

## 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.