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 is 17 years of age or older and [(intentionally) (knowingly) (recklessly)] commits [(an act of contact, however slight, between the sex organ or anus of one person and the part of the body of another for the purposes of [(sexual gratification) (arousal)] of the [(victim) (defendant)]) (an act of sexual penetration)] and

[1] the victim is under 13 years of age.

[or]

[2] the victim is under 13 years of age he [(is armed with a firearm) (personally discharges a firearm during the commission of the offense) (causes great bodily harm to the victim that [(results in permanent disability) (is life threatening)])].

[or]

[3] the victim is under 13 years of age and he delivers by [(injection) (inhalation) (ingestion) (transfer of possession) (by any means)] any controlled substance to the victim [(without the victim's consent) (by threat) (by deception)] for other than medical purposes.

Committee Note
Instruction and Committee Note Approved April 29, 2016.

720 ILCS 5/11-1.40(a) (West 2016). Renumbered and Amended as § 11-1.40 by P.A. 96-1551, Art.2, §5, effective July 1, 2011: Amended by P.A. 98-370, §5 effective January 1, 2014; Amended by P.A. 98-903, effective August 15, 2014.

Give Instruction 11.104 when no aggravating factors are charged and only the first bracketed option is selected.

Give Instruction 11.106 when aggravating factors are charged and either the second or third bracketed options are selected.

When applicable, give Instruction 4.36, defining the term "armed with a firearm".

Section 11.1.40 (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(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 145. In *People v. Anderson*, 148 Ill.2d 15, 591 N.E.2d 461(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 (1991), *People v. Tolliver*, 147 Ill.2d 397, 589 N.E.2d 527(1992), and *People v. Whitlow*, 89 Ill.2d 322, 433 N.E.2d 629 (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 11-1.40(a) 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 (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(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, 396 N.E.2d 27 (1979), and *People v. Valley Steel Products*, 71 Ill.2d 408, 375 N.E.2d 1297 (1978).