

7B.00-7C.00
DEATH PENALTY SENTENCING INSTRUCTIONS

I.

FIRST STAGE OF DEATH PENALTY INSTRUCTIONS

7B.00
Introduction To The Death Penalty Sentencing Instructions

Committee Note

These instructions are for a bifurcated death penalty hearing at which eligibility for a death sentence is considered at the first stage and actual imposition of a death sentence is considered at the second stage. The instructions could be adapted to a unitary death penalty hearing. However, the Illinois Supreme Court has indicated that a bifurcated hearing is preferable. *People v. Albanese*, 104 Ill.2d 504, 473 N.E.2d 1246, 85 Ill.Dec. 441 (1984).

These instructions assume that there is a single defendant at the death penalty hearing. Appropriate modifications should be made if there is more than one defendant. In such cases the jury must be instructed to give separate consideration to each defendant.

Some of these instructions assume that there is a single murder victim involved in the case. Appropriate modifications should be made when there is more than one murder victim.

Some of these instructions assume that the defendant has been convicted after a trial. Appropriate modifications should be made when the defendant has pleaded guilty.

Some of the instructions refer to the defendant or to the victim as “he.” The word “she” should be substituted when appropriate.

7B.01
Nature Of The Hearing

Members of the jury, evidence and arguments have been completed, and I now will instruct you as to the law.

The defendant in this case has been convicted of the crime of murder. The State has requested that the defendant be sentenced to death.

A death penalty hearing is divided into two parts. During the first part the jury decides whether the defendant is eligible for a death sentence under the law. If the jury unanimously decides that the defendant is eligible for a death sentence, then during the second part of the hearing the jury decides whether the defendant shall be sentenced to death.

This is the first part of the death penalty hearing. During this part of the hearing you will decide only whether the defendant is eligible for a death sentence under the law.

If you cannot unanimously decide that the defendant is eligible for a death sentence under the law, then there will be no second part of the death penalty hearing. The court will impose a sentence other than death.

If you unanimously decide that the defendant is eligible for a death sentence, then we will go to the second part of the hearing. During the second part both the State and the defendant may offer more evidence on why the defendant should be sentenced to death or should not be sentenced to death.

Committee Note

720 ILCS 5/9-1(f), (g) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §9-1(f), (g) (1991)).

This instruction explains to the jury the function of the first stage of a bifurcated death penalty hearing.

7B.01A
Duties Of The Jury

The law that applies to this hearing 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.

You are not to be swayed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion, or public feeling. You should not be influenced by any person's race, color, religion, or national ancestry.

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 is vital to the administration of justice.

Committee Note

The jury should be instructed in every case that they should not be influenced by race, color, religion, or national ancestry. This instruction is appropriate whatever the race or background of the people involved in the case. *See McCleskey v. Kemp*, 481 U.S. 279, 107 S.Ct. 1756, 95 L.Ed.2d 262 (1987), rehearing denied 482 U.S. 920, 107 S.Ct. 3199, 96 L.Ed.2d 686 (1987).

It is proper to instruct a jury that they should not be influenced by sympathy at a death penalty hearing. *California v. Brown*, 475 U.S. 1301, 106 S.Ct. 1367, 89 L.Ed.2d 702 (1986); *People v. Stewart*, 104 Ill.2d 463, 473 N.E.2d 1227, 85 Ill.Dec. 422 (1984).

7B.02
General Instructions

Committee Note

Instruction 1.02 (Jury Is Sole Judge of the Believability of Witnesses) should be given at the first stage of the death penalty hearing.

Instruction 1.03 (Arguments of Counsel) should be given at the first stage of the death penalty hearing. The instruction may be modified if either party has waived opening or closing.

It is possible that a case could arise in which no witnesses were called by either party at the first stage of a death penalty hearing. However, credibility of trial witnesses could still be at issue.

It is also possible that at the first stage of a death penalty 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.

7B.03 Evidence

It is your duty to determine the facts and to determine them only from the evidence. You are to apply the law to the facts and in this way decide whether the defendant is eligible for a death sentence.

The evidence which you should consider consists of the testimony [and exhibits] which the court has received during [the trial of this case and during] this first part of the death penalty hearing. [This means you should consider both the evidence received at trial and the evidence received at this hearing.]

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 which 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.

Committee Note

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. Trial evidence should be considered at a death penalty hearing. *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), judgment reversed on other grounds 832 F.2d 1446 (7th Cir.1987).

However, when there has been a bench trial, a plea of guilty, or a different jury at trial, the sentencing jury should not be instructed to consider trial evidence unless it has been formally admitted at the death penalty hearing.

Use applicable bracketed material.

7B.04
Burden Of Proof

The defendant is presumed not to be eligible for a death sentence under the law. This presumption remains with him throughout every stage of the first part of the death penalty hearing and during your deliberations on the verdict, and is not overcome unless from all the evidence you are convinced beyond a reasonable doubt that the defendant is eligible for a death sentence.

The State has the burden of proving beyond a reasonable doubt that the defendant is eligible for a death sentence under the law, and this burden remains on the State throughout the first part of the death penalty hearing. The defendant is not required to prove that he is ineligible for a death sentence.

Committee Note

720 ILCS 5/9-1(f) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §9-1(f) (1991)).

This instruction is adapted from the second paragraph of Instruction 2.03, which must be given at trial. The State's burden of proof is the same at trial and at the first stage of a death penalty hearing.

7B.05
Failure Of Defendant To Testify

Committee Note

Instruction 2.04 (Failure of Defendant to Testify) must be given if the defendant has not testified at the first stage of the death penalty hearing and the defendant requests that the instruction be given. The instruction should not be given if the defendant does not request it.

A defendant has a right not to testify at a death penalty hearing, and the exercise of this right may not be held against him. *People v. Ramirez*, 98 Ill.2d 439, 457 N.E.2d 31, 75 Ill.Dec. 241 (1983), appeal after remand 114 Ill.2d 125, 500 N.E.2d 14, 102 Ill.Dec. 392 (1986).

7B.06
Definition Of Death Sentence Eligibility

A defendant is eligible for a death sentence under the law if
[1] he was 18 years old or older at the time he committed the murder[s] of which he was
found guilty at the trial of this case; and
[2] [(a statutory aggravating factor) (one or more statutory aggravating factors)] exist[s].

Committee Note

720 ILCS 5/9-1(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §9-1(b) (1991)).

This instruction is similar to an instruction given at trial defining an offense. If the jury is instructed on more than one statutory aggravating factor, then the language “one or more statutory aggravating factors” should be used in paragraph [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.

7B.07
Issues Concerning Eligibility

Before the defendant may be found eligible for a death sentence under the law, the State must prove the following propositions:

First Proposition: That the defendant was 18 years old or older at the time of the commission of the murder[s] of which he was found guilty at the trial of this case; and

Second Proposition: That [(the following) (one or more of the following)] statutory aggravating factor[s] exist[s]:

[1] The murdered person was a [(peace officer) (fireman)] killed [(in the course of performing his official duties) (to prevent the performance of his official duties) (in retaliation for performing his official duties)], and the defendant knew or should have known that the murdered person was a [(peace officer) (fireman)].

[or]

[2A] The murdered person was an employee of an institution or facility of the Department of Corrections, [or any similar local correctional agency killed [(in the course of performing his official duties) (to prevent the performance of his official duties) (in retaliation for performing his official duties)].

[or]

[2B] The murdered person was an inmate of an institution or facility of the Department of Corrections [or any similar local correctional agency] and was killed on the grounds of that institution or facility.

[or]

[2C] The murdered person was present in an institution or facility of the Department of Corrections (or similar local correction agency), with the knowledge and approval of the chief administrative officer of the institution or facility.

[or]

[3] The defendant has been convicted of murdering two or more persons so long as the deaths were the result of [(an intent to kill more than one person) (separate acts which the defendant knew would cause death or create a strong probability of death or great bodily harm to the murdered individual or another)].

[or]

[4] The murdered person was killed as a result of the hijacking of a[n] [(airplane) (train) (ship) (bus) [or other public conveyance]].

[or]

[5] 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]

[6] The murdered person was killed in the course of another felony if
[a] the murdered person was actually killed by the defendant.

[or]

[b] 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 persons[s] for whose conduct he is legally responsible caused the death of the murdered person;

And

[c] in performing the acts which caused the death of the murdered person, the defendant acted with the intent to kill the murdered person or with the knowledge that his acts created a strong probability of death or great bodily harm to the murdered person [or another].

[or]

[d] in performing the acts 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

[e] the other felony [(was) (was one or more of the following:)] [(armed robbery) (robbery) (armed violence) (aggravated criminal sexual assault) (aggravated kidnapping) (aggravated vehicular hijacking) (forcible detention) (arson) (aggravated arson) (aggravated stalking) (burglary) (residential burglary) (home invasion) (calculated criminal drug conspiracy) [or the attempt to commit ____]].

[or]

[7] 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.

[or]

[8A] The defendant committed the murder with intent to prevent the murdered person from [(testifying in any criminal prosecution) (giving material assistance to the State in any investigation or prosecution, either against the defendant or another)].

[or]

[8B] 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]

[9] The defendant, while [(committing the offense of ____)] (engaged in a [(conspiracy) (solicitation)] to commit the offense of ____), [(intentionally killed an individual) [(counseled) (commanded) (induced) (procured) (caused)] the intentional killing of the murdered individual)].

[or]

[10] 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 [(intentionally killed an individual) [(counseled) (commanded) (induced) (procured) (caused)] the intentional killing of the murdered individual)].

[or]

[11] 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]

[12] The murdered individual was an emergency medical technician, ambulance driver, or other medical assistant or first aid personnel, employed by a municipality or other governmental unit, killed [(in the course of performing his official duties) (to prevent the performance of his official duties) (in retaliation for performing his official duties)], and the defendant knew or should have known that the murdered individual was an emergency medical technician, ambulance driver, or other medical assistant or first aid personnel.

[or]

[13] 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]

[14] 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]

[15] 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]

[16] 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]

[17] 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 result from disease, or 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.

If you find from your consideration of all the evidence that the First and Second Propositions have been proved beyond a reasonable doubt, then the defendant is eligible for a death sentence.

If you cannot unanimously find that both the First and Second Propositions have been proved beyond a reasonable doubt, then the defendant is not eligible for a death sentence.

Committee Note

720 ILCS 5/91(b) and (f) (West 1992) (formerly III.Rev.Stat. ch. 38, §§91(b) and (f) (1991)). For the effective dates of the statutory amendments to Sections 91(b) and (f), see the discussions of individual aggravating factors in this Committee Note.

Because of multiple amendments in recent years to Section 91(b), providing additional aggravating factors which make a person convicted of first degree murder eligible for the death penalty, the Committee cautions court and counsel to check the effective date of a particular statutory aggravating factor upon which the prosecution is relying to ensure it had been enacted before the defendant committed the first degree murder of which he stands convicted.

This instruction is similar to an issues instruction given at trial to specify the elements which the State must prove to obtain a conviction.

The jury should be instructed on every statutory aggravating factor at issue when there is sufficient evidence of that statutory aggravating factor to submit to the jury. Language concerning other statutory aggravating factors should be omitted.

Certain language in the statutory aggravating factors may be omitted when not relevant under the evidence in the case.

When there are multiple murder victims, it may be necessary to modify the language of a statutory aggravating factor. For example, it may be necessary to substitute “a murdered person or persons” for “the murdered person.”

P.A. 86-806, P.A. 86-834, and P.A. 86-1012, referred to in various places in this Committee Note, were combined in the Second Revisory Act of 1990, P.A. 86-1475, effective January 10, 1991.

Aggravating Factor [1] Where the State relies on the aggravating factor of murdering a peace officer, the definition of a peace officer should be given. See instruction 4.08. P.A. 87-921, effective January 1, 1993, amended Section 91(b) by adding the motive clauses “to prevent the performance of his official duties” and “in retaliation for performing his official duties” to this aggravating factor. Use these clauses only for murders committed after the effective date of P.A. 87-921.

Aggravating Factors [2A], [2B], and [2C] P.A. 87-921, effective January 1, 1993, amended Section 9-1(b) by adding the motive clauses “to prevent the performance of his official duties” and “in retaliation for performing his official duties” to this aggravating factor. Use these clauses only for murders committed after the effective date of P.A. 87-921.

Aggravating Factor [3] When necessary to clarify the issues for the jury, the following statutory language may be added: “regardless of whether the deaths occurred as the result of the same act or of several related or unrelated acts.” This language should ordinarily be added when requested by either party. 720 ILCS 5/9 1(b)(3).

When the State relies on a prior murder conviction from another jurisdiction, an issue may arise concerning whether that jurisdiction's statute is “substantially similar” to that of Illinois. 720 ILCS 5/91(b)(3). 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).

P.A. 85-404, effective January 1, 1988, amended Section 9-1(b)(3) by deleting therefrom the word “premeditated” and substituting in lieu thereof the phrase that appears as the second bracketed alternative. If that second bracketed alternative is used, the court should be mindful of the fact that some authorities suggest that a defendant may not be sentenced to death for murder unless that defendant personally killed the victim or intended that the victim be killed. *Enmund v. Florida*, 458 U.S. 782, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982). A clarifying instruction may be necessary. But see *Tison v. Arizona*, 481 U.S. 137, 107 S.Ct. 1676, 95 L.Ed.2d 127 (1987).

The Committee takes no position on whether the bracketed language must be given. *See People v. Del Vecchio*, 105 Ill.2d 414, 475 N.E.2d 840, 86 Ill.Dec. 461 (1985).

Aggravating Factor [6] Please note that the word “subparagraph,” when used in this Committee Note, refers to subparagraphs of this Instruction, *not* to subparagraphs of the statutory provision under Section 9-1(b).

Unless there is evidence that another person contributed to the death of the victim in the manner specified by the statute, the language in subparagraphs [6][a] and [6][c] should be used. If there is evidence that another person contributed to the death of the victim in the manner specified by the statute, the language in subparagraphs [6][b] and [6][d] should be used instead of [6][a] and [6][c].

The form of this instruction should make clear that the State must prove conjunctively beyond a reasonable doubt three separate paragraphs under this factor: (i) either [6][a] or [6][b]; (ii) either [6][c] or [6][d]; and (iii) [6][e]. In some circumstances, the evidence may warrant an instruction on both [6][a] and [6][c], and both [6][b] and [6][d].

Subparagraph [6][e] must be given whenever Aggravating Factor [6] is given and should name only those felonies supported by the evidence in the case, including Instruction 6.05, defining attempt when subparagraph [6][e] refers to attempt. The felony attempted should also be defined. The jury should be given a definition instruction for each felony named. However, it may be appropriate to omit a definition instruction if the defendant has already been convicted of the felony at trial at the guilt stage of these proceedings.

This aggravating factor was amended by P.A. 86-1012, effective July 1, 1990, to include residential burglary within the felonies specified in paragraph [6] of this instruction. It also was amended by P.A. 86-834, effective September 7, 1989, to include calculated criminal drug conspiracy, as defined in Section 405 of the Illinois Controlled Substances Act (720 ILCS 570/405 (West 1992) (formerly Ill.Rev.Stat. ch. 561/2, §1405 (1991))), within the felonies specified in paragraph [6] of this instruction. See 720 ILCS 5/9-1(b)(6)(c).

This aggravating factor was also amended by P.A. 88-677, effective December 15, 1994, to include armed violence within the felonies specified in paragraph [6] of this instruction.

This aggravating factor was also amended by P.A. 88-678, effective July 1, 1995, to include armed violence, aggravated vehicular hijacking, and aggravated stalking within the felonies specified in paragraph [6] of this instruction.

This aggravating factor was also amended by P.A. 89-428, effective December 13, 1995, to include predatory criminal sexual assault of a child within the felonies specified in paragraph [6] of this instruction.

This aggravating factor was also amended by P.A. 89-498, effective June 27, 1996, to include streetgang criminal drug conspiracy within the felonies specified in paragraph [6] of this instruction.

The discussion in the preceding paragraph regarding defining offenses is applicable as well to these two new offenses.

Aggravating Factor [7] The definitions for 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).

Aggravating Factors [8A] and [8B] A defendant is not eligible for a death sentence under this factor because he has murdered a victim out of fear that the victim could become a witness to another crime committed at the time of the murder. *People v. Brownell*, 79 Ill.2d 508, 404 N.E.2d 181, 38 Ill.Dec. 757 (1980).

Aggravating Factor [9] This aggravating factor was added by P.A. 86-806, effective January 1, 1990. Insert in the blank the offense in question, which must be punishable under Sections 401, 401.1, 401.2, 405, 407.1, or subsection (b) of Section 404 of the Illinois Controlled Substances Act (720 ILCS 570/401, 401.1, 401.2, 404(b), 405, 407, 407.1 (West 1992) (formerly Ill.Rev.Stat. ch. 561/2, §§1401, 1401.1, 1401.2, 1404(b), 1405, 1407, and 1407.1 (1991))). When solicitation is an issue, give Instruction 6.01, defining solicitation. When conspiracy is an issue, give Instruction 6.03, defining conspiracy. If calculated criminal drug conspiracy is relied upon by the State, give Instruction 17.14, defining that offense. Also define any drug offenses which are relied upon in paragraph [9]. P.A. 89-498, effective June 27, 1996, added new Section 405.2 (streetgang criminal drug conspiracy) of the Illinois Controlled Substances Act (720 ILCS 570/405.2 (West 1997)) to the list of offenses under this aggravating factor.

Aggravating Factor [10] This aggravated factor was added by P.A. 87-525, effective January 1, 1992. Insert in the blank the offense in question, which must be punishable as a felony under Illinois law. Give the instruction defining that felony. When solicitation is an issue, give Instruction 6.01, defining solicitation. When conspiracy is an issue, give Instruction 6.03, defining conspiracy.

Aggravating Factor [11] This aggravating factor was added by P.A. 86-834, effective September 7, 1989.

720 ILCS 5/9-1(b)(11) (West 1994).

In *People v. Williams*, 193 Ill.2d 1, 737 N.E.2d 230 (2000), the Supreme Court

pronounced the definitions listed in the second paragraph above. The Court said that when Section 9-1 (b)(11) is read and applied in this plain and ordinary sense, "... the factor properly narrows the class of death eligible defendants and provides a meaningful basis for distinguishing the few cases in which the death penalty is imposed from the many cases in which it is not." (Citations omitted).

For cases upholding a finding of death eligibility under Section 9-1(b)(11), see *People v. Brown*, 169 Ill. 2d 132, 661 N.E.2d 287 (1996) (Defendant devised a plan to kill rival gang members and almost three hours after first devising the plan, the murder was carried out. This was premeditation.); *People v. Mata*, 366 Ill.App.3d 1068, 853 N.E.2d 110 (2nd Dist. 2006) (Finding defendant's plan to murder the victim for "several hours" to be premeditated); *People v. Watson*, 347 Ill.App.3d 181, 807 N.E.2d 628 (1st Dist. 2006) (Defendant left numerous death threats on the victim's answering machine and told the victim's son the day before the murder, "I am going to kill your mom." This was found to be premeditation).

Aggravating Factor [12] P.A. 87-921, effective January 1, 1993, amended Section 9-1(b) by adding this aggravating factor. Use this aggravating factor only for murders committed after the effective date of P.A. 87-921. P.A. 88-433, effective January 1, 1994, amended this section by changing the term "paramedic" to "emergency medical technician" (EMT). 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 50/412, 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).

Aggravating Factor [13] This aggravating factor was added by P.A. 88-176, effective January 1, 1994. Give Instruction 17.29, defining "calculated criminal drug conspiracy".

Aggravating Factor [14] This aggravating factor was added by P.A. 88-176, effective January 1, 1994.

Aggravating Factor [15] This aggravating factor was added by P.A. 88-678, effective July 1, 1995.

Aggravating Factor [16] This aggravating factor was added by P.A. 90-123, effective January 1, 1998.

Aggravating Factor [17] This aggravating factor was added by P.A. 90-123, effective January 1, 1998.

Use applicable paragraphs, subparagraphs, and bracketed material.

7B.08

Concluding Instructions--Single Aggravating Factor

[(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.)] Your verdict must be in writing and signed by all of you, including your foreperson. Any verdict finding the defendant eligible for a death sentence must be unanimous.

You will receive two forms of verdict. These forms of verdict read as follows:

Committee Note

Give Instruction 7B.10.

The alternate language on electing a foreperson should be given if the jury has not already elected a foreperson at trial.

7B.09

Concluding Instructions--Multiple Aggravating Factors

[(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.)] Your verdict must be in writing and signed by all of you, including your foreperson. Any verdict finding that the defendant is eligible for a death sentence must be unanimous.

You will receive ____ verdict forms. One of these verdict forms states that the defendant is not eligible for a death sentence under the law. If you cannot unanimously find beyond a reasonable doubt that the defendant is eligible for a death sentence under the law, then you should sign the verdict form stating that the defendant is not eligible for a death sentence.

You will receive ____ verdict forms finding the defendant eligible for a death sentence under the law. Each of these verdict forms names a separate statutory aggravating factor. You should give separate consideration to each statutory aggravating factor. If you unanimously find beyond a reasonable doubt that the statutory aggravating factor named in a verdict form exists and that the defendant was 18 years or older at the time of the murder[s] for which he was convicted in this case, then you should sign that verdict form. If you cannot unanimously find beyond a reasonable doubt that the statutory aggravating factor exists or if you cannot unanimously find that the defendant was 18 years or older at the time of the murder[s] for which he was convicted in this case, then you should not sign that verdict form.

The verdict forms which you will receive read as follows:

Committee Note

Give Instruction 7B.11.

The alternate language on electing a foreperson should be given if the jury has not already elected a foreperson at trial.

There should be separate verdict forms finding the defendant eligible for a death sentence for each statutory aggravating factor submitted to the jury.

7B.10
Verdict Form--Finding Single Statutory Aggravating Factor

We, the jury, unanimously find beyond a reasonable doubt that the defendant ____ is eligible for a death sentence under the law. We unanimously find beyond a reasonable doubt that the defendant was 18 years old or older at the time of the murder[s] for which he was convicted in this case and we unanimously find beyond a reasonable doubt that the statutory aggravating factor exists.

Foreperson

Committee Note

Insert in the blank the name of the defendant.

Changing the form of this instruction risks reversible error. *See People v. Mack*, 167 Ill.2d 525, 538, 658 N.E.2d 437, 212 Ill.Dec. 955 (1995), wherein the Supreme Court found reversible error when the trial court deviated from the form of this instruction by attempting to set forth the elements of a statutory aggravating factor, but failed to include all the elements.

7B.11

Verdict Form--Multiple Aggravating Factors--Defendant Eligible For Death Sentence

We, the jury, unanimously find beyond a reasonable doubt that the defendant ____ is eligible for a death sentence under the law. We unanimously find beyond a reasonable doubt that:

[1] the defendant was 18 years old or older at the time of the murder[s] for which he was convicted in this case; and

[2] the following statutory aggravating factor exists: _____.

Foreperson

Committee Note

Insert in the first blank the name of the defendant.

Insert in the second blank in paragraph [2] a statutory aggravating factor from Instruction 7B.07.

Changing the form of this instruction risks reversible error. *See People v. Mack*, 167 Ill.2d 525, 538, 658 N.E.2d 437, 212 Ill.Dec. 955 (1995), wherein the Supreme Court found reversible error when the trial court deviated from the form of this instruction by attempting to set forth the elements of a statutory aggravating factor, but failed to include all the elements.

A separate verdict form finding the defendant eligible for a death sentence should be submitted to the jury for each statutory aggravating factor named in Instruction 7B.07.

7B.12

Verdict Form--Defendant Ineligible For Death Sentence

We, the jury, cannot unanimously find beyond a reasonable doubt that the defendant ____ is eligible for a death sentence under the law. We cannot unanimously find beyond a reasonable doubt that the defendant was 18 years of age or older at the time of the murder[s] for which he was convicted in this case or we cannot find unanimously beyond a reasonable doubt that [(the) (a)] statutory aggravating factor exists.

Foreperson

Committee Note

Insert in the blank the name of the defendant.

Use applicable bracketed material.

II.
SECOND STAGE OF DEATH PENALTY HEARING

7C.01.
Nature Of Hearing And Duties Of Jury

Members of the jury, the evidence and arguments have been completed, and I will now instruct you as to the law.

This is the second part of the death penalty hearing. At this hearing you will determine whether the defendant will be sentenced to death.

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.

You are not to be swayed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion, or public feeling.

You must not be influenced by prejudice towards any person involved in this case. You must not be influenced by any person's race, color, religion, or national ancestry.

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.

Committee Note

See Committee Note to Instruction 7B.01A.

7C.02
Evidence

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 whether the defendant will be sentenced to death.

The evidence which you should consider consists of the testimony [and exhibits] which the court has received [(during the trial of this case) (during the first part of the death penalty hearing) (during the second part of the death penalty hearing)]. This means you should consider all the evidence whether received [(at the trial) (during the first part of the death penalty hearing) (during the second part of the death penalty hearing)].

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 which 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.

Committee Note

See Committee Note to Instruction 7B.03.

Use applicable bracketed material. If more than one alternative applies, then insert an “or” between the bracketed alternatives that apply.

7C.03
General Instructions

Committee Note

Instruction 1.02 (Jury is Sole Judge of the Believability of Witnesses) should be given at the second stage of the death penalty hearing.

Instruction 1.03 (Arguments of Counsel) should be given at the second stage of the death penalty hearing.

Instruction 2.04 (Failure of Defendant to Testify) should be given if the defendant has not testified and if and only if the defendant requests that it be given.

It is possible that a case could arise in which neither party presented evidence at the second stage of a death penalty hearing. However, the jury may still have to determine the credibility of witnesses heard previously.

The instruction on failure of the defendant to testify may be modified if the defendant testified at the trial or the first stage of the death penalty hearing. In that event the phrase “at this stage” should be inserted following the word “testify.”

See Committee Note to 7B.05 concerning the failure of defendant to testify.

7C.04

No Burden Of Proof At Second Stage

Aggravating factors may be found in any evidence presented [(during the trial) (during the first part of the death penalty hearing) (during the second part of the death penalty hearing)]. During the first part of the death penalty hearing, you found that the State had proved that [(a statutory aggravating factor) (statutory aggravating factors)] exist[s]. [During the second part of the death penalty hearing, the State may offer additional evidence that aggravating factors exist, but the State is not required to do so.]

Mitigating factors may be found in any evidence presented [(during the trial) (during the first part of the death penalty hearing) (during the second part of the death penalty hearing)]. [During the second part of the death penalty hearing, the defendant may offer additional evidence that mitigating factors exist, but the defendant is not required to do so.]

Committee Note

The second stage of a death penalty hearing involves a weighing and balancing process which does not impose a burden of proof on the State. *People v. Brownell*, 79 Ill.2d 508, 404 N.E.2d 181, 38 Ill.Dec. 757 (1980); *see also* *People v. Thomas*, 137 Ill.2d 500, 561 N.E.2d 57, 148 Ill.Dec. 751 (1990). A defendant does not have to present evidence at the second stage of a death penalty hearing, but may rely on any mitigating factors shown by the evidence at trial or at the first stage. *People v. Johnson*, 114 Ill.2d 170, 499 N.E.2d 1355, 102 Ill.Dec. 342 (1986).

The State has the option of requesting the third bracketed alternative that reads, “[During the second part of the death penalty hearing, the State may offer additional evidence that aggravating factors exist, but the State is not required to do so.]” Do not use this bracketed material if the State does not request it.

The defense has the option of requesting the fifth bracketed alternative that reads, “[During the second part of the death penalty hearing, the defendant may offer additional evidence that mitigating factors exist, but the defendant is not required to do so.]”. Do not use this bracketed material if the defense does not request it.

Use applicable bracketed material. If more than one alternative applies, then insert an “or” between the bracketed alternatives that apply.

7C.04A
Failure Of Defendant To Testify

Committee Note

Instruction 2.04 (Failure of Defendant to Testify) must be given if the defendant has not testified at the second stage of the death penalty hearing and the defendant requests that the instruction be given. This instruction should not be given if the defendant does not request it.

A defendant has a right not to testify at a death penalty hearing, and the exercise of this right may not be held against him. *People v. Ramirez*, 98 Ill.2d 439, 457 N.E.2d 31, 75 Ill.Dec. 241 (1983).

7C.05 Outcome Of Hearing

Under the law, the defendant shall be sentenced to death if you unanimously find that there is no mitigating factor sufficient to preclude imposition of a death sentence.

If you are unable to find unanimously that there is no mitigating factor sufficient to preclude imposition of a death sentence, the court will impose a sentence [(other than death) (of natural life imprisonment, and no person serving a sentence of natural life imprisonment can be paroled or released, except through an order by the Governor for executive clemency)].

Committee Note

720 ILCS 5/9-1(g).

Use the second bracketed alternative only when a natural life sentence is mandated if the defendant is not sentenced to death. See 730 ILCS 5/5-8-1(a)(1)(c) for circumstances under which a sentence of natural life imprisonment is required if the defendant does not receive the death penalty.

A judge is bound by a jury's decision to impose a death sentence. *People v. Lewis*, 88 Ill.2d 129, 430 N.E.2d 1346, 58 Ill.Dec. 895 (1981), rev'd on other grounds 832 F.2d 1446 (7th Cir.1987). There are no hung juries at death penalty hearings because the failure of a jury to agree unanimously precludes a death sentence. See 720 ILCS 5/9-1(g).

The Illinois Supreme Court has directed that after February 11, 1988, the second bracketed alternative *must* be given at this stage of death penalty proceedings whenever a defendant has been convicted of multiple murders, thereby necessitating the imposition of a sentence of natural life imprisonment under 730 ILCS 5/5-8-1(a)(1)(c) if the defendant is not sentenced to death. See *People v. Gacho*, 122 Ill.2d 221, 522 N.E.2d 1146, 119 Ill.Dec. 287 (1988). However, this instruction should only be given if natural life is the other alternative. See *People v. Bean*, 137 Ill.2d 65, 560 N.E.2d 258, 147 Ill.Dec. 891 (1990).

The second bracketed alternative must also be given if the defendant has been convicted of murder in another case because a sentence of natural life imprisonment is required under 730 ILCS 5/5-8-1(a)(c)(i).

The second bracketed alternative may also be given if the defendant has previously been convicted of qualifying offenses under 720 ILCS 5/33B-1, and if the judge is satisfied that the prosecution will file a petition under 720 ILCS 5/33B-2 and that the defendant qualifies for natural life imprisonment.

7C.05A

Outcome Of Hearing

Under the law, the defendant shall be sentenced to death if you unanimously find after weighing the factors in aggravation and mitigation that death is the appropriate sentence.

If after weighing the factors in aggravation and mitigation one or more jurors determines that death is not the appropriate sentence, the court shall impose a sentence [(other than death) (of natural life imprisonment, and no person serving a sentence of natural life imprisonment can be paroled or released, except through an order by the Governor for executive clemency)].

Committee Note

Public Act 93-605, effective November 19, 2003. 720 ILCS 5/9-1(g) (West 1999).

Use for all cases where the offense was committed on or after November 13, 2003, or for any case tried after November 13, 2003, where the defendant elects to be tried under the new statute.

Use the second bracketed alternative only when a natural life sentence is mandated if the defendant is not sentenced to death. See 730 ILCS 5/5-8-1(a)(1)(c) for circumstances under which a sentence of natural life imprisonment is required if the defendant does not receive the death penalty.

A judge is bound by a jury's decision to impose a death sentence. *People v. Lewis*, 88 Ill.2d 129, 430 N.E.2d 1346, 58 Ill.Dec. 895 (1981), habeas corpus relief granted, 656 F.Supp. 181 (C.D. Ill. 1987), affirmed, 832 F.2d 1446 (7th Cir.1987). There are no hung juries at death penalty hearings because the failure of a jury to agree unanimously precludes a death sentence. See 720 ILCS 5/9-1(g).

The Illinois Supreme Court has directed that after February 11, 1988, the second bracketed alternative *must* be given at this stage of death penalty proceedings whenever a defendant has been convicted of multiple murders, thereby necessitating the imposition of a sentence of natural life imprisonment under 730 ILCS 5/5-8-1(a)(1)(c) if the defendant is not sentenced to death. See *People v. Gacho*, 122 Ill.2d 221, 522 N.E.2d 1146, 119 Ill.Dec. 287 (1988). However, this instruction should be given if natural life is the only other alternative. See *People v. Bean*, 137 Ill.2d 65, 560 N.E.2d 258, 147 Ill.Dec. 891 (1990).

The second bracketed alternative must also be given if the defendant has been convicted of murder in another case because a sentence of natural life imprisonment is required under 730 ILCS 5/5-8-1(a)(e)(i).

The second bracketed alternative may also be given if the defendant has previously been convicted of qualifying offenses under 720 ILCS 5/33B-1 and if the judge is satisfied that the prosecution will file a petition under 720 ILCS 5/33B-2 and that the defendant qualifies for natural life imprisonment.

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

7C.06

Issues In Aggravation And Mitigation

In deciding whether the defendant should be sentenced to death, you should consider all the aggravating factors supported by the evidence and all the mitigating factors supported by the evidence.

Aggravating factors are reasons why the defendant should be sentenced to death. Mitigating factors are reasons why the defendant should not be sentenced to death.

Aggravating factors include:

First: [(Insert any statutory aggravating factor or factors found by the jury at the first stage of the death penalty hearing)]

Second: Any other reason supported by the evidence why the defendant should be sentenced to death.

Where there is evidence of an aggravating factor, the fact that such aggravating factor is not a factor specifically listed in these instructions does not preclude your consideration of the evidence.

Mitigating factors include:

First: [(Any or all of the following) (The following)] if supported by the evidence:

The defendant has no significant history of prior criminal activity.

The murder was committed while the defendant was under the influence of an extreme mental or emotional disturbance, although not such as to constitute a defense to the prosecution.

The murdered person was a participant in the defendant's homicidal conduct or consented to the homicidal act.

The defendant acted under the compulsion of threat or menace of the imminent infliction of death or great bodily harm.

The defendant was not personally present during the commission of the act or acts causing death.

The defendant may be rehabilitated or restored to useful citizenship.

Second: Any other reason supported by the evidence why the defendant should not be sentenced to death.

Where there is evidence of a mitigating factor, the fact that such mitigating factor is not a factor specifically listed in these instructions does not preclude your consideration of the evidence.

If you unanimously find from your consideration of all the evidence that there is no mitigating factor sufficient to preclude imposition of a death sentence, then you should sign the verdict requiring the court to sentence the defendant to death.

If you do not unanimously find from your consideration of all the evidence that there is no mitigating factor sufficient to preclude imposition of a death sentence, then you should sign the verdict requiring the court to impose a sentence [(other than death) (of natural life imprisonment)].

Committee Note

720 ILCS Sections 9-1(c) and (g).

The jury should be instructed on all statutory mitigating factors with any support in the evidence. Other statutory mitigating factors should be omitted.

The jury should be instructed on all statutory aggravating factors found at the first stage of the death penalty hearing.

Use applicable bracketed material.

7C.06A
Issues In Aggravation And Mitigation

In deciding whether the defendant should be sentenced to death, you should consider all the aggravating factors supported by the evidence and all the mitigating factors supported by the evidence.

Aggravating factors are reasons why the defendant should be sentenced to death. Mitigating factors are reasons why the defendant should not be sentenced to death. Aggravating factors include:

First: (Insert any statutory aggravating factor or factors found by the jury at the first stage of the death penalty hearing)

Second: Any other reason supported by the evidence why the defendant should be sentenced to death.

Where there is evidence of an aggravating factor, the fact that such aggravating factor is not a factor specifically listed in these instructions does not preclude your consideration of the evidence.

Mitigating factors include:

First: [(Any or all of the following) (The following)] if supported by the evidence:

The defendant has no significant history of prior criminal activity.

The murder was committed while the defendant was under the influence of an extreme mental or emotional disturbance, although not such as to constitute a defense to prosecution.

The murdered person was a participant in the defendant's homicidal conduct or consented to the homicidal act.

The defendant acted under the compulsion of threat or menace of the imminent infliction of death or great bodily harm.

The defendant was not personally present during the commission of the act or acts causing death.

The defendant's background includes a history of extreme emotional or physical abuse.

The defendant suffers from a reduced mental capacity.

Second: Any other reason supported by the evidence why the defendant should not be sentenced to death.

Where there is evidence of a mitigating factor, the fact that such mitigating factor is not a factor specifically listed in these instructions does not preclude your consideration of the evidence.

If you unanimously determine from your consideration of all the evidence after weighing the factors in aggravation and mitigation that death is the appropriate sentence, then you should sign the verdict requiring the court to sentence the defendant to death.

If after weighing the factors in aggravation and mitigation one or more jurors determine that death is not the appropriate sentence, then you should sign the verdict requiring the court to impose a sentence [(other than death) (of natural life imprisonment)].

Committee Note

Public Act 93-605, effective November 19, 2003. 720 ILCS 5/9-1(c) and (g) (West 1999).

Use for all cases where the offense was committed on or after November 13, 2003, or for any case tried after November 13, 2003, where the defendant elects to be tried under the new statute.

The jury should be instructed on all statutory mitigating factors with any support in the evidence. Other statutory mitigating factors should be omitted.

The jury should be instructed on all statutory aggravating factors found at the first stage of the death penalty hearing.

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.

7C.08A
Verdict Form Approving Death Sentence

After weighing the factors in aggravation and mitigation, we the jury unanimously determine that death is the appropriate sentence.

The court shall sentence the defendant _____ to death.

Foreperson

Committee Note

Public Act 93-605, effective November 19, 2003. 730 ILCS 5/9-1(g) (West 1999) (formerly Ill.Rev.Stat. Ch. 38, Section 9-1(g) (1991)).

Use for all cases where the offense was committed on or before November 13, 2003, or for any case tried after November 13, 2003, where the defendant elects to be tried under the new statute.

Insert in the blank the name of the defendant.

7C.09
Verdict Form Rejecting Death Sentence

We, the jury, do not unanimously find that there is no mitigating factor sufficient to preclude a death sentence.

The court shall not sentence the defendant _____ to death.

Foreperson

Committee Note

720 ILCS 5/9-1(g) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §9-1(g) (1991)).

Insert in the blank the name of the defendant.

7C.09A

Verdict Form Rejecting Death Sentence--Natural Life A Mandatory Alternative

We, the jury, do not unanimously find that there is no mitigating factor sufficient to preclude a death sentence.

The court shall not sentence the defendant _____ to death, but shall sentence defendant to natural life imprisonment.

Foreperson

Committee Note

720 ILCS 5/9-1(g) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §9-1(g) (1991)).

Give this instruction when natural life imprisonment without parole is the mandatory alternative. See Instruction 7C.05.

See People v. Gacho, 122 Ill.2d 221, 260-63, 522 N.E.2d 1146, 1164-66, 119 Ill.Dec. 287, 305-07 (1988).

Insert in the blank the name of the defendant.

7C.09B.

Verdict Form Rejecting Death Sentence Natural Life a Mandatory Alternative

After weighing the factors in aggravation and mitigation, one or more of the jurors determines that death is not the appropriate sentence.

The court shall not sentence the defendant _____ to death, but shall sentence the defendant to natural life imprisonment.

Foreperson

Committee Note

Public Act 93-605, effective November 19, 2003. 720 ILCS 5/9-1(g) (West 1999) formerly Ill.Rev.Stat Ch. 38, Section 9-1(g)(1991)).

Use for all cases where the offense was committed on or after November 13, 2003, or for any case tried after November 13, 2003, where the defendant elects to be tried under the new statute.

Give this instruction when natural life imprisonment without parole is the mandatory alternative, See Instruction 7C.05A

See People v. Gacho, 122 Ill. 2d 221, 260-63, 522 N.E. 2d 1146, 1164-66, 119 Ill. Dec. 287, 305-07 (1988).

Insert in the blank the name of the defendant.

