

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, 1999) (formerly Ill.Rev.Stat. ch. 38, §2-2 (1991)).

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, 1999) (formerly Ill.Rev.Stat. ch. 38, §2-4 (1991)).

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 1992) (formerly Ill.Rev.Stat. ch. 38, §2-6 (1991)), amended by
P.A. 84-1289, Section 1, effective January 1, 1987.

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, 131 Ill.Dec. 646 (5th Dist.1989). See
Committee Note to Instruction 14.13.

The term “dwelling place” which this instruction now defines has been changed from
“dwelling” in the prior form of this instruction in order to conform with the use of “dwelling
place” in 720 ILCS 5/19-3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §19-3 (1991)), which
defines the offense of residential burglary.

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.

4.04
Definition Of Felony

Committee Note

720 ILCS 5/2-7 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §2-7 (1991)).

The Committee no longer believes it is necessary to instruct on the definition of the word “felony” because the jury would never be called upon to make such a factual determination. 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, 1999) (formerly Ill.Rev.Stat. ch. 38, §2-8 (1991)), as amended by P.A. 84-1450, Section 2, effective July 1, 1987, and P.A. 85-1447, Section 1, and P.A. 86-291, effective January 1, 1990.

The Committee no longer believes it is necessary to instruct on the definition of the term “forcible felony” because the jury would never be called upon to make such a factual determination. When the term “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, 1999) (formerly Ill.Rev.Stat. ch. 38, §2-11 (1991)).

The Committee no longer believes it is necessary to instruct on the definition of the word “misdemeanor” because the jury would never be called upon to make such a factual determination. 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, 1999) (formerly Ill.Rev.Stat. ch. 38, §2-12 (1991)).

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, 1999) (formerly Ill.Rev.Stat. ch. 38, §2-13 (1991)).

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 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.

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, 1999) (formerly Ill.Rev.Stat. ch. 38, §2-14 (1991)).

See People v. Simmons, 88 Ill.2d 270, 430 N.E.2d 1032, 58 Ill.Dec. 781 (1981); People v. Marble, 91 Ill.2d 242, 437 N.E.2d 641, 62 Ill.Dec. 953 (1982).

4.10
Definition Of Person

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

Committee Note

720 ILCS 5/2-15 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §2-15 (1991)).

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, 1999) (formerly Ill.Rev.Stat. ch. 38, §2-15a (1991)).

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, 1999) (formerly Ill.Rev.Stat. ch. 38, §2-17 (1991)).

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, 1999) (formerly Ill.Rev.Stat. ch. 38, §2-18 (1991)).

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, 1999) (formerly Ill.Rev.Stat. ch. 38, §2-19 (1991)).

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, 1999) (formerly Ill.Rev.Stat. ch. 38, §4-1 (1991)).

Where the voluntariness of an act is an issue, the jury should be told in the issues instruction that it must find that 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, 17 Ill.Dec. 814 (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, 1999) (formerly Ill.Rev.Stat. ch. 38, §4-2 (1991)).

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

See Committee Note to Instruction 4.14.

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, 118 Ill.Dec. 145 (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, 159 Ill.Dec. 160 (4th Dist.1991).

Use applicable paragraphs and bracketed material when appropriate.

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.

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 those armed robbery cases where the alleged weapon is not inherently dangerous. See Committee Note to Instruction 14.02. The definition is from *People v. Skelton*, 83 Ill.2d 58, 414 N.E.2d 455, 46 Ill.Dec. 571 (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

This definition is based on IPI-Civil Instruction 21.01.

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) (formerly Ill.Rev.Stat. ch. 38, §6-2(e) (1991)).) 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 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, 180 Ill.Dec. 97, 100 (1992); *People v. Failor*, 271 Ill.App.3d 968, 970-71, 649 N.E.2d 1342, 1343-44, 208 Ill.Dec. 681, 682-83 (4th Dist.1995)), and (2) that phrase is much better known to--and understood by--nonlawyers 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 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 1997).

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 1997).

4.22

Definition Of Streetgang Related Or Gang-Related

The term [(streetgang related) (gang-related)] means any criminal activity, enterprise, 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 1997).

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 2010) (formerly Ill.Rev.Stat. ch. 95 $\frac{1}{2}$ §11-605).

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 2010).

720 ILCS 5/9-1.2(d)(4) (West 2010).

720 ILCS 5/10-2(a)(8) (West 2010).

720 ILCS 5/12-4.3 (b)(3) (West 2010).

720 ILCS 5/12-11(a)(5) (West 2010).

720 ILCS 5/12-14(a)(10) (West 2010).

720 ILCS 5/12-21.6 (d) (West 2010).

720 ILCS 5/18-2(a)(4) (West 2010).

720 ILCS 5/18-4(a)(6) (West 2010).

720 ILCS 5/31-1(a-7) (West 2010).

720 ILCS 5/33 A-2 (c) (West 2010).

730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2010).

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 that 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 (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) (trichlorethane) (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 2010) (formerly Ill.Rev.Stat. ch. 38 §81-1 (1991)).

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.

4.27

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

Instruction and Committee Note Approved January 18, 2013.

720 ILCS 5/16-0.1 (West 2013) added by P.A. 97-597, § 5, effective January 1, 2012, and amended by P.A. 97-1109, § 15-55, effective January 1, 2013.

Give Instruction 4.32, defining “computer”.

4.32

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

Instruction and Committee Note Approved January 18, 2013.

720 ILCS 5/16-0.1 (West 2013) added by P.A. 97-597, § 5, effective January 1, 2012, and amended by P.A. 97-1109, § 15-55, effective January 1, 2013.

4.38

Definition Of Internet

The word “Internet” means an interactive computer service or system or an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, and includes, but is not limited to, an information service, system, or access software provider that provides access to a network system commonly known as the Internet, or any comparable system or service and also includes, but is not limited to, a World Wide Web page, newsgroup, message board, mailing list, or chat area on any interactive computer service or system or other online service.

Committee Note

Instruction and Committee Note Approved January 18, 2013.

720 ILCS 5/16-0.1 (West 2013) added by P.A. 97-597, § 5, effective January 1, 2012, and amended by P.A. 97-1109, § 15-55, effective January 1, 2013.

Give Instruction 4.27, defining “access”.

Give Instruction 4.32, defining “computer”.

Give Instruction 4.48, defining “online”.

Give Instruction 4.69, defining “wireless device”.

4.48

Definition Of Online

The word “online” means the use of any electronic or wireless device to access the Internet.

Committee Note

Instruction and Committee Note Approved January 18, 2013.

720 ILCS 5/16-0.1 (West 2013) added by P.A. 97-597, § 5, effective January 1, 2012, and amended by P.A. 97-1109, § 15-55, effective January 1, 2013.

Give Instruction 4.27, defining “access”.

Give Instruction 4.32, defining “computer”.

Give Instruction 4.38, defining “Internet”.

Give Instruction 4.69, defining “wireless device”.

4.69

Definition Of Wireless Device

The word “wireless device” includes any type of instrument, device, machine, or equipment that is capable of transmitting or receiving telephonic, electronic or radio communications, or any part of such instrument, device, machine, or equipment, or any computer circuit, computer chip, electronic mechanism, or other component that is capable of facilitating the transmission or reception of telephonic, electronic, or radio communications.

Committee Note

Instruction and Committee Note Approved January 18, 2013.

720 ILCS 5/16-0.1 (West 2013) added by P.A. 97-597, § 5, effective January 1, 2012, and amended by P.A. 97-1109, § 15-55, effective January 1, 2013.

Give Instruction 4.32, defining “computer”.