

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.