second degree murder.

Accordingly, you will be provided with five verdict forms [as to each defendant]: "not guilty", "not guilty by reason of insanity of first degree murder", "guilty of first degree murder", "not guilty by reason of insanity of second degree murder", and "guilty of second degree murder".

From these five verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other four verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01E must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, and (2) the jury is to be instructed on the insanity defense.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, or (2) the jury is to be instructed on some charge other than first and second degree murder.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 26.01M.

See Introductory Note at 26.00.

The Committee takes no position on the question of whether the special verdict form of guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See People v. Gurga, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986), for the proposition that "under appropriate facts, a defendant has a right to a judgment of 'guilty but mentally ill' instead of 'guilty'." *Gurga,* 150 Ill.App.3d at 167, 501 N.E.2d at 773, 103 Ill.Dec. at 456.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

26.01F Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) not guilty by reason of insanity of second degree murder; or (5) guilty of second degree murder.

[2] Accordingly, you will be provided with five verdict forms [as to each defendant]: "not guilty of first degree murder", "not guilty by reason of insanity of first degree murder", "guilty of first degree murder", "not guilty by reason of insanity of second degree murder", and "guilty of second degree murder".

[3] From these five verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other four verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[4] The defendant[s] [(is) (are)] also charged with the offense of ____. Accordingly, you will be provided with three forms of verdict [as to each defendant] pertaining to the charge of ____: "not guilty of ____", "not guilty by reason of insanity of ____", and "guilty of ____".

[5] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of ____ and sign it as I have stated. You should not write at all on the other verdict forms pertaining to the charge of ____. Only one of these three verdict forms [as to each defendant] is to be signed by you.

Committee Note

Whenever this instruction is given, Instruction 2.01F must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on the insanity defense, and (3) the jury is to be instructed on some other charge or charges.

This instruction should *not* be used when the jury is to be instructed on the guilty but mentally ill verdict.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 26.01N.

See Introductory Note at 26.00.

The Committee takes no position on the question of whether the special verdict form of guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See People v. Gurga, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986), for

the proposition that "under appropriate facts, a defendant has a right to a judgment of 'guilty but mentally ill' instead of 'guilty'." *Gurga,* 150 Ill.App.3d at 167, 501 N.E.2d at 773, 103 Ill.Dec. at 456.

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder and not guilty of second degree murder." Under the present statutory scheme concerning homicide offenses, there can be no such verdict as, "not guilty of second degree murder." See Sections 9-1 and 9-2. Only after the State has first proved the defendant guilty of first degree murder may the jury consider whether the defendant has met his burden of proving the existence of a mitigating factor to reduce his crime to the lesser offense of second degree murder. Thus, a finding by the jury that the defendant is not guilty of first degree murder bars the jury from considering second degree murder at all. Accordingly, the jury need be provided only with a verdict form of "not guilty of first degree murder."

Paragraphs [1], [2], and [3] should refer only to first degree murder and second degree murder.

Paragraphs [4] and [5] should be repeated for each separate charge that the jury is to be instructed upon. Insert in the blanks in those paragraphs the charge other than first and second degree murder about which the jury is to be instructed. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use paragraphs [4] and [5]; instead, use paragraphs [1], [2], and [3] of Instruction 26.01V in place of paragraphs [4] and [5], modifying the first sentence of paragraph [1] of Instruction 26.01V to read, "The defendant[s] [(is) (are)] also charged with the offense of [greater offense]."

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

26.01G Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; or (5) not guilty by reason of insanity of second degree murder; or (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder.

Accordingly, you will be provided with seven verdict forms [as to each defendant]: "not guilty", "not guilty by reason of insanity of first degree murder", "guilty of first degree murder", "guilty but mentally ill of first degree murder", "not guilty by reason of insanity of second degree murder", "guilty of second degree murder", and "guilty but mentally ill of second degree murder".

From these seven verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other six verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01G must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on the insanity defense, and (3) the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used when the jury is to be instructed on some charge other than first and second degree murder.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 26.01O.

See Introductory Note at 26.00.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.04B.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

26.01H Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; or (5) not guilty by reason of insanity of second degree murder; or (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder.

[2] Accordingly, you will be provided with seven verdict forms [as to each defendant]: "not guilty of first degree murder", "not guilty by reason of insanity of first degree murder", "guilty of first degree murder", "guilty but mentally ill of first degree murder", "not guilty by reason of insanity of second degree murder", "guilty of second degree murder", and "guilty but mentally ill of second degree murder".

[3] From these seven verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other six verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[4] The defendant[s] [(is) (are)] also charged with the offense of ____. Accordingly, you will be provided with four verdict forms [as to each defendant] pertaining to the charge of ____: "not guilty of ____", "not guilty by reason of insanity of ____", "guilty of ____", and "guilty but mentally ill of ____".

[5] From these four verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of ____ and sign it as I have stated. You should not write at all on the other verdict forms pertaining to the charge of ____. Only one of these four verdict forms [as to each defendant] is to be signed by you.

Committee Note

Whenever this instruction is given, Instruction 2.01H must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on the insanity defense, (3) the jury is to be instructed on the guilty but mentally ill verdict, and (4) the jury is to be instructed on some other charge or charges.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 26.01P.

See Introductory Note at 26.00.

Paragraphs [1], [2], and [3] should refer only to first degree murder and second degree murder.

Paragraphs [4] and [5] should be repeated for each separate offense that the jury is to be instructed upon. Insert in the blanks in those paragraphs the charge other than first and second degree murder about which the jury is to be instructed. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use paragraphs [4] and [5]; instead, use paragraphs [1], [2], and [3] of Instruction 26.01X in place of paragraphs [4] and [5], modifying the first sentence of paragraph [1] of Instruction 26.01X to read, "The defendant[s] [(is) (are)] also charged with the offense of [greater offense]."

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder and not guilty of second degree murder." Under the present statutory scheme concerning homicide offenses, there can be no such verdict as, "not guilty of second degree murder." See Sections 9-1 and 9-2. Only after the State has first proved the defendant guilty of first degree murder may the jury consider whether the defendant has met his burden of proving the existence of a mitigating factor to reduce his crime to the lesser offense of second degree murder. Thus, a finding by the jury that the defendant is not guilty of first degree murder bars the jury from considering second degree murder at all. Accordingly, the jury need be provided only with a verdict form of "not guilty of first degree murder."

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

PART III.
FIRST AND SECOND DEGREE MURDER AND INVOLUNTARY MANSLAUGHTER

26.01I Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is Not To Be Instructed On Any Other Charge

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty of second degree murder; or (4) guilty of involuntary manslaughter.

Accordingly, you will be provided with four verdict forms [as to each defendant]: "not guilty", "guilty of first degree murder", "guilty of second degree murder", and "guilty of involuntary manslaughter".

During your deliberations, you should first consider whether each of the propositions for first degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should continue as to the additional proposition regarding whether the defendant is guilty of second degree murder instead of first degree murder.

If you find that any of the propositions regarding first degree murder have not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

Under the law, if you find the defendant guilty of either first degree murder, second degree murder, or involuntary manslaughter, you can sign a guilty verdict on only one of these three offenses. Accordingly, if you find the defendant guilty of either first degree murder or second degree murder, that verdict would mean that the defendant is not guilty of involuntary manslaughter. Likewise, if you find the defendant guilty of involuntary manslaughter, that verdict would mean that the defendant is not guilty of first degree murder and second degree murder.

At the conclusion of your deliberations, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01I must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever the jury is to be instructed on first degree murder, second degree murder, and involuntary manslaughter. Accordingly, this instruction is to be used only in conjunction with either Instruction 7.04X (issues where jury instructed on first degree murder, second degree murder (provocation), and involuntary manslaughter), 7.06X (issues where jury instructed on first degree murder, second degree murder (belief in justification), and involuntary manslaughter), or 7.06Y (issues where jury instructed on first degree murder, second degree murder (both provocation and belief in justification), and involuntary manslaughter).

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the insanity defense, (2) the jury is to be instructed on the guilty but mentally ill verdict, (3) the jury is to be instructed on some charge other than first degree murder, second degree murder, and involuntary manslaughter, or (4) the jury is *not* to be instructed on first degree murder, second degree murder, *and* involuntary manslaughter.

See Introductory Note at 26.00.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with ...." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses are included to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

See Sample Set 27.06.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

26.01J Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is To Be Instructed On Some Other Charge Or Charges

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder and not guilty of involuntary manslaughter; or (2) guilty of first degree murder; or (3) guilty of second degree murder; or (4) guilty of involuntary manslaughter.

[2] Accordingly, you will be provided with four verdict forms [as to each defendant]: "not guilty of first degree murder and not guilty of involuntary manslaughter", "guilty of first degree murder", "guilty of second degree murder", and "guilty of involuntary manslaughter".

[3] During your deliberations, you should first consider whether each of the propositions for first degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should continue as to the additional proposition regarding whether the defendant is guilty of second degree murder instead of first degree murder.

[4] If you find that any of the propositions regarding first degree murder have not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

[5] Under the law, if you find the defendant guilty of either first degree murder, second degree murder, or involuntary manslaughter, you can sign a guilty verdict on only one of these three offenses. Accordingly, if you find the defendant guilty of either first degree murder or second degree murder, that verdict would mean that the defendant is not guilty of involuntary manslaughter. Likewise, if you find the defendant guilty of involuntary manslaughter, that verdict would mean that the defendant is not guilty of first degree murder and second degree murder.

[6] From these four verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[7] The defendant[s] [(is) (are)] also charged with the offense of ____. Accordingly, you will receive two verdict forms [as to each defendant] as to this charge. You will be provided with both a "not guilty of ____" and a "guilty of ____" verdict form [as to each defendant].

[8] From these two verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of ____ and sign it as I have stated. Do not write on the other verdict form pertaining to the charge of ____. Sign only one verdict form [as to each defendant] pertaining to the charge of ____.

Committee Note

Whenever this instruction is given, Instruction 2.01J must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, and (3) the jury is to be instructed on some other charge or charges. Accordingly, this instruction is to be

used in conjunction with either Instruction 7.04X (issues where jury instructed on first degree murder, second degree murder (provocation), and involuntary manslaughter), 7.06X (issues where jury instructed on first degree murder, second degree murder (belief in justification), and involuntary manslaughter), or 7.06Y (issues where jury instructed on first degree murder, second degree murder (both provocation and belief in justification), and involuntary manslaughter).

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the insanity defense, (2) the jury is to be instructed on the guilty but mentally ill verdict, or (3) the jury is *not* to be instructed on first degree murder, second degree murder *and* involuntary manslaughter.

See Introductory Note at 26.00.

Paragraphs [1] through [6] should refer only to first degree murder, second degree murder, and involuntary manslaughter.

Paragraphs [7] and [8] should be repeated for each separate charge upon which the jury is to be instructed. Insert in the blanks in those paragraphs the charge other than first and second degree murder and involuntary manslaughter about which the jury is to be instructed. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also to be instructed about a lesser offense included within that greater offense, then do not use paragraphs [7] and [8]; instead, use paragraphs [1], [2], and [3] of Instruction 26.01R in place of paragraphs [7] and [8], modifying the first sentence of paragraph [1] of Instruction 26.01R to read, "The defendant[s] [(is) (are)] also charged with the offense of [greater offense]."

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder and not guilty of second degree murder." Under the present statutory scheme concerning homicide offenses, there can be no such verdict as "not guilty of second degree murder." See Sections 9-1 and 9-2. Only after the State has first proved the defendant guilty of first degree murder may the jury consider whether the defendant has met his burden of proving the existence of a mitigating factor to reduce his crime to the lesser offense of second degree murder. Thus, a finding by the jury that the defendant is not guilty of first degree murder bars the jury from considering second degree murder at all. Accordingly, the jury need be provided only with a verdict form of "not guilty of first degree murder and not guilty of involuntary manslaughter."

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with ...." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses are included to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

26.01K Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty but mentally ill of first degree murder; or (4) guilty of second degree murder; or (5) guilty but mentally ill of second degree murder; or (6) guilty of involuntary manslaughter; or (7) guilty but mentally ill of involuntary manslaughter.

Accordingly, you will be provided with seven verdict forms [as to each defendant]: "not guilty", "guilty of first degree murder", "guilty but mentally ill of first degree murder", "guilty of second degree murder", "guilty but mentally ill of second degree murder", "guilty of involuntary manslaughter", and "guilty but mentally ill of involuntary manslaughter".

During your deliberations, you should first consider whether each of the propositions for first degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should continue as to the additional proposition regarding whether the defendant is guilty of second degree murder instead of first degree murder.

If you find that any of the propositions regarding first degree murder have not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

Under the law, if you find the defendant guilty of either first degree murder, second degree murder, or involuntary manslaughter, you can sign a guilty verdict on only one of these three offenses. Accordingly, if you find the defendant guilty of either first degree murder or second degree murder, that verdict would mean that the defendant is not guilty of involuntary manslaughter. Likewise, if you find the defendant guilty of involuntary manslaughter, that verdict would mean that the defendant is not guilty of first degree murder and second degree murder.

If you find the defendant is guilty of any one of these offenses, you should then go on with your deliberations to decide whether the defendant is guilty but mentally ill of that offense.

>From these seven verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other six verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01K must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, and (3) the jury is to be instructed on the guilty but mentally ill verdict. Accordingly, this instruction is to be used only in conjunction with either Instruction 7.04X (issues where jury instructed on first degree murder, second degree murder (provocation), and involuntary manslaughter), 7.06X

(issues where jury instructed on first degree murder, second degree murder (belief in justification), and involuntary manslaughter), or 7.06Y (issues where jury instructed on first degree murder, second degree murder (both provocation and belief in justification), and involuntary manslaughter).

See also Instructions 24-25.01J and 24-25.01K.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the insanity defense, (2) the jury is to be instructed on some charge other than first degree murder, second degree murder, and involuntary manslaughter, or (3) the jury is *not* to be instructed on first degree murder, second degree murder *and* involuntary manslaughter.

See Introductory Note at 26.00.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with ...." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses are included to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

26.01L Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder and not guilty of involuntary manslaughter; or (2) guilty of first degree murder; or (3) guilty but mentally ill of first degree murder; or (4) guilty of second degree murder; or (5) guilty but mentally ill of second degree murder; or (6) guilty of involuntary manslaughter; or (7) guilty but mentally ill of involuntary manslaughter.

[2] Accordingly, you will be provided with seven verdict forms [as to each defendant]: "not guilty of first degree murder and not guilty of involuntary manslaughter", "guilty of first degree murder", "guilty but mentally ill of first degree murder", "guilty of second degree murder", "guilty but mentally ill of second degree murder", "guilty of involuntary manslaughter", and "guilty but mentally ill of involuntary manslaughter".

[3] During your deliberations, you should first consider whether each of the propositions for first degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should continue as to the additional proposition regarding whether the defendant is guilty of second degree murder instead of first degree murder.

[4] If you find that any of the propositions regarding first degree murder have not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

[5] Under the law, if you find the defendant guilty of either first degree murder, second degree murder, or involuntary manslaughter, you can sign a guilty verdict on only one of these three offenses. Accordingly, if you find the defendant guilty of either first degree murder or second degree murder, that verdict would mean that the defendant is not guilty of involuntary manslaughter. Likewise, if you find the defendant guilty of involuntary manslaughter, that verdict would mean that the defendant is not guilty of first degree murder and second degree murder.

[6] If you find the defendant is guilty of any one of these three offenses, you should then go on with your deliberations to decide whether the defendant is guilty but mentally ill of that offense.

[7] From these seven verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other six verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[8] The defendant[s] [(is) (are)] also charged with the offense of ____. Accordingly, you will be provided with three verdict forms [as to each defendant] pertaining to the charge of ____: "not guilty of ____", "guilty of ____", and "guilty but mentally ill of ____".

[9] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of ____ and sign it as I have stated. Do not write on the other verdict forms pertaining to the charge of ____. Sign only one of these three verdict forms [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01L must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, (3) the jury is to be instructed on the guilty but mentally ill verdict, and (4) the jury is to be instructed on some other charge or charges. Accordingly, this instruction is to be used in conjunction with either Instruction 7.04X (issues where jury instructed on first degree murder, second degree murder (provocation), and involuntary manslaughter), 7.06X (issues where jury instructed on first degree murder, second degree murder (belief in justification), and involuntary manslaughter), or 7.06Y (issues where jury instructed on first degree murder, second degree murder (both provocation and belief in justification), and involuntary manslaughter).

See also Instructions 24-25.01J and 24-25.01K.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the insanity defense, or (2) the jury is *not* to be instructed on first degree murder, second degree murder, *and* involuntary manslaughter.

See Introductory Note at 26.00.

Paragraphs [1] through [7] should refer only to first degree murder, second degree murder, and involuntary manslaughter.

Paragraphs [8] and [9] should be repeated for each separate charge upon which the jury is to be instructed. Insert in the blanks in those paragraphs the charge other than first and second degree murder and involuntary manslaughter about which the jury is to be instructed. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use paragraphs [8] and [9]; instead, use paragraphs [1], [2], and [3] of Instruction 26.01T in place of paragraphs [8] and [9], modifying the first sentence of paragraph [1] of Instruction 26.01T to read, "The defendant[s] [(is) (are)] also charged with the offense of _____ [greater offense]."

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder and not guilty of second degree murder." Under the present statutory scheme concerning homicide offenses, there can be no such verdict as "not guilty of second degree murder." See Sections 9-1 and 9-2. Only after the State has first proved the defendant guilty of first degree murder may the jury consider whether the defendant has met his burden of proving the existence of a mitigating factor to reduce his crime to the lesser offense of second degree murder. Thus, a finding by the jury that the defendant is not guilty of first degree murder bars the jury from considering second degree murder at all. Accordingly, the jury need be provided only with a verdict form of "not guilty of first degree murder and not guilty of involuntary manslaughter."

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In

either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with ....” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses are included to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

26.01M Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) not guilty by reason of insanity of second degree murder; or (5) guilty of second degree murder; or (6) not guilty by reason of insanity of involuntary manslaughter; or (7) guilty of involuntary manslaughter.

Accordingly, you will be provided with seven verdict forms [as to each defendant]: "not guilty", "not guilty by reason of insanity of first degree murder", "guilty of first degree murder", "not guilty by reason of insanity of second degree murder", "guilty of second degree murder", "not guilty by reason of insanity of involuntary manslaughter", and "guilty of involuntary manslaughter".

During your deliberations, you should first consider whether each of the propositions for first degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should continue as to the additional proposition regarding whether the defendant is guilty of second degree murder instead of first degree murder.

If you find that any of the propositions regarding first degree murder have not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

Under the law, if you find the defendant guilty of either first degree murder, second degree murder, or involuntary manslaughter, you can sign a guilty verdict on only one of these three offenses. Accordingly, if you find the defendant guilty of either first degree murder or second degree murder, that verdict would mean that the defendant is not guilty of involuntary manslaughter. Likewise, if you find the defendant guilty of involuntary manslaughter, that verdict would mean that the defendant is not guilty of first degree murder and second degree murder.

If you find the defendant is guilty of any one of these offenses, you should then go on with your deliberations to decide whether the defendant is not guilty by reason of insanity of that offense.

From these seven verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other six verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01M must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, and (3) the

jury is to be instructed on the insanity defense. Accordingly, this instruction is to be used only in conjunction with either Instruction 7.04X (issues where jury instructed on first degree murder, second degree murder (provocation), and involuntary manslaughter), 7.06X (issues where jury instructed on first degree murder, second degree murder (belief in justification), and involuntary manslaughter), or 7.06Y (issues where jury instructed on first degree murder, second degree murder (both provocation and belief in justification), and involuntary manslaughter).

See also Instructions 24-25.01E and 24-25.01G.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, (2) the jury is to be instructed on any charge other than first degree murder, second degree murder, and involuntary manslaughter, or (3) the jury is *not* to be instructed on first degree murder, second degree murder, *and* involuntary manslaughter.

See Introductory Note at 26.00.

The Committee takes no position on the question of whether the special verdict form of guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See People v. Gurga, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986), for the proposition that "under appropriate facts, a defendant has a right to a judgment of 'guilty but mentally ill' instead of 'guilty'." *Gurga,* 150 Ill.App.3d at 167, 501 N.E.2d at 773, 103 Ill.Dec. at 456.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with ...." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses are included to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

26.01N Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder and not guilty of involuntary manslaughter; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) not guilty by reason of insanity of second degree murder; or (5) guilty of second degree murder; or (6) not guilty by reason of insanity of involuntary manslaughter; or (7) guilty of involuntary manslaughter.

[2] Accordingly, you will be provided with seven verdict forms [as to each defendant]: "not guilty of first degree murder and not guilty of involuntary manslaughter", "not guilty by reason of insanity of first degree murder", "guilty of first degree murder", "not guilty by reason of insanity of second degree murder", "guilty of second degree murder", "not guilty by reason of insanity of involuntary manslaughter", and "guilty of involuntary manslaughter".

[3] During your deliberations, you should first consider whether each of the propositions for first degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should continue as to the additional proposition regarding whether the defendant is guilty of second degree murder instead of first degree murder.

[4] If you find that any of the propositions regarding first degree murder have not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

[5] Under the law, if you find the defendant guilty of either first degree murder, second degree murder, or involuntary manslaughter, you can sign a guilty verdict on only one of these three offenses. Accordingly, if you find the defendant guilty of either first degree murder or second degree murder, that verdict would mean that the defendant is not guilty of involuntary manslaughter. Likewise, if you find the defendant guilty of involuntary manslaughter, that verdict would mean that the defendant is not guilty of first degree murder and second degree murder.

[6] If you find the defendant is guilty of one of these three offenses, you should go on with your deliberations to decide whether the defendant is not guilty by reason of insanity of that offense.

[7] From these seven verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other six verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[8] The defendant[s] [(is) (are)] also charged with the offense of ____. Accordingly, you will be provided with three verdict forms [as to each defendant] pertaining to the charge of ____: "not guilty of ____", "not guilty by reason of insanity of ____", and "guilty of ____".

[9] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of ____ and sign it as I have stated. Do not write on the other verdict forms pertaining to the charge of ____. Sign only one of these three verdict forms [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01N must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, (3) the jury is to be instructed on the insanity defense, and (4) the jury is to be instructed on some other charge or charges. Accordingly, this instruction is to be used in conjunction with either Instruction 7.04X (issues where jury instructed on first degree murder, second degree murder (provocation), and involuntary manslaughter), 7.06X (issues where jury instructed on first degree murder, second degree murder (belief in justification), and involuntary manslaughter), or 7.06Y (issues where jury instructed on first degree murder, second degree murder (both provocation and belief in justification), and involuntary manslaughter).

See also Instructions 24-25.01E and 24-25.01G.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, or (2) the jury is *not* to be instructed on first degree murder, second degree murder, *and* involuntary manslaughter.

See Introductory Note at 26.00.

The Committee takes no position on the question of whether the special verdict form of guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See People v. Gurga, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986), for the proposition that "under appropriate facts, a defendant has a right to a judgment of 'guilty but mentally ill' instead of 'guilty'." *Gurga*, 150 Ill.App.3d at 167, 501 N.E.2d at 773, 103 Ill.Dec. at 456.

Paragraphs [1] through [7] should refer only to first degree murder, second degree murder, and involuntary manslaughter.

Paragraphs [8] and [9] should be repeated for each separate charge upon which the jury is to be instructed. Insert in the blanks in those paragraphs the charge other than first and second degree murder and involuntary manslaughter about which the jury is to be instructed. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use paragraphs [8] and [9]; instead, use paragraphs [1], [2], and [3] of Instruction 26.01V in place of paragraphs [8] and [9], modifying the fist sentence of paragraph [1] of Instruction 26.01V to read, "The defendant[s] [(is) (are)] also charged with the offense of [greater offense]."

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder and not guilty of second degree murder." Under the present statutory scheme concerning homicide offenses, there can be no such verdict as "not guilty of second degree murder." See Sections 9-1 and 9-2. Only after the State has first proved the defendant guilty of first degree murder may the jury consider whether the defendant has met his burden of proving the existence of a mitigating factor to reduce his crime to the lesser offense of second degree murder. Thus, a finding by the jury that the defendant is not guilty of first degree

murder bars the jury from considering second degree murder at all. Accordingly, the jury need be provided only with a verdict form of "not guilty of first degree murder and not guilty of involuntary manslaughter."

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendant are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with ...." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses are included to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

26.01O Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; or (5) not guilty by reason of insanity of second degree murder; or (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder; or (8) not guilty by reason of insanity of involuntary manslaughter; or (9) guilty of involuntary manslaughter; or (10) guilty but mentally ill of involuntary manslaughter.

Accordingly, you will be provided with ten verdict forms [as to each defendant]: "not guilty", "not guilty by reason of insanity of first degree murder", "guilty of first degree murder", "guilty but mentally ill of first degree murder", "not guilty by reason of insanity of second degree murder", "guilty of second degree murder", "guilty but mentally ill of second degree murder", "not guilty by reason of insanity of involuntary manslaughter", "guilty of involuntary manslaughter", and "guilty but mentally ill of involuntary manslaughter".

During your deliberations, you should first consider whether each of the propositions for first degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should continue as to the additional proposition regarding whether the defendant is guilty of second degree murder instead of first degree murder.

If you find that any of the propositions regarding first degree murder have not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

Under the law, if you find the defendant guilty of either first degree murder, second degree murder, or involuntary manslaughter, you can sign a guilty verdict on only one of these three offenses. Accordingly, if you find the defendant guilty of either first degree murder or second degree murder, that verdict would mean that the defendant is not guilty of involuntary manslaughter. Likewise, if you find the defendant guilty of involuntary manslaughter, that verdict would mean that the defendant is not guilty of first degree murder and second degree murder.

If you find the defendant is guilty of any one of these offenses, you should then go on with your deliberations to decide whether the defendant is not guilty by reason of insanity of that offense.

If you find the defendant has not proved that he is not guilty by reason of insanity, you should then go on with your deliberations to decide whether the defendant is guilty but mentally ill of that offense.

From these ten verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other nine verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01O must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, (3) the jury is to be instructed on the insanity defense, and (4) the jury is to be instructed on the guilty but mentally ill verdict. Accordingly, this instruction is to be used only in conjunction with either Instruction 7.04X (issues where jury instructed on first degree murder, second degree murder (provocation), and involuntary manslaughter), 7.06X (issues where jury instructed on first degree murder, second degree murder (belief in justification), and involuntary manslaughter), or 7.06Y (issues where jury instructed on first degree murder, second degree murder (both provocation and belief in justification), and involuntary manslaughter).

See also Instructions 24-25.01F and 24-25.01H.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on any charge other than first degree murder, second degree murder, and involuntary manslaughter, or (2) the jury is *not* to be instructed on first degree murder, second degree murder, *and* involuntary manslaughter.

See Introductory Note at 26.00.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with ....” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses are included to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

26.01P Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder and not guilty of involuntary manslaughter; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; or (5) not guilty by reason of insanity of second degree murder; or (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder; or (8) not guilty by reason of insanity of involuntary manslaughter; or (9) guilty of involuntary manslaughter; or (10) guilty but mentally ill of involuntary manslaughter.

[2] Accordingly, you will be provided with ten verdict forms [as to each defendant]: "not guilty of first degree murder and not guilty of involuntary manslaughter", "not guilty by reason of insanity of first degree murder", "guilty of first degree murder", "guilty but mentally ill of first degree murder", "not guilty by reason of insanity of second degree murder", "guilty of second degree murder", "guilty but mentally ill of second degree murder", "not guilty by reason of insanity of involuntary manslaughter", "guilty of involuntary manslaughter", and "guilty but mentally ill of involuntary manslaughter".

[3] During your deliberations, you should first consider whether each of the propositions for first degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should continue as to the additional proposition regarding whether the defendant is guilty of second degree murder instead of first degree murder.

[4] If you find that any of the propositions regarding first degree murder have not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

[5] Under the law, if you find the defendant guilty of either first degree murder, second degree murder, or involuntary manslaughter, you can sign a guilty verdict on only one of these three offenses. Accordingly, if you find the defendant guilty of either first degree murder or second degree murder, that verdict would mean that the defendant is not guilty of involuntary manslaughter. Likewise, if you find the defendant guilty of involuntary manslaughter, that verdict would mean that the defendant is not guilty of first degree murder and second degree murder.

[6] If you find the defendant is guilty of any one of these three offenses, you should then go on with your deliberations to decide whether the defendant is not guilty by reason of insanity of that offense.

[7] If you find the defendant has not proved that he is not guilty by reason of insanity, you should then go on with your deliberations to decide whether the defendant is guilty but mentally ill of that offense.

[8] From these ten verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other nine verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

[9] The defendant[s] [(is) (are)] also charged with the offense of ____. Accordingly, you

will be provided with four verdict forms [as to each defendant] pertaining to the charge of ____: "not guilty of ____", "not guilty by reason of insanity of ____", "guilty of ____", and "guilty but mentally ill of ____".

[10] From these four verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of ____ and sign it as I have stated. Do not write on the other verdict forms pertaining to the charge of ____. Sign only one of these four verdict forms [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01P must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, (3) the jury is to be instructed on the insanity defense, (4) the jury is to be instructed on the guilty but mentally ill verdict, and (5) the jury is to be instructed on some other charge or charges. Accordingly, this instruction is to be used in conjunction with either Instruction 7.04X (issues where jury instructed on first degree murder, second degree murder (provocation), and involuntary manslaughter), 7.06X (issues where jury instructed on first degree murder, second degree murder (belief in justification), and involuntary manslaughter), or 7.06Y (issues where jury instructed on first degree murder, second degree murder (both provocation and belief in justification), and involuntary manslaughter).

See also Instructions 24-25.01F and 24-25.01H.

This instruction should *not* be used if the jury is *not* to be instructed on first degree murder, second degree murder, *and* involuntary manslaughter.

See Introductory Note at 26.00.

Paragraphs [1] through [8] should refer only to first degree murder, second degree murder, and involuntary manslaughter.

Paragraphs [9] and [10] should be repeated for each separate charge upon which the jury is to be instructed. Insert in the blanks in those paragraphs the charge other than first and second degree murder and involuntary manslaughter about which the jury is to be instructed. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use paragraphs [9] and [10]; instead, use paragraphs [1], [2], and [3] of Instruction 26.01X in place of paragraphs [9] and [10], modifying the first sentence of paragraph [1] of Instruction 26.01X to read, "The defendant[s] [(is) (are)] also charged with the offense of [greater offense]."

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder and not guilty of second degree murder." Under the present statutory scheme concerning homicide offenses, there can be no such verdict as "not guilty of second degree murder." See Sections 9-1 and 9-2. Only after the State has first proved the defendant guilty of first degree murder may the jury consider whether the defendant has met his burden of proving the existence of a mitigating factor to reduce his crime to the lesser offense of

second degree murder. Thus, a finding by the jury that the defendant is not guilty of first degree murder bars the jury from considering second degree murder at all. Accordingly, the jury need be provided only with a verdict form of "not guilty of first degree murder and not guilty of involuntary manslaughter."

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with ...." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses are included to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

PART IV.
LESSER INCLUDED OFFENSES

26.01Q Concluding Instruction--Jury Is To Be Instructed On One Or More Charges Including Lesser Offenses--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Charge Other Than The Greater And Lesser Included Offenses

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] [also] charged with the offense of ____. Under the law, a person charged with [greater offense] may be found (1) not guilty [of [greater offense] and not guilty of [lesser offense]; or (2) guilty of [greater offense]; or (3) guilty of [lesser offense].

[2] Accordingly, you will be provided with three verdict forms [as to each defendant] pertaining to the charge of [greater offense] "not guilty [of [greater offense] and not guilty of [lesser offense]"; "guilty of [greater offense]," and "guilty of [lesser offense]."

[3] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant) and sign it as I have stated. Do not write on the other two verdict forms [as to that defendant). Sign only one of these verdict forms [as to each defendant].

[4] (If you find the State has proved the defendant guilty of both [greater offense] and [lesser offense], you should select the verdict form finding the defendant guilty of [greater offense] sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of [lesser offense].]

[5] [(Under the law, the defendant cannot be guilty of [greater offense] and [lesser offense]. Accordingly, if you find the defendant guilty of [greater offense], that verdict would mean that the defendant is not guilty of [lesser offense]. Likewise, if you find the defendant guilty of [lesser offense], that verdict would mean that the defendant is not guilty of [greater offense].]

Committee Note

Whenever this instruction is given, Instruction 2.01Q must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever the jury is to be instructed on one or more charges which include a lesser offense.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on any charge other than the greater and the lesser included offenses, (2) the jury is to be instructed on the insanity defense, (3) the jury is to be instructed on the guilty but mentally ill verdict, or (4) the jury is to be instructed on second degree murder.

This instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter. Do not use this instruction when the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

Repeat paragraphs [1], [2], [3] and either [4] or [5] for each separate charge for which the jury is to be instructed on greater and lesser included offenses, including the bracketed word "also" in paragraph [1] for each additional charge, and then also include the bracketed words "of [greater offense] and not guilty of [lesser offense]" in paragraphs [1] and [2] for all the charges, inserting the greater and lesser included offenses where indicated.

Paragraph [4] should *not* be given when the lesser offense has the less culpable mental state of recklessness. One example of such a situation is when aggravated battery (greater offense) is charged under Section 12-4, requiring proof of intentional or knowing conduct by the defendant, and reckless conduct (lesser offense) is charged under Section 12-5, requiring proof only that the defendant acted recklessly. Another example is when first degree murder (greater offense) is charged under Sections 9-1(a)(1) or (a)(2), requiring proof of intentional or knowing conduct by the defendant, and involuntary manslaughter (lesser offense) is charged under Section 9-3, requiring proof only that the defendant acted recklessly. See People v. Towns, 157 Ill.2d 90, 623 N.E.2d 269, 191 Ill.Dec. 24 (1993). By definition, the jury should not be able to find that the State has proved the defendant guilty of both the greater and lesser offenses in these examples, and it should not be given an instruction that implies it could do so. See People v. Hoffer, 106 Ill.2d 186, 478 N.E.2d 335, 88 Ill.Dec. 20 (1985); see also 720 ILCS 5/2-9, defining the term "included offense." Furthermore, when the jury has found the defendant to have acted with the less culpable mental state of recklessness, it would be error for the court to tell the jury to nonetheless return a guilty verdict on the greater offense if the jury had somehow also been able to conclude that the defendant was also guilty of the greater offense because he had acted intentionally or knowingly.

Paragraph [5] should be given whenever paragraph [4] is not to be used. Paragraphs [4] and [5] are mutually exclusive. Paragraph [5] explains to the jury that a defendant *cannot* be guilty of both the greater offense and the lesser offense. See People v. Summers, 202 Ill.App.3d 1, 559 N.E.2d 1133, 147 Ill.Dec. 793 (4th Dist.1990). "Greater offense" in paragraph [5] means that offense requiring proof of intentional or knowing conduct by the defendant. "Lesser offense" in paragraph [5] means the offense requiring proof that the defendant acted recklessly.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a verdict form. If the jury is to be instructed on more than one lesser included offense, then the clauses in which the blank entitled [lesser offense] appears should be repeated for each lesser included offense to go before the jury.

The terms "lesser offense" and "greater offense" which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the codefendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the codefendant's instruction should be similarly

modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.07.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

26.01R Concluding Instruction--Jury Is To Be Instructed On One Or More Charges Including Lesser Offenses--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Charge Other Than The Greater And Lesser Included Offenses

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] ((is) (are)] [also) charged with the offense of [greater offense]. Under the law, a person charged with [greater offense] may be found (1) not guilty of [greater offense] and not guilty of [lesser offense]; or (2) guilty of [greater offense]; or (3) guilty of [lesser offense].

[2] Accordingly, you will be provided with three verdict forms [as to each defendant] pertaining to the charge of [greater offense]: "not guilty of [greater offense] and not guilty of [lesser offense]," "guilty of [greater offense]," and "guilty of [lesser offense]."

[3] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other two verdict forms [as to that defendant]. Sign only one of these verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[4] [If you find the State has proved the defendant guilty of both [greater offense] and [lesser offense], you should select the verdict form finding the defendant guilty of [greater offense] and sign it as I have stated. Under these circumstances, do not sign verdict form finding the defendant guilty of [lesser offense].]

[5] [Under the law, the defendant cannot be guilty of [greater offense] and [lesser offense]. Accordingly, if you find the defendant guilty of [greater offense], that verdict would mean that the defendant is not guilty of [lesser offense]. Likewise, if you find the defendant guilty of [lesser offense], that verdict would mean that the defendant is not guilty of [greater offense].

[6] The defendant[s] [(is) (are)] also charged with the offense of ____. You will receive two forms of verdict [as to each defendant] as to this charge. You will be provided with both a "not guilty of ____" and a "guilty of ____" form of verdict [as to each defendant].

[7] From these two verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of ____ and sign it as I have stated. You should not write at all on the other verdict form pertaining to the charge of ____.

Committee Note

Whenever this instruction is given, Instruction 2.01R must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on one or more charges which include a lesser offense and (2) the jury is also to be instructed on some other charge or charges.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the insanity defense, (2) the jury is to be instructed on the guilty but mentally ill verdict, or (3) the jury is to be instructed on second degree murder.

This instruction should be used when the jury is to be instructed on first degree murder, involuntary manslaughter, and some other charge or charges as well.

See Introductory Note at 26.00.

This instruction may have to be repeated for each defendant being jointly tried if (1) the charges against the codefendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the codefendants instruction should be similarly modified.

Paragraphs [1], [2], and [3] should refer only to the greater and lesser included offenses. They should not refer at all to the charge(s) set forth in paragraphs [6] and [7].

Repeat paragraphs [1], [2l, [3] and either [4] or [5] for each separate charge for which the jury is to be instructed on greater and lesser included offenses, including the bracketed word "also" in paragraph [1] for each additional charge.

Paragraphs [6] and [7] should be repeated for each separate charge that the jury is to be instructed upon, other than the greater and lesser included offenses.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a verdict form. If the jury is to be instructed on more than one lesser included offense, then the clauses in which the blank **entitled [lesser offense] appears should be repeated for each lesser included offense to go before the jury.**

The terms "lesser offense" and "greater offense" which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Paragraph [4] should *not* be given when the lesser offense has the less culpable mental state of recklessness. One example of such a situation is when aggravated battery (greater offense) is charged under Section 12-4, requiring proof of intentional or knowing conduct by the defendant, and reckless conduct (lesser offense) is charged under Section 12-5, requiring proof only that the defendant acted recklessly. Another example is when first degree murder (greater offense) is charged under Sections 9-1(a)(1) or (a)(2), requiring proof of intentional or knowing conduct by the defendant, and involuntary manslaughter (lesser offense) is charged under Section 9-3, requiring proof only that the defendant acted recklessly. See People v. Towns, 157 Ill.2d 90, 623 N.E.2d 269, 191 Ill.Dec. 24 (1993). By definition, the jury should not be able to find that the State has proved the defendant guilty of both the greater and lesser offenses in these examples, and it should not be given an instruction that implies it could do so. See People v. Hoffer, 106 Ill.2d 186, 478 N.E.2d 335, 88 Ill.Dec. 20 (1985); see also Section 2-9, defining the term "included offense." Furthermore, when the jury has found the defendant to have acted with the less culpable mental state of recklessness, it would be error for the court to tell the jury to nonetheless return a guilty verdict on the greater offense if the jury had somehow also been able to

conclude that the defendant was also guilty of the greater offense because he had acted intentionally or knowingly.

Paragraph [5] should be given whenever paragraph [4] is not to be used. Paragraphs [4] and [5] are mutually exclusive. Paragraph [5] explains to the jury that a defendant *cannot* be guilty of *both* the greater offense and the lesser offense. See People v. Summers, 202 Ill.App.3d 1, 559 N.E.2d 1133, 147 Ill.Dec. 793 (4th Dist.1990). "Greater offense" in paragraph [5] means that offense requiring proof of intentional or knowing conduct by the defendant. "Lesser offense" in paragraph [5] means the offense requiring proof that the defendant acted recklessly.

Select a different instruction from the 2601 series for each defendant being jointly tried if (1) the charges against the codefendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the codefendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.07.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

26.01S Concluding Instruction--Jury Is To Be Instructed On A Lesser Included Offense--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of [greater offense]. Under the law, a person charged with [greater offense] may be found (1) not guilty; or (2) guilty of [greater offense]; or (3) guilty but mentally ill of [greater offense]; or (4) guilty of [lesser offense]; or (5) guilty but mentally ill of [lesser offense].

Accordingly, you will be provided with five verdict forms [as to each defendant]: "not guilty", "guilty of [greater offense], "guilty but mentally ill of [greater offense]", "guilty of [lesser offense]", and "guilty but mentally ill of [lesser offense]".

From these five verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other four verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[1] [If you find the State has proved the defendant guilty of both [greater offense] and [lesser offense], you should select the verdict form finding the defendant guilty of [greater offense] and sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of [lesser offense].]

[2] [Under the law, the defendant cannot be guilty of [greater offense] and [lesser offense]. Accordingly, if you find the defendant guilty of [greater offense], that verdict would mean that the defendant is not guilty of [lesser offense]. Likewise, if you find the defendant guilty of [lesser offense], that verdict would mean that the defendant is not guilty of [greater offense].]

Committee Note

Whenever this instruction is given, Instruction 2.01S must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, and (2) the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the insanity defense, (2) the jury is to be instructed on any charge other than the greater and the lesser included offenses, or (3) the jury is to be instructed on second degree murder.

This instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter. Do *not* use this instruction when the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

Paragraph [1] should *not* be given when the lesser offense has the less culpable mental

state of recklessness. One example of such a situation is when aggravated battery (greater offense) is charged under Section 12-4, requiring proof of intentional or knowing conduct by the defendant, and reckless conduct (lesser offense) is charged under Section 12-5, requiring proof only that the defendant acted recklessly. Another example is when first degree murder (greater offense) is charged under Sections 9-1(a)(1) or (a)(2), requiring proof of intentional or knowing conduct by the defendant, and involuntary manslaughter (lesser offense) is charged under Section 9-3, requiring proof only that the defendant acted recklessly. By definition, the jury should not be able to find that the State has proved the defendant guilty of *both* the greater and lesser offenses in these examples, and it should not be given an instruction that implies it could do so. See People v. Hoffer, 106 Ill.2d 186, 478 N.E.2d 335, 88 Ill.Dec. 20 (1985); see also Section 2-9, defining the term "included offense." Furthermore, when the jury has found the defendant to have acted with the less culpable mental state of recklessness, it would be error for the court to tell the jury to nonetheless return a guilty verdict on the greater offense if the jury had somehow also been able to conclude that the defendant was also guilty of the greater offense because he had acted intentionally or knowingly.

Paragraph [2] should be given whenever paragraph [1] is not to be used. Paragraphs [1] and [2] are mutually exclusive. Paragraph [2] explains to the jury that a defendant *cannot* be guilty of *both* the greater offense and the lesser offense. See People v. Summers, 202 Ill.App.3d 1, 559 N.E.2d 1133, 147 Ill.Dec. 793 (4th Dist.1990). "Greater offense" in paragraph [2] means the offense requiring proof of intentional or knowing conduct by the defendant. "Lesser offense" in paragraph [2] means the offense requiring proof that the defendant acted recklessly.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

The terms "lesser offense" and "greater offense" which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

26.01T Concluding Instruction--Jury Is To Be Instructed On A Lesser Included Offense--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of [greater offense]. Under the law, a person charged with [greater offense] may be found (1) not guilty of [greater offense] and not guilty of [lesser offense]; or (2) guilty of [greater offense]; or (3) guilty but mentally ill of [greater offense]; or (4) guilty of [lesser offense]; or (5) guilty but mentally ill of [lesser offense].

[2] Accordingly, you will be provided with five verdict forms [as to each defendant]: "not guilty of [greater offense] and not guilty of [lesser offense]", "guilty of [greater offense]", "guilty but mentally ill of [greater offense]", "guilty of [lesser offense]", and "guilty but mentally ill of [lesser offense]".

[3] From these five verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other four verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[4] The defendant[s] [(is) (are)] also charged with the offense of ____. Accordingly, you will be provided with three verdict forms [as to each defendant] pertaining to the charge of ____: "not guilty of ____", "guilty of ____", and "guilty but mentally ill of ____".

[5] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of ____ and sign it as I have stated. Do not write on the other verdict forms pertaining to the charge of ____. Sign only one of these three verdict forms [as to each defendant].

[6] [If you find the State has proved the defendant guilty of both [greater offense] and [lesser offense] you should select the verdict form finding the defendant guilty of [lesser offense] and sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of [lesser offense].]

[7] [Under the law, the defendant cannot be guilty of [greater offense] and [lesser offense]. Accordingly, if you find the defendant guilty of [greater offense], that verdict would mean that the defendant is not guilty of [lesser offense]. Likewise, if you find the defendant guilty of [lesser offense], that verdict would mean that the defendant is not guilty of [greater offense].]

Committee Note

Whenever this instruction is given, Instruction 2.01T must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, (2) the jury is to be instructed on the guilty but mentally ill verdict, and (3) the jury is to be instructed on some other charge or charges.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the insanity defense, or (2) the jury is to be instructed on second degree murder.

This instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter. Do *not* use this instruction when the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

Paragraphs [1], [2], and [3] should refer only to the greater and lesser included offenses.

Paragraphs [4] and [5] should be repeated for each separate offense upon which the jury is to be instructed other than the greater and lesser included offenses.

Paragraph [6] should *not* be given when the lesser included offense has the less culpable mental state of recklessness. One example of such a situation is when aggravated battery (greater offense) is charged under Section 12-4, requiring proof of intentional or knowing conduct by the defendant, and reckless conduct (lesser offense) is charged under Section 12-5, requiring proof only that the defendant acted recklessly. Another example is when first degree murder (greater offense) is charged under Section 9-1(a)(1) or (a)(2), requiring proof of intentional or knowing conduct by the defendant, and involuntary manslaughter (lesser offense) is charged under Section 9-3, requiring proof only that the defendant acted recklessly. See People v. Towns, 157 Ill.2d 90, 623 N.E.2d 269, 191 Ill.Dec. 24 (1993). By definition, the jury should not be able to find that the State has proved the defendant guilty of *both* the greater and lesser offenses in these examples, and it should not be given an instruction that implies it could do so. See People v. Hoffer, 106 Ill.2d 186, 478 N.E.2d 335, 88 Ill.Dec. 20 (1985); see also Section 2-9, defining the term "included offense." Furthermore, when the jury has found the defendant to have acted with the less culpable mental state of recklessness, it would be error for the court to tell the jury to nonetheless return a guilty verdict on the greater offense if the jury had somehow also been able to conclude that the defendant was also guilty of the greater offense because he had acted intentionally or knowingly.

Paragraph [7] should be given whenever paragraph [6] is not to be used. Paragraphs [6] and [7] are mutually exclusive. Paragraph [7] explains to the jury that a defendant *cannot* be guilty of *both* the greater offense and the lesser offense. See People v. Summers, 202 Ill.App.3d 1, 559 N.E.2d 1133, 147 Ill.Dec. 793 (4th Dist.1990). "Greater offense" in paragraph [7] means the offense requiring proof of intentional or knowing conduct by the defendant. "Lesser offense" in paragraph [7] means the offense requiring proof that the defendant acted recklessly.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a verdict form.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a verdict form. If the jury is to be instructed on more than one lesser included offense, then the clause in which the blank **entitled [lesser offense] appears should be repeated for each lesser included offense to go before the jury.**

The bracketed terms "lesser offense" and "greater offense" which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instructions submitted to the jury.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with ...." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses are included to provide clarity for the jury as well as for court and counsel and should be in the instructions submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

26.01U Concluding Instruction--Jury Is To Be Instructed On A Lesser Included Offense--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of [greater offense]. Under the law, a person charged with [greater offense] may be found (1) not guilty; or (2) not guilty by reason of insanity of [greater offense]; or (3) guilty of [greater offense]; or (4) not guilty by reason of insanity of [lesser offense]; or (5) guilty of [lesser offense].

Accordingly, you will be provided with five verdict forms [as to each defendant]: "not guilty", "not guilty by reason of insanity of [greater offense]", "guilty of [greater offense]", "not guilty by reason of insanity of [lesser offense]", and "guilty of [lesser offense]".

From these five verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other four verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[1] [If you find the State has proved the defendant guilty of both [greater offense] and [lesser offense], you should select the verdict form finding the defendant guilty of [greater offense] and sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of [lesser offense].]

[2] [Under the law, the defendant cannot be guilty of [greater offense] and [lesser offense]. Accordingly, if you find the defendant guilty of [greater offense], that verdict would mean that the defendant is not guilty of [lesser offense]. Likewise, if you find the defendant guilty of [lesser offense], that verdict would mean that the defendant is not guilty of [greater offense].]

Committee Note

Whenever this instruction is given, Instruction 2.01U must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, and (2) the jury is to be instructed on the insanity defense.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, (2) the jury is to be instructed on any charge other than the greater and lesser included offenses, or (3) the jury is to be instructed on second degree murder.

This instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter. Do *not* use this instruction when the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

Paragraph [1] should *not* be given when the lesser offense has the less culpable mental

state of recklessness. One example of such a situation is when aggravated battery (greater offense) is charged under Section 12-4, requiring proof of intentional or knowing conduct by the defendant, and reckless conduct (lesser offense) is charged under Section 12-5, requiring proof only that the defendant acted recklessly. Another example is when first degree murder (greater offense) is charged under Sections 9-1(a)(1) or (a)(2), requiring proof of intentional or knowing conduct by the defendant, and involuntary manslaughter (lesser offense) is charged under Section 9-3, requiring proof only that the defendant acted recklessly. By definition, the jury should not be able to find that the State has proved the defendant guilty of *both* the greater and lesser offenses in these examples, and it should not be given an instruction that implies it could do so. See People v. Hoffer, 106 Ill.2d 186, 478 N.E.2d 335, 88 Ill.Dec. 20 (1985); see also Section 2-9, defining the term "included offense." Furthermore, when the jury has found the defendant to have acted with the less culpable mental state of recklessness, it would be error for the court to tell the jury to nonetheless return a guilty verdict on the greater offense if the jury had somehow also been able to conclude that the defendant was also guilty of the greater offense because he had acted intentionally or knowingly.

Paragraph [2] should be given whenever paragraph [1] is not to be used. Paragraphs [1] and [2] are mutually exclusive. Paragraph [2] explains to the jury that a defendant *cannot* be guilty of *both* the greater offense and the lesser offense. See People v. Summers, 202 Ill.App.3d 1, 559 N.E.2d 1133, 147 Ill.Dec. 793 (4th Dist.1990). "Greater offense" in paragraph [2] means the offense requiring proof of intentional or knowing conduct by the defendant. "Lesser offense" in paragraph [2] means the offense requiring proof that the defendant acted recklessly.

The Committee takes no position on the question of whether the special verdict form of guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See People v. Gurga, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986), for the proposition that "under appropriate facts, a defendant has a right to a judgment of 'guilty but mentally ill' instead of 'guilty'." *Gurga,* 150 Ill.App.3d at 167, 501 N.E.2d at 773, 103 Ill.Dec. at 456.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a verdict form. If the jury is to be instructed on more than one lesser included offense, then the clause in which the blank **entitled [lesser offense] appears should be repeated for each lesser included offense to go before the jury.**

The terms "lesser offense" and "greater offense" which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

26.01V Concluding Instruction--Jury Is To Be Instructed On A Lesser Included Offense--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of [greater offense]. Under the law, a person charged with [greater offense] may be found (1) not guilty of [greater offense] and [lesser offense]; or (2) not guilty by reason of insanity of [greater offense]; (3) guilty of [greater offense]; or (4) not guilty by reason of insanity of [lesser offense]; or (5) guilty of [lesser offense].

[2] Accordingly, you will be provided with five verdict forms [as to each defendant]: "not guilty of [greater offense] and [lesser offense]", "not guilty by reason of insanity of [greater offense]", "guilty of [greater offense]", "not guilty by reason of insanity of [lesser offense]", and "guilty of [lesser offense]".

[3] From these five verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other four verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[4] The defendant[s] [(is) (are)] also charged with the offense of ____. Accordingly, you will be provided with three verdict forms [as to each defendant] pertaining to the charge of ____: "not guilty of ____", "not guilty by reason of insanity of ____", and "guilty of ____".

[5] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of ____ and sign it as I have stated. You should not write at all on the other verdict forms pertaining to the charge of ____. Only one of these three verdict forms [as to each defendant] is to be signed by you.

[6] [If you find the State has proved the defendant guilty of both [greater offense] and [lesser offense], you should select the verdict form finding the defendant guilty of [greater offense] and sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of [lesser offense].]

[7] [Under the law, the defendant cannot be guilty of [greater offense] and [lesser offense]. Accordingly, if you find the defendant guilty of [greater offense], that verdict would mean that the defendant is not guilty of [lesser offense]. Likewise, if you find the defendant guilty of [lesser offense], that verdict would mean that the defendant is not guilty of [greater offense].]

Committee Note

Whenever this instruction is given, Instruction 2.01V must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, and (2) the jury is to be instructed on the insanity defense, and (3) the jury is to be instructed on some other charge or charges.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, or (2) the jury is to be instructed on

second degree murder.

This instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter. Do *not* use this instruction when the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

The Committee takes no position on the question of whether the special verdict form of guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See People v. Gurga, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986), for the proposition that "under appropriate facts, a defendant has a right to a judgment of 'guilty but mentally ill' instead of 'guilty'." *Gurga,* 150 Ill.App.3d at 167, 501 N.E.2d at 773, 103 Ill.Dec. at 456.

Paragraphs [1], [2], and [3] should refer only to the greater and lesser included offenses.

Paragraphs [4] and [5] should be repeated for each separate offense that the jury is to be instructed upon. Insert in the blanks in those paragraphs the charge[s] other than the greater and lesser included offenses about which the jury is to be instructed.

Paragraph [6] should *not* be given when the lesser offense has the less culpable mental state of recklessness. One example of such a situation is when aggravated battery (greater offense) is charged under Section 12-4, requiring proof of intentional or knowing conduct by the defendant, and reckless conduct (lesser offense) is charged under Section 12-5, requiring proof only that the defendant acted recklessly. Another example is when first degree murder (greater offense) is charged under Sections 9-1(a)(1) or (a)(2), requiring proof of intentional or knowing conduct by the defendant, and involuntary manslaughter (lesser offense) is charged under Section 9-3, requiring proof only that the defendant acted recklessly. By definition, the jury should not be able to find that the State has proved the defendant guilty of *both* the greater and lesser offenses in these examples, and it should not be given an instruction that implies it could do so. See People v. Hoffer, 106 Ill.2d 186, 478 N.E.2d 335, 88 Ill.Dec. 20 (1985); see also Section 2-9, defining the term "included offense." Furthermore, when the jury has found the defendant to have acted with the less culpable mental state of recklessness, it would be error for the court to tell the jury to nonetheless return a guilty verdict on the greater offense if the jury had somehow also been able to conclude that the defendant was also guilty of the greater offense because he had acted intentionally or knowingly.

Paragraph [7] should be given whenever paragraph [6] is not to be used. Paragraphs [6] and [7] are mutually exclusive. Paragraph [7] explains to the jury that a defendant *cannot* be guilty of *both* the greater offense and the lesser offense. See People v. Summers, 202 Ill.App.3d 1, 559 N.E.2d 1133, 147 Ill.Dec. 793 (4th Dist.1990). "Greater offense" in paragraph [7] means the offense requiring proof of intentional or knowing conduct by the defendant. "Lesser offense" in paragraph [7] means the offense requiring proof that the defendant acted recklessly.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive

a verdict form. If the jury is to be instructed on more than one lesser included offense, then the clause in which the blank entitled [lesser offense] appears should be repeated for each lesser included offense to go before the jury.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with ....” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

26.01W Concluding Instruction--Jury Is To Be Instructed On A Lesser Included Offense--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of [greater offense]. Under the law, a person charged with [greater offense] may be found (1) not guilty; or (2) not guilty by reason of insanity of [greater offense]; or (3) guilty of [greater offense]; or (4) guilty but mentally ill of [greater offense]; or (5) not guilty by reason of insanity of [lesser offense]; or (6) guilty of [lesser offense]; or (7) guilty but mentally ill of [lesser offense].

Accordingly, you will be provided with seven verdict forms [as to each defendant]: "not guilty", "not guilty by reason of insanity of [greater offense]", "guilty of [greater offense]", "guilty but mentally ill of [greater offense]", "not guilty by reason of insanity of [lesser offense]", "guilty of [lesser offense]", and "guilty but mentally ill of [lesser offense]".

From these seven verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other six verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[1] [If you find the State has proved the defendant guilty of both [greater offense] and [lesser offense], you should select the verdict form finding the defendant guilty of [greater offense] and sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of [lesser offense].]

[2] [Under the law, the defendant cannot be guilty of [greater offense] and [lesser offense]. Accordingly, if you find the defendant guilty of [greater offense], that verdict would mean that the defendant is not guilty of [lesser offense]. Likewise, if you find the defendant guilty of [lesser offense], that verdict would mean that the defendant is not guilty of [greater offense].]

Committee Note

Whenever this instruction is given, Instruction 2.01W must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, (2) the jury is to be instructed on the insanity defense, (3) the jury is to be instructed on the guilty but mentally ill verdict, and (4) the jury is not to be instructed on any charge other than the greater or lesser included offenses.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on any charge other than the greater and lesser offenses, or (2) the jury is to be instructed on second degree murder.

This instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter. Do *not* use this instruction when the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

Paragraph [1] should *not* be given when the lesser offense has the less culpable mental state of recklessness. One example of such a situation is when aggravated battery (greater offense) is charged under Section 12-4, requiring proof of intentional or knowing conduct by the defendant, and reckless conduct (lesser offense) is charged under Section 12-5, requiring proof only that the defendant acted recklessly. Another example is when first degree murder (greater offense) is charged under Sections 9-1(a)(1) or (a)(2), requiring proof of intentional or knowing conduct by the defendant, and involuntary manslaughter (lesser offense) is charged under Section 9-3, requiring proof only that the defendant acted recklessly. By definition, the jury should not be able to find that the State has proved the defendant guilty of *both* the greater and lesser offenses in these examples, and it should not be given an instruction that implies it could do so. See People v. Hoffer, 106 Ill.2d 186, 478 N.E.2d 335, 88 Ill.Dec. 20 (1985), cert. denied 474 U.S. 847, 106 S.Ct. 139, 88 L.Ed.2d 114 (1985); see also Section 2-9, defining the term "included offense." Furthermore, when the jury has found the defendant to have acted with the less culpable mental state of recklessness, it would be error for the court to tell the jury to nonetheless return a guilty verdict on the greater offense if the jury had somehow also been able to conclude that the defendant was also guilty of the greater offense because he had acted intentionally or knowingly.

Paragraph [2] should be given whenever paragraph [1] is not to be used. Paragraphs [1] and [2] are mutually exclusive. Paragraph [2] explains to the jury that a defendant *cannot* be guilty of *both* the greater offense and the lesser offense. See People v. Summers, 202 Ill.App.3d 1, 559 N.E.2d 1133, 147 Ill.Dec. 793 (4th Dist.1990). "Greater offense" in paragraph [2] means the offense requiring proof of intentional or knowing conduct by the defendant. "Lesser offense" in paragraph [2] means the offense requiring proof that the defendant acted recklessly.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a verdict form. If the jury is to be instructed on more than one lesser included offense, then the clause in which the blank entitled [lesser offense] appears should be repeated for each lesser included offense to go before the jury.

The terms "lesser offense" and "greater offense" which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

26.01X Concluding Instruction--Jury Is To Be Instructed On A Lesser Included Offense--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of [greater offense]. Under the law, a person charged with [greater offense] may be found (1) not guilty of [greater offense] and [lesser offense]; or (2) not guilty by reason of insanity of [greater offense]; or (3) guilty of [greater offense]; or (4) guilty but mentally ill of [greater offense]; or (5) not guilty by reason of insanity of [lesser offense]; or (6) guilty of [lesser offense]; or (7) guilty but mentally ill of [lesser offense].

[2] Accordingly, you will be provided with seven verdict forms [as to each defendant]: "not guilty of [greater offense] and [lesser offense]", "not guilty by reason of insanity of [greater offense]", "guilty of [greater offense]", "guilty but mentally ill of [greater offense]", "not guilty by reason of insanity of [lesser offense]", "guilty of [lesser offense]", and "guilty but mentally ill of [lesser offense]".

[3] From these seven verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other six verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[4]
The defendant[s] [(is) (are)] also charged with the offense of ____. Accordingly, you will be provided with four verdict forms [as to each defendant] pertaining to the charge of ____: "not guilty of ____", "not guilty by reason of insanity of ____", "guilty of ____", and "guilty but mentally ill of ____".

[5] From these four verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of ____ and sign it as I have stated. You should not write at all on the other verdict forms pertaining to the charge of ____. Only one of these four verdict forms [as to each defendant] is to be signed by you.

[6] [If you find the State has proved the defendant guilty of both [greater offense] and [lesser offense], you should select the verdict form finding the defendant guilty of [greater offense] and sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of [lesser offense].]

[7] [Under the law, the defendant cannot be guilty of [greater offense] and [lesser offense]. Accordingly, if you find the defendant guilty of [greater offense], that verdict would mean that the defendant is not guilty of [lesser offense]. Likewise, if you find the defendant guilty of [lesser offense], that verdict would mean that the defendant is not guilty of [greater offense].]

Committee Note

Whenever this instruction is given, Instruction 2.01X must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, (2) the jury is to be instructed on the insanity defense, (3) the jury is to be

instructed on the guilty but mentally ill verdict, and (4) the jury is to be instructed on some other charge or charges.

This instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter. Do *not* use this instruction when the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

Paragraphs [1], [2], and [3] should refer only to the greater and lesser included offenses.

Paragraphs [4] and [5] should be repeated for each separate offense that the jury is to be instructed upon, other than the greater and lesser included offenses.

Paragraph [6] should *not* be given when the lesser offense has the less culpable mental state of recklessness. One example of such a situation is when aggravated battery (greater offense) is charged under Section 12-4, requiring proof of intentional or knowing conduct by the defendant, and reckless conduct (lesser offense) is charged under Section 12-5, requiring proof only that the defendant acted recklessly. Another example is when first degree murder (greater offense) is charged under Sections 9-1(a)(1) or (a)(2), requiring proof of intentional or knowing conduct by the defendant, and involuntary manslaughter (lesser offense) is charged under Section 9-3, requiring proof only that the defendant acted recklessly. By definition, the jury should not be able to find that the State has proved the defendant guilty of *both* the greater and lesser offenses in these examples, and it should not be given an instruction that implies it could do so. See People v. Hoffer, 106 Ill.2d 186, 478 N.E.2d 335, 88 Ill.Dec. 20 (1985); see also Section 2-9, defining the term "included offense." Furthermore, when the jury has found the defendant to have acted with the less culpable mental state of recklessness, it would be error for the court to tell the jury to nonetheless return a guilty verdict on the greater offense if the jury had somehow also been able to conclude that the defendant was also guilty of the greater offense because he had acted intentionally or knowingly.

Paragraph [7] should be given whenever paragraph [6] is not to be used. Paragraphs [6] and [7] are mutually exclusive. Paragraph [7] explains to the jury that a defendant *cannot* be guilty of *both* the greater offense and the lesser offense. See People v. Summers, 202 Ill.App.3d 1, 559 N.E.2d 1133, 147 Ill.Dec. 793 (4th Dist.1990). "Greater offense" in paragraph [7] means the offense requiring proof of intentional or knowing conduct by the defendant. "Lesser offense" in paragraph [7] means the offense requiring proof that the defendant acted recklessly.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a verdict form. If the jury is to be instructed on more than one lesser included offense, then the clause in which the blank entitled [lesser offense] appears should be repeated for each lesser included offense to go before the jury.

The terms "lesser offense" and "greater offense" which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

PART V.
NO LESSER INCLUDED OFFENSES

26.01Y Concluding Instruction--Jury Is Not To Be Instructed On A Lesser Included Offense--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of ____. Under the law, a person charged with ____ may be found (1) not guilty; or (2) not guilty by reason of insanity of ____; or (3) guilty of ____.

[2] Accordingly, you will be provided with three verdict forms [as to each defendant]: "not guilty", "not guilty by reason of insanity of ____", and "guilty of ____".

From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other two verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01Y must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever the jury is to be instructed on the insanity defense.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, (2) the jury is to be instructed on a lesser included offense, or (3) the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

The Committee takes no position on the question of whether the special verdict form of guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See People v. Gurga, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986), for the proposition that "under appropriate facts, a defendant has a right to a judgment of 'guilty but mentally ill' instead of 'guilty'." *Gurga,* 150 Ill.App.3d at 167, 501 N.E.2d at 773, 103 Ill.Dec. at 456.

Paragraphs [1] and [2] must be repeated for each separate charge that the jury is to be instructed upon. When repeating paragraph [1], modify the first sentence to read, "The defendant[s] [(is) (are)] also charged with . . . ."

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant

John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

26.01Z Concluding Instruction--Jury Is Not To Be Instructed On A Lesser Included Offense--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict

When you retire to the jury room you first will elect one your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of ____. Under the law, a person charged with ____ may be found (1) not guilty; or (2) guilty of ____; or (3) guilty but mentally ill of ____.

[2] Accordingly, you will be provided with three verdict forms [as to each defendant]: "not guilty", "guilty of ____", and "guilty but mentally ill of ____".

From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other two verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01Z must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on a lesser included offense, (2) the jury is to be instructed on the insanity defense, or (3) the jury is to be instructed on second degree murder.

Do *not* use this instruction if the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

This instruction may have to be repeated for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

Paragraphs [1] and [2] must be repeated for each separate charge that the jury is to be instructed upon. When repeating paragraph [1], modify the first sentence to read, "The defendant[s] [(is) (are)] also charged with . . . ."

Insert in the blanks all offenses specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In

either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

26.01AA Concluding Instruction--Jury Is Not To Be Instructed On A Lesser Included Offense--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of ____. Under the law, a person charged with ____ may be found (1) not guilty of ____; or (2) not guilty by reason of insanity of ____; or (3) guilty of ____; or (4) guilty but mentally ill of ____.

[2] Accordingly, you will be provided with four verdict forms [as to each defendant]: "not guilty", "not guilty by reason of insanity of ____", "guilty of ____", and "guilty but mentally ill of ____".

[3] From these four verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other three verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01AA must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on the insanity defense, and (2) the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used under either of the following circumstances: (1) the jury is not to be instructed on a lesser included offense, or (2) the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

Paragraphs [1], [2], and [3] must be repeated for each separate charge that the jury is to be instructed upon. When repeating paragraph [1], modify the first sentence to read, "The defendant[s] [(is) (are)] also charged with . . . ."

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and

should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.04A.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

26.02 Verdict--Not Guilty

We, the jury, find the defendant ____ not guilty [of ____].

_____
Foreperson
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Committee Note

A general not guilty verdict form should generally be used, and must be used in certain situations. (See Instructions 26.01A, 26.01C, 26.01E, 26.01G, 26.01I, 26.01K, 26.01M, 26.01O, 26.01Q, 26.01S, 26.01U, 26.01W, 26.01Y, 26.01Z, and 26.01AA.) Specific not guilty verdict forms, however, must be used in certain other situations. (See Instructions 26.01B, 26.01D, 26.01F, 26.01H, 26.01J, 26.01L, 26.01N, 26.01P, 26.01R, 26.01T, 26.01V, and 26.01X.) In all cases, the form of the not guilty verdict should follow the directions contained in an applicable instruction from the 26.01 series.

When a specific not guilty verdict form is used, the title of each offense under consideration by the jury for a possible not guilty verdict should be identical to the title of that offense as set forth in each issues instruction.

The opening sentence of the issues instruction(s) as well as the guilty and not guilty verdict forms may be expanded in appropriate cases to distinguish among the different ways a particular charge is before the jury. See Committee Note to Instruction 26.01.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Sets 27.01 through 27.07.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION WILL NOT BE USED.

26.03 Verdict--Not Guilty By Reason Of Insanity

We, the jury, find the defendant ____ not guilty by reason of insanity of ____.

_____
Foreperson

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Committee Note

In all cases, the title of each offense under consideration by the jury for a possible verdict of not guilty by reason of insanity should be identical to the title of that offense as set forth in each issues instruction.

A not guilty by reason of insanity verdict must always be specific as to the charge to which it pertains; there can be no general verdict of not guilty by reason of insanity.

See Committee Note to Instruction 26.01.

For an example of the use of this instruction, see Sample Sets 27.04A and 27.04B.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION WILL NOT BE USED.

26.04 Verdict--Guilty But Mentally Ill

We, the jury, find the defendant ____ guilty but mentally ill of ____.

_____
Foreperson

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Committee Note

In all cases, the title of each offense under consideration by the jury for a possible guilty but mentally ill verdict should be identical to the title of that offense as set forth in each issues instruction.

See Committee Note to Instruction 26.01.

For an example of the use of this instruction, see Sample Sets 27.04A and 27.04B.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION WILL NOT BE USED.

26.05 Verdict--Guilty

We, the jury, find the defendant ____ guilty of ____.

_____
Foreperson
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Committee Note

In all cases, the title of each offense under consideration by the jury for a possible guilty verdict should be identical to the title of that offense as set forth in each issues instruction.

The opening sentence of the issues instruction(s) as well as the guilty and not guilty verdict forms may be expanded in appropriate cases to distinguish among the different ways a particular charge is before the jury. See Committee Note to Instruction 26.01.

For an example of the use of this instruction, see Sample Sets 27.01 through 27.07.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION WILL NOT BE USED.

26.06 Death Penalty Verdicts

Committee Note

Death penalty verdict forms are contained in Instructions 7B.10 through 7B.12, and 7C.08 through 7C.09A.

26.07 Deadlocked Jury Supplemental Instruction

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.

You are not partisans. You are judges--judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case.

Committee Note

This instruction is taken from People v. Prim, 53 Ill.2d 62, 289 N.E.2d 601 (1972). The Committee takes no position on whether this instruction should be given or under what circumstances it should be given. For a recent case applying Prim, see People v. Cowan, 105 Ill.2d 324, 473 N.E.2d 1307, 85 Ill.Dec. 502 (1985).

26.08 Suggested Rule 436 Instruction When Admonishing Jurors During Trial

As jurors in this case your job is extremely important. Your decision on your verdict is to be based only upon the evidence that you see and hear in this courtroom and the instructions of law I will give you. Therefore, to remain fair and impartial you must refrain from doing the following things until you are discharged from service on this case:

1. You must not converse with anyone on any subject connected with this case;
2. You must not read or listen to any outside comments or news accounts of this case;
3. You must not discuss among yourselves any subject connected with the trial or form any opinion on the cause until it is submitted to you for your deliberation on a verdict;
4. You must not view or go to the place where the offense was allegedly committed [other than with the court as a part of this proceeding].

If you hear or observe anything about this case outside this courtroom, whether inadvertently or otherwise, you must immediately inform me at the beginning of our next session. Do not discuss any of those things with your fellow jurors at any time.

Committee Note

See Supreme Court Rule 436(b).

Rule 436(b) provides that a trial judge should admonish jurors concerning several of their most important duties. The Committee is providing this suggested instruction as an aid to trial judges.

26.09 Suggested Rule 436 Instruction When Sending The Jury Home For The Night During Deliberations

Stop deliberating at this time. We will now recess for the evening. You [should return to your homes] [may go about your normal affairs] and you must not discuss this case with anyone, including family members, friends, or your fellow jurors. All deliberations are to be conducted only in the jury deliberation room when all jurors are present.

As I told you at the beginning of this case, your job as jurors is extremely important. Your decision on your verdict is to be based only upon the evidence that you see and hear in this courtroom and the instruction of law that I have given you. Therefore, to remain fair and impartial you must refrain from doing the following things until you are discharged from service on this case:

1. You must not converse with anyone on any subject connected with this case;
2. You must not read or listen to any outside comments or news accounts of this case;
3. You must not discuss among yourselves any subject connected with the trial or form any opinion on the cause until you continue your deliberation on the verdict when all of you are present;
4. You must not view or go to the place where the offense was allegedly committed.

If you hear or observe anything about this case outside this courtroom, whether inadvertently or otherwise, you must immediately inform me at the beginning of our next session. Do not discuss any of these things with your fellow jurors at any time.

You are to report tomorrow morning to continue your jury service in this case.

Committee Note

See Supreme Court Rule 436(b).

Rule 436(b) provides that a trial judge should admonish jurors concerning several of their most important duties. The Committee is providing this suggested instruction as an aid to trial judges.

27.00.

SAMPLE SETS OF INSTRUCTIONS

INTRODUCTION

This chapter consists of seven sets of sample instructions. The court and counsel may wish to vary the order of these instructions to accommodate the needs of a particular case.

The bracketed instruction numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

The committee has determined that in certain circumstances it would be valuable for a trial court to have the option to provide the jury verdict forms for each charge on a single page. The committee believes this will be particularly valuable where the jury is instructed as to lesser-included offenses. The alternative, single page, multiple verdict form is given at the end of each sample set of instructions, following the traditional verdict forms. Thus, the trial court has the option of using either the traditional forms or the new single page multiple verdict forms. However, the committee does recommend that whichever format is used, this same format be used for all verdict forms given to an individual jury.

IF THE TRIAL COURT DECIDES TO USE THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM, IT WILL BE NECESSARY TO SLIGHTLY REVISE THE INSTRUCTIONS FROM CHAPTER 26. The instructions should be revised to tell the jury that the verdict options appear on one page; that the jury must unanimously agree on one of those options; that the jury should indicate its choice by checking off the appropriate verdict; and that the form should then be signed by the jurors.

SET 27.01

Instructions Included within Set 27.01

1.01 Functions of Court and Jury
1.02 Jury Sole Judges of Believability
1.03 Arguments of Counsel
2.01A Charge Against Defendant--1st and 2nd Degree Murder--Jury Not Instructed on Other Charges
2.02 Indictment/Information Not Evidence
2.03A Presumption of Innocence--Burden of Proof--1st and 2nd Degree Murder
3.06-3.07 Statements by Defendant
7.01A Definition of 1st Degree Murder
7.05A Definition of Mitigating Factor--2nd Degree Murder--Belief in Justification
24-25.06 Use of Force in Defense of a Person
24-25.09 Initial Aggressor's Use of Force
7.06A Issues Instruction--1st and 2nd Degree Murder--Belief in Justification--Justifiable Use of Force
26.01A Concluding Instruction--1st and 2nd Degree Murder--Jury Not Instructed on Other Charges
26.02 Verdict Form--Not Guilty
26.05 Verdict Form--Guilty of 1st Degree Murder
26.05 Verdict Form--Guilty of 2nd Degree Murder

In the first case (Set 27.01), the defendant, Arthur Fletcher, is charged with the first degree murder of Ralph Hudson. A police officer testifies that Fletcher admitted killing Hudson, but said nothing about self-defense. The defendant denies making any statement to the police. Fletcher testifies that he shot Hudson, but asserts that he was acting in self-defense. Witnesses for the State testify that Fletcher was the initial aggressor. The court instructs the jury on second degree murder.

27.01 First Degree Murder--Self-Defense--Second Degree Murder--Statement Of The Defendant--(Defendant Is Arthur Fletcher

[1.01]

Members of the jury, the evidence and arguments in this case have been completed, and I now will instruct you as to the law.

The law that applies to this case is stated in these instructions, and it is your duty to follow all of them. You must not single out certain instructions and disregard others.

It is your duty to determine the facts and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case.

Neither sympathy nor prejudice should influence you.

From time to time it has been the duty of the court to rule on the admissibility of evidence. You should not concern yourselves with the reasons for these rulings. You should disregard questions and exhibits which were withdrawn or to which objections were sustained.

Any evidence that was received for a limited purpose should not be considered by you for any other purpose.

You should disregard testimony and exhibits which the court has refused or stricken.

The evidence which you should consider consists only of the testimony of the witnesses and the exhibits which the court has received.

You should consider all the evidence in the light of your own observations and

experience in life.

Neither by these instructions nor by any ruling or remark which I have made do I mean to indicate any opinion as to the facts or as to what your verdict should be.

Faithful performance by you of your duties as jurors is vital to the administration of justice.

[1.02]

Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, his memory, his manner while testifying, any interest, bias, or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

[1.03]

Opening statements are made by the attorneys to acquaint you with the facts they expect to prove. Closing arguments are made by the attorneys to discuss the facts and circumstances in the case and should be confined to the evidence and to reasonable inferences to be drawn from the evidence. Neither opening statements nor closing arguments are evidence, and any statement or argument made by the attorneys which is not based on the evidence should be disregarded.

[2.01A]

The defendant is charged with the offense of first degree murder. The defendant has pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty of second degree murder.

[2.02]

The charge against the defendant in this case is contained in a document called the information. This document is the formal method of charging the defendant and placing the defendant on trial. It is not any evidence against the defendant.

[2.03A]

The defendant is presumed to be innocent of the charge against him of first degree murder. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving that the defendant is guilty of first degree murder, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

If the State proves beyond a reasonable doubt that the defendant is guilty of first degree murder, the defendant then has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder, and not guilty of first degree murder. In deciding whether a mitigating factor is present, you should

consider all of the evidence bearing on this question.

[3.06-3.07]

You have before you evidence that the defendant made a statement relating to the offense charged in the information. It is for you to determine whether the defendant made the statement, and, if so, what weight should be given to the statement. In determining the weight to be given a statement, you should consider all of the circumstances under which it was made.

[7.01]

A person commits the offense of first degree murder when he kills an individual without lawful justification if, in performing the acts which cause the death,

he intends to kill or do great bodily harm to that individual;

or

he knows that such acts will cause death to that individual;

or

he knows that such acts create a strong probability of death or great bodily harm to that individual.

[7.05]

A mitigating factor exists so as to reduce the offense of first degree murder to the lesser offense of second degree murder if at the time of the killing the defendant believes that circumstances exist which would justify the deadly force he uses, but his belief that such circumstances exist is unreasonable.

[24-25.06]

A person is justified in the use of force when and to the extent that he reasonably believes that such conduct is necessary to defend himself against the imminent use of unlawful force.

However, a person is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself.

[24-25.09]

A person who initially provokes the use of force against himself is justified in the use of force only if the force used against him is so great that he reasonably believes he is in imminent danger of death or great bodily harm, and he has exhausted every reasonable means to escape the danger other than the use of force which is likely to cause death or great bodily harm to the other person.

[7.06]

To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of Ralph Hudson; and

Second Proposition: That when the defendant did so,

he intended to kill or do great bodily harm to Ralph Hudson;

or

he knew that such acts would cause death to Ralph Hudson;

or

he knew that such acts created a strong probability of death or great bodily harm to Ralph Hudson;

and

Third Proposition: That the defendant was not justified in using the force which he used.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations should end, and you should return a verdict of not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of Ralph Hudson, believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable.

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of first degree murder.

[26.01A]

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant is charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty of second degree murder.

Accordingly, you will be provided with three verdict forms: "not guilty", "guilty of first degree murder", and "guilty of second degree murder".

From these three verdict forms, you should select the one verdict form that reflects your verdict and sign it as I have stated. Do not write on the other two verdict forms. Sign only one verdict form.

[26.02]

We, the jury, find the defendant Arthur Fletcher not guilty.

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Arthur Fletcher guilty of first degree murder.

_____

Foreperson

_____

[Lines for eleven other jurors]

NOTE: IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, SLIGHT REVISIONS MUST BE MADE TO THE CONCLUDING INSTRUCTIONS FROM CHAPTER 26. READ THE "INTRODUCTION" TO THIS CHAPTER FOR DETAILS.

(Set 27.01)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. ____ Arthur Fletcher not guilty. [26.02]
2. ____ Arthur Fletcher guilty of first degree murder. [26.05]
3. ____ Arthur Fletcher guilty of second degree murder. [26.05]

Indicate your unanimous verdict by checking only one of the choices above.

_____

Foreperson

_____

[Lines for eleven other jurors]

SET 27.02

Instructions Included within Set 27.02:
1.01Functions of Court and Jury
1.02 Jury Sole Judges of Believability
1.03 Arguments of Counsel
2.01A Charge Against Defendant--1st and 2nd Degree Murder--Jury Not Instructed on Other Charges
2.02 Indictment/Information Not Evidence
2.03A Presumption of Innocence--Burden of Proof--1st and 2nd Degree Murder
3.06-3.07 Statements by Defendant
7.01A Definition of 1st Degree Murder
7.05A Definition of Mitigating Factor--2nd Degree Murder--Belief in Justification
24-25.06 Use of Force in Defense of a Person
24-25.09 Initial Aggressor's Use of Force
7.06A Issues Instruction--1st and 2nd Degree Murder--Belief in Justification--Justifiable Use of Force
26.01A Concluding Instruction--1st and 2nd Degree Murder--Jury Not Instructed on Other Charges
26.02 Verdict Form--Not Guilty
26.05 Verdict Form--Guilty of 1st Degree Murder
26.05 Verdict Form--Guilty of 2nd Degree Murder

In the second case (Set 27.02), the defendant, Samuel Jones, is charged in Cook County with attempt first degree murder and armed robbery of William Smith. Smith testifies that Jones and some others viciously beat Smith, hit him with a stick, and robbed him. At the time of the crime, Smith gives a vague description of the offender, but immediately identifies Jones in a line-up conducted four weeks later. Jones testifies that he was somewhere else at the time of the robbery. An alleged accomplice, who is impeached by a prior inconsistent statement, testifies as a prosecution witness that he helped Jones commit the offense. The State has told the accomplice it will recommend he receive probation in return for his testimony.

The defendant has been impeached with his prior conviction of burglary. The defendant's car was observed speeding away from the scene of the robbery. Arnold Davis testifies for the defense that the defendant loaned Davis the defendant's car on the night of the beating. However, Davis identifies a written statement he gave to the police in which he made no mention of borrowing the defendant's car on the night in question and in which he said he saw the defendant driving the defendant's car shortly after the time of the robbery.

The alleged victim had numerous interviews with the prosecutor, but declined to speak to defense counsel. The defendant's alibi witnesses declined to speak to the prosecutor. Because defense counsel argues that the stick was not a dangerous weapon, the court instructs the jury on the lesser included offense of robbery. Because the beating occurred in a wooded area near the county line, an issue arises concerning venue.

27.02 Attempt First Degree Murder--Armed Robbery--Robbery Given As Lesser Included Offense--Accomplice Testimony--Prior Inconsistent Statements--Defendant With Prior Record--Venue At Issue--(Defendant Is Samuel Jones)

[1.01]

Members of the jury, the evidence and arguments in this case have been completed, and I now will instruct you as to the law.

The law that applies to this case is stated in these instructions, and it is your duty to follow all of them. You must not single out certain instructions and disregard others.

It is your duty to determine the facts and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case.

Neither sympathy nor prejudice should influence you.

From time to time it has been the duty of the court to rule on the admissibility of evidence. You should not concern yourselves with the reasons for these rulings. You should disregard questions and exhibits which were withdrawn or to which objections were sustained.

Any evidence that was received for a limited purpose should not be considered by you for any other purpose.

You should disregard testimony and exhibits which the court has refused or stricken.

The evidence which you should consider consists only of the testimony of the witnesses and the exhibits which the court has received.

You should consider all the evidence in the light of your own observations and experience in life.

Neither by these instructions nor by any ruling or remark which I have made do I mean to indicate any opinion as to the facts or as to what your verdict should be.

Faithful performance by you of your duties as jurors is vital to the administration of justice.

[1.02]

Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, his memory, his manner while testifying, any interest, bias, or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

[1.03]

Opening statements are made by the attorneys to acquaint you with the facts they expect to prove. Closing arguments are made by the attorneys to discuss the facts and circumstances in the case and should be confined to the evidence and to reasonable inferences to be drawn from the evidence. Neither opening statements nor closing arguments are evidence, and any statement or argument made by the attorneys which is not based on the evidence should be disregarded.

[2.01R]

The defendant is charged with the offense of armed robbery. The defendant has pleaded not guilty. Under the law, a person charged with armed robbery may be found (1) not guilty of armed robbery and not guilty of robbery; or (2) guilty of armed robbery; or (3) guilty of robbery.

The defendant is also charged with the offense of attempt first degree murder. The defendant has pleaded not guilty.

[2.02]

The charges against the defendant in this case are contained in a document called the information. This document is the formal method of charging the defendant and placing the defendant on trial. It is not any evidence against the defendant.

[2.03]

The defendant is presumed to be innocent of the charges against him. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

[3.02]

Circumstantial evidence is the proof of facts or circumstances which give rise to a reasonable inference of other facts which tend to show the guilt or innocence of the defendant. Circumstantial evidence should be considered by you together with all the other evidence in the case in arriving at your verdict.

[3.10]

It is proper for an attorney to interview or attempt to interview a witness for the purpose of learning the testimony the witness will give.

However, the law does not require a witness to speak to an attorney before testifying.

[3.11]

The believability of a witness may be challenged by evidence that on some former occasion he made a statement that was not consistent with his testimony in this case. Evidence of this kind ordinarily may be considered by you only for the limited purpose of deciding the weight to be given the testimony you heard from the witness in this courtroom.

However, you may consider a witness's earlier inconsistent statement as evidence without this limitation when the statement narrates, describes, or explains an event or condition the witness had personal knowledge of; and

the statement was written or signed by the witness, or

the witness acknowledged under oath that he made the statement.

It is for you to determine what weight should be given to that statement. In determining the weight to be given to an earlier statement, you should consider all of the circumstances under which it was made.

[3.13]

Evidence of a defendant's previous conviction of an offense may be considered by you only as it may affect his believability as a witness and must not be considered by you as evidence of his guilt of the offense with which he is charged.

[3.15]

When you weigh the identification testimony of a witness, you should consider all the facts and circumstances in evidence, including, but not limited to, the following:

The opportunity the witness had to view the offender at the time of the offense.

The witness's degree of attention at the time of the offense.

The witness's earlier description of the offender.

The level of certainty shown by the witness when confronting the defendant.

The length of time between the offense and the identification confrontation.

[3.17]

When a witness says he was involved in the commission of a crime with the defendant, the testimony of that witness is subject to suspicion and should be considered by you with caution. It should be carefully examined in light of the other evidence in the case.

[4.17]

An object or an instrument which is not inherently dangerous may be a dangerous weapon depending on the manner of its use and the circumstances of the case.

[6.05X]

A person commits the offense of attempt first degree murder when he, with the intent to kill an individual, does any act which constitutes a substantial step toward the killing of an individual.

The killing attempted need not have been accomplished.

[5.03]

A person is legally responsible for the conduct of another person when, either before or during the commission of an offense, and with the intent to promote or facilitate the commission of an offense, he knowingly solicits, aids, abets, agrees to aid, or attempts to aid the other person in the planning or commission of an offense.

The word "conduct" includes any criminal act done in furtherance of the planned and intended act.

[6.07X/2.08]

To sustain the charge of attempt first degree murder, the State must prove the following propositions:

First Proposition: That the defendant or one for whose conduct he is legally responsible performed an act which constituted a substantial step toward the killing of an individual; and

Second Proposition: That the defendant or one for whose conduct he is legally responsible did so with the intent to kill an individual.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[14.05]

A person commits the offense of armed robbery when he, while carrying on or about his person, or while otherwise armed with a dangerous weapon, intentionally takes property from the person or presence of another by the use of force or by threatening the imminent use of force.

[14.06]

To sustain the charge of armed robbery, the State must prove the following propositions:

First Proposition: That the defendant or one for whose conduct he is legally responsible intentionally took property from the person or presence of William Smith; and

Second Proposition: That the defendant or one for whose conduct he is legally responsible did so by the use of force or by threatening the imminent use of force; and

Third Proposition: That the defendant or one for whose conduct he is legally responsible carried on or about his person a dangerous weapon or was otherwise armed with a dangerous weapon at the time of the taking.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[14.01]

A person commits the offense of robbery when he intentionally takes property from the person or the presence of another by the use of force or by threatening the imminent use of force.

[14.02]

To sustain the charge of robbery, the State must prove the following propositions:

First Proposition: That the defendant or one for whose conduct he is legally responsible intentionally took property from the person or presence of William Smith; and

Second Proposition: That the defendant or one for whose conduct he is legally responsible did so by the use of force or by threatening the imminent use of force.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[26.01R]

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant is charged with the offense of armed robbery. Under the law, a person charged with armed robbery may be found (1) not guilty of armed robbery and not guilty of robbery; or (2) guilty of armed robbery; or (3) guilty of robbery.

Accordingly, you will be provided with three verdict forms pertaining to the charge of

armed robbery: "not guilty of armed robbery and not guilty of robbery", "guilty of armed robbery", and "guilty of robbery".

From these three verdict forms, you should select the one verdict form that reflects your verdict and sign it as I have stated. Do not write on the other two verdict forms. Sign only one of these verdict forms.

The defendant is also charged with the offense of attempt first degree murder. You will receive two forms of verdict as to this charge. You will be provided with both a "not guilty of attempt first degree murder" and a "guilty of attempt first degree murder" form of verdict.

From these two verdict forms, you should select the one verdict form that reflects your verdict pertaining to the charge of attempt first degree murder and sign it as I have stated. You should not write at all on the other verdict form pertaining the charge of attempt first degree murder.

If you find the State has proved the defendant guilty of both armed robbery and robbery, you should select the verdict form finding the defendant guilty of armed robbery and sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of robbery.

[26.02]

We, the jury, find the defendant Samuel Jones not guilty of armed robbery and not guilty of robbery.

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Samuel Jones guilty of armed robbery.

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Samuel Jones guilty of robbery.

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.02]

We, the jury, find the defendant Samuel Jones not guilty of attempt first degree murder.

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Samuel Jones guilty of attempt first degree murder.

_____

Foreperson

_____

[Lines for eleven other jurors]

NOTE: IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, SLIGHT REVISIONS MUST BE MADE TO THE CONCLUDING INSTRUCTIONS FROM

CHAPTER 26. READ THE "INTRODUCTION" TO THIS CHAPTER FOR DETAILS.

(Set 27.02)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. ____ Samuel Jones not guilty of armed robbery and not guilty of robbery. [26.02]
2. ____ Samuel Jones guilty of armed robbery. [26.05]
3. ____ Samuel Jones guilty of robbery. [26.05]

Indicate your unanimous verdict by checking only one of the choices above.

_____

Foreperson

_____

[Lines for eleven other jurors]

(Set 27.02)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. ____ Samuel Jones not guilty of attempt first degree murder. [26.02]
2. ____ Samuel Jones guilty of attempt first degree murder. [26.05]

Indicate your unanimous verdict by checking only one of the choices above.

_____

Foreperson

_____

[Lines for eleven other jurors]

SET 27.03

Instructions Included within Set 27.03
1.01 Functions of Court and Jury
1.02 Jury Sole Judges of Believability
1.03 Arguments of Counsel
2.01 Charge Against Defendant--Multiple Defendants
2.02 Indictment/Information Not Evidence
2.03 Presumption of Innocence--Burden of Proof
3.05 Separate Consideration for Each Defendant
5.03 Accountability
11.55 Definition of Criminal Sexual Assault
11.65E Definition of Sexual Penetration
11.56 Issues Instruction--Criminal Sexual Assault As to Defendant Sidney Sommers
11.56 Issues Instruction--Criminal Sexual Assault As to Defendant Walter Winters
11.63 Defense of Consent
11.63A Definition of Consent
11.61 Definition of Aggravated Criminal Sexual Abuse
11.62A Issues Instruction--Aggravated Criminal Sexual Abuse As to Defendant Sidney Sommers
11.62A Issues Instruction--Aggravated Criminal Sexual Abuse As to Defendant Walter Winters
11.64 Defense to Aggravated Criminal Sexual Abuse
4.13 Definition of Reasonable Belief
26.01 Concluding Instruction--Multiple Defendants
26.02 Verdict Forms--Not Guilty of Criminal Sexual Assault (Sidney Sommers)
26.05 Verdict Form--Guilty of Criminal Sexual Assault (Sidney Sommers)
26.02 Verdict Form--Not Guilty of Aggravated Criminal Sexual Abuse (Sidney Sommers)
26.05 Verdict Form--Guilty of Aggravated Criminal Sexual Abuse (Sidney Sommers)
26.02 Verdict Form--Not Guilty of Criminal Sexual Assault (Walter Winters)
26.05 Verdict Form--Guilty of Criminal Sexual Assault--(Walter Winters)
26.02 Verdict Form--Not Guilty of Aggravated Criminal Sexual Abuse (Walter Winters)
26.05 Verdict Form--Guilty of Aggravated Criminal Sexual Abuse (Walter Winters)

In the third case (Set 27.03), the two defendants, Sidney Sommers and Walter Winters, both 26 years old, are charged in the same information with criminal sexual assault of Ann Strong, a 15-year-old female. A second count charges them with aggravated criminal sexual abuse of the same alleged victim. She testifies that she accepted the defendants' offer of a ride home from a party. She says they pulled into an alley and Winters slapped her once and held her while Sommers forcibly engaged in sexual intercourse with her. The defendants say the girl agreed to the sexual acts that took place. They also testify she said she was 17 years old and that she appeared to be at least that old.

27.03 Criminal Sexual Assault--Aggravated Criminal Sexual Abuse--Two Defendants--Consent--(Defendants Are Sidney Sommers And Walter Winters)

[1.01]

Members of the jury, the evidence and arguments in this case have been completed, and I now will instruct you as to the law.

The law that applies to this case is stated in these instructions, and it is your duty to follow all of them. You must not single out certain instructions and disregard others.

It is your duty to determine the facts and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case.

Neither sympathy nor prejudice should influence you.

From time to time it has been the duty of the court to rule on the admissibility of evidence. You should not concern yourselves with the reasons for these rulings. You should disregard questions and exhibits which were withdrawn or to which objections were sustained.

Any evidence that was received for a limited purpose should not be considered by you for any other purpose.

You should disregard testimony and exhibits which the court has refused or stricken.

The evidence which you should consider consists only of the testimony of the witnesses and the exhibits which the court has received.

You should consider all the evidence in the light of your own observations and experience in life.

Neither by these instructions nor by any ruling or remark which I have made do I mean to indicate any opinion as to the facts or as to what your verdict should be.

Faithful performance by you of your duties as jurors is vital to the administration of justice.

[1.02]

Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his or her ability and opportunity to observe, his or her memory, his or her manner while testifying, any interest, bias, or prejudice he or she may have, and the reasonableness of his or her testimony considered in the light of all the evidence in the case.

You should judge the testimony of the defendants in the same manner as you judge the testimony of any other witness.

[1.03]

Opening statements are made by the attorneys to acquaint you with the facts they expect to prove. Closing arguments are made by the attorneys to discuss the facts and circumstances in the case and should be confined to the evidence and to reasonable inferences to be drawn from the evidence. Neither opening statements nor closing arguments are evidence, and any statement or argument made by the attorneys which is not based on the evidence should be disregarded.

[2.01]

The defendants are charged with the offenses of criminal sexual assault and aggravated criminal sexual abuse. The defendants have pleaded not guilty.

[2.02]

The charges against the defendants in this case are contained in a document called the information. This document is the formal method of charging the defendants and placing the defendants on trial. It is not any evidence against the defendants.

[2.03]

Each defendant is presumed to be innocent of the charges against him. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

[3.05]

You should give separate consideration to each defendant. Each is entitled to have his case decided on the evidence and the law which applies to him.

Any evidence which was limited to one defendant should not be considered by you as to the other defendant.

[5.03]

A person is legally responsible for the conduct of another person when, either before or during the commission of an offense, and with the intent to promote or facilitate the commission of the offense, he knowingly solicits, aids, abets, agrees to aid, or attempts to aid the other person in the planning or commission of the offense.

[11.55]

A person commits the offense of criminal sexual assault when he commits an act of sexual penetration upon the victim by the use of force or threat of force.

[11.65E]

The term "sexual penetration" means any intrusion, however slight, of any part of the body of one person into the sex organ of another person. Evidence of emission of semen is not required to prove sexual penetration.

[11.56]

To sustain the charge of criminal sexual assault against the defendant Sidney Sommers, the State must prove the following propositions:

First Proposition: That the defendant, or one for whose conduct he is legally responsible, committed an act of sexual penetration upon Ann Strong; and

Second Proposition: That the act was committed by the use of force or threat of force; and

Third Proposition: That Ann Strong did not consent to the act of sexual penetration.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[11.56]

To sustain the charge of criminal sexual assault against the defendant Walter Winters, the State must prove the following propositions:

First Proposition: That the defendant, or one for whose conduct he is legally responsible, committed an act of sexual penetration upon Ann Strong; and

Second Proposition: That the act was committed by the use of force or threat of force; and

Third Proposition: That Ann Strong did not consent to the act of sexual penetration.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[11.63]

It is a defense to the charge of criminal sexual assault that Ann Strong consented.

[11.63A]

The word "consent" means a freely given agreement to the act of sexual penetration in question. Lack of verbal or physical resistance or submission by the victim resulting from the use of force or threat of force by the defendant shall not constitute consent.

[11.61]

A person commits the offense of aggravated criminal sexual abuse when he commits an act of sexual penetration with a victim who is at least 13 years of age but under 17 years of age when the act is committed and he is at least 5 years older than the victim.

[11.62A]

To sustain the charge of aggravated criminal sexual abuse against the defendant Sidney Sommers, the State must prove the following propositions:

First Proposition: That the defendant, or one for whose conduct he is legally responsible, committed an act of sexual penetration upon Ann Strong; and

Second Proposition: That Ann Strong was at least 13 years of age but under 17 years of age when the act was committed; and

Third Proposition: That the defendant was at least 5 years older than Ann Strong; and

Fourth Proposition: That the defendant did not reasonably believe Ann Strong to be 17 years of age or older.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[11.62A]

To sustain the charge of aggravated criminal sexual abuse against the defendant Walter Winters, the State must prove the following propositions:

First Proposition: That the defendant, or one for whose conduct he is legally responsible,

committed an act of sexual penetration upon Ann Strong; and

Second Proposition: That Ann Strong was at least 13 years of age but under 17 years of age when the act was committed; and

Third Proposition: That the defendant was at least 5 years older than Ann Strong; and

Fourth Proposition: That the defendant did not reasonably believe Ann Strong to be 17 years of age or older.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[11.64]

It is a defense to the charge of aggravated criminal sexual abuse that the defendant reasonably believed Ann Strong to be 17 years of age or older.

[4.13]

The phrases "reasonable belief" or "reasonably believes" mean that the person concerned, acting as a reasonable person, believes that the described facts exist.

[26.01]

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberation on your verdicts.

Your agreement on a verdict must be unanimous. Your verdicts must be in writing and signed by all of you, including your foreperson.

The defendants are charged with the offenses of criminal sexual assault and aggravated criminal sexual abuse. You will receive eight forms of verdict. As to each charge and for each defendant, you will be provided with both a "not guilty" and "guilty" form of verdict. From these two verdict forms with regard to a particular charge, you should select the one verdict form that reflects your verdict on that charge as to each defendant and sign it as I have stated. Do not write on the other verdict form on that charge as to that defendant. Sign only one verdict form on that charge as to that defendant.

[26.02]

We, the jury, find the defendant Sidney Sommers not guilty of criminal sexual assault.

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Sidney Sommers guilty of criminal sexual assault.

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.02]

We, the jury, find the defendant Sidney Sommers not guilty of aggravated criminal sexual abuse.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Sidney Sommers guilty of aggravated criminal sexual abuse.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.02]

We, the jury, find the defendant Walter Winters not guilty of criminal sexual assault.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Walter Winters guilty of criminal sexual assault.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.02]

We, the jury, find the defendant Walter Winters not guilty of aggravated criminal sexual abuse.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Walter Winters guilty of aggravated criminal sexual abuse.

_____
Foreperson

_____
[Lines for eleven other jurors]

NOTE: IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, SLIGHT REVISIONS MUST BE MADE TO THE CONCLUDING INSTRUCTIONS FROM CHAPTER 26. READ THE "INTRODUCTION" TO THIS CHAPTER FOR DETAILS.

(Set 27.03)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. ____ Sidney Sommers not guilty of criminal sexual assault. [26.02]
2. ____ Sidney Sommers guilty of criminal sexual assault. [26.05]

Indicate your unanimous verdict by checking only one of the choices above.

_____
Foreperson

_____
[Lines for eleven other jurors]

(Set 27.03)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. ____ Sidney Sommers not guilty of aggravated criminal sexual abuse. [26.02]
2. ____ Sidney Sommers guilty of aggravated criminal sexual abuse. [26.05]

Indicate your unanimous verdict by checking only one of the choices above.

_____
Foreperson

_____
[Lines for eleven other jurors]

(Set 27.03)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. ____ Walter Winters not guilty of criminal sexual assault. [26.02]
2. ____ Walter Winters guilty of criminal sexual assault. [26.05]

Indicate your unanimous verdict by checking only one of the choices above.

_____
Foreperson

_____
[Lines for eleven other jurors]

(Set 27.03)

Alternative, Single Page, Multiple Verdict Form We, the jury, find the defendant:

1. ____ Walter Winters not guilty of aggravated criminal sexual abuse. [26.02]
2. ____ Walter Winters guilty of aggravated criminal sexual abuse. [26.05]

Indicate your unanimous verdict by checking only one of the choices above.

_____
Foreperson

_____
[Lines for eleven other jurors]

SET 27.04A

The fourth case (Set 27.04) is designed to demonstrate the utilization of jury instructions when the jury is instructed on the guilty but mentally ill verdict. Set 27.04 has been divided into Sets 27.04A and 27.04B to demonstrate jury instructions to be used when the jury will be considering only first degree murder and the guilty but mentally ill verdict (Set 27.04A), as opposed to when the jury will be considering both first degree murder and second degree murder, as well as the guilty but mentally ill verdict (Set 27.04B).

Instructions Included within Set 27.04A:

1.01	Functions of Court and Jury
1.02	Jury Sole Judges of Believability
1.03	Arguments of Counsel
2.01AA	Charge Against Defendant--Insanity Defense--Guilty But Mentally Ill Verdict
2.02	Indictment/Information Not Evidence
2.03	Presumption of Innocence--Burden of Proof
2.03B	Presumption of Innocence--Burden of Proof--Insanity Defense
2.04	Failure of Defendant to Testify
7.01A	Definition of 1st Degree Murder
24-25.01	Definition of Insanity
4.18	Definition of Preponderance of Evidence
24-25.01B	Explanation of Guilty But Mentally Ill
24-25.01C	Definition of Mentally Ill
7.02A/24-25.01D	Issues Instruction--1st Degree Murder--Insanity Defense--Guilty But Mentally Ill Verdict
26.01AA	Concluding Instruction--Insanity Defense--Guilty But Mentally Ill Verdict
26.02	Verdict Form--Not Guilty
26.03	Verdict Form--Not Guilty by Reason of Insanity of 1st Degree Murder
26.05	Verdict Form--Guilty of 1st Degree Murder
26.04	Verdict Form--Guilty But Mentally Ill of 1st Degree Murder

In Set 27.04A, the defendant, Thomas Swanson, a black male, is charged with the first degree murder of Henry Carter. The State's evidence shows that the two men had a verbal confrontation before the defendant stabbed Carter 17 times with an ice pick. The defendant puts forth an insanity defense, but does not testify. No defense witness testifies to the events surrounding Carter's death. The court instructs the jury on the guilty but mentally ill verdict.

27.04A First Degree Murder--Insanity Defense--Guilty But Mentally Ill Verdict--(Defendant Is Thomas Swanson)

[1.01]

Members of the jury, the evidence and arguments in this case have been completed, and I now will instruct you as to the law.

The law that applies to this case is stated in these instructions and it is your duty to follow all of them. You must not single out certain instructions and disregard others.

It is your duty to determine the facts and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case.

Neither sympathy nor prejudice should influence you. You should not be influenced by any person's race, color, religion, or national ancestry.

From time to time it has been the duty of the court to rule on the admissibility of evidence. You should not concern yourselves with the reasons for these rulings. You should disregard questions and exhibits which were withdrawn or to which objections were sustained.

Any evidence that was received for a limited purpose should not be considered by you for any other purpose.

You should disregard testimony and exhibits which the court has refused or stricken.

The evidence which you should consider consists only of the testimony of the witnesses and the exhibits which the court has received.

You should consider all the evidence in the light of your own observations and experience in life.

Neither by these instructions nor by any ruling or remark which I have made do I mean to indicate any opinion as to the facts or as to what your verdict should be.

Faithful performance by you of your duties as jurors is vital to the administration of justice.

[1.02]

Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, his memory, his manner while testifying, any interest, bias, or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

[1.03]

Opening statements are made by the attorneys to acquaint you with the facts they expect to prove. Closing arguments are made by the attorneys to discuss the facts and circumstances in the case and should be confined to the evidence and to reasonable inferences to be drawn from the evidence. Neither opening statements nor closing arguments are evidence, and any statement or argument made by the attorneys which is not based on the evidence should be disregarded.

[2.01AA]

The defendant is charged with the offense of first degree murder. The defendant has pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder.

[2.02]

The charge against the defendant in this case is contained in a document called the information. This document is the formal method of charging the defendant and placing the defendant on trial. It is not any evidence against the defendant.

[2.03]

The defendant is presumed to be innocent of the charges against him. This presumption

remains with him throughout every stage of the trial and during your deliberations on the verdict, and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

[2.03B]

The defense of insanity has been presented during the trial. The burden of proof is on the defendant to prove by clear and convincing evidence that the defendant is not guilty by reason of insanity. However, the burden remains on the State to prove beyond a reasonable doubt each of the elements of the offense charged. You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity until and unless it has first been determined that the State has proved the defendant guilty beyond a reasonable doubt of the offense with which he is charged.

[2.04]

The fact that a defendant did not testify must not be considered by you in any way in arriving at your verdict.

[7.01]

A person commits the offense of first degree murder when he kills an individual without lawful justification if, in performing the acts which cause the death,

he intends to kill or do great bodily harm to that individual;

or

he knows that such acts will cause death to that individual;

or

he knows that such acts create a strong probability of death or great bodily harm to that individual.

[24-25.01]

A person is insane and not criminally responsible for his conduct if at the time of the conduct, as a result of mental disease or mental defect, he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law.

[4.18]

The phrase "preponderance of the evidence" means whether, considering all the evidence in the case, the proposition on which the defendant has the burden of proof is more probably true than not true.

[24-25.01B]

A person may be found guilty but mentally ill and is not relieved of criminal responsibility for his conduct if at the time of the commission of the offense he was not insane but was suffering from a mental illness.

[24-25.01C]

A person is mentally ill if, at the time of the commission of the offense, he was afflicted by a substantial disorder of thought, mood, or behavior which impaired his judgment, but not to the extent that he was unable to appreciate the wrongfulness of his behavior.

[7.02/24-25.01D]

To sustain the charge of first degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of Henry Carter; and

Second Proposition: That when the defendant did so,

he intended to kill or do great bodily harm to Henry Carter;

or

he knew that such acts would cause death to Henry Carter;

or

he knew that such acts created a strong probability of death or great bodily harm to Henry Carter.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty, your deliberations should end, and you should return the verdict of not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether the defendant has proved by clear and convincing evidence that he is not guilty by reason of insanity.

You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity until and unless you have first determined that the State has proved the defendant guilty beyond a reasonable doubt.

If you find from your consideration of all the evidence that the defendant has proved by clear and convincing evidence that he is not guilty by reason of insanity, your deliberations should end, and you should return the verdict of not guilty by reason of insanity.

If you find from your consideration of all the evidence that the defendant has not proved by clear and convincing evidence that he is not guilty by reason of insanity, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill.

A special verdict of guilty but mentally ill may be returned by you instead of a general verdict of guilty if you find each of the following circumstances to be present in this case:

First: That the State has proved beyond a reasonable doubt that the defendant is guilty of

first degree murder; and

Second: That the defendant has not proved by clear and convincing evidence that he was insane at the time he committed the offense of first degree murder; and

Third: That the defendant has proved by a preponderance of the evidence that he was mentally ill at the time he committed the offense of first degree murder.

If you find from your consideration of all the evidence that each one of these circumstances is present, you may return the special verdict finding the defendant guilty but mentally ill.

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt that the defendant is guilty of first degree murder and if you find that either the second or third circumstance concerning the guilty but mentally ill verdict is not present, you should return the general verdict finding the defendant guilty.

[26.01AA]

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant is charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder.

Accordingly, you will be provided with four verdict forms: "not guilty", "not guilty by reason of insanity of first degree murder", "guilty of first degree murder", and "guilty but mentally ill of first degree murder".

From these four verdict forms, you should select the one verdict form that reflects your verdict and sign it as I have stated. Do not write on the other three verdict forms. Sign only one verdict form.

[26.02]

We, the jury, find the defendant Thomas Swanson not guilty.

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.03]

We, the jury, find the defendant Thomas Swanson not guilty by reason of insanity of first degree murder.

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Thomas Swanson guilty of first degree murder.

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.04]

We, the jury, find the defendant Thomas Swanson guilty but mentally ill of first degree murder.

_____
Foreperson

_____
[Lines for eleven other jurors]

NOTE: IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, SLIGHT REVISIONS MUST BE MADE TO THE CONCLUDING INSTRUCTIONS FROM CHAPTER 26. READ THE "INTRODUCTION" TO THIS CHAPTER FOR DETAILS.

(Set 27.04A)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. ____ Thomas Swanson not guilty. [26.02]
2. ____ Thomas Swanson not guilty by reason of insanity of first degree murder. [26.03]
3. ____ Thomas Swanson guilty of first degree murder. [26.05]
4. ____ Thomas Swanson guilty but mentally ill of first degree murder. [26.04]

Indicate your unanimous verdict by checking only one of the choices above.

_____
Foreperson

_____
[Lines for eleven other jurors]

SET 27.04B

Instructions Included within Set 27.04B

1.01	Functions of Court and Jury
1.02	Jury Sole Judges of Believability
1.03	Arguments of Counsel
2.01G	Charge Against Defendant--1st and 2nd Degree Murder--Insanity Defense--Guilty But Mentally Ill Verdict
2.02	Indictment/Information Not Evidence
2.03A	Presumption of Innocence--Burden of Proof--1st and 2nd Degree Murder
2.03B	Presumption of Innocence--Burden of Proof--Insanity Defense
2.04	Failure of Defendant to Testify
7.01A	Definition of 1st Degree Murder
7.03A	Definition of Mitigating Factor--1st and 2nd Degree Murder--Provocation
24-25.01	Definition of Insanity
4.18	Definition of Preponderance of the Evidence
24-25.01B	Explanation of Guilty But Mentally Ill
24-25.01C	Definition of Mentally Ill
7.04A/24-25.01F	Issues Instruction--1st and 2nd Degree Murder--Insanity Defense--Guilty But Mentally Ill Verdict
26.01G	Concluding Instruction--1st and 2nd Degree Murder--Insanity Defense--Guilty But Mentally Ill Verdict
26.02	Verdict Form--Not Guilty
26.03	Verdict Form--Not Guilty by Reason of Insanity of 1st Degree Murder
26.03	Verdict Form--Not Guilty by Reason of Insanity of 2nd Degree Murder
26.05	Verdict Form--Guilty of 1st Degree Murder
26.05	Verdict Form--Guilty of 2nd Degree Murder
26.04	Verdict Form--Guilty But Mentally Ill of 1st Degree Murder
26.04	Verdict Form--Guilty But Mentally Ill of 2nd Degree Murder

In Set 27.04B, the defendant, Thomas Swanson, is charged with the first degree murder of Henry Carter. The State's evidence shows that the two men had a verbal and physical confrontation before the defendant stabbed Henry Carter 17 times with an ice pick. The defendant puts forth an insanity defense, but does not testify. No defense witness testifies to the events surrounding Carter's death. The court instructs the jury on second degree murder. The court also instructs the jury on the guilty but mentally ill verdict.

27.04B First Degree Murder--Insanity Defense--Provocation--Second Degree Murder--Guilty But Mentally Ill Verdict--(Defendant Is Thomas Swanson)

[1.01]

Members of the jury, the evidence and arguments in this case have been completed, and I now will instruct you as to the law.

The law that applies to this case is stated in these instructions, and it is your duty to follow all of them. You must not single out certain instructions and disregard others.

It is your duty to determine the facts and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case.

Neither sympathy nor prejudice should influence you.

From time to time it has been the duty of the court to rule on the admissibility of evidence. You should not concern yourselves with the reasons for these rulings. You should

disregard questions and exhibits which were withdrawn or to which objections were sustained.

Any evidence that was received for a limited purpose should not be considered by you for any other purpose.

You should disregard testimony and exhibits which the court has refused or stricken.

The evidence which you should consider consists only of the testimony of the witnesses and the exhibits which the court has received.

You should consider all the evidence in the light of your own observations and experience in life.

Neither by these instructions nor by any ruling or remark which I have made do I mean to indicate any opinion as to the facts or as to what your verdict should be.

Faithful performance by you of your duties as jurors is vital to the administration of justice.

[1.02]

Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, his memory, his manner while testifying, any interest, bias, or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

[1.03]

Opening statements are made by the attorneys to acquaint you with the facts they expect to prove. Closing arguments are made by the attorneys to discuss the facts and circumstances in the case and should be confined to the evidence and to reasonable inferences to be drawn from the evidence. Neither opening statements nor closing arguments are evidence, and any statement or argument made by the attorneys which is not based on the evidence should be disregarded.

[2.01G]

The defendant is charged with the offense of first degree murder. The defendant has pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; or (5) not guilty by reason of insanity of second degree murder; or (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder.

[2.02]

The charge against the defendant in this case is contained in a document called the information. This document is the formal method of charging the defendant and placing the defendant on trial. It is not any evidence against the defendant.

[2.03A]

The defendant is presumed to be innocent of the charge against him of first degree murder. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all the evidence in this case you are

convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving that the defendant is guilty of first degree murder, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

If the State proves beyond a reasonable doubt that the defendant is guilty of first degree murder, the defendant then has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder, and not guilty of first degree murder. In deciding whether a mitigating factor is present, you should consider all of the evidence bearing on this question. The defendant is not required to present any evidence in order to establish the existence of a mitigating factor.

[2.03B]

The defense of insanity has been presented during the trial. The burden of proof is on the defendant to prove by clear and convincing evidence that the defendant is not guilty by reason of insanity. However, the burden remains on the State to prove beyond a reasonable doubt each of the elements of the offense charged. You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity until and unless it has first been determined that the State has proved the defendant guilty beyond a reasonable doubt of the offense with which he is charged.

[2.04]

The fact that the defendant did not testify must not be considered by you in any way in arriving at your verdict.

[7.01]

A person commits the offense of first degree murder when he kills an individual without lawful justification if, in performing the acts which cause the death,

he intends to kill or do great bodily harm to that individual;

or

he knows that such acts will cause death to that individual;

or

he knows that such acts create a strong probability of death or great bodily harm to that individual.

[7.03]

A mitigating factor exists so as to reduce the offense of first degree murder to the lesser offense of second degree murder if, at the time of the killing, the defendant acts under a sudden and intense passion resulting from serious provocation by the deceased. Serious provocation is conduct sufficient to excite an intense passion in a reasonable person.

[24-25.01] A person is insane and not criminally responsible for his conduct if at the time of the conduct, as a result of mental disease or mental defect, he lacks substantial capacity to appreciate the criminality of his conduct.

[4.18] The phrase "preponderance of the evidence" means whether, considering all the evidence in the case, the proposition on which the defendant has the burden of proof is more probably true than not true.

[24-25.01B] A person may be found guilty but mentally ill and is not relieved of criminal responsibility for his conduct if at the time of the commission of the offense he was not insane but was suffering from a mental illness.

[24-25.01C] A person is mentally ill if, at the time of the commission of the offense, he was afflicted by a substantial disorder of thought, mood, or behavior which impaired his judgment, but not to the extent that he was unable to appreciate the wrongfulness of his behavior.

[7.04/24-25.01F] To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of Henry Carter; and

Second Proposition: That when the defendant did so,

he intended to kill or do great bodily harm to Henry Carter;

or he knew that such acts would cause death to Henry Carter;

or he knew that such acts created a strong probability of death or great bodily harm to Henry Carter.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty, your deliberations should end, and you should return a verdict of not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of

Henry Carter, acted under a sudden and intense passion resulting from serious provocation by the deceased.

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by a preponderance of the evidence that he is not guilty by reason of insanity on the charge of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by clear and convincing evidence that he is not guilty by reason of insanity on the charge of first degree murder.

You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity on either the charge of first degree murder or the charge of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

If you find from your consideration of all the evidence that the defendant has proved by clear and convincing evidence that he is not guilty by reason of insanity, then you should find the defendant not guilty by reason of insanity of whichever murder charge, either first degree murder or second degree murder, that you found earlier to apply, your deliberations should end, and you should return a verdict of not guilty by reason of insanity on that murder charge.

If you find from your consideration of all the evidence that the defendant has not proved by clear and convincing evidence that he is not guilty by reason of insanity of first degree murder or second degree murder, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill on that murder charge.

A special verdict of guilty but mentally ill may be returned by you instead of a general verdict of guilty if you find each of the following circumstances to be present in this case:

First: That the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder; and

Second: That the defendant has not proved by clear and convincing evidence that he was insane at the time he committed whichever murder you found earlier to be applicable; and

Third: That the defendant has proved by a preponderance of the evidence that he was mentally ill at the time he committed that murder.

If you find from your consideration of all the evidence that each one of these circumstances concerning the guilty but mentally ill verdict is present, you may return the special verdict finding the defendant guilty but mentally ill of the murder charge that you found earlier to be applicable.

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder and if you find that either the second or third circumstance concerning the guilty but mentally ill verdict is not present, you should return the general verdict finding the defendant guilty of the murder charge that you found earlier to be applicable.

[26.01G] When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant is charged with the offense of first degree murder. Under the law, a person

charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; or (5) not guilty by reason of insanity of second degree murder; or (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder.

Accordingly, you will be provided with seven verdict forms: "not guilty", "not guilty by reason of insanity of first degree murder", "guilty of first degree murder", "guilty but mentally ill of first degree murder", "not guilty by reason of insanity of second degree murder", "guilty of second degree murder", and "guilty but mentally ill of second degree murder".

From these seven verdict forms, you should select the one verdict form that reflects your verdict and sign it as I have stated. Do not write on the other six verdict forms. Sign only one verdict form.

[26.02] We, the jury, find the defendant Thomas Swanson not guilty.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.03] We, the jury, find the defendant Thomas Swanson not guilty by reason of insanity of first degree murder.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.03] We, the jury, find the defendant Thomas Swanson not guilty by reason of insanity of second degree murder.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.05] We, the jury, find the defendant Thomas Swanson guilty of first degree murder.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.05] We, the jury, find the defendant Thomas Swanson guilty of second degree murder.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.04] We, the jury, find the defendant Thomas Swanson guilty but mentally ill of first degree murder.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.04] We, the jury, find the defendant Thomas Swanson guilty but mentally ill of second degree murder.

_____
Foreperson

_____

[Lines for eleven other jurors]

NOTE: IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, SLIGHT REVISIONS MUST BE MADE TO THE CONCLUDING INSTRUCTIONS FROM CHAPTER 26. READ THE "INTRODUCTION" TO THIS CHAPTER FOR DETAILS.

(Set 27.04B)

Alternative, Single Page, Multiple Verdict Form We, the jury, find the defendant:

1. ____ Thomas Swanson not guilty. [26.02]
2. ____ Thomas Swanson not guilty by reason of insanity of first degree murder. [26.03]
3. ____ Thomas Swanson not guilty by reason of insanity of second degree murder. [26.03]
4. ____ Thomas Swanson guilty of first degree murder. [26.05]
5. ____ Thomas Swanson guilty of second degree murder. [26.05]
6. ____ Thomas Swanson guilty but mentally ill of first degree murder. [26.04]
7. ____ Thomas Swanson guilty but mentally ill of second degree murder. [26.04]

Indicate your unanimous verdict by checking only one of the choices above.

_____

Foreperson

_____

[Lines for eleven other jurors]

Set 27.05

Included within Set 27.05:

1.01		Functions of Court and Jury
1.02		Jury Sole Judges of Believability
1.03		Arguments of Counsel
2.01B	(modified)	Charge Against Defendant--1st Degree Murder (Type A) and (Type B)--2nd Degree Murder--Jury Instructed on Other Charge
7.01X		Explanation of (Type A) and (Type B) 1st Degree Murder
2.02		Indictment/Information Not Evidence
2.03	(modified)	Presumption of Innocence--Burden of Proof
2.03A	(modified)	Presumption of Innocence--Burden of Proof--1st and 2nd Degree Murder
3.02		Definition of Circumstantial Evidence
3.14		Evidence of Other Offenses
11.53		Definition of Home Invasion
11.54		Issues Instruction--Home Invasion
7.01A	(modified)	Definition of 1st Degree Murder (Type B)
7.02	(modified)	Issues Instruction--1st Degree Murder (Type B)
7.02X		Explanation of Relationship of Home Invasion to 1st Degree Murder (Type B)
7.01A	(modified)	Definition of 1st Degree Murder (Type A)
7.03A	(modified)	Definition of Mitigating Factor--2nd Degree Murder--Provocation
7.05A	(modified)	Definition of Mitigating Factor--2nd Degree Murder--Belief in Justification
7.06A	(modified)	Issues Instruction--1st Degree Murder (Type A) and 2nd Degree Murder--Provocation and Belief in Justification--Justifiable Use of Force
24-25.06		Use of Force in Defense of a Person
24-25.09		Initial Aggressor's Use of Force
24-25.10		Forcible Felon Not Entitled to Use Force
26.01B	(modified)	Concluding Instruction--1st Degree Murder (Type A) and (Type B)--2nd Degree Murder--Jury Instructed on Other Charge
26.02		Verdict Form--Not Guilty of 1st Degree Murder (Type B)
26.05		Verdict Form--Guilty of 1st Degree Murder (Type B)
26.02		Verdict Form--Not Guilty of 1st Degree Murder (Type A)
26.05		Verdict Form--Guilty of 1st Degree Murder (Type A)
26.05		Verdict Form--Guilty of 2nd Degree Murder
26.02		Verdict Form--Not Guilty of Home Invasion
26.05		Verdict Form--Guilty of Home Invasion

In the fifth case (Set 27.05), the defendant, Lester Williams, is charged with home invasion and first degree murder. The State claims that he killed the victim, Henry Baxter, while committing the forcible felony of home invasion. The defendant is also charged with first degree murder based upon the charge that he killed Baxter intending to kill or to do great bodily harm to Baxter, or knew that his acts would do so.

The evidence for the State shows that Williams, while armed with a hunting knife, entered the trailer of his estranged wife and therein confronted her and her new boyfriend, Baxter. The State's evidence is that an argument ensued, the defendant drew his knife and attacked Baxter, who subsequently died from the stab wounds.

The defendant testifies that his wife voluntarily permitted him to enter her trailer, Baxter started an argument with him, he left, and Baxter jumped him just outside the trailer's front door. Only then did the defendant pull his knife in self-defense and stab Baxter. Baxter then staggered into the trailer where he collapsed and died on the living room floor.

The court permits the State to present evidence that three weeks before this confrontation, Williams struck Baxter in the head with a bottle while they were in a tavern and said, "If you don't stay away from my wife, I'm going to kill you."

The court instructs the jury on two different versions of first degree murder. One set of first degree murder instructions (Type A) is based upon the charge that defendant killed the deceased while intending to kill or cause great bodily harm to the deceased or knowing that his acts would do so. This set of instructions also permits the jury to find defendant guilty of second degree murder. The other set of first degree murder instructions (Type B) is based upon felony murder, and this set does not permit the jury to find the defendant guilty of second degree murder.

27.05 First Degree Murder With Some Counts Based On Felony Murder And Some Counts Based On "Knowing Or Intentional" Murder--Second Degree Murder--(Defendant Is Lester Williams)

[1.01]

Members of the jury, the evidence and arguments in this case have been completed, and I now will instruct you as to the law.

The law that applies to this case is stated in these instructions, and it is your duty to follow all of them. You must not single out certain instructions and disregard others. When I use the word "he" in these instructions, I mean a male or female.

It is your duty to determine the facts and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case.

Neither sympathy nor prejudice should influence you.

From time to time it has been the duty of the court to rule on the admissibility of evidence. You should not concern yourselves with the reasons for these rulings. You should disregard questions and exhibits which were withdrawn or to which objections were sustained.

Any evidence that was received for a limited purpose should not be considered by you for any other purpose.

You should disregard testimony and exhibits which the court has refused or stricken.

The evidence which you should consider consists only of the testimony of the witnesses and the exhibits which the court has received.

You should consider all the evidence in the light of your own observations and experience in life.

Neither by these instructions nor by any ruling or remark which I have made do I mean to indicate any opinion as to the facts or as to what your verdict should be.

Faithful performance by you of your duties as jurors is vital to the administration of justice.

[1.02]

Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, his memory, his manner while testifying, any

interest, bias, or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case.
You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

[1.03]

Opening statements are made by the attorneys to acquaint you with the facts they expect to prove. Closing arguments are made by the attorneys to discuss the facts and circumstances in the case and should be confined to the evidence and to reasonable inferences to be drawn from the evidence. Neither opening statements nor closing arguments are evidence, and any statement or argument made by the attorneys which is not based on the evidence should be disregarded.

[2.01B (modified)]

The defendant is charged with the offense of first degree murder (Type A). The defendant has pleaded not guilty. Under the law, a person charged with first degree murder (Type A) may be found (1) not guilty of first degree murder (Type A); or (2) guilty of first degree murder (Type A); or (3) guilty of second degree murder.

The defendant is also charged with the offenses of first degree murder (Type B) and home invasion. Defendant has pleaded not guilty to that charge.

[7.01X]

The terms "(Type A)" and "(Type B)" that I used in referring to first degree murder have no legal significance. I use those terms simply to distinguish between different kinds of first degree murder.

[2.02]

The charges against the defendants in this case are contained in a document called the information. This document is the formal method of charging the defendant and placing the defendant on trial. It is not any evidence against the defendant.

[2.03 (modified)]

The defendant is presumed to be innocent of the charges against him of first degree murder (Type B) and home invasion. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdicts, and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that the defendant is guilty.
The State has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

[2.03A (modified)]

The defendant is presumed to be innocent of the charge against him of first degree murder (Type A). The presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all of the evidence in

this case you are convinced beyond a reasonable doubt that the defendant is guilty.
The State has the burden of proving that the defendant is guilty of first degree murder (Type A), and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.
If the State proves beyond a reasonable doubt that the defendant is guilty of first degree murder (Type A), the defendant then has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder, and not guilty of first degree murder (Type A). In deciding whether a mitigating factor is present, you should consider all of the evidence bearing on this question.

[3.02]

Circumstantial evidence is the proof of facts or circumstances which give rise to a reasonable inference of other facts which tend to show the guilt or innocence of the defendant. Circumstantial evidence should be considered by you together with all the other evidence in the case in arriving at your verdict.

[3.14]

Evidence has been received that the defendant has been involved in an offense other than those charged in the indictment.
This evidence has been received on the issue of the defendant's intent and may be considered by you only for that limited purpose.
It is for you to determine whether the defendant was involved in that offense and, if so, what weight should be given to this evidence on the issue of the defendant's intent.

[11.53]

A person commits the offense of home invasion when he, not being a police officer acting in the line of duty, without authority, knowingly enters the dwelling place of another when he knows or has reason to know that one or more persons is present, and intentionally causes any injury to any person within the dwelling place.

[11.54]

To sustain the charge of home invasion, the State must prove the following propositions:

First Proposition: That the defendant was not a police officer acting in the line of duty; and

Second Proposition: That he knowingly and without authority entered the dwelling place of another; and

Third Proposition: That when he entered the dwelling place he knew or had reason to know that one or more persons was present; and

Fourth Proposition: That he intentionally caused an injury to Henry Baxter, a person within the dwelling place.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[7.01 (modified)]

A person commits the offense of first degree murder (Type B) when he kills an individual if, in performing the acts which caused the death, he is committing the offense of home invasion.

[7.02 (modified)]

To sustain the charge of first degree murder (Type B), the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of Henry Baxter; and

Second Proposition: That when the defendant did so, he was committing the offense of home invasion.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[7.02X]

To sustain the charge of first degree murder (Type B), the State must prove that when the defendant performed the acts which caused the death of Henry Baxter, the defendant was committing the offense of home invasion. Accordingly, you may find the defendant guilty of first degree murder (Type B) only if you also find the defendant guilty of home invasion.

If you find the defendant not guilty of home invasion, then you must find the defendant not guilty of first degree murder (Type B).

[7.01 (modified)]

A person commits the offense of first degree murder (Type A) when he kills an individual without lawful justification if, in performing the acts which caused the death,

he intends to kill or do great bodily harm to that individual;

or

he knows that such acts will cause death to that individual;

or

he knows that such acts create a strong probability of death or great bodily harm to that individual.

[7.03 (modified)]

A mitigating factor exists so as to reduce the offense of first degree murder (Type A) to the lesser offense of second degree murder if, at the time of the killing, the defendant acts under a sudden and intense passion resulting from serious provocation by the deceased. Serious

provocation is conduct sufficient to excite an intense passion in a reasonable person.

[7.05 (modified)]

A mitigating factor exists so as to reduce the offense of first degree murder (Type A) to the lesser offense of second degree murder if at the time of the killing the defendant believes that circumstances exist which would justify the deadly force he uses, but his belief that such circumstances exist is unreasonable.

[7.06 (modified)]

To sustain either the charge of first degree murder (Type A) or the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of Henry Baxter; and

Second Proposition: That when the defendant did so, he intended to kill or do great bodily harm to Henry Baxter;

or

he knew that such acts would cause death to Henry Baxter;

or

he knew that such acts created a strong probability of death or great bodily harm to Henry Baxter;

and

Third Proposition: That the defendant was not justified in using the force which he used.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations on these charges should end, and you should return a verdict of not guilty of first degree murder (Type A).

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder (Type A).

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder (Type A). By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that either of the following mitigating factors is present:

that the defendant, at the time he performed the acts which caused the death of Henry

Baxter, acted under a sudden and intense passion resulting from serious provocation by the deceased,

or

that the defendant, at the time he performed the acts which caused the death of Henry Baxter, believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable.

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder (Type A), you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder (Type A), you should find the defendant guilty of first degree murder (Type A).

[24-25.06]

A person is justified in the use of force when and to the extent that he reasonably believes that such conduct is necessary to defend himself against the imminent use of unlawful force. However, a person is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself.

[24-25.09]

A person who initially provokes the use of force against himself is justified in the use of force only if the force used against him is so great that he reasonably believes he is in imminent danger of death or great bodily harm, and he has exhausted every reasonable means to escape the danger other than the use of force which is likely to cause death or great bodily harm to the other person.

[24-25.10]

A person is not justified in the use of force if he is attempting to commit or committing home invasion.

[26.01B (modified)]

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant is charged with the offense of first degree murder (Type A). Under the law, a person charged with first degree murder (Type A) may be found (1) not guilty of first degree murder (Type A); or (2) guilty of first degree murder (Type A); or (3) guilty of second degree murder.

Accordingly, you will be provided with three verdict forms: "not guilty of first degree murder (Type A)", "guilty of first degree murder (Type A)", and "guilty of second degree murder".

>From these three verdict forms, you should select the one verdict form that reflects your verdict and sign it as I have stated. Do not write on the other two verdict forms. Sign only one of these verdict forms.

The defendant is also charged with the offense of first degree murder (Type B). You will receive two forms of verdict as to this charge. You will be provided with both a "not guilty of first degree murder (Type B)", and a "guilty of first degree murder (Type B)" form of verdict.

>From these two verdict forms, you should select the one verdict form that reflects your verdict pertaining to the charge of first degree murder (Type B) and sign it as I have stated. You should not write at all on the other verdict form pertaining to the charge of first degree murder (Type B).

The defendant is also charged with the offense of home invasion. You will receive two forms of verdict as to this charge. You will be provided with both a "not guilty of home invasion", and a "guilty of home invasion" form of verdict.

>From these two verdict forms, you should select the one verdict form that reflects your verdict pertaining to the charge of home invasion and sign it as I have stated. You should not write at all on the other verdict form pertaining to the charge of home invasion.

[26.02]

We, the jury, find the defendant Lester Williams not guilty of first degree murder (Type B).

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Lester Williams guilty of first degree murder (Type B).

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.02]

We, the jury, find the defendant Lester Williams not guilty of first degree murder (Type A).

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Lester Williams guilty of first degree murder (Type A).

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Lester Williams guilty of second degree murder.

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.02]

We, the jury, find the defendant Lester Williams not guilty of home invasion.

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Lester Williams guilty of home invasion.

_____

Foreperson

_____

[Lines for eleven other jurors]

NOTE: IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, SLIGHT REVISIONS MUST BE MADE TO THE CONCLUDING INSTRUCTIONS FROM CHAPTER 26. READ THE "INTRODUCTION" TO THIS CHAPTER FOR DETAILS.

(Set 27.05)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. ____ Lester Williams not guilty of first degree murder (Type B). [26.02]
2. ____ Lester Williams guilty of first degree murder (Type B). [26.05]

Indicate your unanimous verdict by checking only one of the choices above.

_____

Foreperson

_____

[Lines for eleven other jurors]

(Set 27.05)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. ____ Lester Williams not guilty of first degree murder (Type A). [26.02]
2. ____ Lester Williams guilty of first degree murder (Type A). [26.05]
3. ____ Lester Williams guilty of second degree murder. [26.05]

Indicate your unanimous verdict by checking only one of the choices above.

_____
Foreperson

_____
[Lines for eleven other jurors]

(Set 27.05)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. ____ Lester Williams not guilty of home invasion. [26.02]
2. ____ Lester Williams guilty of home invasion. [26.05]

Indicate your unanimous verdict by checking only one of the choices above.

_____
Foreperson

_____
[Lines for eleven other jurors]

SET 27.06

Instructions Included within Set 27.06:

1.01	Functions of Court and Jury
1.02	Jury Sole Judges of Believability
1.03	Arguments of Counsel
2.01I	Charge Against Defendant--1st and 2nd Degree Murder--Involuntary Manslaughter
2.02	Indictment/Information Not Evidence
2.03 (modified)	Presumption of Innocence--Burden of Proof
2.03A	Presumption of Innocence--Burden of Proof--1st and 2nd Degree Murder
3.02	Definition of Circumstantial Evidence
7.01A	Definition of 1st Degree Murder
7.05A	Definition of Mitigating Factor--2nd Degree Murder--Belief in Justification
7.06A	Issues Instruction--1st and 2nd Degree Murder--Belief in Justification--Justifiable Use of Force
7.07	Definition of Involuntary Manslaughter
5.01	Definition of Recklessness
7.08/24-25.06	A Issues Instruction--Involuntary Manslaughter--Justifiable Use of Force
7.15	Causation in Homicide Cases
26.01I	Concluding Instruction--1st and 2nd Degree Murder--Involuntary Manslaughter
26.02	Verdict Form--Not Guilty
26.05	Verdict Form--Guilty of 1st Degree Murder
26.05	Verdict Form--Guilty of 2nd Degree Murder
26.05	Verdict Form--Guilty of Involuntary Manslaughter

In the sixth case (Set 27.06), the defendant, Edward Grady, is charged with the first degree murder of James Ross. The State's evidence shows that Grady and Ross lived in the same neighborhood and had a long-standing feud. On the evening in question, the feud became more heated, and Grady shot Ross, stating, “I'm not going to put up with your taunts any longer.”

Grady testifies that he feared for his life because of Ross' previous threats and violent behavior toward him. Grady claims that on the evening in question, he was carrying a gun only because the day before Ross had threatened to beat Grady into the ground the next time Ross saw Grady. Grady testifies that he carried his father's gun on the night in question just for the purpose of scaring Ross away. Grady also testifies that he had been told and believed that the gun was always unloaded. Last, Grady testifies that he never intended to shoot Ross and that he was shocked when the gun went off.

Ross is hospitalized for six weeks after the shooting and undergoes surgery twice. Ross dies after the second surgery. Grady presents evidence that Ross' doctors mishandled the case, that Ross' second surgery was due to malpractice during his first surgery, and that Ross might have recovered from his gunshot wounds but for this malpractice. The court instructs the jury on first degree murder, second degree murder, and involuntary manslaughter.

27.06 First Degree Murder--Second Degree Murder--Involuntary Manslaughter--(Defendant Is Edward Grady)

[1.01]

Members of the jury, the evidence and arguments in this case have been completed, and I now will instruct you as to the law.

The law that applies to this case is stated in these instructions, and it is your duty to follow all of them. You must not single out certain instructions and disregard others.

It is your duty to determine the facts and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case.

Neither sympathy nor prejudice should influence you.

>From time to time it has been the duty of the court to rule on the admissibility of evidence. You should not concern yourselves with the reasons for these rulings. You should disregard questions and exhibits which were withdrawn or to which objections were sustained.

Any evidence that was received for a limited purpose should not be considered by you for any other purpose.

You should disregard testimony and exhibits which the court has refused or stricken.

The evidence which you should consider consists only of the testimony of the witnesses and the exhibits which the court has received.

You should consider all the evidence in the light of your own observations and experience in life.

Neither by these instructions nor by any ruling or remark which I have made do I mean to indicate any opinion as to the facts or as to what your verdict should be.

Faithful performance by you of your duties as jurors is vital to the administration of justice.

[1.02]

Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, his memory, his manner while testifying, any interest, bias, or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

[1.03]

Opening statements are made by the attorneys to acquaint you with the facts they expect to prove. Closing arguments are made by the attorneys to discuss the facts and circumstances in the case and should be confined to the evidence and to reasonable inferences to be drawn from the evidence. Neither opening statements nor closing arguments are evidence, and any statement or argument made by the attorneys which is not based on the evidence should be disregarded.

[2.01I]

The defendant is charged with the offense of first degree murder. The defendant has pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty of second degree murder; or (4) guilty of involuntary manslaughter.

[2.02]

The charge against the defendant[s] in this case is contained in a document called the information. This document is the formal method of charging the defendant and placing the defendant on trial. It is not any evidence against the defendant.

[2.03 (modified)]

The defendant is presumed to be innocent of the charge against him of involuntary manslaughter. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

[2.03A]

The defendant is presumed to be innocent of the charge against him of first degree murder. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving that the defendant is guilty of first degree murder, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

If the State proves beyond a reasonable doubt that the defendant is guilty of first degree murder, the defendant then has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder, and not guilty of first degree murder. In deciding whether a mitigating factor is present, you should consider all of the evidence bearing on this question.

[3.02]

Circumstantial evidence is the proof of facts or circumstances which give rise to a reasonable inference of other facts which tend to show the guilt or innocence of the defendant. Circumstantial evidence should be considered by you together with all the other evidence in the case in arriving at your verdict.

[7.01]

A person commits the offense of first degree murder when he kills an individual without lawful justification if, in performing the acts which caused the death,

he intends to kill or do great bodily harm to that individual;

or

he knows that such acts will cause death to that individual;

or

he knows that such acts create a strong probability of death or great bodily harm to that individual.

[7.05]

A mitigating factor exists so as to reduce the offense of first degree murder to the lesser offense of second degree murder if at the time of the killing the defendant believes that circumstances exist which would justify the deadly force he uses, but his belief that such circumstances exist is unreasonable.

[7.06]

To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of James Ross; and

Second Proposition: That when the defendant did so,

he intended to kill or do great bodily harm to James Ross;

or

he knew that such acts would cause death to James Ross;

or

he knew that such acts created a strong probability of death or great bodily harm to James Ross;

and

Third Proposition: That the defendant was not justified in using the force which he used.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations should end, and you should return a verdict of not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder

instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of James Ross, believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable.

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of first degree murder.

[7.07]

A person commits the offense of involuntary manslaughter when he unintentionally causes the death of an individual without lawful justification by acts which are performed recklessly and are likely to cause death or great bodily harm to another.

[5.01]

A person acts recklessly when he consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.

[7.08/24-25.06A]

To sustain the charge of involuntary manslaughter, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of James Ross; and

Second Proposition: That the defendant performed those acts recklessly; and

Third Proposition: That those acts were likely to cause death or great bodily harm; and

Fourth Proposition: That the defendant was not justified in using the force which he used.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[7.15]

In order for you to find that the acts of the defendant caused the death of James Ross, the State must prove beyond a reasonable doubt that defendant's acts were a contributing cause of the death and that the death did not result from a cause unconnected with the defendant. However, it is not necessary that you find the acts of the defendant were the sole and immediate cause of death.

[26.01I]

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant is charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty of second degree murder; or (4) guilty of involuntary manslaughter.

Accordingly, you will be provided with four verdict forms: "not guilty", "guilty of first degree murder", "guilty of second degree murder", and "guilty of involuntary manslaughter".

During your deliberations, you should first consider whether each of the propositions for first degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should continue as to the additional proposition regarding whether the defendant is guilty of second degree murder instead of first degree murder.

If you find that any of the propositions regarding first degree murder have not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

Under the law, if you find the defendant guilty of either first degree murder, second degree murder, or involuntary manslaughter, you can sign a guilty verdict on only one of these three offenses. Accordingly, if you find the defendant guilty of either first degree murder or second degree murder, that verdict would mean that the defendant is not guilty of involuntary manslaughter. Likewise, if you find the defendant guilty of involuntary manslaughter, that verdict would mean that the defendant is not guilty of first degree murder and second degree murder.

At the conclusion of your deliberations, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

[26.02]

We, the jury, find the defendant Edward Grady not guilty.

_____

Foreperson

_____

[Lines for eleven other jurors]

We, the jury, find the defendant Edward Grady guilty of first degree murder.

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Edward Grady guilty of second degree murder.

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Edward Grady guilty of involuntary manslaughter.

_____

Foreperson

_____

[Lines for eleven other jurors]

NOTE: IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, SLIGHT REVISIONS MUST BE MADE TO THE CONCLUDING INSTRUCTIONS FROM CHAPTER 26. READ THE "INTRODUCTION" TO THIS CHAPTER FOR DETAILS

(Set 27.06)

Alternative, Single Page, Multiple Verdict Form We, the jury, find the defendant:

1. ____ Edward Grady not guilty. [26.02]
2. ____ Edward Grady guilty of first degree murder. [26.05]
3. ____ Edward Grady guilty of second degree murder. [26.05]
4. ____ Edward Grady guilty of involuntary manslaughter. [26.05]

Indicate your unanimous verdict by checking only one of the choices above.

_____

Foreperson

_____

[Lines for eleven other jurors]

SET 27.07

Instructions Included within Set 27.07:

1.02 Jury Sole Judges of Believability
1.03 Arguments of Counsel
1.05 Jury Notetaking
2.01Q (modified) Charge Against Defendant--Possession With Intent to Deliver 400 Grams or More of a Substance Containing Cocaine--Jury Instructed on Lesser Included Offenses--Jury Not Instructed on Any Other Charge
2.03 Presumption of Innocence--Burden of Proof
3.02 Definition of Circumstantial Evidence
4.16 Possession
5.01A Intent
5.01B Knowledge
17.17 Definition of Delivery of a Controlled Substance Weighing 400 Grams or More
17.05A Definition of Deliver
17.18 Issues Instruction--Delivery of a Controlled Substance Weighing 400 Grams or More
17.17 Definition of Delivery of a Controlled Substance Weighing One Gram or More But Less Than 15 Grams
17.18 Issues Instruction--Delivery of a Controlled Substance Weighing One Gram or More But Less Than 15 Grams
17.19 Definition of Possession of a Controlled Substance Weighing 400 Grams or More
17.20 Issues Instruction--Possession of a Controlled Substance Weighing 400 Grams or More
17.19 Definition of Possession of a Controlled Substance Weighing One Gram or More But Less Than 15 Grams
17.20 Issues Instruction--Possession of a Controlled Substance Weighing One Gram or More But Less Than 15 Grams
26.01Q (modified) Concluding Instruction--Possession With Intent to Deliver 400 Grams or More of a Substance Containing Cocaine--Jury Instructed on Lesser Included Offenses--Jury Not Instructed on Any Other Charge
26.02 Verdict Form--Not Guilty
26.05 Verdict Form--Guilty of Possession With Intent to Deliver 400 Grams or More of a Substance Containing Cocaine
26.05 Verdict Form--Guilty of Possession With Intent to Deliver One Gram or More But Less Than 15 Grams of a Substance Containing Cocaine
26.05 Verdict Form--Guilty of Possession of 400 Grams or More of a Substance Containing Cocaine
26.05 Verdict Form--Guilty of Possession of One Gram or More But Less Than 15 Grams of a Substance Containing Cocaine

In the seventh case (Set 27.07), the defendant, Karen Scott, is charged by indictment with the offense of possession with the intent to deliver 400 grams or more of a substance containing cocaine. Evidence presented at trial revealed that the cocaine was found in two different rooms of a drug house allegedly run by Scott: 398 grams were found inside the freezer which was located in the kitchen, and 4 grams were found in a nightstand drawer in a bedroom. Near the freezer, the police also found some baggies and a jar of inositol. A small facial mirror, a razor, a

straw, and some letters addressed to Scott were found in the nightstand drawer.

Scott argues that none of the cocaine is hers. In the alternative, she argues that only the cocaine found in the nightstand drawer is hers. The State argues that all of the cocaine found in the house is Scott's and that the large quantity of cocaine, the baggies, and the inositol found in the kitchen are evidence of Scott's intent to deliver.

At Scott's request, the court instructs the jury on the lesser included offenses of possession with the intent to deliver more than one gram but less than 15 grams of a substance containing cocaine, possession of 400 grams or more of a substance containing cocaine, and possession of more than one gram but less than 15 grams of a substance containing cocaine. The court also decides to instruct the jury on notetaking.

27.07 Possession With The Intent To Deliver A Controlled Substance Given With Lesser Included Offenses--(Defendant Is Karen Scott)

[1.01]

Members of the jury, the evidence and arguments in this case have been completed, and I now will instruct you as to the law.

The law that applies to this case is stated in these instructions, and it is your duty to follow all of them. You must not single out certain instructions and disregard others. When I use the word "he" in these instructions, I mean a male or a female.

It is your duty to determine the facts and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case.

You are not to concern yourself with possible punishment or sentence for the offense charged during your deliberations. It is the function of the trial judge to determine the sentence should there be a verdict of guilty.

Neither sympathy nor prejudice should influence you.

From time to time it has been the duty of the court to rule on the admissibility of evidence. You should not concern yourselves with the reasons for these rulings. You should disregard questions and exhibits which were withdrawn or to which objections were sustained.

Any evidence that was received for a limited purpose should not be considered by you for any other purpose.

You should disregard testimony and exhibits which the court has refused or stricken.

The evidence which you should consider consists only of the testimony of the witnesses and the exhibits which the court has received.

You should consider all the evidence in the light of your own observations and experience in life.

Neither by these instructions nor by any ruling or remark which I have made do I mean to indicate any opinion as to the facts or as to what your verdict should be.

Faithful performance by you of your duties as jurors is vital to the administration of justice.

[1.02]

Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, his age, his memory, his manner while testifying, any interest, bias, or prejudice he may have, and the reasonableness of his testimony considered

in the light of all the evidence in the case.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

[1.03]

Opening statements are made by the attorneys to acquaint you with the facts they expect to prove. Closing arguments are made by the attorneys to discuss the facts and circumstances in the case and should be confined to the evidence and to reasonable inferences to be drawn from the evidence. Neither opening statements nor closing arguments are evidence, and any statement or argument made by the attorneys which is not based on the evidence should be disregarded.

[1.05]

Those of you who took notes during trial may use your notes to refresh your memory during jury deliberations.

Each juror should rely on his or her recollection of the evidence. Just because a juror has taken notes does not necessarily mean that his or her recollection of the evidence is any better or more accurate than the recollection of a juror who did not take notes.

When you are discharged from further service in this case, your notes will be collected by the deputy and destroyed. Throughout that process, your notes will remain confidential and no one will be allowed to see them.

[2.01Q (modified)]

The defendant is charged with the offense of possession with the intent to deliver 400 grams or more of a substance containing cocaine. The defendant has pleaded not guilty. Under the law, a person charged with possession with the intent to deliver 400 grams or more of a substance containing cocaine may be found (1) not guilty; or (2) guilty of possession with the intent to deliver 400 grams or more of a substance containing cocaine; or (3) guilty of possession with the intent to deliver one gram or more but less than 15 grams of a substance containing cocaine; or (4) guilty of possession of 400 grams or more of a substance containing cocaine; or (5) guilty of possession of more than one gram but less than 15 grams of a substance containing cocaine.

[2.02]

The charge against the defendant in this case is contained in a document called the information. This document is the formal method of charging the defendant and placing the defendant on trial. It is not any evidence against the defendant.

[2.03]

The defendant is presumed to be innocent of the charge against her. This presumption remains with her throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the State throughout the case. The defendant is not required to prove

her innocence.

[3.02]

Circumstantial evidence is the proof of facts or circumstances which give rise to a reasonable inference of other facts which tend to show the guilt or innocence of the defendant. Circumstantial evidence should be considered by you together with all the other evidence in the case in arriving at your verdict.

[4.16]

Possession may be actual or constructive. A person has actual possession when she has immediate and exclusive control over a thing. A person has constructive possession when she lacks actual possession of a thing but she has both the power and the intention to exercise control over a thing either directly or through another person.

If two or more persons share the immediate and exclusive control or share the intention and the power to exercise control over a thing, then each person has possession.

[5.01A]

A person intends to accomplish a result or engage in conduct when her conscious objective or purpose is to accomplish that result or engage in that conduct.

[5.01B]

A person knows the nature or attendant circumstances of her conduct when she is consciously aware that her conduct is of such a nature or that such circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that such fact exists.

A person knows the result of her conduct when she is consciously aware that such result is practically certain to be caused by her conduct.

[17.17]

A person commits the offense of possession with intent to deliver a controlled substance when she knowingly possesses with intent to deliver a substance containing a controlled substance and the substance containing the controlled substance weighs 400 grams or more.

[17.05A]

The word "deliver" means to transfer possession or to attempt to transfer possession.

The word "deliver" includes a constructive transfer of possession which occurs without an actual physical transfer. When the conduct or declarations of the person who has the right to exercise control over a thing is such as to effectively relinquish the right of control to another person, so that the other person is then in constructive possession, there has been a delivery.

A delivery may occur with or without the transfer or exchange of money, or with or without the transfer or exchange of other consideration.

[17.18]

To sustain the charge of possession with intent to deliver a controlled substance when the substance containing the controlled substance weighed 400 grams or more, the State must prove the following propositions:

First Proposition: That the defendant knowingly possessed with intent to deliver a substance containing cocaine, a controlled substance; and

Second Proposition: That the weight of the substance containing the controlled substance was 400 grams or more.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[17.17]

A person commits the offense of possession with intent to deliver a controlled substance when she knowingly possesses with intent to deliver a substance containing a controlled substance and the substance containing the controlled substance weighs one gram or more but less than 15 grams.

[17.18]

To sustain the charge of possession with intent to deliver a controlled substance when the substance containing the controlled substance weighed one gram or more but less than 15 grams, the State must prove the following propositions:

First Proposition: That the defendant knowingly possessed with intent to deliver a substance containing cocaine, a controlled substance; and

Second Proposition: That the weight of the substance containing the controlled substance was one gram or more but less than 15 grams.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[17.27]

A person commits the offense of possession of a controlled substance when she knowingly possesses a substance containing a controlled substance and the substance containing the controlled substance weighs 400 grams or more.

[17.28]

To sustain the charge of possession of a controlled substance when the substance containing the controlled substance weighed 400 grams or more, the State must prove the following propositions:

First Proposition: That the defendant knowingly possessed a substance containing cocaine, a controlled substance; and

Second Proposition: That the weight of the substance possessed was 400 grams or more.

If you find from your consideration of all the evidence that each one of these propositions

has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[17.27]

A person commits the offense of possession of a controlled substance when she knowingly possesses a substance containing a controlled substance and the substance containing the controlled substance weighs one gram or more but less than 15 grams.

[17.28]

To sustain the charge of possession of a controlled substance when the substance containing the controlled substance weighed one gram or more but less than 15 grams, the State must prove the following propositions:

First Proposition: That the defendant knowingly possessed a substance containing cocaine, a controlled substance; and

Second Proposition: That the weight of the substance possessed was one gram or more but less than 15 grams.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[26.01Q (modified)]

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant is charged with the offense of possession with intent to deliver 400 grams or more of a substance containing cocaine. Under the law, a person charged with possession with intent to deliver 400 grams or more of a substance containing cocaine may be found (1) not guilty; or (2) guilty of possession with intent to deliver 400 grams or more of a substance containing cocaine; or (3) guilty of possession with intent to deliver one gram or more but less than 15 grams of a substance containing cocaine; or (4) guilty of possession of 400 grams or more of a substance containing cocaine; or (5) guilty of possession of more than one gram but less than 15 grams of a substance containing cocaine.

Accordingly, you will be provided with five verdict forms: “not guilty”, “guilty of possession with intent to deliver 400 grams or more of a substance containing cocaine”, “guilty of possession with intent to deliver one gram or more but less than 15 grams of a substance containing cocaine”, “guilty of possession of 400 grams or more of a substance containing cocaine”, and “guilty of possession of one gram or more but less than 15 grams of a substance containing cocaine”.

From these five verdict forms, you should select the one verdict form that reflects your verdict and sign it as I have stated. Do not write on the other four verdict forms. Sign only one of these verdict forms.

If you find the State has proved the defendant guilty of both possession with intent to deliver 400 grams or more of a substance containing cocaine and possession with intent to

deliver one gram or more but less than 15 grams of a substance containing cocaine, you should select the verdict form finding the defendant guilty of possession with intent to deliver 400 grams or more of a substance containing cocaine and sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of possession with intent to deliver one gram or more but less than 15 grams of a substance containing cocaine.

If you find that the State has not proved the defendant guilty of possession with intent to deliver 400 grams or more of a substance containing cocaine, but you find that the State has proved defendant guilty of possession with intent to deliver one gram or more but less than 15 grams of a substance containing cocaine, you should select the verdict form finding the defendant guilty of possession with intent to deliver one gram or more but less than 15 grams of a substance containing cocaine and sign it as I have stated. Under these circumstances, do not sign either of the verdict forms finding the defendant guilty of possession of 400 grams or more of a substance containing cocaine or guilty of possession of one gram or more but less than 15 grams of a substance containing cocaine.

If you find that the State has not proved the defendant guilty of either charge of possession with intent to deliver a substance containing cocaine, but you find the State has proved defendant guilty of both possession of 400 grams or more of a substance containing cocaine and possession of one gram or more but less than 15 grams of a substance containing cocaine, you should select the verdict form finding the defendant guilty of possession of 400 grams or more of a substance containing cocaine and sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of possession of one gram or more but less than 15 grams of a substance containing cocaine.

[26.02]

We, the jury, find the defendant Karen Scott not guilty.

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Karen Scott guilty of possession with intent to deliver 400 grams or more of a substance containing cocaine.

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Karen Scott guilty of possession with intent to deliver one gram or more but less than 15 grams of a substance containing cocaine.

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Karen Scott guilty of possession of 400 grams or more of a substance containing cocaine.

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Karen Scott guilty of possession of one gram or more but less than 15 grams of a substance containing cocaine.

_____

Foreperson

_____

[Lines for eleven other jurors]

NOTE: IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, SLIGHT REVISIONS MUST BE MADE TO THE CONCLUDING INSTRUCTIONS FROM CHAPTER 26. READ THE "INTRODUCTION" TO THIS CHAPTER FOR DETAILS.

(Set 27.07)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. ____ Karen Scott not guilty. [26.02]
2. ____ Karen Scott guilty of possession with intent to deliver 400 grams or more of a substance containing cocaine. [26.05]
3. ____ Karen Scott guilty of possession with intent to deliver one gram or more but less than 15 grams of a substance containing cocaine. [26.05]
4. ____ Karen Scott guilty of possession of 400 grams or more of a substance containing cocaine. [26.05]
5. ____ Karen Scott guilty of possession of one gram or more but less than 15 grams of a substance containing cocaine. [26.05]

Indicate your unanimous verdict by checking only one of the choices above.

_____

Foreperson

_____

[Lines for eleven other jurors]

28.00 TO 28A.00.
ENHANCEMENT/EXTENDED TERM SENTENCING
I.
UNITARY INSTRUCTIONS

28.00 Introduction To The Enhancement/Extended Term Sentencing Instructions

In *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), the United States Supreme Court held that the Due Process Clause of the Fourteenth Amendment to the United States Constitution requires that any fact, other than a prior conviction, increasing the penalty for an offense beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt.

The sentencing enhancements set forth in 730 ILCS 5/5-8-1(a)(1)(d) (West 2006), along with the extended term factors in 730 ILCS 5/5-5-3.2(b) (West 2006) and the natural life enhancement factors for first degree murder set forth in 730 ILCS 5/5-8-1(a)(1)(b) and (c) (West 2006) are included in these instructions.

730 ILCS 5/5-8-1(a)(1)(d) (West 2006) provides:

> (d)(i) if the person committed the offense while armed with a firearm, 15 years shall be added to the term of imprisonment imposed by the court;
> (ii) if, during the commission of the offense, the person personally discharged a firearm, 20 years shall be added to the term of imprisonment imposed by the court;
> (iii) if, during the commission of the offense, the person personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person, 25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court.

In *People v. Sharpe*, 216 Ill.2d 481, 839 N.E.2d 492, 298 Ill.Dec. 169 (2005), the court held that the enhancement provisions in 730 ILCS 5/5-8-1(a)(1)(d) (West 2006) did not set forth disproportionate penalties, were not unconstitutionally vague, did not amount to improper double enhancements and did not violate due process in the context of first degree murder.

Extended term factors may also be contained in the statute creating the offense. For example, the defendant is eligible for an extended term when he is convicted of aggravated battery, domestic battery, aggravated domestic battery, unlawful restraint or aggravated unlawful restraint in the presence of a child. 720 ILCS 5/12-3.2(c) (West 2006). The defendant is also eligible for an extended term sentence when he is convicted of predatory criminal sexual assault of a child. 720 ILCS 5/12-14.1 (West 2006). In addition, the defendant is eligible for an extended term when he is convicted of solicitation to commit murder and the person solicited was under the age of 17 years. 720 ILCS 5/8-1.1(b) (West 2006). The Committee has drafted instructions for use in such cases. See Instructions 11.103, 11.104, 28.01[12], 28.01[13], 28.03[12], 28.03[13], 28.04[12] and 28.04[13].

In other instances, extended term factors may already be included in instructions applicable to the offense. Examples include aggravated discharge of a firearm, Instruction 18.13, aggravated battery with a firearm, Instruction 18.14, and cannabis and controlled substance offenses, Instruction 17.00 *et seq*.

For an enhancement/extended term factor to be submitted to the jury, the enhancement/extended term factor must be included in the charging instrument or otherwise provided to the defendant through written notification before trial. 725 ILCS 5/111-3(c-5) (West 2006). The jury should be instructed on every enhancement/extended term factor at issue when

there is sufficient evidence of that enhancement/extended term factor to submit to the jury.

Enhancement/extended term factors based on prior convictions need not be proven beyond a reasonable doubt to a jury and are to be determined by the court at sentencing. Almendarez-Torres v. United States, 523 U.S. 224, 118 S.Ct. 1219, 140 L.Ed.2d 350 (1998). These instructions do not include enhancement/extended term factors based on prior convictions. Examples of prior conviction enhancement/extended term factors not submitted to the jury are set forth in 730 ILCS 5/5-5-3.2(b)(1) and (11) (West 2006).

The defendant is eligible for an extended term sentence when he is convicted of voluntary manslaughter, second degree murder, involuntary manslaughter or reckless homicide in which the defendant has been convicted of causing the death of more than one individual. 730 ILCS 5/5-5-3.2(b)(3) (West 2006). These instructions do not cover this situation because the applicability of the extended term provision will be evident from the verdicts.

There may be cases in which the charging instrument or written notice describes more than one enhancement/extended term factor. In such cases, separate issues instructions under 28.03 and separate verdict forms should be given for each enhancement/extended term factor.

Because of amendments providing enhancement/extended term factors, the Committee cautions the court and counsel to check the effective date of a particular enhancement/extended term factor to ensure it was enacted before the defendant committed the offense.

Apprendi did not address whether the enhancement/extended term factor hearing should be conducted as part of a unitary trial or in bifurcated proceedings. In People v. Norwood, 362 Ill.App.3d 1121, 1137, 841 N.E.2d 514, 530, 299 Ill.Dec. 102, 118 (1st Dist. 2005), the court held that the Illinois statutes codifying the principles of *Apprendi* in extended term sentencing situations do not give defendants the option to bifurcate the issues of guilt and "wanton cruelty" or to have those issues decided by different fact finders and that *Apprendi* does not create such a right. See also People v. Bowman, 357 Ill.App.3d 290, 299, 827 N.E.2d 1062, 1071, 293 Ill.Dec. 181, 191 (1st Dist. 2005) (regarding the issues of guilt and the age of the victim as an enhancement factor).

The Committee recommended to the Illinois Supreme Court Rules Committee the adoption of a rule that provides for unitary trials, as well as bifurcated trials in limited circumstances. The Illinois Supreme Court Rules Committee adopted Illinois Supreme Court Rule 451(g), effective July 1, 2006, which provides:

> Proceedings When an Enhanced Sentence is Sought. When the death penalty is not being sought and the State intends, for the purpose of sentencing, to rely on one or more sentencing enhancement factors which are subject to the notice and proof requirements of section 111-3(c-5) of the Code of Criminal Procedure, the court may, within its discretion, conduct a unitary trial through verdict on the issue of guilt and on the issue of whether a sentencing enhancement factor exists. The court may also, within its discretion, upon motion of a party, conduct a bifurcated trial. In deciding whether to conduct such a bifurcated trial, the court must first hold a pretrial hearing to determine if proof of the sentencing enhancement factor is not relevant to the question of guilt or if undue prejudice outweighs the factor's probative value. Such bifurcated trial shall be conducted subject to the following:
>
> (1) The court shall first conduct a trial through verdict on the issue of guilt under the procedures applicable to trials in other cases.
> (2) If a guilty verdict is rendered, the court shall then conduct a separate proceeding before the same jury or before the court if a jury was waived at trial or is waived for purposes of the separate proceeding. This separate proceeding shall be confined to the

> issue of whether the sentencing enhancement factor exists. The order in which the parties may present evidence and argument and the rules governing admission of evidence shall be the same as at trial, with the burden remaining on the State to prove the factor beyond a reasonable doubt. After the evidence is closed, the submission and giving of instructions shall proceed in accordance with paragraphs (a), (b), (c) and (d) of this rule.
> (3) The court may enter a directed verdict or judgment notwithstanding the verdict respecting any fact at issue in the separate proceeding.

Because a bifurcated trial "generally causes additional inconvenience to the jury, the witnesses, and/or the parties, and causes additional cost to the parties and/or the taxpayers," the Committee Comments to Rule 451(g) make "unitary trials the presumptive option." Ill. Sup. Ct. R. 451(g), Committee Comments.

28.01 Enhancement/Extended Term Factor(S)

The State has also alleged that

[1] during the commission of the offense of _____ the defendant [(was armed with a firearm) (personally discharged a firearm) (personally discharged a firearm that proximately caused [great bodily harm] [permanent disability] [permanent disfigurement] [death] to another person)].

[or]

[2] when the defendant committed the offense of _____ the _____ was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty.

[or]

[3] the defendant committed the offense of _____ against a person [(under 12 years of age) (60 years of age or older) (physically handicapped)] at the time of the offense (or against such person's property).

[or]

[4] when the defendant committed the offense of [(aggravated criminal sexual assault) (criminal sexual assault)], the offense was committed on the same victim by one or more other individuals and the defendant voluntarily participated in the crime with the knowledge of the participation of the others in the crime and the commission of the crime was part of a single course of conduct during which there was no substantial change in the nature of the criminal objective.

[or]

[5] _____ was under 18 years of age at the time of the commission of the aggravated criminal sexual assault.

[or]

[6] when the _____ was committed by the defendant the _____ involved [(any) (the following type(s) of)] misconduct committed as part of a ceremony, rite, initiation, observance, performance, practice or activity of any actual or ostensible religious, fraternal or social group [(the brutalizing or torturing of humans or animals) (the theft of human corpses) (the kidnapping of humans) (the desecration of any cemetery, religious, fraternal, business, governmental, educational, or other building or property) (ritualized abuse of a child)].

[or]

[7] the defendant committed the offense of _____ under an agreement with two or more other persons to commit that offense and the defendant, with respect to the other individuals, occupied a position of organizer, supervisor, financier, or any other position of management or leadership and the commission of the offense of _____ was related to or in furtherance of the criminal activities of an organized gang or was motivated by the defendant's leadership in an organized gang.

[or]

[8] when the defendant committed the offense of unlawful use of weapons the defendant was a member of an organized gang.

[or]

[9] when the defendant committed the offense of _____ he used a firearm with a laser sight attached to it.

[or]

[10] when the defendant committed the offense of _____ an emergency response officer in the performance of his duties is killed or injured at the scene of the offense while responding to the emergency caused by the commission of the offense.

[or]

[11] when the defendant committed the offense of _____ the defendant [(used), (possessed), (exercised control over), (or) (otherwise directed)] an animal to assault a law enforcement officer [(engaged in the execution of his official duties) (or) (in furtherance of the criminal activities of an organized gang in which the defendant is engaged)].

[or]

[12] the defendant committed the offense of [(aggravated battery) (domestic battery) (aggravated domestic battery) (unlawful restraint) (aggravated unlawful restraint)] in the presence of a child.

[or]

[13] when the defendant committed the offense of solicitation of murder the person solicited was a person under the age of 17 years.

[or]

[14] when the defendant committed the offense of first degree murder

a) the defendant had attained the age of 17 or more and the defendant murdered an individual under 12 years of age.

[or]

b) the defendant murdered a [(peace officer) (fireman) (emergency management worker)] when the [(police officer) (fireman) (emergency management worker)] was killed [(in the course of performing his official duties) (to prevent the [(police officer) (fireman) (emergency management worker)] from performing his official duties) (in retaliation for the [(police officer) (fireman) (emergency management worker)] from performing his official duties)] and the defendant knew or should have known that the murdered individual was a [(police officer) (fireman) (emergency management worker)].

[or]

c) the defendant murdered an employee of an institution or facility of the Department of Corrections or any similar local correctional agency, and the employee was killed [(in the course of performing his official duties) (to prevent the employee from performing his official duties) (in retaliation for the employee performing his official duties)].

[or]

d) the defendant murdered an [(emergency medical technician-ambulance) (emergency medical technician-intermediate) (emergency medical technician-paramedic) (ambulance driver or other medical assistance or first aid person) while employed by a municipality or other governmental unit when the person was killed [(in the course of performing official duties) (to prevent the person from performing official duties) (in retaliation for performing official duties)] and the defendant knew or should have known that the murdered individual was an [(emergency medical technician-ambulance) (emergency medical technician-intermediate) (emergency medical technician-paramedic) (ambulance driver or other medical assistant or first aid personnel)].

[or]

e) the defendant murdered a person under 12 years of age and the murder was committed during the course of [(aggravated criminal sexual assault) (criminal sexual assault) (aggravated kidnapping)].

[or]

f) the murder was committed by reason of any person's activity as a community policing volunteer or to prevent any person from engaging in activity as a community policing volunteer.

[or]

[15] the defendant at the time of the commission of the offense of first degree murder had attained the age of 18 or more; and

a) the murdered person was killed as a result of the hijacking of [(a)(an)] [(airplane) (train) (ship) (bus) (public conveyance)].

[or]

b) the defendant [(committed the murder pursuant to a contract, agreement, or understanding by which he was to receive money or anything of value in return for committing the murder) (procured another to commit the murder for money or anything of value)].

[or]

c) the murdered person was killed in the course of another felony if

[1] [(the murdered person was actually killed by the defendant);

[or]

(the murdered person received physical injuries personally inflicted by the defendant substantially contemporaneously with physical injuries caused by [(a person) (one or more persons)] for whose conduct the defendant was legally responsible and the physical injuries inflicted by either the defendant or other person(s) for whose conduct he is legally responsible caused the death of the murdered person);]

and

[2] in performing the acts which caused the death of the murdered individual or which resulted in physical injuries personally inflicted by the defendant on the murdered individual substantially contemporaneously with physical injuries caused by [(a person) (one or more persons)] for whose conduct the defendant was legally responsible, the defendant acted with the intent to kill the murdered individual or with the knowledge that his acts created a strong probability of death or great bodily harm to the murdered person (or another);

and

[3] the other felony [(was) (was one or more of the following:)] [(armed robbery) (robbery) (armed violence) (predatory criminal sexual assault of a child) (aggravated criminal

sexual assault) (aggravated kidnapping) (aggravated vehicular hijacking) (aggravated arson) (aggravated stalking) (residential burglary) (home invasion) [or] the attempt to commit _____)].

[or]

d) the murdered person was under 12 years of age and the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty.

[or]

e) the defendant committed the murder with intent to prevent the murdered person from [(testifying or participating in any criminal investigation or prosecution) (giving material assistance to the State in any investigation or prosecution, either against the defendant or another)].

[or]

f) the defendant committed the murder because the murdered person was a witness in any prosecution or gave material assistance to the State in any investigation or prosecution, either against the defendant or another.

[or]

g) the defendant, while [(committing the offense of ____) (engaged in a [(conspiracy) (solicitation)] to commit the offense of ____)],

[i] (intentionally killed an individual)

[or]

[ii] [(counseled) (commanded) (induced) (procured) (caused) the intentional killing of the murdered individual)].

[or]

h) the defendant was incarcerated in an institution or facility of the Department of Corrections at the time of the murder, and while [(committing the offense of _____) (engaged in a [(conspiracy) (solicitation)] to commit the offense of _____)], defendant

[i] (intentionally killed an individual)

[or]

[ii] [(counseled) (commanded) (induced) (procured) (caused) the intentional killing of the murdered individual)].

[or]

i) the murder was committed in a cold, calculated, and premeditated manner pursuant to a preconceived plan, scheme, or design to take a human life by unlawful means, and the conduct of the defendant created a reasonable expectation that the death of a human being would result therefrom.

[or]

j) the defendant was a principal administrator, organizer, or leader of a calculated criminal drug conspiracy consisting of a hierarchical position of authority superior to that of all other members of the conspiracy, and the defendant [(counseled) (commanded) (induced) (procured) (caused)] the intentional killing of the murdered person.

[or]

k) the murder was intentional and involved the infliction of torture.

[or]

l) the murder was committed as a result of the intentional discharge of a firearm by the defendant from a motor vehicle and the victim was not present within the motor vehicle.

[or]

m) the murdered individual was 60 years of age or older and the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty.

[or]

n) the murdered individual was a disabled person and the defendant knew or should have known that the murdered individual was disabled.

[or]

o) the murdered person was subject to an order of protection and the murder was committed by a person against whom the same order of protection was issued under the Illinois Domestic Violence Act.

[or]

p) the murdered person was known by the defendant to be a [(teacher) (person)] employed in any school and the [(teacher) (employee)] is upon [(the grounds of a school) (the grounds adjacent to a school) (any part of a building used for school purposes)].

[or]

q) the murder was committed by the defendant [(in connection with) (as a result of)] the offense of terrorism.

The defendant has denied [(the)(these)] allegation(s)

Committee Note

Give this instruction in addition to the applicable 2.01 series instruction and immediately after the applicable 2.01 series instruction.

Give Instruction 28.02.

Give Instruction 28.03.

Give Instruction 28.04.

If the charging instrument or written notice charges more than one enhancement/extended term factor include each enhancement/extended term factor and add the word "and" between them. The "ors" are provided for differentiation and should not be included in the instruction submitted to the jury.

Enhancement/Extended Term Factor [1] 730 ILCS 5/5-8-1(a)(1)(d) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material. See Instruction 28.03[1] for the definition of term "personally discharged a firearm."

Enhancement/Extended Term Factor [2] 730 ILCS 5/5-5-3.2(b)(2) (West 2006); 730 ILCS 5/5-8-1(a)(1)(b) (West 2006). Insert in both blanks as indicated the offense specifically charged in the charging instrument or written notice. See Instruction 28.03[2] for the definitions of the words "brutal" and "heinous" and the term "wanton cruelty."

Enhancement/Extended Term Factor [3] 730 ILCS 5/5-5-3.2(b)(4) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material.

Enhancement/Extended Term Factor [4] 730 ILCS 5/5-5-3.2(b)(5) (West 2006). Use when the defendant is charged with aggravated criminal sexual assault under 720 ILCS 5/12-14 (West 2006), or criminal sexual assault under 720 ILCS 5/12-13 (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Use applicable bracketed material.

Enhancement/Extended Term Factor [5] 730 ILCS 5/5-5-3.2(c) (West 2006). Use when the defendant is charged with aggravated criminal sexual assault under 720 ILCS 5/12-14 (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Insert in the blank as indicated the name of the victim. Appropriate modifications should be made when there is more than one victim. Use applicable bracketed material.

Enhancement/Extended Term Factor [6] 730 ILCS 5/5-5-3.2(b)(6) (West 2006). Insert in both blanks as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material. When more than one alternative is alleged in the charging document, the word "and" should be inserted between them.

Enhancement/Extended Term Factor [7] 730 ILCS 5/5-5-3.2(b)(8) (West 2006). This factor does not apply when the defendant is charged with conspiracy. Insert in both blanks as indicated the offense specifically charged in the charging instrument or written notice. See Instruction 28.03[7] for the definition of the term "organized gang."

Enhancement/Extended Term Factor [8] 730 ILCS 5/5-5-3.2(b)(9) (West 2006). This factor applies only when the defendant is charged with felony unlawful use of weapons under 720 ILCS 5/24-1 (West 2006). See Instruction 28.03[8] for the definition of the term "organized gang."

Enhancement/Extended Term Factor [9] 730 ILCS 5/5-5-3.2(b)(10) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. See Instruction 28.03[9] for the definitions of the terms "laser sight" and "laser pointer."

Enhancement/Extended Term Factor [10] 730 ILCS 5/5-5-3.2(b)(12) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. See Instruction 28.03[10] for the definitions of the word "emergency" and the term "emergency response officer."

Enhancement/Extended Term Factor [11] 730 ILCS 5/5-5-3.2(b)(13) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material. See Instruction 28.03[11] for the definition of the term "organized gang."

Enhancement/Extended Term Factor [12] 720 ILCS 5/12-3.2(c) (West 2006). Use applicable bracketed material. See Instruction 28.03[12] for the definitions of the word "child" and the term "presence of a child."

Enhancement/Extended Term Factor [13] 720 ILCS 5/8-1.1(b) (West 2006). Use when the defendant is charged with solicitation to commit murder under 720 ILCS 5/8-1.1(a) and the charging instrument or written notice alleges that the person solicited was under the age of 17 years.

Enhancement/Extended Term Factor [14] 730 ILCS 5/5-8-1(a)(1)(c) (West 2006). Use when the defendant is charged with first degree murder under 720 ILCS 5/9-1(a) (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Use applicable bracketed material. See Instruction 28.03[14] for the definitions of the terms

"emergency management worker," "emergency medical technician-intermediate," "emergency medical technician-paramedic" and "community policing volunteer." Although 720 ILCS 5/2-6.5 (West 2006) states that the definition of the term "emergency medical technician-ambulance" is contained in the Emergency Medical Services (EMS) Systems Act, 210 ILCS 50-1 et seq. (West 2006), the Committee could find no statutory definition of the term "emergency medical technician-ambulance."

Enhancement/Extended Term Factor [15] 730 ILCS 5/5-8(b)(1) (West 2006). Use when the defendant is charged with first degree murder under 720 ILCS 5/9-1(a) (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Use applicable bracketed material. See Instruction 28.03[15] for the definitions of the words "brutal," "heinous," "torture," and "cold" and the terms "wanton cruelty" and "disabled person" and the phrase "calculated and premeditated manner pursuant to a preconceived, plan, scheme or design."

The numbers and brackets are provided solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

28.02 Enhancement/Extended Term Factor(S) Presumption Of Innocence--Reasonable Doubt--Burden Of Proof

The State has alleged that [Insert the appropriate enhancement/extended term factor(s).]. The defendant is presumed to be innocent of [(this) (these)] allegations(s). This presumption remains with [(the defendant) (each defendant)] throughout every stage of the trial and during your deliberation on the verdict and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that the allegation(s) [(is)(are)] proven.

The State has the burden of proving the allegation(s) beyond a reasonable doubt and this burden remains on the State throughout the case.

[(The) (A)] defendant is not required to disprove [(the)(these)] allegations(s).

Committee Note

Give this instruction in addition to the applicable 2.03 series instruction and immediately after the applicable 2.03 series instruction.

Give Instruction 28.01.

Give Instruction 28.03.

Give Instruction 28.04.

Insert in the blank the applicable enhancement/extended term factor specifically charged in the charging instrument or written notice.

If the charging instrument or written notice charges more than one enhancement/extended term factor include each enhancement/extended term factor and add the word "and" between them.

Use applicable bracketed material.

The brackets are provided solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

28.03 Issues In Enhancement/Extended Term Factor(S)

To sustain the allegation made in connection with the offense of _____, the State must prove the following proposition:

That

[1] during the commission of the offense of _____ the defendant [(was armed with a firearm) (personally discharged a firearm) (personally discharged a firearm that proximately caused [great bodily harm] [permanent disability] [permanent disfigurement] [death] to another person.] [A person is considered to have "personally discharged a firearm" when he, while armed with a firearm, knowingly and intentionally fires a firearm causing the ammunition projectile to be forcefully expelled from the firearm].

[or]

[2] when the defendant committed the offense of _____ the _____ was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty. The word "brutal" means cruel and cold blooded, grossly ruthless, or devoid of mercy or compassion. The word "heinous" means enormously and flagrantly criminal, hatefully or shockingly evil, or grossly bad. The term "wanton cruelty" means consciously seeking to inflict pain and suffering on the victim of the offense.

[or]

[3] the defendant committed the offense of _____ against a person [(under 12 years of age) (60 years of age or older) (physically handicapped)] at the time of the offense (or against such person's property).

[or]

[4] when the defendant committed the offense of [(aggravated criminal sexual assault) (criminal sexual assault)], the offense was committed on the same victim by one or more other individuals and the defendant voluntarily participated in the crime with the knowledge of the participation of the others in the crime and the commission of the crime was part of a single course of conduct during which there was no substantial change in the nature of the criminal objective.

[or]

[5] _____ was under 18 years of age at the time of the commission of the aggravated criminal sexual assault.

[or]

[6] when the _____ was committed by the defendant the ____ involved [(any) (the following type(s) of)] misconduct committed as part of a ceremony, rite, initiation, observance, performance, practice or activity of any actual or ostensible religious, fraternal or social group [(the brutalizing or torturing of humans or animals) (the theft of human corpses) (the kidnapping of human) (the desecration of any cemetery, religious, fraternal, business, governmental, educational, or other building or property) (ritualized abuse of a child)].

[or]

[7] the defendant committed the offense of _____ under an agreement with two or more other persons to commit that offense and the defendant, with respect to the other individuals, occupied a position of organizer, supervisor, financier, or any other position of management or leadership and the commission of the offense of ____ was related to or in furtherance of the criminal activities of an organized gang or was motivated by the defendant's leadership in an organized gang. The term "organized gang" means any combination, confederation, alliance, network, conspiracy, understanding, or other similar conjoining, in law or in fact, of three or more persons with an established hierarchy that through its membership or through the agency of any member engages in a course or pattern of criminal activity.

[or]

[8] when the defendant committed the offense of unlawful use of weapons the defendant was a member of an organized gang. The term "organized gang" means any combination, confederation, alliance, network, conspiracy, understanding, or other similar conjoining, in law or in fact, of three or more persons with an established hierarchy that through its membership or through the agency of any member engages in a course or pattern of criminal activity.

[or]

[9] when the defendant committed the offense of _____ he used a firearm with a laser sight attached to it. The term "laser sight" means a laser pointer that can be attached to a firearm and can be used to improve the accuracy of the firearm. A "laser pointer" means a hand-held device that emits light amplified by the stimulated emission of a radiation that is visible to the human eye.

[or]

[10] when the defendant committed the offense of _____ an emergency response officer in the performance of his duties is killed or injured at the scene of the offense while responding to the emergency caused by the commission of the offense. The word "emergency" means a situation in which a person's life, health, or safety is in jeopardy. The term "emergency response officer" means a peace officer, community policing volunteer, fireman, emergency medical technician--ambulance, emergency medical technician--intermediate, emergency medical technician--paramedic, ambulance driver, other medical assistance or first aid personnel, or

hospital emergency room personnel.

[or]

[11] when the defendant committed the offense of _____ the defendant [(used), (possessed), (exercised control over), (or) (otherwise directed)] an animal to assault a law enforcement officer [(engaged in the execution of his official duties) (or) (in furtherance of the criminal activities of an organized gang in which the defendant is engaged)]. [The term "organized gang" means any combination, confederation, alliance, network, conspiracy, understanding, or other similar conjoining, in law or in fact, of three or more persons with an established hierarchy that, through its membership or through the agency of any member engages in a course or pattern of criminal activity].

[or]

[12] the defendant committed the offense of [(aggravated battery) (domestic battery) (aggravated domestic battery) (unlawful restraint) (aggravated unlawful restraint)] in the presence of a child. A "child" means a person under 18 years of age who is the defendant's or victim's child or step child or who is a minor child residing within or visiting the household of the defendant or victim. "In the presence of a child" means in the physical presence of a child or knowing or having reason to know that a child is present and may see or hear an act constituting [(aggravated battery) (domestic battery) (aggravated domestic battery) (unlawful restraint) (aggravated unlawful restraint)].

[or]

[13] when the defendant committed the offense of solicitation of murder the person solicited was a person under the age of 17 years.

[or]

[14] when the defendant committed the offense of first degree murder

a) the defendant had attained the age of 17 or more and the defendant murdered an individual under 12 years of age.

[or]

b) the defendant murdered a [(peace officer) (fireman) (emergency management worker)] when the [(police officer) (fireman) (emergency management worker)] was killed [(in the course of performing his official duties) (to prevent the [(police officer) (fireman) (emergency management worker)] from performing his official duties)] (in retaliation for the [(police officer) (fireman) (emergency management worker)] from performing his official duties)] and the defendant knew or should have known that the murdered individual was a [(police officer) (fireman) (emergency management worker)].

[The term "emergency management worker" means (any person, paid or unpaid, who is a member of a local or county emergency services and disaster agency as defined by the Illinois Emergency Management Agency Act, or who is an employee of the Illinois Emergency Management Agency or the Federal Emergency Management Agency) (any employee or volunteer of the Red Cross) (any employee of a federal, state, county or local government agency assisting an emergency services and disaster agency, the Illinois Emergency Management Agency, or the Federal Emergency Management Agency through mutual aid or as otherwise requested or directed in time of disaster or emergency) (any person volunteering or directed to assist an emergency services and disaster agency, the Illinois Emergency Management Agency, or the Federal Emergency Management Agency)].

[or]

c) the defendant murdered an employee of an institution or facility of the Department of Corrections or any similar local correctional agency, and the employee was killed [(in the course of performing his official duties) (to prevent the employee from performing his official duties) (in retaliation for the employee performing his official duties)].

[or]

d) the defendant murdered an [(emergency medical technician-ambulance) (emergency medical technician-intermediate) (emergency medical technician-paramedic) (ambulance driver or other medical assistance or first aid person)] while employed by a municipality or other governmental unit when the person was killed [(in the course of performing official duties) (to prevent the person from performing official duties) (in retaliation for performing official duties)] and the defendant knew or should have known that the murdered individual was an [(emergency medical technician-ambulance) (emergency medical technician-intermediate) (emergency medical technician-paramedic) (ambulance driver or other medical assistant or first aid personnel)].

[The term "emergency medical technician-intermediate" means a person who has successfully completed a course of instruction in intermediate life support as prescribed by the Illinois Department of Public Health, is currently license by the Department, and practices within an Intermediate or Advanced Life Support EMS System].

[The term "emergency medical technician-paramedic" means a person, who has successfully completed a course of instruction in advanced life support care as prescribed by the Illinois Department of Public Health, is license by the Department and practices within an Advanced Life Support EMS System].

[or]

e) the defendant murdered a person under 12 years of age and the murder was committed during the course of [(aggravated criminal sexual assault) (criminal sexual assault) (aggravated kidnapping)].

[or]

f) the murder was committed by reason of any person's activity as a community policing volunteer or to prevent any person from engaging in activity as a community policing volunteer.

The term “community policing volunteer” means a person who is summoned or directed by a peace officer or any person actively participating in a community policing program and who is engaged in lawful conduct intended to assist any unit of government in enforcing any criminal or civil law. The term “community policing program” means any plan, system or strategy established by and conducted under the auspices of a law enforcement agency in which citizens participate with and are guided by the law enforcement agency and work with members of that agency to reduce or prevent crime within a defined geographic area.

[or]

[15] the defendant at the time of the commission of the offense of first degree murder had attained the age of 18 or more; and

a) the murdered person was killed as a result of the hijacking of [(a)(an)] [(airplane) (train) (ship) (bus) (public conveyance)].

[or]

b) the defendant [(committed the murder pursuant to a contract, agreement, or understanding by which he was to receive money or anything of value in return for committing the murder) (procured another to commit the murder for money or anything of value)].

[or]

c) the murdered person was killed in the course of another felony if

[1] [(the murdered person was actually killed by the defendant);

[or]

(the murdered person received physical injuries personally inflicted by the defendant substantially contemporaneously with physical injuries caused by [(a person) (one or more persons)] for whose conduct the defendant was legally responsible and the physical injuries inflicted by either the defendant or other person(s) for whose conduct he is legally responsible caused the death of the murdered person);]

and

[2] in performing the acts which caused the death of the murdered individual or which

resulted in physical injuries personally inflicted by the defendant on the murdered individual substantially contemporaneously with physical injuries caused by [(a person) (one or more persons)] for whose conduct the defendant was legally responsible, the defendant acted with the intent to kill the murdered individual or with the knowledge that his acts created a strong probability of death or great bodily harm to the murdered person (or another);

and

[3] the other felony [(was) (was one or more of the following:)] [(armed robbery) (robbery) (armed violence) (predatory criminal sexual assault of a child) (aggravated criminal sexual assault) (aggravated kidnapping) (aggravated vehicular hijacking) (aggravated arson) (aggravated stalking) (residential burglary) (home invasion) [or] the attempt to commit _____)].

[or]

d) the murdered person was under 12 years of age and the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty. The word "brutal" means cruel and coldblooded, grossly ruthless, or devoid of mercy or compassion. The word "heinous" means enormously and flagrantly criminal, hatefully or shockingly evil, or grossly bad. The term "wanton cruelty" means consciously seeking to inflict pain and suffering on the victim of the offense.

[or]

e) the defendant committed the murder with intent to prevent the murdered person from [(testifying or participating in any criminal investigation or prosecution) (giving material assistance to the State in any investigation or prosecution, either against the defendant or another)].

[or]

f) the defendant committed the murder because the murdered person was a witness in any prosecution or gave material assistance to the State in any investigation or prosecution, either against the defendant or another.

[or]

g) the defendant, while [(committing the offense of _____) (engaged in a [(conspiracy) (solicitation)] to commit the offense of _____)],

[i] (intentionally killed an individual)

[or]

[ii] [(counseled) (commanded) (induced) (procured) (caused) the intentional killing of the murdered individual)].

[or]

h) the defendant was incarcerated in an institution or facility of the Department of Corrections at the time of the murder, and while [(committing the offense of _____) (engaged in a [(conspiracy) (solicitation)] to commit the offense of _____)], defendant

[i] (intentionally killed an individual)

[or]

[ii] (counseled) (commanded) (induced) (procured) (caused) the intentional killing of the murdered individual)].

[or]

i) the murder was committed in a cold, calculated, and premeditated manner pursuant to a preconceived plan, scheme, or design to take a human life by unlawful means, and the conduct of the defendant created a reasonable expectation that the death of a human being would result therefrom. "Cold" means not motivated by mercy or the emotion of the moment. "Calculated and premeditated manner pursuant to a preconceived, plan, scheme, or design" means deliberated or reflected upon for an extended period of time.

[or]

j) the defendant was a principal administrator, organizer, or leader of a calculated criminal drug conspiracy consisting of a hierarchical position of authority superior to that of all other members of the conspiracy, and the defendant [(counseled) (commanded) (induced) (procured) (caused)] the intentional killing of the murdered person.

[or]

k) the murder was intentional and involved the infliction of torture. The word "torture" means the infliction of or subjection to extreme physical pain, motivated by an intent to increase or prolong the pain, suffering, or agony of the victim.

[or]

l) the murder was committed as a result of the intentional discharge of a firearm by the defendant from a motor vehicle and the victim was not present within the motor vehicle.

[or]

m) the murdered individual was 60 years of age or older and the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty. The word "brutal" means cruel and cold blooded, grossly ruthless, or devoid of mercy or compassion. The word "heinous" means enormously and flagrantly criminal, hatefully or shockingly evil, or grossly bad. The term "wanton cruelty" means consciously seeking to inflict pain and suffering on the victim of the offense.

[or]

n) the murdered individual was a disabled person and the defendant knew or should have known that the murdered individual was disabled. A "disabled person" means a person who suffers from a permanent physical or mental impairment resulting from disease, an injury, a functional disorder, or a congenital condition that renders the person incapable of adequately providing for his or her own health or personal care.

[or]

o) the murdered person was subject to an order of protection and the murder was committed by a person against whom the same order of protection was issued under the Illinois Domestic Violence Act.

[or]

p) the murdered person was known by the defendant to be a [(teacher) (person)] employed in any school and the [(teacher) (employee)] is upon [(the grounds of a school) (the grounds adjacent to a school) (any part of a building used for school purposes)].

[or]

q) the murder was committed by the defendant [(in connection with) (as a result of)] the offense of terrorism.

If you find from your consideration of all the evidence that the above proposition has been proved beyond a reasonable doubt, then you should sign the verdict form finding that the allegation was proven.

If you find from your consideration of all the evidence that the above proposition has not been proved beyond a reasonable doubt, then you should sign the verdict form finding that the allegation was not proven.

Committee Note

Give this instruction immediately after the issues instruction for the offense to which the

enhancement/extended term factor applies.

Give Instruction 28.01.

Give Instruction 28.02.

Give Instruction 28.04.

When the charging instrument or written notice charges more than one enhancement/extended term factor, give a separate issues instruction for each enhancement/extended term factor.

The "ors" are provided for differentiation and should not be included in the instruction submitted to the jury.

Enhancement/Extended Term Factor [1] 730 ILCS 5/5-8-1(a)(1)(d) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material. The definition of the term "personally discharged a firearm" is set forth in accordance with 720 ILCS 5/2-15.5 (West 2006).

Enhancement/Extended Term Factor [2] 730 ILCS 5/5-5-3.2(b)(2) (West 2006); 730 ILCS 5/5-8-1(a)(1)(b) (West 2006). Insert in both blanks the offense specifically charged in the charging instrument or written notice. The definitions of the words "brutal" and "heinous" are set forth in accordance with the Illinois Supreme Court's discussion in People v. Lucas, 132 Ill.2d 399, 445, 548 N.E.2d 1003, 1022, 139 Ill.Dec. 447, 466 (1989). The definition of the term "wanton cruelty" is set forth in accordance with the Illinois Supreme Court's discussion in People v. Nitz, 219 Ill.2d 400, 418, 848 N.E.2d 982, 994, 302 Ill.Dec. 418, 436 (2006). Wanton cruelty cannot be perpetrated on a corpse. People v. Nielson, 187 Ill.2d 271, 299, 718 N.E.2d 131,148, 240 Ill.Dec. 650, 678 (1999).

Enhancement/Extended Term Factor [3] 730 ILCS 5/5-5-3.2(b)(4) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material.

Enhancement/Extended Term Factor [4] 730 ILCS 5/5-5-3.2(b)(5) (West 2006). Use when the defendant is charged with aggravated criminal sexual assault under 720 ILCS 5/12-14 (West 2006), or criminal sexual assault under 720 ILCS 5/12-13 (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Use applicable bracketed material.

Enhancement/Extended Term Factor [5] 730 ILCS 5/5-5-3.2(c) (West 2006). Use when the defendant is charged with aggravated criminal sexual assault under 720 ILCS 5/12-14 (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Insert in the blank as indicated the name of the victim. Appropriate modifications should be made when there is more than one victim. Use applicable bracketed material.

Enhancement/Extended Term Factor [6] 730 ILCS 5/5-5-3.2(b)(6) (West 2006). Insert in both blanks as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material. When more than one alternative is alleged in the

charging document, the word "and" should be inserted between them.

Enhancement/Extended Term Factor [7] 730 ILCS 5/5-5-3.2(b)(8) (West 2006). This factor does not apply when the defendant is charged with conspiracy. Insert in both blanks as indicated the offense specifically charged in the charging instrument or written notice. The definition of the term "organized gang" is set forth in accordance with 740 ILCS 147/10 (West 2006).

Enhancement/Extended Term Factor [8] 730 ILCS 5/5-5-3.2(b)(9) (West 2006). This factor applies only when the defendant is charged with felony unlawful use of weapons under 720 ILCS 5/24-1 (West 2006). The definition of the term "organized gang" is set forth in accordance with 740 ILCS 147/10 (West 2006).

Enhancement/Extended Term Factor [9] 730 ILCS 5/5-5-3.2(b)(10) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. The definitions of the terms "laser sight" and "laser pointer" are set forth in accordance with 720 ILCS 24.6-5 (West 2006).

Enhancement/Extended Term Factor [10] 730 ILCS 5/5-5-3.2(b)(12) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. The definitions of the word "emergency" and the term "emergency response officer" are set forth in accordance with 730 ILCS 5/5-3.2(b)(12) (West 2006).

Enhancement/Extended Term Factor [11] 730 ILCS 5/5-5-3.2(b)(13) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material. The definition of the term "organized gang" is set forth in accordance with 740 ILCS 147/10 (West 2006).

Enhancement/Extended Term Factor [12] 720 ILCS 5/12-3.2(c) (West 2006). Use applicable bracketed material. The definitions of the word "child" and the term "in the presence of a child" are set forth in accordance with 720 ILCS 5/12-3.2(c) (West 2006).

Enhancement/Extended Term Factor [13] 720 ILCS 5/8-1.1(b) (West 2006). Use when the defendant is charged with solicitation to commit murder under 720 ILCS 5/8-1.1(a) (West 2006), and the charging instrument or written notice alleges that the person solicited was under the age of 17 years.

Enhancement/Extended Term Factor [14] 730 ILCS 5/5-8-1(a)(1)(c) (West 2006). Use when the defendant is charged with first degree murder under 720 ILCS 5/9-1(a) (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Use applicable bracketed material. The definition of the term "emergency management worker" is set forth in accordance with 720 ILCS 5/2-6.6 (West 2006). The definitions of the terms "emergency medical technician-intermediate," and "emergency medical technician paramedic" are set forth in accordance with 210 ILCS 50/3.50 (West 2006). The definitions of the terms "community policing volunteer" and "community policing program" are set forth in accordance with 720 ILCS 5/2-3.5 (West 2006). Although 720 ILCS 5/2-6.5 (West 2006) states that the definition of the term "emergency medical technician-ambulance" is contained in the Emergency Medical Services (EMS) Systems Act, 210 ILCS 50-1 et seq. (West 2006), the Committee could find no statutory definition of the term "emergency medical technician-ambulance."

Enhancement/Extended Term Factor [15] 730 ILCS 5/5-8(b)(1) (West 2006). Use when the defendant is charged with first degree murder under 720 ILCS 5/9-1(a) (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Use applicable bracketed material. The definitions of the words "brutal" and "heinous" are set forth in accordance with the Illinois Supreme Court's discussion in People v. Lucas, 132 Ill.2d 399, 445, 548 N.E.2d 1003, 1022, 139 Ill.Dec. 447, 466 (1989). The definition of the term "wanton cruelty" is set forth in accordance with the Illinois Supreme Court's discussion in People v. Nitz, 219 Ill.2d 400, 418, 848 N.E.2d 982, 994, 302 Ill.Dec. 418, 436 (2006). Wanton cruelty cannot be perpetrated on a corpse. People v. Nielson, 187 Ill.2d 271, 299, 718 N.E.2d 131,148, 240 Ill.Dec. 650, 678 (1999). The definition of the word "torture" is set forth in accordance with 720 ILCS 5/9-1(b)(14) (West 2006). The definition of the term "disabled person" is set forth in accordance with 720 ILCS 5/9-1(b)(14) (West 2006). The definitions of the word "cold" and the phrase "calculated and premeditated manner pursuant to a preconceived plan, scheme or design" are set forth in accordance with the Illinois Supreme Court discussion in People v. Williams, 193 Ill.2d 1, 737 N.E.2d 230 (2000).

The numbers and brackets are provided solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

28.04 Enhancement/Extended Term Factor(S)--Concluding Instruction

The State has also alleged that

[1] during the commission of the offense of _____ the defendant [(was armed with a firearm) (personally discharged a firearm) (personally discharged a firearm that proximately caused [great bodily harm] [permanent disability] [permanent disfigurement] [death] to another person)].

[or]

[2] when the defendant committed the offense of _____ the _____ was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty.

[or]

[3] the defendant committed the offense of _____ against a person [(under 12 years of age) (60 years of age or older) (physically handicapped)] at the time of the offense (or against such person's property).

[or]

[4] when the defendant committed the offense of [(aggravated criminal sexual assault) (criminal sexual assault)], the offense was committed on the same victim by one or more other individuals and the defendant voluntarily participated in the crime with the knowledge of the participation of the others in the crime and the commission of the crime was part of a single course of conduct during which there was no substantial change in the nature of the criminal objective.

[or]

[5] _____ was under 18 years of age at the time of the commission of the aggravated criminal sexual assault.

[or]

[6] when the _____ was committed by the defendant the _____ involved [(any) (the following type(s)) of] misconduct committed as part of a ceremony, rite, initiation, observance, performance, practice or activity of any actual or ostensible religious, fraternal or social group [(the brutalizing or torturing of humans or animals) (the theft of human corpses) (the kidnapping of humans) (the desecration of any cemetery, religious, fraternal, business, governmental, educational, or other building or property) (ritualized abuse of a child)].

[or]

[7] the defendant committed the offense of _____ under an agreement with two or more other persons to commit that offense and the defendant, with respect to the other individuals, occupied a position of organizer, supervisor, financier, or any other position of management or leadership and the commission of the offense of _____ was related to or in furtherance of the criminal activities of an organized gang or was motivated by the defendant's leadership in an organized gang.

[or]

[8] when the defendant committed the offense of unlawful use of weapons the defendant was a member of an organized gang.

[or]

[9] when the defendant committed the offense of _____ he used a firearm with a laser sight attached to it.

[or]

[10] when the defendant committed the offense of _____ an emergency response officer in the performance of his duties is killed or injured at the scene of the offense while responding to the emergency caused by the commission of the offense.

[or]

[11] when the defendant committed the offense of _____ the defendant [(used), (possessed), (exercised control over), (or) (otherwise directed)] an animal to assault a law enforcement officer [(engaged in the execution of his official duties) (or) (in furtherance of the criminal activities of an organized gang in which the defendant is engaged)].

[or]

[12] the defendant committed the offense of [(aggravated battery) (domestic battery) (aggravated domestic battery) (unlawful restraint) (aggravated unlawful restraint)] in the presence of a child.

[or]

[13] when the defendant committed the offense of solicitation of murder the person solicited was a person under the age of 17 years.

[or]

[14] when the defendant committed the offense of first degree murder

a) the defendant had attained the age of 17 or more and the defendant murdered an individual under 12 years of age.

[or]

b) the defendant murdered a [(peace officer) (fireman) (emergency management worker)] when the [(police officer) (fireman) (emergency management worker)] was killed [(in the course of performing his official duties) (to prevent the [(police officer) (fireman) (emergency management worker)] from performing his official duties) (in retaliation for the [(police officer) (fireman) (emergency management worker)] from performing his official duties)] and the defendant knew or should have known that the murdered individual was a [(police officer) (fireman) (emergency management worker)].

[or]

c) the defendant murdered an employee of an institution or facility of the Department of Corrections or any similar local correctional agency, and the employee was killed in the course of performing his official duties or to prevent the employee from performing his official duties or in retaliation for the employee performing his official duties.

[or]

d) the defendant murdered an [(emergency medical technician-ambulance) (emergency medical technician-intermediate) (emergency medical technician-paramedic) (ambulance driver or other medical assistance or first aid person) while employed by a municipality or other governmental unit when the person was killed [(in the course of performing official duties) (to prevent the person from performing official duties) (in retaliation for performing official duties)] and the defendant knew or should have known that the murdered individual was an [(emergency medical technician-ambulance) (emergency medical technician-intermediate) (emergency medical technician-paramedic) (ambulance driver or other medical assistant or first aid personnel)].

[or]

e) the defendant murdered a person under 12 years of age and the murder was committed during the course of [(aggravated criminal sexual assault) (criminal sexual assault) (aggravated kidnapping)].

[or]

f) the murder was committed by reason of any person's activity as a community policing volunteer or to prevent any person from engaging in activity as a community policing volunteer.

[or]

[15] the defendant at the time of the commission of the offense of first degree murder had attained the age of 18 or more; and

a) the murdered person was killed as a result of the hijacking of [(a)(an)] [(airplane) (train) (ship) (bus) (public conveyance)].

[or]

b) the defendant [(committed the murder pursuant to a contract, agreement, or understanding by which he was to receive money or anything of value in return for committing the murder) (procured another to commit the murder for money or anything of value)].

[or]

c) the murdered person was killed in the course of another felony if

[1] [(the murdered person was actually killed by the defendant);

[or]

(the murdered person received physical injuries personally inflicted by the defendant substantially contemporaneously with physical injuries caused by [(a person) (one or more persons)] for whose conduct the defendant was legally responsible and the physical injuries inflicted by either the defendant or other person(s) for whose conduct he is legally responsible caused the death of the murdered person);]

and

[2] in performing the acts which caused the death of the murdered individual or which resulted in physical injuries personally inflicted by the defendant on the murdered individual substantially contemporaneously with physical injuries caused by [(a person) (one or more persons)] for whose conduct the defendant was legally responsible, the defendant acted with the intent to kill the murdered individual or with the knowledge that his acts created a strong probability of death or great bodily harm to the murdered person (or another);

and

[3] the other felony [(was) (was one or more of the following:)] [(armed robbery)

(robbery) (armed violence) (predatory criminal sexual assault of a child) (aggravated criminal sexual assault) (aggravated kidnapping) (aggravated vehicular hijacking) (aggravated arson) (aggravated stalking) (residential burglary) (home invasion) [or] the attempt to commit _____)].

[or]

d) the murdered person was under 12 years of age and the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty.

[or]

e) the defendant committed the murder with intent to prevent the murdered person from [(testifying or participating in any criminal investigation or prosecution) (giving material assistance to the State in any investigation or prosecution, either against the defendant or another)].

[or]

f) the defendant committed the murder because the murdered person was a witness in any prosecution or gave material assistance to the State in any investigation or prosecution, either against the defendant or another.

[or]

g) the defendant, while [(committing the offense of _____) (engaged in a [(conspiracy) (solicitation)] to commit the offense of _____)],

[i] (intentionally killed an individual)

[or]

[ii] [(counseled) (commanded) (induced) (procured) (caused) the intentional killing of the murdered individual)].

[or]

h) the defendant was incarcerated in an institution or facility of the Department of Corrections at the time of the murder, and while [(committing the offense of _____) (engaged in a [(conspiracy) (solicitation)] to commit the offense of _____)], defendant

[i] (intentionally killed an individual)

[or]

[ii] [(counseled) (commanded) (induced) (procured) (caused) the intentional killing of the murdered individual)].

[or]

i) the murder was committed in a cold, calculated, and premeditated manner pursuant to a preconceived plan, scheme, or design to take a human life by unlawful means, and the conduct of the defendant created a reasonable expectation that the death of a human being would result therefrom.

[or]

j) the defendant was a principal administrator, organizer, or leader of a calculated criminal drug conspiracy consisting of a hierarchical position of authority superior to that of all other members of the conspiracy, and the defendant [(counseled) (commanded) (induced) (procured) (caused)] the intentional killing of the murdered person.

[or]

k) the murder was intentional and involved the infliction of torture.

[or]

l) the murder was committed as a result of the intentional discharge of a firearm by the defendant from a motor vehicle and the victim was not present within the motor vehicle.

[or]

m) the murdered individual was 60 years of age or older and the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty.

[or]

n) the murdered individual was a disabled person and the defendant knew or should have known that the murdered individual was disabled.

[or]

o) the murdered person was subject to an order of protection and the murder was committed by a person against whom the same order of protection was issued under the Illinois

Domestic Violence Act.

[or]

p) the murdered person was known by the defendant to be a [(teacher) (person)] employed in any school and the [(teacher) (employee)] is upon [(the grounds of a school) (the grounds adjacent to a school) (any part of a building used for school purposes)].

[or]

q) the murder was committed by the defendant [(in connection with) (as a result of)] the offense of terrorism.

If you find the defendant is not guilty of the offense of _____ you should not consider the State's additional allegation(s) regarding the offense of _____.

If you find the defendant is guilty of _____, you should then go on with your deliberation to decide whether the State has proved beyond a reasonable doubt the allegation that insert the appropriate enhancement/extended term factor(s).

[You should give separate consideration to each allegation.]

Accordingly, you will be provided with two verdict forms [(as to each allegation)]: "We, the jury, find the allegation that insert the appropriate enhancement/extended term factor [as to defendant _____] was not proven" and "We, the jury, find the allegation that insert the appropriate enhancement/extended term factor [as to defendant _____] was proven."

From these _____ verdict forms, you should select the one verdict form (as to each allegation) that reflects your verdict (as to each defendant) and sign it as I have stated. Do not write on the other verdict form(s) (as to each defendant). Sign only one of these verdict forms [(as to each allegation) (as to each defendant)].

Your agreement on your verdict as to the allegation(s) must also be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

Committee Note

Give this instruction in addition to the applicable 26.01 series instruction and immediately after the applicable 26.01 series instruction.

Give Instruction 28.01.

Give Instruction 28.02.

Give Instruction 28.03.

Insert in the blanks the offense and the applicable enhancement/extended term factor specifically charged in the charging instrument or written notice. If the charging instrument or written notice charges more than one enhancement/extended term factor include each enhancement/extended term factor and add the word "and" between them.

The "ors" are provided for differentiation and should not be included in the instruction submitted to the jury.

When the charging instrument or written notice charges more than one enhancement/extended term factor, give separate verdict forms for each enhancement/extended term factor.

When the charging instrument or written notice charges enhancement/extended term factor[s] against more than one defendant, give separate verdict forms for each defendant and insert the defendant's name in the verdict forms.

Enhancement/Extended Term Factor [1] 730 ILCS 5/5-8-1(a)(1)(d) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material. See Instruction 28.03[1] for the definition of term "personally discharged a firearm."

Enhancement/Extended Term Factor [2] 730 ILCS 5/5-5-3.2(b)(2) (West 2006); 730 ILCS 5/5-8-1(a)(1)(b) (West 2006). Insert in both blanks as indicated the offense specifically charged in the charging instrument or written notice. See Instruction 28.03[2] for the definitions of the words "brutal" and "heinous" and for the term "wanton cruelty."

Enhancement/Extended Term Factor [3] 730 ILCS 5/5-5-3.2(b)(4) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material.

Enhancement/Extended Term Factor [4] 730 ILCS 5/5-5-3.2(b)(5) (West 2006). Use when the defendant is charged with aggravated criminal sexual assault under 720 ILCS 5/12-14 (West 2006), or criminal sexual assault under 720 ILCS 5/12-13 (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor.

Enhancement/Extended Term Factor [5] 730 ILCS 5/5-5-3.2(c) (West 2006). Use when the defendant is charged with aggravated criminal sexual assault under 720 ILCS 5/12-14 (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Insert in the blank as indicated the name of the victim. Appropriate modifications should be made when there is more than one victim. Use applicable bracketed material.

Enhancement/Extended Term Factor [6] 730 ILCS 5/5-5-3.2(b)(6) (West 2006). Insert in both blanks as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material. When more than one alternative is alleged in the charging document, the word "and" should be inserted between them.

Enhancement/Extended Term Factor [7] 730 ILCS 5/5-5-3.2(b)(8) (West 2006). This factor does not apply when the defendant is charged with conspiracy. Insert in both blanks as indicated the offense specifically charged in the charging instrument or written notice. See Instruction 28.03[7] for the definition of the term "organized gang."

Enhancement/Extended Term Factor [8] 730 ILCS 5/5-5-3.2(b)(9) (West 2006). This factor applies only when the defendant is charged with felony unlawful use of weapons under 720 ILCS 5/24-1 (West 2006). See Instruction 28.03[8] for the definition of the term "organized gang."

Enhancement/Extended Term Factor [9] 730 ILCS 5/5-5-3.2(b)(10) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. See Instruction 28.03[9] for the definitions of the terms "laser sight" and "laser pointer."

Enhancement/Extended Term Factor [10] 730 ILCS 5/5-5-3.2(b)(12) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. See Instruction 28.03[10] for the definitions of the word "emergency" and the term "emergency response officer."

Enhancement/Extended Term Factor [11] 730 ILCS 5/5-5-3.2(b)(13) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material. See Instruction 28.03[11] for the definition of the term "organized gang."

Enhancement/Extended Term Factor [12] 720 ILCS 5/12-3.2(c) (West 2006). Use applicable bracketed material. See Instruction 28.03[12] for the definitions of the word "child" and the term "presence of a child."

Enhancement/Extended Term Factor [13] 720 ILCS 5/8-1.1(b) (West 2006). Use when the defendant is charged with solicitation to commit murder under 720 ILCS 5/8-1.1(a) (West 2006), and the charging instrument or written notice alleges that the person solicited was under the age of 17 years.

Enhancement/Extended Term Factor [14] 730 ILCS 5/5-8-1(a)(1)(c) (West 2006). Use when the defendant is charged with first degree murder under 720 ILCS 5/9-1(a) (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Use applicable bracketed material. See Instruction 28.03[14] for the definitions of the terms "emergency management worker," "emergency medical technician-intermediate," "emergency medical technician-paramedic" and "community policing volunteer." Although 720 ILCS 5/2-6.5 (West 2006) states that the definition of the term "emergency medical technician-ambulance" is contained in the Emergency Medical Services (EMS) Systems Act, 210 ILCS 50-1 et seq. (West 2006), the Committee could find no statutory definition of the term "emergency medical technician-ambulance."

Enhancement/Extended Term Factor [15] 730 ILCS 5/5-8(b)(1) (West 2006). Use when the defendant is charged with first degree murder under 720 ILCS 5/9-1(a) (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Use applicable bracketed material. See Instruction 28.03[15] for the definitions of the words "brutal," "heinous," "torture," and "cold" and the terms "wanton cruelty" and "disabled person" and the phrase "calculated and premeditated manner pursuant to a preconceived, plan, scheme or design."

The numbers and brackets are provided solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

28.05 Verdict--Allegation Not Proven

We, the jury, find the allegation that insert the appropriate enhancement/extended term factor [as to defendant _____] was not proven.

_____

Foreperson

_____
_____
_____
_____
_____
_____

Committee Note

Insert in the blank the applicable enhancement/extended term factor specifically charged in the charging instrument or written notice.

When the charging instrument or written notice describes more than one enhancement/extended term factor, give separate verdict forms for each applicable enhancement/extended term factor.

When the charging instrument or written notice charges enhancement/extended term factor[s] against more than one defendant, give separate verdict forms for each defendant and insert the defendant's name in the bracketed blank of the verdict form.

In People v. Starnes, 2007 Ill. App. LEXIS 538, 2007 WL 1462081 (1st Dist. 2007), the court discussed, in a case where the defendant was not sentenced to an extended term, whether unanimity is required to find that an extended term factor was not proven. The Committee believes that *Starnes* did not define a legal basis for non-unanimity in proving enhancement factors under *Apprendi*. The death penalty statute explicitly provides for non-unanimous determinations. See 720 ILCS 5/9-1(g). By contrast, unanimity is not addressed in the *Apprendi* statute or Supreme Court Rules. See 725 ILCS 5/111-3(c-5), Ill. Sup. R. 451(g).

The bracket is provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

28.06 Verdict--Allegation Proven

We, the jury, find the allegation that [insert the appropriate enhancement/extended term factor] [as to defendant _____] was proven.

_____

Foreperson

_____
_____
_____
_____
_____
_____

Committee Note

Insert in the blank the applicable enhancement/extended term factor specifically charged in the charging instrument or written notice.

When the charging instrument or written notice describes more than one enhancement/extended term factor, give separate verdict forms for each applicable

enhancement/extended term factor.

When the charging instrument or written notice charges enhancement/extended term factor[s] against more than one defendant, give separate verdict forms for each defendant and insert the defendant's name in the bracketed blank of the verdict form.

The bracket is provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

II.
BIFURCATED INSTRUCTIONS

28A.01 Nature Of The Hearing, Duties Of The Jury And Functions Of The Court

[1] Members of the jury, the evidence and arguments have been completed, and I now will instruct you as to the law.

[2] The defendant in this case has been convicted of the offense(s) of [(____) (and ____)]. It is now your duty to determine whether the additional allegation(s) in connection with the offense(s) of [(____) (and ____)] [(has) (have)] been proven.

[3] The law that applies to this case is stated in these instructions and it is your duty to follow all of them. You must not single out certain instructions and disregard others. [When I use the word "he" in these instructions, I mean a male or a female.]

[4] It is your duty to determine the facts and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case.

[5] [You are not to concern yourself with possible punishment or sentence for the allegation(s) charged during your deliberation. It is the function of the trial judge to determine the sentence should there be a finding that the allegation(s) [(has) (have)] been proven].

[6] Neither sympathy nor prejudice should influence you. [You should not be influenced by any person's race, color, religion, or national ancestry.]

[7] From time to time it has been the duty of the court to rule on the admissibility of evidence. You should not concern yourselves with the reasons for these rulings. You should disregard questions [and exhibits] which were withdrawn or to which objections were sustained.

[8] Any evidence that was received for a limited purpose should not be considered by you for any other purpose.

[9] You should disregard testimony [and exhibits] which the court has refused or stricken.

[10] The evidence which you should consider consists only of the testimony of the witnesses [and the exhibits] which the court has received [(during the trial of this case) [and] (during this hearing)]. [This means you should consider both the evidence received at trial and the evidence received at this hearing.]

[11] You should consider all the evidence in the light of your own observations and experience in life.

[12] Neither by these instructions nor by any ruling or remark which I have made do I mean to indicate any opinion as the facts or as to what your verdict should be.

[13] Faithful performance by you of your duties as jurors is vital to the administration of justice.

Committee Note

Do not use paragraph [5] unless the issue of punishment is raised during trial on the allegation(s).

The Committee has added the bracketed material in paragraph [3] to be used when applicable.

This instruction was drafted, in part, using Instruction 7B.03 as a guide. The Committee believes, as in 7B.03, that the jury should be instructed to consider the evidence presented at trial in every case in which the jury was the trier of fact at the trial. See *e.g.* People v. Johnson, 114 Ill. 2d 170, 499 N.E. 2d 1355, 102 Ill. Dec. 342 (1986); People v. Lewis, 88 Ill. 2d 129, 430 N.E.

2d 1346, 58 Ill. Dec. 895 (1981), *habeas corpus* granted *sub. nom.* United States ex. rel. Lewis v. Lane, 656 F. Supp. 181 (C.D. Ill. 1987), affirmed *sub. nom.* Lewis v. Lane, 832 F.2d 1446 (7th Cir. 1987).

However, when there has been a bench trial, or a plea of guilty, the sentencing jury should not be instructed to consider trial evidence unless it has been formally admitted at the hearing.

Use applicable paragraphs and bracketed material.

The numbers and brackets are provided solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

28A.02 General Instructions

Committee Note

Instruction 1.02 (Jury Is Sole Judge of the Believability of Witnesses) should be given at the enhancement/extended term hearing.

Instruction 1.03 (Arguments of Counsel) should be given at the hearing. The instruction may be modified if either party has waived opening or closing.

The relevant portion(s) of Instruction 28.01 (Enhancement/Extended Term Factor(s)) should be given at the hearing. It should be modified to strike the word "also" in the first sentence of the instruction.

Instruction 28.02 (Enhancement/Extended Term Factor(s) Presumption of Innocence--Reasonable Doubt--Burden of Proof) should be given at the hearing.

The relevant portion(s) of Instruction 28.03 (Issues in Enhancement/Extended Term Factor(s)) should be given at the hearing.

Instruction 28A.01 (Nature of the Hearing. Duties of the Jury and Functions of the Court) should be given at the hearing.

Instruction 28A.03 (Enhancement/Extended Term Factor(s)--Concluding Instruction) should be given at the hearing.

Instruction 28.05 (Verdict--Allegation Not Proven) should be given at the hearing.

Instruction 28.06 (Verdict--Allegation Proven) should be given at the hearing.

It is possible that a case could arise in which no witnesses were called by either party at the enhancement/extended term hearing. However, credibility of trial witnesses could still be at issue.

It is also possible that at the enhancement/extended term hearing the parties may waive opening statements or even closing argument. However, the jury in most cases will have heard opening statements and closing arguments at trial.

28A.03 Enhancement/Extended Term Factor(S)--Concluding Instruction

[(When you retire to the jury room your foreperson will preside during your deliberations on your verdict.) (When you retire to the jury room you will first elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.)]

The State has alleged that

[1] during the commission of the offense of _____ the defendant [(was armed with a firearm) (personally discharged a firearm) (personally discharged a firearm that proximately caused [great bodily harm] [permanent disability] [permanent disfigurement] [death] to another person)].

[or]

[2] when the defendant committed the offense of _____ the _____ was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty.

[or]

[3] the defendant committed the offense of _____ against a person [(under 12 years of age) (60 years of age or older) (physically handicapped)] at the time of the offense (or against such person's property).

[or]

[4] when the defendant committed the offense of [(aggravated criminal sexual assault) (criminal sexual assault)], the offense was committed on the same victim by one or more other individuals and the defendant voluntarily participated in the crime with the knowledge of the participation of the others in the crime and the commission of the crime was part of a single course of conduct during which there was no substantial change in the nature of the criminal objective.

[or]

[5] _____ was under 18 years of age at the time of the commission of the aggravated criminal sexual assault.

[or]

[6] when the _____ was committed by the defendant the _____ involved [(any) (the following type(s)) of] misconduct committed as part of a ceremony, rite, initiation, observance, performance, practice or activity of any actual or ostensible religious, fraternal or social group [(the brutalizing or torturing of humans or animals) (the theft of human corpses) (the kidnapping of humans) (the desecration of any cemetery, religious, fraternal, business, governmental,

educational, or other building or property) (ritualized abuse of a child)].

[or]

[7] the defendant committed the offense of _____ under an agreement with two or more other persons to commit that offense and the defendant, with respect to the other individuals, occupied a position of organizer, supervisor, financier, or any other position of management or leadership and the commission of the offense of _____ was related to or in furtherance of the criminal activities of an organized gang or was motivated by the defendant's leadership in an organized gang.

[or]

[8] when the defendant committed the offense of unlawful use of weapons the defendant was a member of an organized gang.

[or]

[9] when the defendant committed the offense of _____ he used a firearm with a laser sight attached to it.

[or]

[10] when the defendant committed the offense of _____ an emergency response officer in the performance of his duties is killed or injured at the scene of the offense while responding to the emergency caused by the commission of the offense.

[or]

[11] when the defendant committed the offense of _____ the defendant [(used), (possessed), (exercised control over), (or) (otherwise directed)] an animal to assault a law enforcement officer [(engaged in the execution of his official duties) (or) (in furtherance of the criminal activities of an organized gang in which the defendant is engaged)].

[or]

[12] the defendant committed the offense of [(aggravated battery) (domestic battery) (aggravated domestic battery) (unlawful restraint) (aggravated unlawful restraint)] in the presence of a child.

[or]

[13] when the defendant committed the offense of solicitation of murder the person solicited was a person under the age of 17 years.

[or]

[14] when the defendant committed the offense of first degree murder

a) the defendant had attained the age of 17 or more and the defendant murdered an individual under 12 years of age.

[or]

c) the defendant murdered a [(peace officer) (fireman) (emergency management worker)] when the [(police officer) (fireman) (emergency management worker)] was killed [(in the course of performing his official duties) (to prevent the [(police officer) (fireman) (emergency management worker)] from performing his official duties) (in retaliation for the [(police officer) (fireman) (emergency management worker)] from performing his official duties)] and the defendant knew or should have known that the murdered individual was a [(police officer) (fireman) (emergency management worker)].

[or]

c) the defendant murdered an employee of an institution or facility of the Department of Corrections or any similar local correctional agency, and the employee was killed in the course of performing his official duties or to prevent the employee from performing his official duties or in retaliation for the employee performing his official duties.

[or]

d) the defendant murdered an [(emergency medical technician-ambulance) (emergency medical technician-intermediate) (emergency medical technician-paramedic) (ambulance driver or other medical assistance or first aid person) while employed by a municipality or other governmental unit when the person was killed [(in the course of performing official duties) (to prevent the person from performing official duties) (in retaliation for performing official duties)] and the defendant knew or should have known that the murdered individual was an [(emergency medical technician-ambulance) (emergency medical technician-intermediate) (emergency medical technician-paramedic) (ambulance driver or other medical assistant or first aid personnel)].

[or]

e) the defendant murdered a person under 12 years of age and the murder was committed during the course of [(aggravated criminal sexual assault) (criminal sexual assault) (aggravated kidnapping)].

[or]

f) the murder was committed by reason of any person's activity as a community policing volunteer or to prevent any person from engaging in activity as a community policing volunteer.

[or]

[15] the defendant at the time of the commission of the offense of first degree murder had attained the age of 18 or more; and

a) the murdered person was killed as a result of the hijacking of [(a)(an)] [(airplane) (train) (ship) (bus) (public conveyance)].

[or]

b) the defendant [(committed the murder pursuant to a contract, agreement, or understanding by which he was to receive money or anything of value in return for committing the murder) (procured another to commit the murder for money or anything of value)].

[or]

c) the murdered person was killed in the course of another felony if

[1] [(the murdered person was actually killed by the defendant);

[or]

(the murdered person received physical injuries personally inflicted by the defendant substantially contemporaneously with physical injuries caused by [(a person) (one or more persons)] for whose conduct the defendant was legally responsible and the physical injuries inflicted by either the defendant or other person(s) for whose conduct he is legally responsible caused the death of the murdered person);]

and

[2] in performing the acts which caused the death of the murdered individual or which resulted in physical injuries personally inflicted by the defendant on the murdered individual substantially contemporaneously with physical injuries caused by [(a person) (one or more persons)] for whose conduct the defendant was legally responsible, the defendant acted with the intent to kill the murdered individual or with the knowledge that his acts created a strong probability of death or great bodily harm to the murdered person (or another);

and

[3] the other felony [(was) (was one or more of the following:)] [(armed robbery) (robbery) (armed violence) (predatory criminal sexual assault of a child) (aggravated criminal sexual assault) (aggravated kidnapping) (aggravated vehicular hijacking) (aggravated arson) (aggravated stalking) (residential burglary) (home invasion) [or] the attempt to commit _____)].

[or]

d) the murdered person was under 12 years of age and the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty.

[or]

e) the defendant committed the murder with intent to prevent the murdered person from [(testifying or participating in any criminal investigation or prosecution) (giving material assistance to the State in any investigation or prosecution, either against the defendant or another)].

[or]

f) the defendant committed the murder because the murdered person was a witness in any prosecution or gave material assistance to the State in any investigation or prosecution, either against the defendant or another.

[or]

g) the defendant, while [(committing the offense of _____) (engaged in a [(conspiracy) (solicitation)] to commit the offense of _____)],

[i] (intentionally killed an individual)

[or]

[ii] [(counseled) (commanded) (induced) (procured) (caused) the intentional killing of the murdered individual)].

[or]

h) the defendant was incarcerated in an institution or facility of the Department of Corrections at the time of the murder, and while [(committing the offense of _____) (engaged in a [(conspiracy) (solicitation)] to commit the offense of _____)], defendant

[i]. (intentionally killed an individual)

[or]

[ii] [(counseled) (commanded) (induced) (procured) (caused) the intentional killing of the murdered individual)].

[or]

i) the murder was committed in a cold, calculated, and premeditated manner pursuant to a preconceived plan, scheme, or design to take a human life by unlawful means, and the conduct of the defendant created a reasonable expectation that the death of a human being would result therefrom.

[or]

j) the defendant was a principal administrator, organizer, or leader of a calculated criminal drug conspiracy consisting of a hierarchical position of authority superior to that of all other members of the conspiracy, and the defendant [(counseled) (commanded) (induced) (procured) (caused)] the intentional killing of the murdered person.

[or]

k) the murder was intentional and involved the infliction of torture.

[or]

l) the murder was committed as a result of the intentional discharge of a firearm by the defendant from a motor vehicle and the victim was not present within the motor vehicle.

[or]

m) the murdered individual was 60 years of age or older and the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty.

[or]

n) the murdered individual was a disabled person and the defendant knew or should have known that the murdered individual was disabled.

[or]

o) the murdered person was subject to an order of protection and the murder was committed by a person against whom the same order of protection was issued under the Illinois Domestic Violence Act.

[or]

p) the murdered person was known by the defendant to be a [(teacher) (person)] employed in any school and the [(teacher) (employee)] is upon [(the grounds of a school) (the grounds adjacent to a school) (any part of a building used for school purposes)].

[or]

q) the murder was committed by the defendant [(in connection with) (as a result of)] the offense of terrorism.

[(You have found the defendant is guilty of _____.) (The defendant has been found guilty of _____.)] You now will go on with your deliberations to decide whether the State has proved beyond a reasonable doubt the allegation that insert the appropriate enhancement/extended term factor(s).

[You should give separate consideration to each allegation.]

Accordingly, you will be provided with two verdict forms [(as to each allegation)]: "We, the jury, find the allegation that insert the appropriate enhancement/extended term factor [as to defendant _____] was not proven." and "We, the jury, find the allegation that insert the appropriate enhancement/extended term factor [as to defendant _____] was proven."

From these _____ verdict forms, you should select the one verdict form (as to each allegation) that reflects your verdict (as to each defendant) and sign it as I have stated. Do not write on the other verdict form(s) (as to each defendant). Sign only one of these verdict forms [(as to each allegation) (as to each defendant)].

Your agreement on your verdict as to the allegation(s) must also be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

Committee Note

Give the relevant portion(s) of Instruction 28.01 (Enhancement/Extended Term Factor(s)). It should be modified to strike the word "also" in the first sentence of the instruction.

Give Instruction 28.02.

Give the relevant portion(s) of Instruction 28.03 (Issues in Enhancement/Extended Term Factor(s)).

Give Instruction 28.05 (Verdict--Allegation Not Proven).

Give Instruction 28.06 (Verdict--Allegation Proven).

The alternate language on electing a foreperson should be given if the jury has not already elected a foreperson at trial.

Insert in the blanks the offense and the applicable Enhancement/Extended Term Factor specifically charged in the charging instrument or written notice. If the charging instrument or written notice charges more than one Enhancement/Extended Term Factor include each enhancement/extended term factor and add the word "and" between them.

The "ors" are provided for differentiation and should not be included in the instruction submitted to the jury.

When the charging instrument or written notice charges more than one Enhancement/Extended Term Factor, give separate verdict forms for each Enhancement/Extended Term Factor.

When the charging instrument or written notice charges enhancement/extended term factor[s] against more than one defendant, give separate verdict forms for each defendant and insert the defendant's name in the verdict forms.

Enhancement/Extended Term Factor [1] 730 ILCS 5/5-8-1(a)(1)(d) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material. See Instruction 28.03[1] for the definition of term "personally discharged a firearm."

Enhancement/Extended Term Factor [2] 730 ILCS 5/5-5-3.2(b)(2) (West 2006); 730 ILCS 5/5-8-1(a)(1)(b) (West 2006). Insert in both blanks as indicated the offense specifically charged in the charging instrument or written notice. See Instruction 28.03[2] for the definitions of the words "brutal" and "heinous" and for the term "wanton cruelty."

Enhancement/Extended Term Factor [3] 730 ILCS 5/5-5-3.2(b)(4) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material.

Enhancement/Extended Term Factor [4] 730 ILCS 5/5-5-3.2(b)(5) (West 2006). Use when the defendant is charged with aggravated criminal sexual assault under 720 ILCS 5/12-14 (West 2006), or criminal sexual assault under 720 ILCS 5/12-13 (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor.

Enhancement/Extended Term Factor [5] 730 ILCS 5/5-5-3.2(c) (West 2006). Use when the defendant is charged with aggravated criminal sexual assault under 720 ILCS 5/12-14 (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Insert in the blank as indicated the name of the victim. Appropriate modifications should be made when there is more than one victim. Use applicable bracketed material.

Enhancement/Extended Term Factor [6] 730 ILCS 5/5-5-3.2(b)(6) (West 2006). Insert in

both blanks as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material. When more than one alternative is alleged in the charging document, the word "and" should be inserted between them.

Enhancement/Extended Term Factor [7] 730 ILCS 5/5-5-3.2(b)(8) (West 2006). This factor does not apply when the defendant is charged with conspiracy. Insert in both blanks as indicated the offense specifically charged in the charging instrument or written notice. See Instruction 28.03[7] for the definition of the term "organized gang."

Enhancement/Extended Term Factor [8] 730 ILCS 5/5-5-3.2(b)(9) (West 2006). This factor applies only when the defendant is charged with felony unlawful use of weapons under 720 ILCS 5/24-1 (West 2006). See Instruction 28.03[8] for the definition of the term "organized gang."

Enhancement/Extended Term Factor [9] 730 ILCS 5/5-5-3.2(b)(10) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. See Instruction 28.03[9] for the definitions of the terms "laser sight" and "laser pointer."

Enhancement/Extended Term Factor [10] 730 ILCS 5/5-5-3.2(b)(12) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. See Instruction 28.03[10] for the definitions of the word "emergency" and the term "emergency response officer."

Enhancement/Extended Term Factor [11] 730 ILCS 5/5-5-3.2(b)(13) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material. See Instruction 28.03[11] for the definition of the term "organized gang."

Enhancement/Extended Term Factor [12] 720 ILCS 5/12-3.2(c) (West 2006). Use applicable bracketed material. See Instruction 28.03[12] for the definitions of the word "child" and the term "presence of a child."

Enhancement/Extended Term Factor [13] 720 ILCS 5/8-1.1(b) (West 2006). Use when the defendant is charged with solicitation to commit murder under 720 ILCS 5/8-1.1(a) (West 2006), and the charging instrument or written notice alleges that the person solicited was under the age of 17 years.

Enhancement/Extended Term Factor [14] 730 ILCS 5/5-8-1(a)(1)(c) (West 2006). Use when the defendant is charged with first degree murder under 720 ILCS 5/9-1(a) (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Use applicable bracketed material. See Instruction 28.03[14] for the definitions of the terms "emergency management worker," "emergency medical technician-intermediate," "emergency medical technician-paramedic" and "community policing volunteer." Although 720 ILCS 5/2-6.5 (West 2006) states that the definition of the term "emergency medical technician-ambulance" is contained in the Emergency Medical Services (EMS) Systems Act, 210 ILCS 50-1 et seq. (West 2006), the Committee could find no statutory definition of the term "emergency medical technician-ambulance."

Enhancement/Extended Term Factor [15] 730 ILCS 5/5-8(b)(1) (West 2006). Use when

the defendant is charged with first degree murder under 720 ILCS 5/9-1(a) (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Use applicable bracketed material. See Instruction 28.03[15] for the definitions of the words "brutal," "heinous," "torture," and "cold" and the terms "wanton cruelty" and "disabled person" and the phrase "calculated and premeditated manner pursuant to a preconceived, plan, scheme or design."

The numbers and brackets are provided solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.