11.00.
ASSAULT, BATTERY, AND RELATED CRIMES

11.01
Definition Of Assault

A person commits the offense of assault when he [(knowingly) (intentionally)] [without lawful authority] engages in conduct which places another person in reasonable apprehension of receiving [(bodily harm) (physical contact of an insulting or provoking nature)].

Committee Note

720 ILCS 5/12-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-1 (1991)).

Give Instruction 11.02.

Use the mental state that conforms to the allegation in the charge. *See* People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Use the phrase "without lawful authority" whenever an instruction is to be given on an affirmative defense contained in Article 7 of Chapter 38. *See* People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Use applicable bracketed material.

11.02
Issue In Assault

To sustain the charge of assault, the State must prove the following proposition:

That the defendant [(knowingly) (intentionally)] engaged in conduct which placed ____ in reasonable apprehension of receiving [(bodily harm) (physical contact of an insulting or provoking nature)].

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-1 (1991)).

Give Instruction 11.01.

Use the mental state that conforms to the allegation in the charge. *See* People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase "without lawful authority" in Instruction 11.01 (see Committee Note to Instruction 11.01), and this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Since the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without lawful authority, the Committee has concluded that the phrase "without lawful authority" need not be used in this issues instruction.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.03
Definition Of Aggravated Assault

A person commits the offense of aggravated assault when, he [(intentionally) (knowingly) (recklessly)] [without lawful authority] engages in conduct which places another person in reasonable apprehension of receiving [(bodily harm) (physical contact of an insulting or provoking nature)], and

[1] in doing so, he uses a deadly weapon.

[or]

[2] in doing so, he is hooded, robed, or masked in such a manner as to conceal his identity.

[or]

[3] in doing so, he knows the individual assaulted is a teacher or other person employed in any school and such teacher or other employee is upon the grounds of a school or grounds adjacent thereto, or is in any part of a building used for school purposes.

[or]

[4] in doing so, he knows the individual assaulted is a supervisor, director, instructor, or other person employed in any park district, and such supervisor, director, instructor, or other employee is upon the grounds of the park or grounds adjacent thereto, or is in any part of a building used for park purposes.

[or]

[5] in doing so, he knows the individual assaulted is a [(caseworker) (investigator) (person)] employed by [(the State Department of Public Aid) (a County Department of Public Aid)] and such [(caseworker) (investigator) (person)] is

[a] upon the grounds of a public aid office or grounds adjacent to a public aid office.

[or]

[b] in any part of a building used for public aid purposes.

[or]

[c] on the grounds of the home of a [(public aid applicant or recipient) (person being interviewed or investigated in the employee's discharge of his duties)].

[or]

[d] on grounds adjacent to the home of the [(public aid applicant or recipient) (person being interviewed or investigated in the employee's discharge of his duties)].

[or]

[e] in any part of a building in which a [(public aid applicant or recipient) (person being investigated in the employee's discharge of his duties)] resides or is located.

[or]

[6] in doing so, he knows the individual assaulted is a

[a] [(peace officer) (fireman)] [(who at the time is engaged in the execution of) (and he assaults that [(officer) (fireman)] to prevent him from performing) (and he assaults that [(officer) (fireman)] in retaliation for performing)] his official duties.

[or]

[b] person summoned or directed by a peace officer [(who at the time is engaged in the execution of) (and he assaults that person to prevent that peace officer from performing) (and he assaults that person in retaliation for that person helping the peace officer perform)] his official duties.

[or]

[7] in doing so, he knows the individual assaulted is [(an emergency medical technician) (an ambulance driver) (a medical assistant) (a first aid attendant)] employed by a municipality [or other governmental unit] [(who at the time was engaged in the execution of) (and he assaults that individual to prevent him from performing) (and he assaults that individual in retaliation for that individual performing)] his official duties.

[or]

[8] in doing so, he knows the individual assaulted is the [(driver) (operator) (employee) (passenger)] of any transportation facility or system engaged in the business of transportation of the public for hire and the individual assaulted is

[a] then performing in such capacity.

[or]

[b] then using such public transportation as a passenger.

[or]

[c] using any area of any description designated by the transportation facility or system as a vehicle boarding, departure, or transfer location.

[or]

[9] the person he assaults is, at the time of the assault, on or about a public way, public property, or public place of accommodation or amusement.

[or]

[10] in doing so, he knows the individual assaulted is an employee of [(the State of Illinois) (a municipal corporation of the State of Illinois) (a political subdivision of the State of Illinois)] engaged in the performance of his authorized duties as such employee.

[or]

[11] the other person is physically handicapped. A physically handicapped person is a person who suffers from a permanent and disabling physical characteristic, resulting from disease, injury, functional disorder, or congenital condition.

[or]

[12] the other person is an individual of 60 years of age or older.

[or]

[13] in doing so, he discharges a firearm.

[or]

[14] in doing so, he knows the individual assaulted is a correctional officer [(who at the time is engaged in the execution of) (and he assaults the employee to prevent him from

performing) (and he assaults the employee in retaliation for performing)] his official duties.

[or]

[15] in doing so, he knows the individual assaulted is a correctional employee [(who at the time is engaged in the execution of) (and he assaults the employee to prevent him from performing) (and he assaults the employee in retaliation for performing)] his official duties.

Committee Note

720 ILCS 5/12-2 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-2 (1991)), amended by P.A. 87-921, effective January 1, 1993; P.A. 88-433, effective January 1, 1994; and P.A. 88-467, effective July 1, 1994; and P.A. 88-670, effective December 2, 1994.

Give Instructions 11.01 and 11.04.

Regarding assaults committed upon emergency medical technicians (EMT) (paragraph [7] of this instruction), if the definition of EMT or the type of EMT becomes an issue, see Section 4.12, 4.13, or 4.15 of the Emergency Medical Services System Act (210 ILCS 50/4.12, 4.13, or 4.15 (West 1992)) which define EMT-ambulance, EMT-paramedic, and EMT-intermediate. See 720 ILCS 5/2-6.5 (West Supp.1993).

Regarding assaults committed upon persons over 60 years of age (paragraph [12] of this instruction) or physically handicapped (paragraph [11] of this instruction), the defendant does not have to *know* that the victim is 60 years of age or older or physically handicapped in order to be convicted of aggravated assault under Sections 12-2(a)(11) and (a)(12). *See* People v. White, 241 Ill.App.3d 291, 302, 608 N.E.2d 1220, 1229, 181 Ill.Dec. 746, 755 (2d Dist.1993).

Because Section 12-2 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use the phrase “without lawful authority” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 1961. *See* People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Use applicable paragraphs, subparagraphs, and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.04
Issues In Aggravated Assault

To sustain the charge of aggravated assault, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] placed ____ in reasonable apprehension of receiving [(bodily harm) (physical contact of an insulting or provoking nature)]; and

[1] *Second Proposition:* That the defendant used a deadly weapon.

[or]

[2] *Second Proposition:* That the defendant was hooded, robed, or masked in such a manner as to conceal his identity.

[or]

[3] *Second Proposition:* That the defendant knew ____ to be a teacher or other person employed in a school; and

Third Proposition: ____ was on the grounds of the school or grounds adjacent to the school, or in any part of a building used for school purposes.

[or]

[4] *Second Proposition:* That the defendant knew ____ to be a supervisor, director, instructor, or other person employed in any park district; and

Third Proposition: That ____ was upon the grounds of the park or grounds adjacent to the park, or in any part of a building used for park purposes.

[or]

[5] *Second Proposition:* That the defendant knew ____ to be a [(caseworker) (investigator) (person)] employed by [(the State Department of Public Aid) (a County Department of Public Aid)]; and

[a] *Third Proposition:* That ____ was upon the grounds of a public aid office or grounds adjacent to a public aid office.

[or]

[b] *Third Proposition:* That ____ was in any part of a building used for public aid purposes.

[or]

[c] *Third Proposition:* That ____ was on the grounds of the home of a [(public aid applicant or recipient) (person being interviewed or investigated in the employee's discharge of his duties)].

[or]

[d] *Third Proposition:* That ____ was on grounds adjacent to the home of the [(public aid applicant or recipient) (person being interviewed or investigated in the employee's discharge of his duties)].

[or]

[e] *Third Proposition:* That ____ was in any part of a building in which a [(public aid applicant or recipient) (person being investigated in the employee's discharge of his duties)] resided or was located.

[or]

[6] *Second Proposition:* That the defendant knew ____ to be a [(peace officer) (fireman) (person summoned or directed by a peace officer)]; and

[a] *Third Proposition:* That the defendant [(knew that ____ was engaged in the execution of) (assaulted ____ to prevent him from performing) (assaulted ____ in retaliation for his performing)] his official duties.

[or]

[b] *Third Proposition:* That the defendant assaulted that person [(while the peace officer was engaged in the execution of) (to prevent the peace officer from performing) (to retaliate for that person helping the peace officer perform)] his official duties.

[or]

[7] *Second Proposition:* That the defendant knew ____ to be [(an emergency medical technician) (an ambulance driver) (a medical assistant) (a first aid attendant)]; and

Third Proposition: That the defendant [(knew that ____ was engaged in the execution of) (assaulted ____ to prevent him from performing) (assaulted ____ in retaliation for his performing)] his official duties.

[or]

[8] *Second Proposition:* That the defendant knew ____ to be [(a driver) (an operator) (an employee) (a passenger)] of any transportation facility or system engaged in the business of transportation of the public for hire; and

[a] *Third Proposition:* ____ was then performing in such capacity.

[or]

[b] *Third Proposition:* ____ was then using such public transportation as a passenger.

[or]

[c] *Third Proposition:* ____ was using any area of any description designated by the transportation facility or system as a vehicle boarding, departure, or transfer location.

[or]

[9] *Second Proposition:* That when the defendant did so, ____ was on or about a public way, public property, or public place of accommodation or amusement.

[or]

[10] *Second Proposition:* That the defendant knew ____ to be an employee of [(the State of Illinois) (a municipal corporation of the State of Illinois) (a political subdivision of the State of Illinois)] engaged in the performance of his authorized duties as such employee.

[or]

[11] *Second Proposition:* That at the time the defendant did so, ____ was a physically handicapped person.

[or]

[12] *Second Proposition:* That at the time the defendant did so, ____ was 60 years of age or older.

[or]

[13] *Second Proposition:* That in doing so, the defendant discharged a firearm.

[or]

[14] *Second Proposition:* That the defendant knew ____ to be a correctional officer; and
Third Proposition: That the defendant [(knew that ____ was engaged in the execution of) (assaulted ____ to prevent him from performing) (assaulted ____ in retaliation for his performing)] his official duties.

[or]

[15] *Second Proposition:* That the defendant knew ____ to be a correctional employee; and
Third Proposition: That the defendant [(knew that ____ was engaged in the execution of) (assaulted ____ to prevent him from performing) (assaulted ____ in retaliation for his performing)] his official duties.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-2 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-2 (1991)), amended by P.A. 87-921, effective January 1, 1993; P.A. 88-433, effective January 1, 1994; and P.A. 88-467, effective July 1, 1994; and P.A. 88-670, effective December 2, 1994.

Give Instruction 11.03.

Use the applicable alternative for the second proposition or second and third propositions.

Because Section 12-2 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982), for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase "without lawful authority" in Instruction 11.03 (see Committee Note to Instruction 11.03), and this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without lawful authority, the Committee has

concluded that the phrase “without lawful authority” need not be used in this issues instruction.

Insert in the blank the name of the victim.

The bracketed numbers in this instruction correspond with the bracketed numbers in Instruction 11.03. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Use applicable bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.05
Definition Of Battery

A person commits the offense of battery when he [(intentionally) (knowingly)] [without legal justification] and by any means [(causes bodily harm to) (makes physical contact of an insulting or provoking nature with)] another person.

Committee Note

720 ILCS 5/12-3 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-3 (1991)).

Give Instruction 11.06.

Use the mental state that conforms to the allegations in the charge. *See* People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Use the phrase "without legal justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of Chapter 38. *See* People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Use applicable bracketed material.

11.06
Issue In Battery

To sustain the charge of battery, the State must prove the following proposition:

That the defendant [(knowingly) (intentionally)] [(caused bodily harm to) (made physical contact of an insulting or provoking nature with)] ____.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-3 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-3 (1991)).

Give Instruction 11.05.

Use the mental state that conforms to the allegation in the charge. *See* People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase "without legal justification" in Instruction 11.05 (see Committee Note to Instruction 11.05), and this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Since the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.07
Definition Of Battery Of An Unborn Child

A person, not the pregnant mother of the unborn child, commits the offense of battery of an unborn child when he [(knowingly) (intentionally)] [without legal justification] and by any means causes bodily harm to an unborn child.

Committee Note

720 ILCS 5/12-3.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-3.1 (1991)).

Give Instructions 11.07A and 11.08.

Use the mental state that conforms to the allegation in the charge. *See* People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Use the phrase "without legal justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of Chapter 38. *See* People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Section 12-3.1(d) sets forth exceptions to the offense of battery of an unborn child. The statute does not apply to acts committed during an abortion, as authorized by Chapter 720, Section 81-21 *et seq.*, or to acts committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment. It will be necessary to give additional instructions if the defendant relies upon either of those exceptions.

Use applicable bracketed material.

11.07A
Definition Of Unborn Child

The term "unborn child" means any individual of the human species from fertilization until birth.

Committee Note

720 ILCS 5/12-3.1(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-3.1(b) (1991)).

This definition applies for charges brought under Section 12-3.1, which is battery of an unborn child.

See Instruction 11.07.

11.08
Issues In Battery Of An Unborn Child

To sustain the charge of battery of an unborn child, the State must prove the following propositions:

First Proposition: That the defendant [(knowingly) (intentionally)] caused bodily harm to an unborn child; and

Second Proposition: That the defendant was not the pregnant mother of the unborn child.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-3.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-3.1 (1991)).

Give Instruction 11.07.

Use the mental state that conforms to the allegation in the charge. *See* People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase "without legal justification" in Instruction 11.07 (see Committee Note to Instruction 11.07), and this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Since the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction.

Section 12-3.1(d) sets forth exceptions to the offense of battery of an unborn child, and additional instructions must be given when the defendant relies upon one of those exceptions. See Committee Note to Instruction 11.07.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.09
Definition Of Aggravated Battery Of An Unborn Child

A person, not the pregnant mother of the unborn child, commits the offense of aggravated battery of an unborn child when he [(intentionally) (knowingly)] [without legal justification] and by any means causes [(great bodily harm) (permanent disability) (permanent disfigurement)] to an unborn child.

Committee Note

720 ILCS 5/12-4.4 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4.4 (1991)).

Give Instructions 11.07, 11.07A, and 11.10.

Use the mental state that conforms to the allegation in the charge. *See* People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Use the phrase "without legal justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of Chapter 38. *See* People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Section 12-3.1(d) sets forth exceptions to the offense of battery of an unborn child, and additional instructions must be given when the defendant relies upon one of those exceptions. See Committee Note to Instruction 11.07.

Use applicable bracketed material.

11.10
Issues In Aggravated Battery Of An Unborn Child

To sustain the charge of aggravated battery of an unborn child, the State must prove the following propositions:

First Proposition: That the defendant [(knowingly) (intentionally)] caused [(great bodily harm) (permanent disability) (permanent disfigurement)] to an unborn child; and

Second Proposition: That the defendant was not the pregnant mother of the unborn child.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-4.4 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4.4 (1991)).

Give Instruction 11.09.

Use the mental state that conforms to the allegation in the charge. *See* People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase "without legal justification" in Instruction 11.09 (see Committee Note to Instruction 11.09), and this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Since the additional proposition or propositions that will thereby be without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction.

Section 12-3.1(d) sets forth exceptions to the offense of battery of an unborn child, and additional instructions must be given when the defendant relies upon one of those exceptions. See Committee Note to Instruction 11.07.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.11
Definition Of Domestic Battery

A person commits the offense of domestic battery when he [(intentionally) (knowingly)] [without legal justification] and by any means [(causes bodily harm to) (makes physical contact of an insulting or provoking nature with)] any family or household member.

Committee Note

720 ILCS 5/12-3.2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-3.2 (1991)).

Give Instruction 11.12.

Use the phrase "without legal justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of Chapter 720.

Use applicable bracketed material.

11.11A
Definition Of Family Or Household Member--Domestic Battery

The phrase "family or household member" means [(spouses) (former spouses) (parents) (children) (stepchildren) (persons related by blood or marriage) (persons who share or formerly shared a common dwelling) (persons who [allegedly] have a child in common) (persons who [allegedly] share a blood relationship through a child) (persons who have or have had a dating or engagement relationship) (persons with disabilities and their personal assistants)].

Committee Note

725 ILCS 5/112A-3(3), amended by P.A. 87-1186, effective Jan. 1, 1993.

11.12
Issues In Domestic Battery

To sustain the charge of domestic battery, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly)] [(caused bodily harm to) (made physical contact of an insulting or provoking nature with)] ____; and

Second Proposition: That ____ was then a family or household member to the defendant.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-3.2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-3.2 (1991)).

Give Instructions 11.11 and 11.11A.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase "without legal justification" in Instruction 11.11 (see Committee Note to Instruction 11.11), and this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Since the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction.

Insert in the blanks the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.13
Definition Of Aggravated Battery--Great Bodily Harm

A person commits the offense of aggravated battery when he [(intentionally) (knowingly)] [without legal justification] and by any means causes [(great bodily harm) (permanent disability) (permanent disfigurement)] to another person.

Committee Note

720 ILCS 5/12-4(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4(a) (1991)).

Give Instruction 11.14.

Use the mental state that conforms to the allegations in the charge. *See* People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Use the phrase "without legal justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of Chapter 38. *See* People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Use applicable bracketed material.

11.14
Issue In Aggravated Battery--Great Bodily Harm

To sustain the charge of aggravated battery, the State must prove the following proposition:

That the defendant [(intentionally) (knowingly)] caused [(great bodily harm) (permanent disability) (permanent disfigurement)] to ____.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-4(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4(a) (1991)).

Give Instruction 11.13.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase "without legal justification" in Instruction 11.13 (see Committee Note to Instruction 11.13), and this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Since the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.15.
Definition Of Aggravated Battery--While Armed, Hooded, Or Involving Specific Categories Of Victims

A person commits the offense of aggravated battery when he [(intentionally) (knowingly)] [without legal justification] and by any means [(causes bodily harm to) (makes physical contact of an insulting or provoking nature with)] another person, and

[1] in doing so, he uses a deadly weapon other than by the discharge of a firearm.

[or]

[2] in doing so, he is hooded, robed, or masked in such a manner as to conceal his identity.

[or]

[3] in doing, so, he knows the individual harmed is a teacher or other person employed in any school and such teacher or other employee is on the grounds of a school or grounds adjacent thereto, or is in any part of a building used for school purposes.

[or]

[4] in doing so, he knows the individual harmed is a supervisor, director, instructor, or other person employed in any park district, and such supervisor, director, instructor, or other employee is on the grounds of the park or grounds adjacent thereto, or in any part of a building used for park purposes.

[or]

[5] in doing so, he knows the individual harmed to be a caseworker, investigator, or other person employed by the State Department of Public Aid or a County Department of Public Aid and such caseworker, investigator, or other person is

[a] on the grounds of a public aid office or grounds adjacent to a public aid office.

[or]

[b] in any part of a building used for public aid purposes.

[or]

[c] on the grounds of the home of a [(public aid applicant or recipient) (person being interviewed or investigated in the employee's discharge of his duties)].

[or]

[d] on grounds adjacent to the home of the [(public aid applicant or recipient) (person being interviewed or investigated in the employee's discharge of his duties)].

[or]

[e] in any part of a building in which the applicant, recipient, or other person resides or is located.

[or]

[6] in doing so, he knows the individual harmed is a

[a] [(peace officer) (correctional institution employee) (fireman)] [(who at the time is engaged in the execution of) (and he harms that [(officer) (fireman)] to prevent the [(officer) (fireman)] from performing) (and he harms that [(officer) (fireman)] in retaliation for performing)] official duties.

[or]

[b] person summoned or directed by a peace officer [(who at the time is engaged in the execution of) (and he harms that person to prevent the peace officer from performing) (and he harms that person in retaliation for that person helping the peace officer perform)] official duties.

[or]

[7] in doing so, he knows the individual harmed is [(an emergency medical technician) (an ambulance driver) (a medical assistant) (a first aid attendant)] employed by a municipality [or other governmental unit] [(who at the time is engaged in the performance of his) (and he harms that individual to prevent the individual from performing) (and he harms that individual in retaliation for that individual performing)] official duties.

[or]

[8a] in doing so, he is on or about [(a public way) (public property) (a public place of accommodation) (a public place of amusement)].

[or]

[8b] at the time he does so, the other person is on or about [(a public way) (public

property) (a public place of accommodation) (a public place of amusement)].

[or]

[9] in doing so, he knows the individual harmed is the [(driver) (operator) (employee) (passenger)] of any transportation facility or system engaged in the business of transportation of the public for hire and the individual harmed is [(then performing in such capacity) (then using such public transportation as a passenger) (using any area of any description designated by the transportation facility or system as a vehicle boarding, departure, or transfer location)].

[or]

[10] the other person is an individual of 60 years of age or older.

[or]

[11] in doing so, he knows the individual harmed is pregnant.

[or]

[12] in doing so, he knows the individual harmed to be a judge whom he intended to harm as a result of the judge's performance of his official duties as a judge.

[or]

[13] in doing so, he knows the individual harmed to be an employee of the Illinois Department of Children and Family Services who at the time was engaged in the performance of his authorized duties.

[or]

[14] in doing so, he knows the individual harmed to be a person who is physically handicapped. A physically handicapped person is a person who suffers from a permanent and disabling physical characteristic, resulting from disease, injury, functional disorder, or congenital condition.

[or]

[15] in doing so, he knowingly and without legal justification and by any means causes bodily harm to a merchant who detains the person for an alleged commission of retail theft. A merchant is an owner or operator of any retail mercantile establishment or any

agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of such owner or operator.

Committee Note

720 ILCS 5/124(b) (West 1992) (formerly Ill.Rev.Stat. ch. §12-4(b) (1991)), amended by P.A. 86-979 and P.A. 86-980, effective July 1, 1990; P.A. 87-921, effective January 1, 1993; P.A. 88-45, effective July 6, 1993; P.A. 88-433, effective January 1, 1994; and P.A. 90-115, effective January 1, 1998.

Give Instruction 11.16.

In People v. Hale, 77 Ill.2d 114, 395 N.E.2d 929, 32 Ill.Dec. 548 (1979), the Illinois Supreme Court held that a charge of aggravated battery can rest upon either of the two methods of committing a battery (i.e., causing bodily harm or making physical contact of an insulting or provoking nature) when the offense is aggravated because of the identity of the victim. 720 ILCS 5/12-4(b)(3) through (12). The supreme court did not specifically address what conduct must be proved when the offense is aggravated by the fact that the defendant used a deadly weapon or was hooded, robed, or masked. 720 ILCS 5/12-4(b)(1) and (2). However, the wording of the statute would appear to mandate the same result as that reached in Hale for such charges, and this instruction has, therefore, been drafted to allow either alternative to be used for any of the aggravating factors. Use the alternative that conforms to the allegation in the charge. *See* People v. Lutz, 73 Ill.2d 204, 383 N.E.2d 171, 22 Ill.Dec. 695 (1978).

Regarding offenses committed upon emergency medical technicians (EMT) (paragraph [7] of this instruction), if the definition of EMT or the type of EMT becomes an issue, see Section 4.12, 4.13, or 4.15 of the Emergency Medical Services System Act (210 ILCS 50/4.12, 4.13, or 4.15 (West 1992)) which define EMT-ambulance, EMT-paramedic, and EMT-intermediate. See 720 ILCS 5/26.5 (West Supp. 1993).

The Committee would caution that the specific wording of the provision regarding batteries committed upon persons over 60 years of age (Section 12-4(b)(10), paragraph [10] in this instruction), differs from that employed in any of the other provisions. Although no court has yet addressed the issue, the Committee believes that when paragraph [10] is used, the alternative involving contact of an insulting or provoking nature should not be used.

Also regarding batteries committed upon persons over 60 years of age (paragraph [10] of this instruction), the defendant does not have to *know* that the victim is 60 years of age or older in order to be convicted of aggravated battery under Section 12-4(b)(10). *See* People v. White, 241 Ill.App.3d 291, 302, 608 N.E.2d 1220, 1229, 181 Ill.Dec. 746, 755 (2d Dist. 1993).

Use the phrase "without legal justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 1961. *See* People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist. 1975).

The definition of aggravated battery under Section 12-4(b) has grown over the last several years due to the inclusion by the legislature of additional designations of individuals who are to receive special protection. Court and counsel should ensure that a particular category of persons mentioned in a charge under this Section was in fact included within the statute when the

allegedly criminal behavior occurred.

Use applicable paragraphs, subparagraphs, and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.16
Issues In Aggravated Battery--While Armed, Hooded, Or Involving Specific Categories Of Victims

To sustain the charge of aggravated battery, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly)] [(caused bodily harm to ____) (made physical contact of an insulting or provoking nature with ____)]; and

[1] *Second Proposition:* That the defendant used a deadly weapon other than by the discharge of a firearm.

[or]

[2] *Second Proposition:* That the defendant was hooded, robed, or masked in such a manner as to conceal his identity.

[or]

[3] *Second Proposition:* That the defendant knew ____ to be a teacher or other person employed in a school; and

Third Proposition: That ____ was on the grounds of a school or grounds adjacent to a school, or in any part of a building used for school purposes.

[or]

[4] *Second Proposition:* That the defendant knew ____ to be a supervisor, director, instructor, or other person employed in a park district; and

Third Proposition: That ____ was on the grounds of the park, or on grounds adjacent to the park, or in any part of a building used for park purposes.

[or]

[5] *Second Proposition:* That the defendant knew ____ to be a caseworker, investigator, or other person employed by the State Department of Public Aid or a County Department of Public Aid; and

Third Proposition: That ____ was

[a] on the grounds of a public aid office or grounds adjacent to a public aid office.

[or]

[b] in any part of a building used for public aid purposes.

[or]

[c] on the grounds of the home of a [(public aid applicant or recipient) (person being interviewed or investigated in the employee's discharge of his duties)]

[or]

[d] on grounds adjacent to the home of the [(public aid applicant or recipient) (person being interviewed or investigated in the employee's discharge of his duties)].

[or]

[e] in any part of a building in which the applicant, recipient, or other such person resides or is located.

[or]

[6] *Second Proposition:* That the defendant knew ____ to be a [(peace officer) (correctional institution employee) (fireman) (person summoned or directed by a peace officer)]; and

[a] *Third Proposition:* That the defendant [(knew that ____ was engaged in the execution of) (harmed ____ to prevent him from performing) (harmed ____ in retaliation for his performing)] official duties.

[or]

[b] *Third Proposition:* That the defendant harmed that person [(while the peace officer was engaged in the execution of) (to prevent the peace officer from performing) (to retaliate for that person helping the peace officer perform)] official duties.

[or]

[7] *Second Proposition:* That the defendant knew ____ to be [(an emergency medical technician) (and ambulance driver) (a medical assistant) (a first aid attendant)]; and

Third Proposition: That the defendant [(knew that ____ was engaged in the performance of his) (harmed ____ to prevent him from performing) (harmed ____ in retaliation for his performing)] official duties.

[or]

[8a] *Second Proposition:* That the defendant did so while on or about [(a public way) (public property) (a public place of accommodation) (a public place of amusement)].

[or]

[8b] *Second Proposition:* That when the defendant did so, ____ was on or about [(a public way) (public property) (a public place of accommodation) (a public place of amusement)].

[or]

[9] *Second Proposition:* That the defendant knew ____ to be the [(driver) (operator)(employee) (passenger)] of any transportation facility or system engaged in the business of transportation of the public for hire; and

Third Proposition: That ____ was [(then performing in such capacity) (then using such public transportation as a passenger) (then using any area of any description designated by the transportation facility or system as a vehicle boarding, departure, or transfer location)].

[or]

[10] *Second Proposition:* That at the time defendant did so, ____ was an individual of 60 years of age or older.

[or]

[11] *Second Proposition:* That the defendant knew ____ to be pregnant.

[or]

[12] *Second Proposition:* That the defendant knew ____ to be a judge whom he intended to harm as a result of the judge's performance of his or her official duties as a judge.

[or]

[13] *Second Proposition:* That the defendant knew ____ to be an employee of the Illinois Department of Children and Family Services engaged in the performance of his or her official duties as such an employee.

[or]

[14] *Second Proposition:* That the defendant knew ____ to be a person who was physically handicapped.

[or]

[15] *Second Proposition*: That the defendant knew ____ to be a merchant who was detaining the defendant for an alleged commission of retail theft.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-4(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-4(b) (1991)), amended by P.A. 86-979 and P.A. 86-980, effective July 1, 1990; P.A. 87-921, effective January 1, 1993, P.A. 88-45, effective July 6, 1993; P.A. 88-433, effective January 1, 1994; and P.A. 90-115, effective January 1, 1998.

Give Instruction 11.15.

See Committee Note to Instruction 11.15, concerning selection of the appropriate alternative method of committing a battery.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase "without legal justification" in Instruction 11.15 (see Committee Note to Instruction 11.15), and this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction.

Insert in the blank(s) the name of the victim.

The bracketed numbers in this instruction correspond with the bracketed numbers in Instruction 11.15. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Use applicable paragraphs, subparagraphs, and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.17
Definition Of Aggravated Battery--Administering Dangerous Substance

A person commits the offense of aggravated battery when he, for other than medical purposes [(administers to an individual) (causes an individual to take)] [(without the individual's consent) (by threat) (by deception)] any [(intoxicating) (poisonous) (stupefying) (narcotic) (anesthetic)] substance.

Committee Note

720 ILCS 5/12-4(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4(c) (1991)).

Give Instruction 11.18.

Use applicable bracketed material.

11.18
Issues In Aggravated Battery--Administering Dangerous Substance

To sustain the charge of aggravated battery, the State must prove the following propositions:

First Proposition: That the defendant [(administered to ____) (caused ____ to take)] an [(intoxicating) (poisonous) (stupefying) (narcotic) (anesthetic)] substance; and

Second Proposition: That ____[(did not consent) (was threatened by the defendant) (was deceived by the defendant)]; and

Third Proposition: That the defendant acted for other than medical purposes.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-4(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4(c) (1991)).

Give Instruction 11.17.

Insert in the blanks the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.19
Definition Of Aggravated Battery--Food Containing Foreign Substance Or Object

A person commits the offense of aggravated battery when he knowingly gives to another person any food that contains any [(substance) (object)] that is intended to cause physical injury if eaten.

Committee Note

720 ILCS 5/12-4(d) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4(d) (1991)).

Give Instruction 11.20.

Use applicable bracketed material.

11.20
Issues In Aggravated Battery--Food Containing Foreign Substance Or Object

To sustain the charge of aggravated battery, the State must prove the following propositions:

First Proposition: That the defendant knowingly gave food to another person; and

Second Proposition: That the food contained any [(substance) (object)] that was intended to cause physical injury if eaten; and

Third Proposition: That the defendant knew the food contained such [(a substance) (an object)].

If you find from your consideration of all the evidence that the State has proved each one of these propositions beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that the State has not proved any one of these propositions beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-4(d) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4(d) (1991)).

Give Instruction 11.19.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.21
Definition Of Heinous Battery

A person commits the offense of heinous battery when he knowingly [without legal justification] causes severe and permanent [(disability) (disfigurement)] to another person by means of a [(caustic) (flammable)] substance.

Committee Note

720 ILCS 5/12-4.1 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-4.1 (1991)), amended by P.A. 88-285, effective January 1, 1994.

Give Instruction 11.22.

Use applicable bracketed material.

Use the phrase "without legal justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 1961 (720 ILCS 5/7-1 *et seq.*). *See* People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

11.22
Issues In Heinous Battery

To sustain a charge of heinous battery, the State must prove the following propositions:

First Proposition: That the defendant knowingly caused severe and permanent [(disability) (disfigurement)] to ____; and

Second Proposition: That the defendant did so by means of a [(caustic) (flammable)] substance.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-4.1 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-4.1 (1991)), amended by P.A. 88-285, effective January 1, 1994.

Give Instruction 11.21.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase "without legal justification" in Instruction 11.21 (see Committee Note to Instruction 11.21), and this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.23
Definition Of Aggravated Battery With A Firearm

A person commits the offense of aggravated battery with a firearm when he, by means of discharging a firearm, [(intentionally) (knowingly)] causes injury to

[1] another person.

[or]

[2] a person he knows to be [(a peace officer) (a person summoned by a peace officer) (a correctional institution employee) (a fireman) (an emergency medical technician) (an ambulance driver) (a medical assistant) (a first aid attendant)] [employed by a municipality [or other governmental unit]]

[a] while the [(officer) (employee) (fireman) (emergency medical technician) (ambulance driver) (medical assistant) (first aid attendant)] is engaged in the execution of his official duties.

[or]

[b] to prevent the [(officer) (employee) (fireman) (emergency medical technician) (ambulance driver) (medical assistant) (first aid attendant)] from performing his official duties.

[or]

[c] in retaliation for the [(officer) (employee) (fireman) (emergency medical technician) (ambulance driver) (medical assistant) (first aid attendant)] performing his official duties.

Committee Note

720 ILCS 5/12-4.2 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-4.2 (1991)), added by P.A. 86-980, effective July 1, 1990; amended by P.A. 87-921, effective January 1, 1993; P.A. 87-1256, effective July 1, 1993; and P.A. 88-433, effective January 1, 1994.

Give Instructions 11.23A and 11.24.

Use the phrase "without legal justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 1961. *See* People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Regarding offenses committed upon emergency medical technicians (EMT) (paragraph [2]), if the definition of EMT or the type of EMT becomes an issue, see Section 4.12, 4.13, or 4.15 of the Emergency Medical Services System Act (210 ILCS 50/4.12, 4.13, or 4.15 (West 1992)) which define EMT-ambulance, EMT-paramedic, and EMT-intermediate. See 720 ILCS 5/2-6.5 (West Supp.1993).

Use applicable paragraphs and bracketed material.

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

11.23A
Definition Of Firearm--Aggravated Battery With A Firearm

The word "firearm" means any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas, or escape of gas.

[However, this word does not include ____.]

Committee Note

720 ILCS 5/83-1.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §83-1.1 (1991)).

The statutory definition on which this instruction is based contains several exclusions, such as a spring-gun, a B-B gun, etc. In the event the case on trial presents a jury issue on the applicability of any of these exclusions, the bracketed second paragraph should be given with the particular device at issue inserted in the blank.

11.24
ISSUES IN AGGRAVATED BATTERY WITH A FIREARM

To sustain the charge of aggravated battery with a firearm, the State must prove the following propositions:

[1] *First Proposition:* That the defendant [(intentionally) (knowingly)] caused injury to another person; and

Second Proposition: That the defendant did so by discharging a firearm.

[or]

[2] *First Proposition:* That the defendant [(intentionally) (knowingly)] caused injury to another person; and

Second Proposition: That the defendant did so by discharging a firearm; and

Third Proposition: That the defendant knew that the other person was [(a peace officer) (a person summoned by a peace officer) (a correctional institution employee) (a fireman) (an emergency medical technician) (an ambulance driver) (a medical assistant) (a first aid attendant)]; and

Fourth Proposition: That the defendant did so

> [a] while the [(peace officer) (correctional officer) (fireman) (emergency medical technician) (ambulance driver) (medical assistant) (first aid attendant)] was engaged in the execution of his official duties.
>
> [or]
>
> [b] to prevent the [(peace officer) (correctional officer) (fireman) (emergency medical technician) (ambulance driver) (medical assistant) (first aid attendant)] from performing his official duties.
>
> [or]
>
> [c] in retaliation for the [(peace officer) (correctional officer) (fireman) (emergency medical technician) (ambulance driver) (medical assistant) (first aid attendant)] performing his official duties.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-4.2 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-4.2 (1991)), added by P.A. 86-980, effective July 1, 1990; amended by P.A. 87-921, effective January 1, 1993; P.A. 87-1256, effective July 1, 1993; and P.A. 88-433, effective January 1, 1994.

Give Instruction 11.23.

Whenever the jury is to be instructed on an affirmative defense, this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction, although it does need to be included in Instruction 11.23 (see the Committee Note to Instruction 11.23).

The bracketed numbers in this instruction correspond with the bracketed numbers in Instruction 11.23. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Use applicable paragraphs and bracketed material.

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

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.25
Definition Of Aggravated Battery Of A Child [Or Institutionalized Mentally Retarded Person]

A person commits the offense of aggravated battery of a child when he, being a person of the age of 18 years or more, [(intentionally) (knowingly)] [without legal justification] by any means, causes [(great bodily harm) (permanent disability) (permanent disfigurement)] to [(any child under the age of 13 years) (any institutionalized severely or profoundly mentally retarded person)].

Committee Note

720 ILCS 5/12-4.3 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4.3 (1991)).

Give Instruction 11.26.

P.A. 85-1392, effective January 1, 1989, amended Section 12-4.3 to include aggravated battery of an institutionalized severely or profoundly mentally retarded person. See also P.A. 85-1440. The offense is still entitled "aggravated battery of a child," and the Committee retained that designation in the body of this instruction. The bracketed reference to "institutionalized mentally retarded person" was included in the title to this instruction to facilitate identification of the appropriate instruction.

Give Instruction 11.65G when the alleged victim is an institutionalized severely or profoundly mentally retarded person.

Use the mental state that conforms to the allegation in the charge. *See* People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Use the phrase "without legal justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of Chapter 720. *See* People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Use applicable bracketed material.

11.26
Issues In Aggravated Battery Of A Child [Or Institutionalized Mentally Retarded Person]

To sustain the charge of aggravated battery of a child, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly)] caused [(great bodily harm) (permanent disability) (permanent disfigurement)] to ____; and

Second Proposition: That when the defendant did so, he was of the age of 18 years or older; and

Third Proposition: That when the defendant did so, ____ was under 13 years.

[or]

Third Proposition: That ____ was an institutionalized severely or profoundly mentally retarded person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-4.3 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4.3 (1991)).

Give Instruction 11.25.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase "without legal justification" in Instruction 11.25 (see Committee Note to Instruction 11.25), and this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Since the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction.

Insert in the blanks the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.27
Definition Of Cruelty To Children

A person commits the offense of cruelty to children when he

[1] wilfully and unnecessarily exposes to the inclemency of the weather any [(child) (apprentice) (person)] under his legal control.

[or]

[2] [(knowingly) (intentionally) (recklessly)] injures the health or limb of a [(child) (apprentice) (person)] under his legal control.

Committee Note

720 ILCS 115/53 (West, 1999) (formerly Ill.Rev.Stat. ch. 23, §2368 (1991)).

Give Instruction 11.28.

The second alternative method of violating the statute excludes wilful and unnecessary exposure "to the inclemency of the weather." Since the second alternative does not contain a mental state, this instruction incorporates the requirements of Chapter 38, Section 4-3. *See* People v. Smith, 60 Ill.App.3d 403, 376 N.E.2d 787, 17 Ill.Dec. 641 (4th Dist.1978). *But see* People v. Miller, 116 Ill.App.3d 361, 452 N.E.2d 391, 72 Ill.Dec. 266 (2d Dist.1983), where the Court held the cruelty statute applies only to conduct committed with the mental state of wilfulness and does not apply to recklessness.

Use applicable paragraphs and bracketed material.

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

11.28
Issue In Cruelty To Children

To sustain the charge of cruelty to children, the State must prove the following proposition:

That the defendant wilfully and unnecessarily exposes to the inclemency of the weather ____, a[n] [(child) (apprentice) (person)] under his legal control.

[or]

That the defendant [(knowingly) (intentionally) (recklessly)] injured the [(health) (limb)] of a[n] [(child) (apprentice) (person)] under his legal control.

If you find from your consideration of all the evidence that the State has proved this proposition beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that the State has not proved this proposition beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 115/53 (West, 1999) (formerly Ill.Rev.Stat. ch. 23, §2368 (1991)).

Give Instruction 11.27.

The mental states referred to in Chapter 720, Section 4-3, have been added to the second alternative proposition. *See* People v. Smith, 60 Ill.App.3d 403, 376 N.E.2d 787, 17 Ill.Dec. 641 (4th Dist.1978). *But see* People v. Miller, 116 Ill.App.3d 361, 452 N.E.2d 391, 72 Ill.Dec. 266 (2d Dist.1983). Give the mental state that conforms with the charge.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.29
Definition Of Endangering Life Or Health Of A Child

A person commits the offense of endangering the life or health of a child when he has the care or custody of a child and wilfully causes or permits [(the life of that child to be endangered) (the health of that child to be injured) (that child to be placed in such a situation that the child's life or health may be endangered)].

Committee Note

720 ILCS 150/4 (West, 1999) (formerly Ill.Rev.Stat. ch. 23, §2354 (1991)).

Give Instruction 11.30.

See People v. Vandiver, 51 Ill.2d 525, 283 N.E.2d 681 (1971), wherein the supreme court held that, for purposes of this section, the word "child" refers to children under 14 years of age, and the word "health" includes, *inter alia*, "freedom from physical injury."

See People v. Marquis, 54 Ill.App.3d 209, 369 N.E.2d 372, 11 Ill.Dec. 918 (4th Dist.1977), concerning the required mental state of wilfulness; see also Chapter 720, Section 4-5.

Use applicable bracketed material.

11.30
Issues In Endangering Life Or Health Of A Child

To sustain the charge of endangering the life or health of a child, the State must prove the following propositions:

First Proposition: That the defendant had the care or custody of ____; and

Second Proposition: That the defendant wilfully caused or permitted [(the life of ____ to be endangered) (the health of ____ to be injured) (____ to be placed in such a situation that endangered the life or health of ____)].

If you find from your consideration of all the evidence that the State has proved each one of these propositions beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that the State has not proved any one of these propositions beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 150/4 (West, 1999) (formerly Ill.Rev.Stat. ch. 23, §2354 (1991)).

Give Instruction 11.29.

Insert in the blanks the name of the child.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.31
Definition Of Tampering With Food, Drugs, Or Cosmetics

A person commits the offense of tampering with food, drugs, or cosmetics when he knowingly puts any substance capable of causing death or great bodily harm to a human being into any food, drug, or cosmetic offered for sale or consumption.

Committee Note

720 ILCS 5/12-4.5 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4.5 (1991)).

Give Instruction 11.32.

11.32
Issues In Tampering With Food, Drugs, Or Cosmetics

To sustain the charge of tampering with food, drugs, or cosmetics, the State must prove the following propositions:

First Proposition: That the defendant knowingly put a substance into a [(food) (drug) (cosmetic)] offered for sale or consumption; and

Second Proposition: That the substance was capable of causing death or great bodily harm to a human being; and

Third Proposition: That the defendant knew the substance was capable of causing death or great bodily harm to a human being.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-4.5 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4.5 (1991)).

Give Instruction 11.31.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.33
Definition Of Aggravated Battery Of A Senior Citizen

A person commits the offense of aggravated battery of a senior citizen when he [(intentionally) (knowingly)] [without legal justification] and by any means causes [(great bodily harm) (permanent disability) (permanent disfigurement)] to an individual of 60 years of age or older.

Committee Note

720 ILCS 5/12-4.6 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4.6 (1991)).

Give Instruction 11.34.

Use the mental state that conforms to the allegations in the charge. *See* People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Use the phrase "without legal justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of Chapter 38. *See* People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Use applicable bracketed material.

11.34
Issues In Aggravated Battery Of A Senior Citizen

To sustain the charge of aggravated battery of a senior citizen, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly)] caused [(great bodily harm) (permanent disability) (permanent disfigurement)] to ____; and

Second Proposition: That when the defendant did so, ____ was an individual of 60 years of age or older.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-4.6 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4.6 (1991)).

Give Instruction 11.33.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase "without legal justification" in Instruction 11.33 (see Committee Note to Instruction 11.33), and this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Since the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this instruction.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.35
Definition Of Drug Induced Infliction Of Great Bodily Harm

A person commits the offense of drug induced infliction of great bodily harm when he knowingly delivers a controlled substance to another and any person experiences [(great bodily harm) (permanent disability)] as a result of the [(injection) (inhalation) (ingestion)] of any amount of that controlled substance.

Committee Note

720 ILCS 5/12-4.6 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4.6 (1991)).

Give Instruction 11.36, and Instruction 17.10, defining the offense of delivery of a controlled substance.

Use applicable bracketed material.

11.36
Issues In Drug Induced Infliction Of Great Bodily Harm

To sustain the charge of drug induced infliction of great bodily harm, the State must prove the following propositions:

First Proposition: That the defendant knowingly delivered a controlled substance; and

Second Proposition: That any person experienced [(great bodily harm) (permanent disability)] as a result of the [(injection) (inhalation) (ingestion)] of the controlled substance.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-4.6 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-4.6 (1991)).

Give Instruction 11.35.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.37
Definition Of Reckless Conduct

A person commits the offense of reckless conduct when he recklessly performs any act which [(causes bodily harm to) (endangers the bodily safety of)] another person.

Committee Note

720 ILCS 5/12-5 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-5 (1991)).

Give Instruction 11.38.

Give Instruction 5.01, defining the word “recklessness.”

Use applicable bracketed material.

11.38
Issue In Reckless Conduct

To sustain the charge of reckless conduct, the State must prove the following proposition:

That the defendant recklessly performed an act which [(caused bodily harm to ____) (endangered the bodily safety of ____)].

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-5 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-5 (1991)).

Give Instruction 11.37.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.39
Definition Of Criminal Housing Management

A person commits the offense of criminal housing management when he, having [(personal management) (control)] of residential real estate, as a [(legal owner) (equitable owner) (managing agent)] of the residential real estate, knowingly permits by his gross [(carelessness) (neglect)] the [(physical condition) (facilities)] of the residential real estate to become or remain so deteriorated that the [(health) (safety)] of any inhabitant is endangered.

Committee Note

720 ILCS 5/12-5.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-5.1 (1991)).

Give Instruction 11.40.

Use applicable bracketed material.

11.40
Issues In Criminal Housing Management

To sustain the charge of criminal housing management, the State must prove the following propositions:

First Proposition: That the defendant had [(personal management) (control)] of the real estate as a [(legal owner) (equitable owner) (managing agent)]; and

Second Proposition: That the nature of the real estate at ____ was residential; and

Third Proposition: That the defendant knowingly, by his gross [(carelessness) (neglect)] permitted the real estate to become or remain so deteriorated that the [(health) (safety)] of an inhabitant was endangered.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-5.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-5.1 (1991)).

Give Instruction 11.39.

Insert in the blank the address of the real estate if alleged in the charge.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.41
Definition Of Intimidation

A person commits the offense of intimidation when he, with intent to cause another to [(perform) (omit the performance of)] any act, communicates to the other person a threat to, without lawful authority,

[1] inflict physical harm on [(the person threatened) (any other person) (property)].

[or]

[2] subject any person to physical [(confinement) (restraint)].

[or]

[3] commit any criminal offense.

[or]

[4] accuse any person of a criminal offense.

[or]

[5] expose any person to [(hatred) (contempt) (ridicule)].

[or]

[6] take action as a public official against [(anyone) (anything)].

[or]

[7] withhold official action as a public official.

[or]

[8] cause [(official action) (withholding of official action)] by a public official.

[or]

[9] bring about or continue a [(strike) (boycott) [other collective action]].

Committee Note

720 ILCS 5/12-6 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-6 (1991)).

Give Instruction 11.42.

The Committee has made the phrase "without lawful authority" applicable to each paragraph because here, unlike the battery statute, the phrase seems to be an integral part of the offense, and not a matter of defense. That is, the statute says: "... threat to perform without lawful authority any of the following acts . . . ." The Committee believes "without lawful authority" is part of the threat and is an element of the crime. See Ill.Ann.Stat. ch. 38, para. 12-6 (Smith-Hurd 1979) (Committee Comments). *But see* People v. Hubble, 81 Ill.App.3d 560, 401 N.E.2d 1282, 37 Ill.Dec. 189 (2d Dist.1980).

Use applicable paragraphs and bracketed material.

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

11.41X
Definition Of Aggravated Intimidation

A person commits the offense of aggravated intimidation when he is a streetgang member and he commits the offense of intimidation in furtherance of the activities of an organized gang.

Committee Note

720 ILCS 5/12-6.2 (West 1997), added by P.A. 89-631, effective January 1, 1997.

Give Instruction 11.42X.

Give Instructions 11.41 and 11.42, the definitional instruction and the issues instruction for the offense of intimidation. See the Committee Notes to Instructions 11.41 and 11.42.

If the definition of the term “streetgang,” “streetgang member,” or “organized gang” becomes an issue, see Instructions 4.20 and 4.21 which define these terms. See 720 ILCS 12-6.2 (c) (West 1997).

11.42
Issues In Intimidation

To sustain the charge of intimidation, the State must prove the following propositions:

First Proposition: That the defendant communicated to ____ a threat to, without lawful authority,

[1] inflict physical harm on [(____) (any other person) (property)];

[or]

[2] subject [(____) (any person)] to physical [(confinement) (restraint)];

[or]

[3] commit any criminal offense;

[or]

[4] accuse [(____) (any person)] of an offense;

[or]

[5] expose [(____) (any person)] to [(hatred) (contempt) (ridicule)];

[or]

[6] take action as a public official against ____;

[or]

[7] withhold official action as a public official;

[or]

[8] cause the [(taking of action) (withholding of action)] by a public official;

[or]

[9] bring about or continue a [(strike) (boycott) [other collective action]];

and

Second Proposition: That the defendant then intended to cause ____ to [(perform) (omit the performance of)] an act.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-6 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-6 (1991)).

Give Instruction 11.41.

Insert in the appropriate blanks the name of the victim, person, or thing.

Use applicable paragraphs and bracketed material.

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

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.42X
Issues In Aggravated Intimidation

To sustain the charge of intimidation, the State must prove the following propositions:

First Proposition: That the defendant was a streetgang member; and

Second Proposition: That the defendant committed the offense of intimidation, and

Third Proposition: That the defendant did so in furtherance of the activities of an organized gang.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-6.2 (West, 1997), added by P.A. 89-631, effective January 1, 1997.

Give Instruction 11.41X.

See the Committee Note to Instruction 11.41X.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.43
Definition Of Compelling Organization Membership Of Persons

A person commits the offense of compelling organization membership of persons when he, with intent to [(solicit or cause any person to join) (deter any person from leaving)] any organization or association, regardless of the nature of the organization or association,

[1] expressly or impliedly threatens to do bodily harm to an individual or that individual's family.

[or]

[2] does bodily harm to an individual or that individual's family.

[or]

[3] uses ____.

Committee Note

720 ILCS 5/12-6.1 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-6.1 (1991)); amended by P.A. 89-8, effective March 21, 1995.

Give Instruction 11.44.

Give this instruction for charges brought under the first paragraph of Section 12-6.1. Give Instruction 11.85 (Definition of Compelling a Person Under 18 Years of Age to Join an Organization or Association) for charges brought under the second paragraph of Section 12-6.1.

The third alternative paragraph, defined in the statute as “any criminally unlawful means” applies only to something other than threats to do bodily harm or the actual infliction of bodily harm. Insert in the blank the criminally unlawful means to which the information or indictment refers.

Use applicable bracketed material.

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

11.44
Issues In Compelling Organization Membership Of Persons

To sustain the charge of compelling organization membership of persons, the State must prove the following propositions:

[1] *First Proposition:* That the defendant expressly or impliedly threatened to do bodily harm to ____ or ____'s family;

[or]

[2] *First Proposition:* That the defendant did bodily harm to ____ or ____'s family;

[or]

[3] *First Proposition:* That the defendant used ____;

and

Second Proposition: That the defendant did so with intent to [(solicit or cause any person to join) (deter any person from leaving)] an organization or association.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-6.1 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-6.1 (1991)); amended by P.A. 89-8, effective March 21, 1995.

Give Instruction 11.44.

Give this instruction for charges brought under the first paragraph of Section 12-6.1. Give Instruction 11.86 (Issues in Compelling a Person Under 18 Years of Age to Join an Organization or Membership) for charges brought under the second paragraph of Section 12-6.1.

Insert in the blank the appropriate name.

The bracketed numbers [1] through [3] correspond to the alternatives of the same number in Instruction 11.43, the definitional instruction for this offense. Select the corresponding alternative First Proposition to the alternative selected from the definitional instruction.

If the third alternative First Proposition is used, insert in the blank the “criminally unlawful means” to which the information or indictment refers.

Use applicable bracketed material.

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

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.45
Definition Of Compelling Confession, Statement, Or Information By Force Or Threat

A person commits the offense of compelling a[n] [(confession) (statement) (information)] by force or threat when he, with the intent to obtain a[n] [(confession) (statement) (information)] regarding any offense [(inflicts) (threatens to inflict)] physical harm on [(the person threatened) (any other person)].

Committee Note

720 ILCS 5/12-7 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-7 (1991)).

Give Instruction 11.46.

Use applicable bracketed material.

11.46
Issues In Compelling Confession, Statement, Or Information By Force Or Threat

To sustain the charge of compelling a[n] [(confession) (statement) (information)] by force or threat, the State must prove the following propositions:

First Proposition: That the defendant [(inflicted) (threatened to inflict)] physical harm on [(____) (another person)]; and

Second Proposition: That the defendant then intended to obtain a[n] [(confession) (statement) (information)] regarding an offense.

If you find from consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-7 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-7 (1991)).

Give Instruction 11.45.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.47
Definition Of Hate Crime

A person commits the offense of hate crime when, by reason of the [(actual) (perceived)] [(race) (color) (creed) (religion) (ancestry) (gender) (sexual orientation) (physical disability) (mental disability) (national origin)] of another [(individual) (group of individuals)], he commits [(assault) (battery) (aggravated assault) (theft) (criminal trespass to residence) (criminal damage to property) (criminal trespass to vehicle) (criminal trespass to real property) (mob action) (disorderly conduct) (harassment by telephone)].

Committee Note

720 ILCS 5/12-7.1 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-7.1 (1991)), amended by P.A. 86-1418, effective January 1, 1991; P.A. 87-440, effective January 1, 1992; P.A. 87-1048, effective January 1, 1993; and P.A. 88-259, effective August 9, 1993.

Give Instruction 11.48.

When hate crime based on sexual orientation is alleged, give Instruction 11.47A, defining the term "sexual orientation."

Give one of the following instructions for the offense committed as part of the offense of hate crime in conformance with the charge: 11.01 (assault); 11.05 (battery); 11.03 (aggravated assault); 13.03, 13.07, 13.09, 13.11, or 13.13 (theft); 14.13 (criminal trespass to residence); 16.01 (criminal damage to property); 16.09 (criminal trespass to vehicle); 16.11 (criminal trespass to real property); 19.01, 19.03, or 19.05 (mob action); 19.07 (disorderly conduct); or 19.09 (harassment by telephone).

Use applicable bracketed material.

11.47A
Definition Of Sexual Orientation

The term "sexual orientation" means heterosexuality, homosexuality, or bisexuality.

Committee Note

720 ILCS 5/12-7.1(d) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-7.1(d) (1991)).

11.48
Issues In Hate Crime

To sustain the charge of hate crime, the State must prove the following propositions:

First Proposition: That the defendant committed the offense of [(assault) (battery) (aggravated assault) (theft) (criminal trespass to residence) (criminal damage to property) (criminal trespass to vehicle) (criminal trespass to real property) (mob action) (disorderly conduct) (harassment by telephone)]; and

Second Proposition: That the defendant did so by reason of the [(actual) (perceived)] [(race) (color) (creed) (religion) (ancestry) (gender) (sexual orientation) (physical disability) (mental disability) (national origin)] of another [(individual) (group of individuals)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-7.1 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-7.1 (1991)), amended by P.A. 86-1418, effective January 1, 1991; P.A. 87-440, effective January 1, 1992; P.A. 87-1048, effective January 1, 1993; and P.A. 88-259, effective August 9, 1993.

Give Instruction 11.47.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.49
Definition Of Threatening Public Officials; Human Service Providers

A person commits the offense of threatening a [(public official) (human service provider)] when he knowingly delivers or conveys, directly or indirectly, to a [(public official) (human service provider)] by any means a communication containing a threat

[1] that would place the [(public official) (human service provider)] [or a member of his immediate family] in reasonable apprehension of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)]

[or]

[2] that would place the [(public official) (human service provider)] [or a member of his immediate family] in reasonable apprehension that damage will occur to property in the custody, care, or control of the [(public official) (human service provider)] [or his immediate family];

and

[1] the threat was conveyed because of the performance or nonperformance of some [(public duty) (duty as a human service provider)].

[or]

[2] the threat was conveyed because of the hostility of the person making the threat toward the status or position of [(the public official) (human service provider)].

[or]

[3] the threat was conveyed because of any other factor relating to the official's public existence.

Committee Note

Instruction and Committee Note Approved May 2, 2014.

720 ILCS 5/12-9 (West 2013), amended by P.A. 91-335, effective January 1, 2000, adding a duly appointed assistant State's Attorney to the definition of "public official", amended by P.A. 91-387 effective January 1, 2000, substituting "by any means a communication" for "any telephone communication, letter, paper, writing, print, missive, or document containing a threat to take the life of or to inflict great bodily harm upon the public official or a member of his immediate family and", amended by P.A. 92-16 effective June 28, 2001, amended by P.A. 95-466 effective June 1, 2008, adding paragraph [a-5], amended by P.A. 96-1551 effective July 1, 2011, deleting "the offense of" and "and willfully" from paragraph [a] and adding assistant Attorney General and Appellate Prosecutor to the definition of "public official", amended by P.A. 97—1079 effective January 1, 2013, adding paragraph [a-6], amended by P.A. 98-529 effective January 1, 2014, adding "human service providers" as persons covered under the act and defining "human service provider".

Give Instruction 11.50

When applicable, give Instruction 11.49A, defining a "public official".

When applicable, give Instruction 11.49B, defining "human service provider".

Use applicable bracketed material.

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

11.49A
Definition Of Public Official And Immediate Family

A person [(holding the position of ____) (who has filed the required documents for nomination or election to the position of ____)] is a public official.

[When I use the term "required documents", I mean _____.]

[The term "immediate family" means a public official's [(spouse) (child) (children)].]

Committee Note

Instruction and Committee Note Approved May 2, 2014.

720 ILCS 5/12-9 (West 2013), amended by P.A. 87-238, effective January 1, 1992.

Section 12-9(b) provides the following definition:

> "Public official" means a person who is elected to office in accordance with a statute or who is appointed to an office which is established, and the qualifications and duties of which are prescribed, by statute, to discharge a public duty for the State or any of its political subdivisions or in the case of an elective office any person who has filed the required documents for nomination or election to such office. "Public official" includes a duly appointed assistant State's Attorney, assistant Attorney General, or Appellate Prosecutor; a sworn law enforcement or peace officer; a social worker, caseworker, or investigator employed by the Department of Healthcare and Family Services, the Department of Human Services, or the Department of Children and Family Services.

The Committee concluded that the nature of the office is a question of law to be decided by the court; whether the person allegedly threatened was such a public official is a question of fact for the jury. Insert in the blank the particular office held or filed for.

When applicable, insert in the blank in the first bracketed sentence the required documents that must be filed for nomination or election. The court should instruct the jury what the required documents are, and the jury need only decide if the documents were filed. The legal sufficiency of the documents is not an issue for the jury.

Use applicable bracketed material.

11.49B
Definition Of Human Service Provider And Immediate Family

A human service provider is a person who is a [(social worker) (case worker) (investigator)] employed by an agency or organization providing [(social work) (case work) (investigative services)] under a [(contract with) (grant from)] [(the Department of Human Services) (the Department of Children and Family Services) (the Department of Healthcare and Family Services) (the Department on Aging)].

[The term "immediate family" means a human service provider's [(spouse) (child) (children)].]

Committee Note

Instruction and Committee Note Approved May 2, 2014.

720 ILCS 5/12-9 (West 2013), amended by P.A. 98-529, effective January 1, 2014.

Section 12-9 provides the following definition:

"Human service provider means a social worker, case worker, or investigator employed by an agency or organization providing social work, case work, or investigative services under a contract with or a grant from the Department of Human Services, the Department of Children and Family Services, the Department of Healthcare and Family Services, or the Department on Aging."

The Committee concluded that the nature of the position is a question of fact to be decided by the jury.

Use applicable bracketed material.

11.50
Issues In Threatening Public Officials; Human Service Providers

To sustain the charge of threatening a [(public official) (human service provider)] the State must prove the following propositions:

First Proposition: That the defendant knowingly delivered or conveyed, directly or indirectly, to a [(public official) (human service provider)] by any means a communication containing a threat

[1] that would place the [(public official) (human service provider)] [or a member of his immediate family] in reasonable apprehension of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)];

[or]

[2] that would place the [(public official) (human service provider)] [or a member of his immediate family] in reasonable apprehension that damage will occur to property in the custody, care, or control of the [(public official) (human service provider)] [or his immediate family];

and

Second Proposition: That ____ was a [(public official) (human service provider)] at the time of the threat;

and

[1] *Third Proposition:* That the threat was conveyed because of the performance or nonperformance of some [(public duty) (duty as a human service provider)].

[or]

[2] *Third Proposition:* That the threat was conveyed because of the hostility of the person making the threat toward the status or position of the [(public official) (human service provider)].

[or]

[3] *Third Proposition:* That the threat was conveyed because of any other factor relating to the official's public existence.

and

Fourth Proposition: That when the defendant conveyed the threat, he knew ____ was then [(a public official) (human service provider)].

[and]

[*Fifth Proposition:* That the threat to a [(sworn law enforcement officer) (social worker) (caseworker) (investigator) (human service provider)] contained specific facts indicative of a unique threat to the [(sworn law enforcement officer) (social worker) (caseworker) (investigator) (human service provider) [(family) (property) of the (sworn law enforcement officer) (social worker) (caseworker) (investigator) (human service provider)]] and not a generalized threat of harm.]

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved May 2, 2014.

720 ILCS 5/12-9 (West 2013).

Give Instructions 11.49.

When applicable give 11.49A.

When applicable give 11.49B.

Insert in the blanks the name of the public official or human service provider.

Use the Fifth Proposition when the public official is a sworn law enforcement officer, social worker, caseworker, investigator or a human service provider.

Use applicable bracketed material.

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

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

11.51
Definition Of Armed Violence (Until June 30, 1994)

A person commits armed violence when he commits [(the offense of ____) (either the offense of ____ or the offense of ____)] while armed with a dangerous weapon.

A person is considered armed with a dangerous weapon when he carries on or about his person or is otherwise armed with a ____. To be considered "otherwise armed," the person must have immediate access to or timely control over the weapon.

Committee Note

720 ILCS 5/33A-2 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §33A-2 (1991)).

Give Instruction 11.52. These instructions should *not* be used for any offense allegedly occurring *after* June 30, 1994.

Give the instruction defining the offense that is the subject of the armed violence.

When the aggravated version of armed violence is charged (see 720 ILCS 5/33A-3(a) (West Supp. 1993)), use Instructions 11.51X and 11.52X.

The judge shall determine whether the offense is a felony defined by Illinois law. However, the offense of armed violence cannot be predicated upon the following offenses: (1) first degree murder, second degree murder, or involuntary manslaughter (*see* People v. Hobbs, 249 Ill.App.3d 679, 683, 619 N.E.2d 258, 261, 188 Ill.Dec. 894, 897 (5th Dist. 1993)); (2) unlawful restraint (*see* People v. Murphy, 261 Ill.App.3d 1019, 1023, 635 N.E.2d 110, 113, 200 Ill.Dec. 9, 12 (2d Dist. 1994)); and (3) aggravated battery based upon the use of a deadly weapon (*see* People v. Haron, 85 Ill.2d 261, 278, 422 N.E.2d 627, 634, 52 Ill.Dec. 625, 632 (1981)).

If the defendant is charged with two or more counts of aggravated battery and armed violence, the armed violence instructions must clearly indicate that it is not predicated upon the offense of aggravated battery based upon the use of a deadly weapon. *See* People v. Hines, 257 Ill.App.3d 238, 244-45, 629 N.E.2d 540, 544, 195 Ill.Dec. 955, 959 (1st Dist. 1993). Accordingly, if the defendant is charged with armed violence and two or more counts of aggravated battery, one of which is aggravated battery based upon use of a deadly weapon, two separate sets of aggravated battery instructions should be given--one set for aggravated battery based upon use of a deadly weapon and the other set for all the other types of aggravated battery charged. See Instructions 11.15 and 11.16. The Committee believes that giving two sets of instructions will assist the jury in differentiating aggravated battery based upon use of a deadly weapon from the other type of aggravated battery charged.

For example, if the defendant is charged with aggravated battery based upon (1) use of a deadly weapon, (2) the victim of the battery being over 60 years of age, and (3) the defendant concealing his identity, two separate sets of Instructions 11.15 and 11.16 should be given. In one set, the phrase "based upon use of a deadly weapon" would be inserted after "A person commits the offense of aggravated battery" at the beginning of both Instructions 11.15 and 11.16. The second set of instructions should include the phrase "other than with the use of a deadly weapon" after the opening phrase. Two parallel sets of verdict forms should also be given. In the armed violence instructions, the phrase "aggravated battery other than with the use of a deadly weapon"

should be inserted in the first blank in Instruction 11.51 and the two blanks in Instruction 11.52.

A conviction for armed violence can be based either on the predicate charged offense or a lesser included offense of the predicate charged offense. Use the applicable bracketed material in the first paragraph. See People v. Simmons, 93 Ill.2d 94, 442 N.E.2d 891, 66 Ill.Dec. 330 (1982).

The Illinois Supreme Court has held that a person is "otherwise armed" for purposes of the armed violence statute only if the person has "immediate access to or timely control over the weapon." People v. Harre, 155 Ill.2d 392, 614 N.E.2d 1235, 185 Ill.Dec. 550 (1993); People v. Condon, 148 Ill.2d 96, 592 N.E.2d 951, 170 Ill.Dec. 271 (1992).

There may be cases were the category of weapon used is an essential element of the offense. If so, the defendant would be entitled to instructions and a jury finding on the category of weapon. *See* People v. Foust, 82 Ill.App.3d 516, 401 N.E.2d 1329, 37 Ill.Dec. 236 (4th Dist. 1980).

See 720 ILCS 5/33A-1 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §33A-1 (1991)), for the list of weapons that applies to this instruction.

Insert in the first blank the same of the "felony defined by Illinois law."

Insert in the second blank the same of the alleged dangerous weapon.

11.51X
Definition Of Aggravated Armed Violence (From July 1, 1994 Until December 31, 1994)

A person commits aggravated armed violence when he commits [(the offense of ____) (either the offense of ____ or the offense of ____)] in relation to the activities of an organized gang while armed with a [(pistol) (revolver) (rifle) (shotgun) (spring gun) (firearm) (sawed-off shotgun) (stun gun or taser) (knife with a blade of at least 3 inches in length) (dagger) (dirk) (switchblade knife) (stiletto)] [or any other deadly or dangerous weapon or instrument of like character], and while

[1] in a school.

[or]

[2] on the real property comprising a school.

[or]

[3] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[4] on the real property comprising a public park.

A person is considered armed with a dangerous weapon when he carries on or about his person or is otherwise armed with a ____. To be considered "otherwise armed," the person must have immediate access to or timely control over the weapon.

Committee Note

720 ILCS 5/33A-3(a) (West Supp. 1993) (formerly Ill.Rev.Stat. ch. 38, §33A-3(a) (1991)), amended by P.A. 88-467, effective July 1, 1994.

Give Instruction 11.52X. These instructions should be used *only* for offenses allegedly occurring between July 1, 1994 and December 31, 1994.

Give the instruction defining the offense that is the subject of the armed violence.

See the Committee Note to Instruction 11.51 regarding offenses which cannot be a predicate offense for armed violence. Also, see the Committee Note to Instruction 11.51 regarding use of this instruction when the predicate offense is aggravated battery.

Section 33A-3(a) provides an enhanced penalty for the violation of Section 33A-2 when committed with a category I weapon (see 720 ILCS 5/33A-1(b)) in relation to organized gang activities on the premises listed in the above alternative paragraphs [1] through [4]. The sentencing range for a violation of Section 33A-2 is enhanced under Section 33A-3(a). Select the alternative that corresponds to the location in the charge.

The Committee has created separate instructions for "aggravated" armed violence because the State must prove the existence of the enhancing factors beyond a reasonable doubt. *See* People v. Martin, 266 Ill.App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist. 1994).

Because the Committee believes that "simple" armed violence instructions will typically be given as a lesser included offense when "aggravated" armed violence is charged, the Committee titled this offense "aggravated armed violence" to distinguish it from "simple" armed violence. If only "aggravated" armed violence instructions are given to the jury, the term "aggravated" should be removed from the title as set out in the first sentence of this instruction and issues Instruction 11.52X.

A conviction for armed violence can be based either on the predicate charged offense or a lesser included offense of the predicate charged offense. Use the applicable bracketed material in the first paragraph. *See* People v. Simmons, 93 Ill.2d 94, 442 N.E.2d 891, 66 Ill.Dec. 330 (1982).

The Illinois Supreme Court has held that a person is "otherwise armed" for purposes of the armed violence statute only if the person has "immediate access to or timely control over the weapon." People v. Harre, 155 Ill.2d 392, 614 N.E.2d 1235, 185 Ill.Dec. 550 (1993); People v. Condon, 148 Ill.2d 96, 592 N.E.2d 951, 170 Ill.Dec. 271 (1992).

When applicable, give Instruction 18.35A (defining the term "switchblade knife"), Instruction 18.35E (defining the term "stun gun or taser"), Instruction 18.35F (defining the term "school"), and Instruction 18.35G (defining the term "firearm").

If the definition of "organized gang" becomes an issue, see Section 10 of the Streetgang Terrorism Omnibus Prevention Act (740 ILCS 147/10 (West Supp. 1993)) which defines this term. See 720 ILCS 33A-3(a) (West Supp. 1993).

Insert in the first blank the name of the "felony defined by Illinois law."

Use applicable paragraphs and bracketed material.

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

11.51Y
Definition Of Armed Violence (As Of January 1, 1995)

A person commits armed violence when he commits [(the offense of ____) (either the offense of ____ or the offense of ____)] while he carries on or about his person or is otherwise armed with a

[1] [(handgun) (sawed-off shotgun) (sawed-off rifle)] [or any other firearm small enough to be concealed upon his person].

[or]

[2] [(semiautomatic firearm) (machine gun)].

[or]

[3] [(rifle) (shotgun) (spring gun) (firearm) (stun gun or taser) (knife with a blade of at least 3 inches in length) (dagger) (dirk) (switchblade knife) (stiletto) (axe) (hatchet)] [or other deadly or dangerous weapon or instrument of like character].

A person is consider armed with a dangerous weapon when he carries on or about his person or is otherwise armed with a ____. To be considered "otherwise armed," the person must have immediate access to or timely control over the weapon.

Committee Note

720 ILCS 5/33A-3(a) and 3(a-5) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §33A-3(a) (1991)), amended by P.A. 8-680, effective January 1, 1995.

P.A. 88-680, effective January 1, 1995, substantively amended Section 33A-1 and 33A-3. As a result, *only* use this instruction for cases in which the alleged armed violence occurred on or after January 1, 1995. For armed violence offenses which occurred between July 1, 1994, and December 31, 1994, use Instruction 11.51X. See the Committee Note to Instruction 11.51X.

Give Instruction 11.52Y.

Give the instruction defining the offense that is the subject of the armed violence.

See the Committee Note to Instruction 11.51 regarding offenses which cannot be a predicate offense for armed violence. Also, see the Committee Note to Instruction 11.51 regarding use of this instruction when the predicate offense is aggravated battery.

Section 33A-3(a) and 3(a-5) provide an enhanced penalty for the violation of Section 33A-2 when committed with a category I or category II weapon (see 720 ILCS 5/33A-1(b)). The sentencing range for a violation of Section 33A-2 is enhanced under Section 33A-3(a) and 3(a-5). Alternatives [1] and [2] set forth the category I weapons, and alternative [3] sets forth the category II weapons. Select the alternative that corresponds to the weapon in the charge.

A conviction for armed violence can be based either on the predicate charged offense or a

lesser included offense of the predicate charged offense. Use the applicable bracketed material in the first paragraph. *See* People v. Simmons, 93 Ill.2d 94, 442 N.E.2d 891, 66 Ill.Dec. 330 (1982).

The Illinois Supreme Court has held that a person is "otherwise armed" for purposes of the armed violence statute only if the person has "immediate access to or timely control over the weapon." People v. Harre, 155 Ill.2d 392, 614 N.E.2d 1235, 185 Ill.Dec. 550 (1993); People v. Condon, 148 Ill.2d 96, 592 N.E.2d 951, 170 Ill.Dec. 271 (1992).

The Committee has created separate instructions for armed violence because the State must prove the existence of the enhancing factors beyond a reasonable doubt. *See* People v. Martin, 266 Ill.App.3d 369, 378-79, 640 N.E.2d 638, 645, 203 Ill.Dec. 718, 725 (4th Dist. 1994).

When applicable, give Instruction 18.35A (defining the term "switchblade knife"), Instruction 18.35D (defining the term "machine gun"), Instruction 18.35E (defining the term "stun gun or taser"), Instruction 18.35G (defining the term "firearm"), Instruction 18.35I (defining the term "handgun"), and Instruction 18.35K (defining the term "semiautomatic firearm").

Insert in the first blank the name of the "felony defined by Illinois law."

Use applicable paragraphs and bracketed material.

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

11.52
Issues In Armed Violence (Until June 30, 1994)

To sustain the charge of armed violence, the State must prove the following propositions:

First Proposition: That the defendant committed [(the offense of ____) (either the offense of ____ or the offense of ____)]; and

Second Proposition: That when the defendant committed [(the offense of ____) (either the offense of ____ or the offense of ____)] he was armed with a dangerous weapon.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/33A-2 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §33A-2 (1991)).

Give Instruction 11.51, and see the Committee Note concerning category of weapons, the predicate felony offense charged, and the need for separate sets of instructions if the predicate offense is one type of aggravated battery and the defendant is also charged with aggravated battery based upon use of a deadly weapon. Instructions 11.51 and 11.52 should *not* be used for any offense allegedly occurring *after* June 30, 1994.

Insert in the appropriate blanks the name of the offense.

A conviction for armed violence can be based either on the predicate charged offense or a lesser included offense of the predicate charged offense. Use the applicable bracketed material in the first paragraph. *See* People v. Simmons, 93 Ill.2d 94, 442 N.E.2d 891, 66 Ill.Dec. 330 (1982).

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.52X
Issues In Aggravated Armed Violence (From July 1, 1994 Until December 31, 1994)

To sustain the charge of aggravated armed violence, the State must prove the following propositions:

First Proposition: That the defendant committed [(the offense of ____) (either the offense of ____ or the offense of ____)];

Second Proposition: That when the defendant committed [(the offense of ____) (either the offense of ____ or the offense of ____)], he was armed with a [(pistol) (revolver) (rifle) (shotgun) (spring gun) (firearm) (sawed-off shotgun) (stun gun or taser) (knife with a blade of at least 3 inches in length) (dagger) (dirk) (switchblade knife) (stiletto)] [or any other deadly or dangerous weapon or instrument of like character]; and

Third Proposition: That defendant committed this offense in relation to the activities of an organized gang; and

Fourth Proposition: That the defendant did so while

[1] in a school.

[or]

[2] on the real property comprising a school.

[or]

[3] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[4] on the real property comprising a public park.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/33A-3(a) (West Supp. 1993) (formerly Ill.Rev.Stat. ch. 38, §33A-3(a) (1991)), amended by P.A. 88-467, effective July 1, 1994.

Give Instruction 11.51X, and see the Committee Note concerning the category of weapon and the predicate felony offense charged. Instructions 11.51X and 11.52X should be used *only* for an offense allegedly occurring between July 1, 1994 and December 31, 1994.

See also the Committee Note to Instruction 11.51X concerning the need for definitional instructions and a discussion of sentencing enhancement under Section 33A-3(a).

A conviction for armed violence can be based either on the predicate charged offense or a lesser included offense of the predicate charged offense. Use the applicable bracketed material in the first paragraph. *See* People v. Simmons, 93 Ill.2d 94, 442 N.E.2d 891, 66 Ill.Dec. 330 (1982).

Use applicable paragraphs and bracketed material.

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

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.52Y
Issues In Armed Violence (As Of January 1, 1995)

To sustain the charge of armed violence, the State must prove the following propositions:

First Proposition: That the defendant committed [(the offense of ____) (either the offense of ____ or the offense of ____)]; and

Second Proposition: That when the defendant committed [(the offense of ____) (either the offense of ____ or the offense of ____)], he was carrying on or about his person or was otherwise armed with a

[1] [(handgun) (sawed-off shotgun) (sawed-off rifle)] [or any other firearm small enough to be concealed upon his person].

[or]

[2] [(semiautomatic firearm) (machine gun)].

[or]

[3] [(rifle) (shotgun) (spring gun) (firearm) (stun gun or taser) (knife with a blade of at least 3 inches in length) (dagger) (dirk) (switchblade knife) (stiletto) (axe) (hatchet)] [or other deadly or dangerous weapon or instrument of like character].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/33A-3(a) and 3(a-5) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §33A-3(a) (1991)), amended by P.A. 88-680, effective January 1, 1995.

P.A. 88-680, effective January 1, 1995, substantively amended Section 33A-1 and 33A-3. As a result, *only* use this instruction for cases in which the alleged armed violence occurred on or after January 1, 1995. For armed violence offenses which occurred between July 1, 1994, and December 31, 1994, use Instruction 11.52X. See the Committee Note to Instruction 11.52X.

Give Instruction 11.51Y, and see the Committee Note concerning the category of weapon and the predicate felony offense charged.

See also the Committee Note to Instruction 11.51Y concerning the need for definitional instructions and a discussion of sentencing enhancement under Section 33A-3(a) and 3(a-5).

A conviction for armed violence can be based either on the predicate charged offense or a lesser included offense of the predicate charged offense. Use the applicable bracketed material in the first paragraph. *See* People v. Simmons, 93 Ill.2d 94, 442 N.E.2d 891, 66 Ill.Dec. 330 (1982).

Use applicable paragraphs and bracketed material.

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

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.53
Definition Of Home Invasion

A person commits the offense of home invasion when he, [(not being a peace officer acting in the line of duty, without authority, knowingly enters the dwelling place of another) (falsely represents himself, including but not limited to, falsely represents himself to be a representative of any unit of government or a construction company or a telecommunications company or a utility company, for the purpose of gaining entry to the dwelling place of another)] [(when) (and remains in such dwelling place until)] he knows or has reason to know that one or more persons is present), and

[1] while armed with a dangerous weapon, other than a firearm, he uses force or threatens the imminent use of force upon any person or persons within the dwelling place whether or not injury occurs.

[or]

[2] intentionally causes any injury to any person within the dwelling place.

[or]

[3] while armed with a firearm uses force or threatens the imminent use of force upon any person or persons within the dwelling place whether or not injury occurs.

[or]

[4] uses force or threatens the imminent use of force upon any person or persons within the dwelling place whether or not injury occurs and during the commission of the offense personally discharges a firearm.

[or]

[5] personally discharges a firearm that proximately causes [(great bodily harm) (permanent disability) (permanent disfigurement) (death)] to another person within the dwelling place.

[or]

[6] commits, against any person or persons within that dwelling place, the offense of [(criminal sexual assault) (aggravated criminal sexual assault) (predatory criminal sexual assault of a child) (criminal sexual abuse) (aggravated criminal sexual abuse).

Committee Note

Instruction and Committee Note Approved May 13, 2015

720 ILCS 5/19-6 (West 2013), amended by P.A. 90-787, effective August 14, 1998 defining "dwelling place of another"; amended by P.A. 91-404, effective January 1, 2000, inserting "other than a firearm" and adding paragraphs [3], [4], and [5]; amended by P.A. 91-928, effective June 1, 2001, adding paragraph [6]; amended by P.A. 96-113, effective January 1, 2011, inserting "or who falsely represents himself or herself, including but not limited to, falsely representing himself or herself to be a representative of any unit of government or a construction, telecommunications, or utility company, for the purpose of gaining entry to the dwelling place of another when he or she knows or has reason to know that one or more persons are present"; amended by P.A. 97-1108, effective January 1,2013, renumbering this section which was formerly 720 ILCS 5/12-11.

Give Instruction 11.54.

When applicable, give Instruction 11.53A when an issue arises regarding the defendant's criminal intent when he entered the dwelling and whether this intent, or lack thereof, makes his entry into the dwelling "with authority" or "without authority". See the Committee Note to Instruction 11.53A.

When applicable, give Instruction 11.53B, defining "injury".

When applicable, give Instruction 11.53C, defining "dwelling place of another".

When applicable, give Instruction 11.55, defining "criminal sexual assault".

When applicable, give Instruction 11.57, defining "aggravated criminal sexual assault".

When applicable, give Instruction 11.103, defining "predatory criminal sexual assault of a child".

When applicable, give Instruction 11.59, defining "criminal sexual abuse".

When applicable, give Instruction 11.61, defining "aggravated criminal sexual abuse".

When the nature of the place is an issue, give Instruction 4.03, defining "dwelling place".

When applicable, give Instructions 24-25.25, "defense to home invasion" and 24-25-25A, "issue in defense to home invasion".

Use applicable paragraphs and bracketed material.

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

11.53A
Unauthorized Entry--Limited Authority Doctrine--Home Invasion And Residential Burglary

The defendant's entry into a dwelling of another is "without authority" if, at the time of entry into the dwelling, the defendant has an intent to commit a criminal act within the dwelling regardless of whether the defendant was initially invited into or received consent to enter the dwelling.

However, the defendant's entry into the dwelling is "with authority" if the defendant enters the dwelling without criminal intent and was initially invited into or received consent to enter the dwelling, regardless of what the defendant does after he enters.

Committee Note

This instruction should be given *only* when an issue arises regarding the defendant's criminal intent when he entered the dwelling, and whether this intent, or lack thereof, affects the status of his entry--"with authority" or "without authority". *See* People v. Bush, 157 Ill.2d 248, 253-54, 623 N.E.2d 1361, 1364, 191 Ill.Dec. 475, 478 (1993).

The Illinois Supreme Court specifically requested that the Committee write an instruction which conveys the "limited-authority" doctrine to the jury. *See Bush*, 157 Ill.2d at 257, 623 N.E.2d at 1365, 191 Ill.Dec. at 479 ("an instruction regarding the limited authority doctrine is necessary to augment the IPI instructions on home invasion"). The "limited-authority" doctrine provides that a defendant's authority to enter a private residence is limited only to the specific purpose for which he entered. Thus, the defendant's entry into a dwelling is unauthorized if prior to the defendant's entry into the dwelling, the defendant intends to commit a criminal act within the dwelling. When this is the case, the status of his entry is *not affected* by whether he was invited into the dwelling or received consent to enter the dwelling. As noted by the court in Bush,

> "No individual who is granted access to a dwelling can be said to be an authorized entrant if he intends to commit criminal acts therein, because, if such intentions had been communicated to the owner at the time of entry, it would have resulted in the individual's being barred from the premises *ab initio*." *Bush*, 157 Ill.2d at 253-54, 623 N.E.2d at 1364, 191 Ill.Dec. at 478.

However, if the defendant does not form his criminal intent until after he has entered the dwelling, then his invited or consented entry into the dwelling is authorized. *Bush*, 157 Ill.2d at 253-54, 623 N.E.2d at 1364, 191 Ill.Dec. at 478; *see also* People v. Peeples, 155 Ill.2d 422, 487-88, 616 N.E.2d 294, 325, 186 Ill.Dec. 341, 372 (1993).

In Bush, an issue arose whether the defendant had been invited into another's residence wherein an altercation had occurred. The trial court, over the defendant's objection, supplemented the home invasion instructions with a non-IPI instruction which discussed whether the defendant's entry was unauthorized. The Illinois Supreme Court held that an instruction setting forth the limited authority doctrine was appropriate in this case, but that the trial court's non-IPI instruction had misstated the doctrine. Accordingly, the supreme court stated that the defendant was entitled to a new trial with an instruction which correctly set forth the limited authority doctrine. People v. Bush, 157 Ill.2d 248, 257, 623 N.E.2d 1361, 1365, 191 Ill.Dec. 475, 479 (1993).

11.53B
Definition Of Injury

The term "injury" in the definition of home invasion may include physical injury. It also includes psychological or emotional trauma if that trauma was the result of some physical contact.

Committee Note

Give Instructions 11.53 and 11.54.

This instruction should be given when the evidence presents an issue as to whether or not the defendant caused an injury to a person within the dwelling place. The term "an injury" has been held not to require physical evidence of bodily harm, such as bruises, lacerations, etc. People v. Garrett, 281 Ill.App.3d 535, 667 N.E.2d 130, 217 Ill.Dec. 337 (5th Dist.1996). *See also* People v. Garza, 125 Ill.App.3d 182, 465 N.E.2d 595, 80 Ill.Dec. 483 (1st Dist.1984); People v. Ehrich, 165 Ill.App.3d 1060, 519 N.E.2d 1137, 116 Ill.Dec. 922 (4th Dist.1998).

11.53C
Definition Of Dwelling Place Of Another

The phrase "dwelling place of another" includes a dwelling place where the defendant maintains a tenancy interest but from which the defendant has been barred by a [(divorce decree) (judgment of dissolution of marriage) (order of protection) (_____)].

Committee Note

Instruction and Committee Note Approved May 13, 2015

720 ILCS 5/19-6(d) (West 2013), effective August 14, 1998.

Insert in the blank the "other court order" which bars the defendant from entry into the dwelling place.

11.54
Issues In Home Invasion

To sustain the charge of home invasion, the State must prove the following propositions:

First Proposition: That the defendant was not a peace officer acting in the line of duty; and

[or]

First Proposition: That the defendant falsely represented himself [to be a representative of (any unit of government) (a construction company) (a telecommunications company) (utility company) (_____)] for the purpose of gaining entry to the dwelling place of another; and

Second Proposition: That the defendant knowing and without authority entered the dwelling place of another; and

Third Proposition: That [(when the defendant entered the dwelling place) (the defendant remained in the dwelling place until)] he knew or had reason to know that one or more persons was present; and

Fourth Proposition: That the defendant was armed with a dangerous weapon other than a firearm; and

Fifth Proposition: That while armed with a dangerous weapon other than a firearm the defendant [(used force) (threatened the imminent use of force)] on _____, a person within the dwelling place.

[or]

First Proposition: That the defendant was not a peace officer acting in the line of duty; and

[or]

First Proposition: That the defendant falsely represented himself [to be a representative of (any unit of government) (a construction company) (a telecommunications company) (utility company) (_____)] for the purpose of gaining entry to the dwelling place of another; and

Second Proposition: That the defendant knowing and without authority entered the dwelling place of another; and

Third Proposition: That [(when the defendant entered the dwelling place) (the defendant remained in the dwelling place until)] he knew or had reason to know that one or more persons was present; and

Fourth Proposition: The defendant intentionally caused injury to _____, a person within the dwelling place.

[or]

First Proposition: That the defendant was not a peace officer acting in the line of duty; and

[or]

First Proposition: That the defendant falsely represented himself [to be a representative of (any unit of government) (a construction company) (a telecommunications company) (utility company) (_____)] for the purpose of gaining entry to the dwelling place of another; and

Second Proposition: That the defendant knowing and without authority entered the dwelling place of another; and

Third Proposition: That [(when the defendant entered the dwelling place) (the defendant remained in the dwelling place until)] he knew or had reason to know that one or more persons was present; and

Fourth Proposition: That the defendant was armed with a firearm; and

Fifth Proposition: That while armed with a firearm the defendant [(used force) (threatened the imminent use of force)] on _____, a person within the dwelling place.

[or]

First Proposition: That the defendant was not a peace officer acting in the line of duty; and

[or]

First Proposition: That the defendant falsely represented himself [to be a representative of (any unit of government) (a construction company) (a telecommunications company) (utility company) (_____)] for the purpose of gaining entry to the dwelling place of another; and

Second Proposition: That the defendant knowing and without authority entered the dwelling place of another; and

Third Proposition: That [(when the defendant entered the dwelling place) (the defendant remained in the dwelling place until)] he knew or had reason to know that one or more persons was present; and

Fourth Proposition: That the defendant [(used force) (threatened the imminent use of force)] on _____, a person within the dwelling place; and

Fifth Proposition: That the defendant personally discharged a firearm during the commission of the offense.

[or]

First Proposition: That the defendant was not a peace officer acting in the line of duty; and

[or]

First Proposition: That the defendant falsely represented himself [to be a representative of (any unit of government) (a construction company) (a telecommunications company) (utility company) (_____)] for the purpose of gaining entry to the dwelling place of another; and

Second Proposition: That the defendant knowing and without authority entered the dwelling place of another; and

Third Proposition: That [(when the defendant entered the dwelling place) (the defendant remained in the dwelling place until)] he knew or had reason to know that one or more persons was present; and

Fourth Proposition: That the defendant personally discharged a firearm during the commission of the offense which proximately caused [(great bodily harm) (permanent disability) (permanent disfigurement) (death)] to _____, a person within the dwelling place.

[or]

First Proposition: That the defendant was not a peace officer acting in the line of duty; and

[or]

First Proposition: That the defendant falsely represented himself [to be a representative of (any unit of government) (a construction company) (a telecommunications company) (utility company) (_____)] for the purpose of gaining entry to the dwelling place of another; and

Second Proposition: That the defendant knowing and without authority entered the dwelling place of another; and

Third Proposition: That [(when the defendant entered the dwelling place) (the defendant remained in the dwelling place until)] he knew or had reason to know that one or more persons was present; and

Fourth Proposition: That the defendant committed the offense of [(criminal sexual assault) (aggravated criminal sexual assault) (predatory criminal sexual assault of a child) (criminal sexual abuse) (aggravated criminal sexual abuse)] on _____, a person within the dwelling place.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved May 13, 2015

720 ILCS 5/19-6 (West 2013), amended by P.A. 90-787, effective August 14, 1998 defining "dwelling place of another"; amended by P.A. 91-404, effective January 1, 2000, inserting "other than a firearm" and adding paragraphs [3], [4], and [5]; amended by P.A. 91-928, effective June 1, 2001, adding paragraph [6]; amended by P.A. 96-113, effective January 1, 2011, inserting "or who falsely represents himself or herself, including but not limited to, falsely representing himself or herself to be a representative of any unit of government or a construction, telecommunications, or utility company, for the purpose of gaining entry to the dwelling place of another when he or she knows or has reason to know that one or more persons are present"; amended by P.A. 97-1108, effective January 1,2013, renumbering this section which was formerly 720 ILCS 5/12-11.

Give Instruction 11.53.

When applicable, give Instruction 11.53A when an issue arises regarding the defendant's criminal intent when he entered the dwelling and whether this intent, or lack thereof, makes his entry into the dwelling "with authority" or "without authority". See the Committee Note to Instruction 11.53A.

When applicable, give Instruction 11.53B, defining "injury".

When applicable, give Instruction 11.53C, defining "dwelling place of another".

When applicable, give Instruction 11.55, defining "criminal sexual assault".

When applicable, give Instruction 11.57, defining "aggravated criminal sexual assault".

When applicable, give Instruction 11.103, defining "predatory criminal sexual assault of a child".

When applicable, give Instruction 11.59, defining "criminal sexual abuse".

When applicable, give Instruction 11.61, defining "aggravated criminal sexual abuse".

When the nature of the place is an issue, give Instruction 4.03, defining "dwelling place".

When applicable, give Instructions 24-25.25, "defense to home invasion" and 24-25-25A, "issue in defense to home invasion".

Insert in the blanks the name of the victim in the applicable Fourth or Fifth Proposition.

Insert in the blank in the second alternative First Proposition the type of entity that the defendant falsely represented himself to be a representative of.

Use applicable paragraphs and bracketed material.

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

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

11.55
Definition Of Criminal Sexual Assault

A person commits the offense of criminal sexual assault when he

[1] commits an act of sexual penetration upon the victim by the use of force or threat of force.

[or]

[2] commits an act of sexual penetration upon the victim knowing that the victim was unable to [(understand the nature of the act) (give knowing consent to the act)].

[or]

[3] is a [(family member) (person responsible for the child's welfare)] and commits an act of sexual penetration with the victim who was under 18 years of age when the act is committed.

[or]

[4] commits an act of sexual penetration with the victim who was at least 13 years of age but under 18 years of age when the act is committed, and he is 17 years of age or older and holds a position of trust, authority, or supervision in relation to the victim.

Committee Note

720 ILCS 5/12-13 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-13 (1991)), amended by P.A. 85-1030, effective July 1, 1988; P.A. 85-1209, effective August 30, 1988; and P.A. 85-1440, effective February 1, 1989.

Give Instruction 11.56.

Give Instruction 11.65E, defining the term “sexual penetration”.

In paragraph [3], the bracketed material concerning a person responsible for the child's welfare was added by P.A. 85-1209 and should be used only for offenses committed after the effective date of that Act and before the effective date of P.A. 85-1440 which deleted that element. When applicable, give Instruction 11.65B, defining the term “family member.” When applicable, give Instruction 11.65H, defining the phrase “a person responsible for the child's welfare.”

The offense defined in paragraph [4] was added by P.A. 85-1030, deleted by P.A. 85-1209, and re-added by P.A. 85-1440, and that portion of the instruction should be used only for offenses committed between the effective dates of P.A. 85-1030 and P.A. 85-1209, and after the effective date of P.A. 85-1440.

The Third District Appellate Court has held that the phrase “a position of trust, authority, or supervision” is not unconstitutionally vague and that the words should be understood in their ordinary dictionary meanings. People v. Secor, 279 Ill.App.3d 389, 664 N.E.2d 1054, 216 Ill.Dec. 126 (1996). *See also* People v. Reynolds, 294 Ill.App.3d 58, 689 N.E.2d 335, 228 Ill.Dec. 463 (1st Dist.1997).

In People v. Terrell, 132 Ill.2d 178, 547 N.E.2d 145, 138 Ill.Dec. 176 (1989), the supreme court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that in the legislature's silence a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill.2d at 210, 547 N.E.2d at 159, 138 Ill.Dec. at 190; see also Sections 4-3 through 4-6; Committee Notes to Instructions 5.01A and 5.01B. However, in People v. Burton, 201 Ill.App.3d 116, 558 N.E.2d 1369, 146 Ill.Dec. 1035 (4th Dist.1990), the court held that Terrell does not require the mental states to be included in the jury instruction. *See also* People v. Smith, 209 Ill.App.3d 1043, 568 N.E.2d 482, 154 Ill.Dec. 482 (4th Dist.1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault.

If the defendant is a physician, nurse, or other medical professional who claims to have been conducting a medical procedure consistent with reasonable medical standards, the State must prove “beyond a reasonable doubt what the reasonable medical standards were, that the physician intentionally transgressed those standards, and that the patient did not consent to the transgressions.” In such a case, modified instructions will be necessary. *See* People v. Burpo, 164 Ill.2d 261, 265, 647 N.E.2d 996, 998, 207 Ill.Dec. 503, 505 (1995).

Use applicable bracketed material.

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

For an example of this instruction, see Sample Set 27.03.

11.56
Issues In Criminal Sexual Assault

To sustain the charge of criminal sexual assault, the State must prove the following propositions:

[1] *First Proposition:* That the defendant committed an act of sexual penetration upon ____; and

Second Proposition: That the act was committed by the use of force or threat of force[; and

Third Proposition: That ____ did not consent to the act of sexual penetration].

[or]

[2] *First Proposition:* That the defendant committed an act of sexual penetration upon ____; and

Second Proposition: That the defendant knew that ____ was unable to [(understand the nature of the act) (give knowing consent to the act)].

[or]

[3] *First Proposition:* That the defendant committed an act of sexual penetration upon ____; and

Second Proposition: That ____ was under 18 years of age when the act was committed; and

Third Proposition: That the defendant was [(a family member) (a person responsible for the child's welfare)].

[or]

[4] *First Proposition:* That the defendant committed an act of sexual penetration upon ____; and

Second Proposition: That when the act was committed ____ was at least 13 years of age but under 18 years of age; and

Third Proposition: That when the act was committed the defendant was 17 years of age or over; and

Fourth Proposition: That when the act was committed the defendant held a position of trust, authority, or supervision in relation to the victim.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-13(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-13(a) (1991)).

Give Instruction 11.55.

See the Committee Note to Instruction 11.55 to distinguish recent additions to the statute.

The Third District Appellate Court has held that the phrase "a position of trust, authority, or supervision" is not unconstitutionally vague and that the words should be understood in their ordinary dictionary meanings. People v. Secor, 279 Ill.App.3d 389, 664 N.E.2d 1054, 216 Ill.Dec. 126 (1996). *See also* People v. Reynolds, 294 Ill.App.3d 58, 689 N.E.2d 335, 228 Ill.Dec. 463 (1st Dist.1997).

When force or the threat of force is an element of the offense and the defense of consent is raised by the evidence, it is necessary under People v. Coleman, 166 Ill.App.3d 242, 520 N.E.2d 55, 117 Ill.Dec. 65 (1st Dist.1987), to give the bracketed Third Proposition in the first set of propositions. Also give Instructions 11.63 and 11.63A. See Chapter 720, Section 12-17(a) and the Introduction to Chapter 24-25.00. However, for a contrary discussion, *see* People v. Roberts, 182 Ill.App.3d 313, 537 N.E.2d 1080, 130 Ill.Dec. 751 (1st Dist.1989), where the court held that it was not plain error to omit the instruction on consent because proof of force implicitly establishes lack of consent.

Insert in the blanks the name of the victim.

Use applicable bracketed material.

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

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

For an example of the use of this instruction, see Sample Set 27.03.

11.57
Definition Of Aggravated Criminal Sexual Assault

[a] A person commits the offense of aggravated criminal sexual assault when he commits criminal sexual assault and

[1] [(displays) (threatens to use) (uses)] [(a dangerous weapon other than a firearm) (any object fashioned or utilized in such a manner as to lead the victim under the circumstances reasonably to believe it to be a dangerous weapon)].

[or]

[2] causes bodily harm to the victim.

[or]

[3] acts in such a manner as to threaten or endanger the life of [(the victim) (any other person)].

[or]

[4] the criminal sexual assault is perpetrated during the course of the [(commission) (attempted commission)] of the offense of ____.

[or]

[5] the victim is 60 years of age or over when the offense is committed.

[or]

[6] the victim is a physically handicapped person when the offense is committed.

[or]

[7] as part of the same course of conduct, delivers by [(injection) (inhalation) (ingestion) (transfer of possession) (any other means)] to the victim [(without his or her consent) (by threat or deception)], and for other than medical purposes, any controlled substance.

[or]

[8] is armed with a firearm.

[or]

[9] personally discharges a firearm during the commission of the offense.

[or]

[10] personally discharges a firearm during the commission of the offense that proximately causes [(great bodily harm) (permanent disability) (permanent disfigurement) (death)] to another person.

[or]

[b] A person commits the offense of aggravated criminal sexual assault when he is under 17 years of age and commits an act of sexual penetration with

[1] a victim who is under 9 years of age when the act is committed.

[or]

[2] a victim who is at least 9 years of age but under 13 years of age when the act is committed and the accused used [(force) (threat of force)] to commit the act.

[or]

[c] A person commits the offense of aggravated criminal sexual assault when he

[1] commits an act of sexual penetration with a victim and

[2] the victim is a severely or profoundly mentally retarded person at the time the act is committed.

Committee Note

720 ILCS 5/12-14 (West 2011) (formerly Ill.Rev.Stat. ch. 38, §12-14 (1991)), amended by P.A. 85-691, effective January 1, 1988; P.A. 85-1392, effective January 1, 1989; P.A. 89-428, effective December 13, 1995; P.A. 89-462, effective May 29, 1996; P.A. 90-396, effective January 1, 1998; P.A. 90-735, effective August 11, 1998; P.A. 91-404, effective January 1, 2000; P.A. 92-434, effective January 1, 2002; P.A. 92-502, effective December 19, 2001; P.A. 92-721, effective January 1, 2003.

Give Instruction 11.55.

When paragraph [a] or paragraph [c] is used, give appropriate set of propositions in Instruction 11.58.

Insert in the blank the name of the felony.

When the charge against defendant of criminal sexual assault is based on defendant's being a family member or person responsible for the child's welfare, aggravated by a factor listed in this instruction, give Instruction 11.58A.

When paragraph [b] is used give Instruction 11.58B.

In alternative [a] [6], the element concerning a victim who was physically handicapped was added by P.A. 85-691, and that portion of the instruction should be used only for offenses committed after the effective date of that Act.

In paragraph [c], the element concerning the mental disability of the victim was added by

P.A. 85-1392, and that portion of the instruction should be used only for offenses committed after the effective date of that Act. When applicable, give Instruction 11.65G, defining “institutionalized severely or profoundly mentally retarded person”.

In People v. Terrell, 132 Ill.2d 178, 547 N.E.2d 145 (1989), the supreme court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that in the legislature's silence a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill.2d at 210; *see* also 720 ILCS 5/43 through 4-6 (West 2010); Committee Notes to Instructions 5.01A and 5.01B. However, in People v. Burton, 201 Ill.App.3d 116, 558 N.E.2d 1369 (4th Dist.1990), the court held that Terrell does not require the mental states to be included in the jury instruction. *See also* People v. Smith, 209 Ill.App.3d 1043, 568 N.E.2d 482 (4th Dist.1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault. In People v. Simms, 192 Ill.2d 348, 736 N.E.2d 1092 (2000), the supreme court agreed with Burton that jury instructions on a specific mental state are not required for the offense of aggravated criminal sexual assault.

Alternative [a][7] was added by P.A.90-735, and that portion of the instruction should be used only for offenses committed after the effective date of that Act.

P.A. 91-404 added alternatives [a][8], [a][9] and [a][10] and added the element “other than a firearm” to [a][1]. These portions of the instruction should be used only for offenses committed after the effective date of that Act.

In paragraph [c], P.A. 92-434 deleted the element “institutionalized”.

Use applicable paragraphs, subparagraphs, and bracketed material.

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

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

11.58
Issues In Aggravated Criminal Sexual Assault--Aggravation By Circumstances

To sustain the charge of aggravated criminal sexual assault, the State must prove the following propositions:

First Proposition: That the defendant committed an act of sexual penetration upon ____; and

Second Proposition: That the act was committed by the use of force or threat of force[, and that ____ did not consent to the act of sexual penetration]; and

[or]

Second Proposition: That the defendant knew that ____ was unable to [(understand the nature of the act) (give knowing consent)]; and

[1] *Third Proposition*: That the defendant [(displayed) (threatened to use) (used)] [(a dangerous weapon other than a firearm) (any object fashioned or utilized in such a manner as to lead the victim under the circumstances reasonably to believe it to be a dangerous weapon)].

[or]

[2] *Third Proposition*: That the defendant caused bodily harm to ____.

[or]

[3] *Third Proposition*: That the defendant acted in such a manner as to threaten or endanger the life of [(the victim) (any other person)].

[or]

[4] *Third Proposition*: That the act of sexual penetration was perpetrated during the course of the [(commission) (attempted commission)] of the offense of ____ by the defendant.

[or]

[5] *Third Proposition*: That ____ was 60 years of age or older when the act was committed.

[or]

[6] *Third Proposition*: That ____ was a physically handicapped person when the act was committed.

[or]

[7] *Third Proposition*: That the defendant, as part of the same course of conduct, delivered by [(injection) (inhalation) (ingestion) (transfer of possession) (any other means)] to the victim [(without his or her consent) (by threat or deception)], and for other than medical purposes, any controlled substance.

[or]

[8] *Third Proposition*: That the defendant was armed with a firearm.

[or]

[9] *Third Proposition*: That the defendant personally discharged a firearm during the commission of the offense.

[or]

[10] *Third Proposition*: That the defendant personally discharged a firearm during the commission of the offense that proximately caused [(great bodily harm) (permanent disability) (permanent disfigurement) (death)] to another person.

[or]

First Proposition: That the defendant committed an act of sexual penetration upon ____; and

Second Proposition: That ____ was a severely or profoundly mentally retarded person when the act was committed.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-13, 12-14 (West 2011) (formerly Ill.Rev.Stat. ch. 38, §§12-13, 12-14 (1991)).

Give Instruction 11.57.

Insert in the appropriate blanks the name of the victim and the name of the felony.

See the Committee Note to Instruction 11.57 to distinguish recent revisions to the statute.

When force or the threat of force is an element of the offense and the defense of consent is raised by the evidence, it is necessary under People v. Coleman, 166 Ill.App.3d 242, 520 N.E.2d 55, (1st Dist.1987), to give the bracketed portion of the first alternative Second Proposition. Also give Instructions 11.63 and 11.63A. *See* Section 12-17(a) of the Criminal Code of 1961 and the Introduction to Chapter 24-25.00. However, for a contrary discussion, *see* People v. Roberts, 182 Ill.App.3d 313, 537 N.E.2d 1080 (1st Dist.1989), where the court held that it was not plain error to omit the instruction on consent because proof of force implicitly establishes lack of consent.

With regard to paragraph [4] in the first set of propositions, the Committee recommends that the court give the instruction defining the felony offense said to have been committed or attempted.

It should be noted that, unlike the other choices in this instruction, there are only two elements in an aggravated sexual assault based on the mental disability of the victim. Subsection (c) of Section 12-14 defines the offense as "an act of sexual penetration with a victim who was an severely or profoundly mentally retarded person at the time the act was committed". 720 ILCS 5/12-14(c) (West 2010).

In People v. Terrell, 132 Ill.2d 178, 547 N.E.2d 145 (1989), the supreme court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that, in the legislature's silence, a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill.2d at 210; see also 720 ILCS 5/43 through 4-6 (West 2010); Committee Notes to Instructions 5.01A and 5.01B. However, in People v. Burton, 201 Ill.App.3d 116, 558 N.E.2d 1369 (4th Dist.1990), the court held that Terrell does not require the mental states to be included in the jury instruction. See also People v. Smith, 209 Ill.App.3d 1043, 568 N.E.2d 482 (4th Dist.1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault. In People v. Simms, 192 Ill.2d 348, 736 N.E.2d 1092 (2000), the supreme court agreed with Burton that jury instructions on a specific mental state are not required for the offense of aggravated criminal sexual assault.

Use applicable bracketed material.

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

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. Give Instruction 5.03.

11.58A
Issues In Aggravated Criminal Sexual Assault--Aggravation By Circumstances When Defendant Is A Family Member

To sustain the charge of aggravated criminal sexual assault, the State must prove the following propositions:

First Proposition: That the defendant committed an act of sexual penetration upon __; and

Second Proposition: That __ was under 18 years of age when the act was committed; and

Third Proposition: That the defendant was a [(family member) (person responsible for the child's welfare)]; and

[1] *Fourth Proposition*: That the defendant [(displayed) (threatened to use) (used)] [(a dangerous weapon other than a firearm) (any object fashioned or utilized in such a manner as to lead the victim under the circumstances reasonably to believe it to be a dangerous weapon)].

[or]

[2] *Fourth Proposition*: That the defendant caused bodily harm to ____.

[or]

[3] *Fourth Proposition*: That the defendant acted in such a manner as to threaten or endanger the life of [(the victim) (any other person)].

[or]

[4] *Fourth Proposition*: That the act of sexual penetration was perpetrated during the course of the [(commission) (attempted commission)] of the offense of ____.

[or]

[6] *Fourth Proposition*: That ____ was a physically handicapped person when the act was committed.

[or]

[7] *Fourth Proposition*: That the defendant, as part of the same course of conduct, delivered by [(injection) (inhalation) (ingestion) (transfer of possession) (any other means)] to the victim [(without his or her consent) (by threat or deception)], and for other than medical purposes, any controlled substance.

[or]

[8] *Fourth Proposition*: That the defendant was armed with a firearm.

[or]

[9] *Fourth Proposition*: That the defendant personally discharged a firearm during the commission of the offense.

[or]

[10] *Fourth Proposition*: That the defendant personally discharged a firearm during the commission of the offense that proximately caused [(great bodily harm) (permanent disability) (permanent disfigurement) (death)] to another person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-14(a)(1) to (4), (a)(6) to (10), and 12-13(a)(3) (West 2011) (formerly Ill.Rev.Stat. ch. 38, §§12-14(a)(1) to (4), (a)(6), and 12-13(a)(3) (1991)).

Give Instructions 11.55 and 11.57.

When applicable, give Instruction 11.65B, defining “family member”.

When applicable, give Instruction 11.65H, defining “a person responsible for the child's welfare”.

Insert in the appropriate blanks the name of the victim and the name of the felony.

The element of the offense explained in the Third Proposition, concerning a person responsible for the child's welfare, was added to the offense of criminal sexual assault by P.A. 85-1209 and should be used only for offenses committed after the effective date of that Act and before the effective date of P.A. 85-1440 which deleted that element. See Committee Note to Instruction 11.55. The term “family member” is defined in Instruction 11.65B. The phrase “a person responsible for the child's welfare” is defined in Instruction 11.65H.

With regard to the fourth alternative Fourth Proposition, the Committee recommends that the court give the appropriate instruction defining the felony offense alleged as being committed or attempted.

There is no fifth alternative Fourth Proposition. Section 12-13(a)(3) applies to victims under age 18; therefore, section 12-14(a)(5), an aggravating circumstance applying to victims over age 60, cannot apply.

The element of the offense explained in the sixth alternative Fourth Proposition, concerning a victim who was physically handicapped, was added by P.A. 85-691, and that portion of the instruction should be used only for offenses committed after the effective date of that Act.

In People v. Terrell, 132 Ill.2d 178, 547 N.E.2d 145 (1989), the supreme court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that, in the legislature's silence, a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill.2d at 210; see also 720 ILCS 5/43 through 4-6 (West 2010); Committee Notes to Instructions 5.01A and 5.01B. However, in People v. Burton, 201 Ill.App.3d 116, 558 N.E.2d 1369 (4th Dist.1990), the court held that Terrell does not require the mental states to be included in the jury instruction. *See also* People v. Smith, 209 Ill.App.3d 1043, 568 N.E.2d 482 (4th Dist.1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault. In People v. Simms, 192 Ill.2d 348, 736 N.E.2d 1092 (2000), the supreme court agreed with Burton that jury instructions on a specific mental state are not required for the offense of aggravated criminal sexual assault.

The element of the offense explained in the seventh alternative Fourth Proposition, concerning delivery of a controlled substance to a victim, was added by P.A. 90-735, and that portion of the instruction should be used only for offenses committed after the effective date of that Act.

P.A. 91-404 added the eighth, ninth and tenth alternative Fourth Propositions and added the element “other than a firearm” to the first alternative Fourth Proposition. These portions of the instruction should be used only for offenses committed after the effective date of that Act.

Use applicable bracketed material.

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

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

11.58B
Issues In Aggravated Criminal Sexual Assault--Aggravation By Age

To sustain the charge of aggravated criminal sexual assault, the State must prove the following propositions:

First Proposition: That the defendant committed an act of sexual penetration upon __; and

Second Proposition: That the defendant was under 17 years of age and that __ was under 9 years of age when the act was committed.

[or]

Second Proposition: That the defendant was under 17 years of age and that __ was at least 9 years of age but under 13 years of age when the act was committed; and

Third Proposition: That the defendant used force or threat of force to commit the act. If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty. If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty[.][;][and]

[*Fourth Proposition:* That ____ did not consent to the act of sexual penetration.]

Committee Note

720 ILCS 5/12-14(b) (West 2011) (formerly Ill.Rev.Stat. ch. 38, §12-14(b)(1) and (2) (1991)).

Give Instruction 11.57.

See the Committee Note to Instruction 11.57 to distinguish recent revisions to the statute.

Insert in the blanks the name of the victim.

Give the Fourth Proposition only when proof of force or threat of force is an element of the offense and the defense of consent is raised by the evidence. People v. Coleman, 166 Ill.App.3d 242, 520 N.E.2d 55 (1st Dist.1987).

Also give Instructions 11.63 and 11.63A. See Introduction to Chapter 24-25-00; 720 ILCS 5/12-17(a) (West 2010). However, for a contrary discussion, see People v. Roberts, 182 Ill.App.3d 313, 537 N.E.2d 1080 (1st Dist.1989), where the court held that it was not plain error to omit the instruction regarding consent because proof of force implicitly establishes lack of consent.

In People v. Terrell, 132 Ill.2d 178, 547 N.E.2d 145 (1989), the supreme court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that, in the legislature's silence, a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill.2d at 210; *see* also 720 ILCS 5/43 through 4-6 (West 2008); Committee Notes to Instructions

5.01A and 5.01B. However, in People v. Burton, 201 Ill.App.3d 116, 558 N.E.2d 1369 (4th Dist.1990), the court held that Terrell does not require the mental states to be included in the jury instruction. *See also* People v. Smith, 209 Ill.App.3d 1043, 568 N.E.2d 482 (4th Dist.1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault. In People v. Simms, 192 Ill.2d 348, 736 N.E.2d 1092 (2000), the supreme court agreed with Burton that jury instructions on a specific mental state are not required for the offense of aggravated criminal sexual assault.

Use applicable bracketed material.

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

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03. However, do not insert that language in any of the Second Propositions of this instruction. *See* People v. Griffin, 247 Ill.App.3d 1, 616 N.E.2d 1242 (1st Dist.1993).

11.59
Definition Of Criminal Sexual Abuse

[1] A person commits the offense of criminal sexual abuse when he commits an act of sexual conduct [(by the use of force or threat of force) (and knows that the victim was unable to [(understand the nature of the act) (give knowing consent)])].

[or]

[2] A person commits the offense of criminal sexual abuse when he is 17 years of age or older and commits an act of [(sexual penetration) (sexual conduct)] with a victim who is at least 13 years of age but under 16 years of age when the act is committed.

[or]

[3] A person commits the offense of criminal sexual abuse when he is under 17 years of age and commits an act of [(sexual penetration) (sexual conduct)] with a victim who is at least 9 years of age but under 16 years of age when the act is committed.

[or]

[4] A person commits the offense of criminal sexual abuse when he is under 17 years of age and commits an act of [(sexual penetration) (sexual conduct)] with a victim who is at least 9 years of age but under 17 years of age when the act is committed.

[or]

[5] A person commits the offense of criminal sexual abuse when he commits an act of [(sexual penetration) (sexual conduct)] with a victim who is at least 13 years of age but under 17 years of age and he is less than 5 years older than the victim.

Committee Note

720 ILCS 5/12-15 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-15 (1991)).

Give Instruction 11.60.

When sexual conduct is charged, give Instruction 11.65D.

When sexual penetration is charged, give Instruction 11.65E.

The offenses defined in paragraphs [2] and [3] were in existence prior to the enactment of P.A. 85-651, and should be used only for offenses committed before the effective date of that Act. The offenses defined in paragraphs [4] and [5] were added by P.A. 85-651, and should be

used for offenses which occurred on or after January 1, 1988.

In People v. Terrell, 132 Ill.2d 178, 547 N.E.2d 145, 138 Ill.Dec. 176 (1989), the supreme court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that, in the legislature's silence, a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill.2d at 210, 547 N.E.2d at 159, 138 Ill.Dec. at 190; see also Chapter 720, pars. 4-3 through 4-6; Committee Notes to Instructions 5.01A and 5.01B. However, in People v. Burton, 201 Ill.App.3d 116, 558 N.E.2d 1369, 146 Ill.Dec. 1035 (4th Dist.1990), the court held that Terrell does not require the mental states to be included in the jury instruction. *See also* People v. Smith, 209 Ill.App.3d 1043, 568 N.E.2d 482, 154 Ill.Dec. 482 (4th Dist.1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault.

Use applicable bracketed material.

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

11.60
Issues In Criminal Sexual Abuse

To sustain the charge of criminal sexual abuse, the State must prove the following propositions:

[1] *First Proposition:* That the defendant committed an act of sexual conduct upon ____; and

Second Proposition: That the act was committed by force or threat of force[; and

Third Proposition: That ____ did not consent to the act of sexual conduct].

[or]

First Proposition: That the defendant committed an act of sexual conduct upon ____; and

Second Proposition: That the defendant knew that ____ was unable to [(understand the nature of the act) (give knowing consent to the act)].

[or]

[2] *First Proposition:* That the defendant committed an act of [(sexual penetration) (sexual conduct)] with ____; and

Second Proposition: That the defendant was 17 years of age or older; and

Third Proposition: That ____ was at least 13 years of age but under 16 years of age when the act was committed[; and

Fourth Proposition: That the defendant did not reasonably believe ____ to be 16 years of age or older].

[or]

[3] *First Proposition:* That the defendant committed an act of [(sexual penetration) (sexual conduct)] with ____; and

Second Proposition: That the defendant was under 17 years of age; and

Third Proposition: That ____ was at least 9 years of age but under 16 years of age when the act was committed[; and

Fourth Proposition: That the defendant did not reasonably believe ____ to be 16 years of age or older].

[or]

[4] *First Proposition:* That the defendant committed an act of [(sexual penetration) (sexual conduct)] upon ____; and

Second Proposition: That the defendant was under 17 years of age; and

Third Proposition: That ____ was at least 9 years of age but under 17 years of age when the act was committed[; and

Fourth Proposition: That the defendant did not reasonably believe ____ to be 17 years of

age or older].

[or]

[5] *First Proposition:* That the defendant committed an act of [(sexual penetration) (sexual conduct)] upon ____; and

Second Proposition: That ____ was at least 13 years of age but under 17 years of age when the act was committed; and

Third Proposition: That the defendant was less than 5 years older than ____[; and

Fourth Proposition: That the defendant did not reasonably believe ____ to be 17 years of age or older].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-15 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-15 (1991)).

Give Instruction 11.59.

See the Committee Note to Instruction 11.59 to distinguish recent additions to the statute.

When force or the threat of force is an element of the offense and the defense of consent is raised by the evidence, it is necessary under People v. Coleman, 166 Ill.App.3d 242, 520 N.E.2d 55, 117 Ill.Dec. 65 (1st Dist.1987), to give the bracketed proposition in the first set of propositions. Also give Instructions 11.41 and 11.42. See Chapter 720, Section 12-17(a) and the Introduction to Chapter 24-25.00. However, for a contrary discussion, *see* People v. Roberts, 182 Ill.App.3d 313, 537 N.E.2d 1080, 130 Ill.Dec. 751 (1st Dist.1989), where the court held that it was not plain error to omit the instruction on consent because proof of force implicitly establishes lack of consent.

When the offense is based in part on the age of the victim and there is evidence that the defendant reasonably believed the victim to be beyond the age classification, it is necessary for the State to prove that the defendant did not have a reasonable belief. Also give Instructions 4.13 and 11.64. See Chapter 720, Section 12-17(b) and the Introduction to Chapter 24-25.00.

In People v. Terrell, 132 Ill.2d 178, 547 N.E.2d 145, 138 Ill.Dec. 176 (1989), the supreme court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that, in the legislature's silence, a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill.2d at 210, 547 N.E.2d at 159, 138 Ill.Dec. at 190; see also Chapter 720, pars. 4-3 through 4-6; Committee Notes to Instructions 5.01A and 5.01B. However, in People v. Burton, 201 Ill.App.3d 116, 558 N.E.2d 1369, 146 Ill.Dec. 1035 (4th Dist.1990), the court held that Terrell does not require the mental states to be included in the jury instruction. *See also* People v. Smith, 209 Ill.App.3d 1043, 568 N.E.2d 482, 154 Ill.Dec. 482 (4th Dist.1991),

which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault.

Insert in the blanks the name of the victim.

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

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.61
Definition Of Aggravated Criminal Sexual Abuse

[a] A person commits the offense of aggravated criminal sexual abuse when he commits criminal sexual abuse, and

[1] [(displays) (threatens to use) (uses)] [(a dangerous weapon) (any object fashioned or utilized in such a manner as to lead the victim under the circumstances reasonably to believe it to be a dangerous weapon)].

[or]

[2] causes bodily harm to the victim.

[or]

[3] the victim is 60 years of age or older when the act is committed.

[or]

[4] the victim is a physically handicapped person when the act is committed.

[or]

[b] A person commits the offense of aggravated criminal sexual abuse when he is a [(family member) (person responsible for the child's welfare)] and commits an act of sexual conduct with a victim who is under 18 years of age when the act is committed.

[or]

[c] A person commits the offense of aggravated criminal sexual abuse when he

[1] is 17 years of age or older and commits an act of sexual conduct with a victim who is under 13 years of age when the act is committed.

[or]

[2] is 17 years of age or older and commits an act of sexual conduct with a victim who is at least 13 years of age but under 17 years of age when the act is committed.

[or]

[3] is under 17 years of age and commits an act of sexual conduct with a victim

who is under 9 years of age when the act is committed.

[or]

[4] is under 17 years of age and commits an act of sexual conduct by force or threat of force upon a victim who is at least 9 years of age but under 13 years of age when the act is committed.

[or]

[5] is under 17 years of age and commits an act of sexual conduct by force or threat of force upon a victim who is at least 9 years of age but under 17 years of age when the act is committed.

[or]

[d] A person commits the offense of aggravated criminal sexual abuse when he

[1] commits an act of sexual penetration with a victim who is at least 13 years of age but under 16 years of age and he is at least 5 years older than the victim.

[or]

[2] commits an act of [(sexual penetration) (sexual conduct)] with a victim who is at least 13 years of age but under 17 years of age when the act is committed and he is at least 5 years older than the victim.

[or]

[e] A person commits the offense of aggravated criminal sexual abuse when he commits an act of sexual conduct with a victim who is an institutionalized severely or profoundly mentally retarded person when the act is committed.

[or]

[f] A person commits the offense of aggravated criminal sexual abuse when he commits an act of sexual conduct with a victim who is at least 13 years of age but under 18 years of age when the act is committed and he holds a position of trust, authority, or supervision in relation to the victim.

Committee Note

720 ILCS 5/12-16 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-16 (1991)), amended by P.A. 85-651, effective January 1, 1988; P.A. 85-692, effective January 1, 1988; P.A. 85-1030,

effective July 1, 1988; P.A. 85-1209, effective August 30, 1988; P.A. 85-1392, effective January 1, 1989; P.A. 85-1440, effective February 1, 1989; and P.A. 88-99, effective July 20, 1993.

Give Instruction 11.59.

When paragraph [a] or [e] is used, give the appropriate set of propositions in Instruction 11.62.

When paragraph [c] or [d] is used, give the appropriate set of propositions in Instruction 11.62A.

When paragraph [b] or [f] is used, give the appropriate set of propositions in Instruction 11.62B.

In the first series of definitions (paragraph [a]), the material in subparagraphs [3] and [4] were added by P.A. 85-691 and should be used only for offenses committed after the effective date of that Act.

In the second series of definitions (paragraph [b]), the bracketed material addressing a person responsible for the child's welfare was added by P.A. 85-1209 and should be used only for offenses committed after the effective date of that Act and before the effective date of P.A. 85-1440 which deleted that material.

In the third series of definitions (paragraph [c]), the material in subparagraphs [2] and [5] were added by P.A. 85-651 and should only be used for offenses committed after the effective date of that Act. The material in subparagraph [4] should only be used for offenses committed before the effective date of that Act.

In the fourth series of definitions (paragraph [d]), the material in subparagraph [2] was added by P.A. 85-651 and should only be used for offenses committed after the effective date of that Act. The material in subparagraph [1] should only be used for offenses committed before the effective date of that Act.

The fifth definition (paragraph [e]), concerning the mental disability of the victim, was added by P.A. 85-1392, and should be used only for offenses committed after the effective date of that Act. The phrase “an institutionalized severely or profoundly mentally retarded person” is defined in Instruction 11.68.

The sixth definition (paragraph [f]), which addresses an accused in a position of trust, authority, or supervision, was added by P.A. 85-1030, deleted by P.A. 85-1209, and re-added by P.A. 85-1440, and should be used only for offenses committed between the effective dates of P.A. 85-1030 and P.A. 85-1209, and after the effective date of P.A. 85-1440.

In People v. Terrell, 132 Ill.2d 178, 547 N.E.2d 145, 138 Ill.Dec. 176 (1989), the supreme court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that, in the legislature's silence, a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill.2d at 210, 547 N.E.2d at 159, 138 Ill.Dec. at 190; see also 720 ILCS

5/4-3 through 4-6 (formerly Ill.Rev.Stat. ch. 38, §§4-3 through 4-6 (1991)); Committee Notes to Instructions 5.01A and 5.01B. However, in People v. Burton, 201 Ill.App.3d 116, 558 N.E.2d 1369, 146 Ill.Dec. 1035 (4th Dist.1990), the court held that Terrell does not require the mental states to be included in the jury instruction. *See also* People v. Smith, 209 Ill.App.3d 1043, 568 N.E.2d 482, 154 Ill.Dec. 482 (4th Dist.1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault.

P.A. 88-99, effective July 20, 1993, amended Section 12-16(a)(2) to delete the requirement that the accused caused *great* bodily harm to the victim in order for aggravated criminal sexual abuse to be committed. As a result of this amendment, *bodily harm* now suffices to meet the definition of that offense.

Use applicable bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.03.

11.62
Issues In Aggravated Criminal Sexual Abuse--Aggravation By Circumstances

To sustain the charge of aggravated criminal sexual abuse, the State must prove the following propositions:

First Proposition: That the defendant committed an act of sexual conduct upon ____; and

Second Proposition: That the act was committed by force or threat of force;

[or]

Second Proposition: That the defendant knew that ____ was unable to [(understand the nature of the act) (give knowing consent)];

and

[1] *Third Proposition:* That the defendant [(displayed) (threatened to use) (used)] [(a dangerous weapon) (any object fashioned or utilized in such a manner as to lead the victim under the circumstances reasonably to believe it to be a dangerous weapon)]

[or]

[2] *Third Proposition:* That the defendant caused bodily harm to ____

[or]

[3] *Third Proposition:* That ____ was 60 years of age or older when the act was committed

[or]

[4] *Third Proposition:* That ____ was a physically handicapped person when the act was committed

[; and

Fourth Proposition: That ____ did not consent to the act of sexual conduct].

[or]

First Proposition: That the defendant committed an act of sexual conduct upon ____; and

Second Proposition: That ____ was an institutionalized severely or profoundly mentally

retarded person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-16(a)(1), (2), (3), and (4) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §§12-16(a)(1), (2), (3), and (4) (1991)), amended by P.A. 85-691, effective January 1, 1988; P.A. 85-1391, effective January 1, 1989; and P.A. 88-99, effective July 20, 1993.

Give Instruction 11.61.

See the Committee Note to Instruction 11.61 to distinguish recent additions to the statute.

When force or threat of force is an element of the offense and the defense of consent is raised by the evidence, it is necessary under People v. Coleman, 166 Ill.App.3d 242, 520 N.E.2d 55, 117 Ill.Dec. 65 (1st Dist.1987), to give the Fourth Proposition. Also give Instruction 11.63 and 11.63A. See Section 12-17(a) and the Introduction to Chapter 24-25.00. However, for a contrary discussion, *see* People v. Roberts, 182 Ill.App.3d 313, 537 N.E.2d 1080, 130 Ill.Dec. 751 (1st Dist.1989), where the court held that it was not plain error to omit the instruction on consent because proof of force implicitly establishes lack of consent.

P.A. 88-99, effective July 20, 1993, amended Section 12-16(a)(2) to delete the requirement that the accused caused *great* bodily harm to the victim in order for aggravated criminal sexual abuse to be committed. As a result of this amendment, *bodily harm* now suffices to meet the definition of that offense.

Use applicable bracketed material.

Insert in the blanks the name of the victim.

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

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.62A
Issues In Aggravated Criminal Sexual Abuse--Aggravation By Age

To sustain the charge of aggravated criminal sexual abuse, the State must prove the following propositions:

First Proposition: That the defendant committed an act of sexual conduct with ____; and

[1] *Second Proposition:* That the defendant was 17 years of age or older; and

Third Proposition: That ____ was under 13 years of age when the act was committed.

[or]

[2] *Second Proposition:* That the defendant was 17 years of age or older; and

Third Proposition: That ____ was at least 13 years of age but under 17 years of age when the act was committed; and

Fourth Proposition: That the defendant used force or the threat of force to commit the act.

[or]

[3] *Second Proposition:* That the defendant was under 17 years of age; and

Third Proposition: That ____ was under 9 years of age when the act was committed.

[or]

[4] *Second Proposition:* That the defendant was under 17 years of age; and

Third Proposition: That ____ was at least 9 years of age but under 13 years of age when the act was committed; and

Fourth Proposition: That the defendant used force or the threat of force to commit the act.

[or]

[5] *Second Proposition:* That the defendant was under 17 years of age; and

Third Proposition: That ____ was at least 9 years of age but under 17 years of age when the act was committed; and

Fourth Proposition: That the defendant used force or the threat of force to commit the act.

[or]

First Proposition: That the defendant committed an act of sexual penetration upon ____; and

Second Proposition: That ____ was at least 13 years of age but under 16 years of age

when the act was committed; and

Third Proposition: That the defendant was at least 5 years older than ____.

[or]

First Proposition: That the defendant committed an act of [(sexual penetration) (sexual conduct)] upon ____; and

Second Proposition: That ____ was at least 13 years of age but under 17 years of age when the act was committed; and

Third Proposition: That the defendant was at least 5 years older than ____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-16(c) and (d) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-16(c) and (d) (1991)).

Give Instruction 11.61.

See the Committee Note to Instruction 11.61 to distinguish recent additions to the statute.

When force or the threat of force is an element of the offense and the defense of consent is raised by the evidence, it is necessary under People v. Coleman, 166 Ill.App.3d 242, 520 N.E.2d 55, 117 Ill.Dec. 65 (1st Dist.1987), to give the following instruction as the final proposition:

> "*Fifth Proposition:* That ____ did not consent to the act of sexual conduct."

Also give Instructions 11.63 and 11.63A. See Chapter 720, Section 12-17(a) and the Introduction to Chapter 24-25.00. However, for a contrary discussion, *see* People v. Roberts, 182 Ill.App.3d 313, 537 N.E.2d 1080, 130 Ill.Dec. 751 (1st Dist.1989), where the court held that it was not plain error to omit the instruction on consent because proof of force implicitly establishes lack of consent.

When the defendant is charged with aggravated criminal sexual abuse under Chapter 720, Section 12-16(d) (which, effective January 1, 1988, was amended to make the critical ages 13 to 17 years of age, and not 13 to 16 years of age) and the defense that the defendant reasonably believed the victim to be 17 or 16 years of age or older is raised by the evidence, give the following instruction as the final proposition:

> "*Fourth Proposition:* That the defendant did not reasonably believe ____ to be [(16) (17)] years of age or older."

Also give Instructions 4.13 and 11.64. See Chapter 720, Section 12-17(b) and the Introduction to Chapter 24-25.00.

In People v. Terrell, 132 Ill.2d 178, 547 N.E.2d 145, 138 Ill.Dec. 176 (1989), the supreme court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that, in the legislature's silence, a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill.2d at 210, 547 N.E.2d at 159, 138 Ill.Dec. at 190; see also Chapter 720, pars. 4-3 through 4-6; Committee Notes to Instructions 5.01A and 5.01B. However, in People v. Burton, 201 Ill.App.3d 116, 558 N.E.2d 1369, 146 Ill.Dec. 1035 (4th Dist.1990), the court held that Terrell does not require the mental states to be included in the jury instruction. *See also* People v. Smith, 209 Ill.App.3d 1043, 568 N.E.2d 482, 154 Ill.Dec. 482 (4th Dist.1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault.

Use applicable bracketed material.

Insert in the blanks the name of the victim.

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

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

For an example of the use of this instruction, see Sample Set 27.03.

11.62B
Issues In Aggravated Criminal Sexual Abuse--Aggravation By Age When Defendant Is A Family Member Or In A Position Of Responsibility Or Trust

To sustain the charge of aggravated criminal sexual abuse, the State must prove the following propositions:

First Proposition: That the defendant committed an act of sexual conduct with ____; and

Second Proposition: That ____ was under 18 years of age when the act was committed; and

Third Proposition: That the defendant was a [(family member) (person responsible for the child's welfare)].

[or]

First Proposition: That the defendant committed an act of sexual conduct with ____; and

Second Proposition: That ____ was at least 13 years of age but under 18 years of age when the act was committed; and

Third Proposition: That the defendant was 17 years of age or older; and

Fourth Proposition: That the defendant held a position of trust, authority, or supervision in relation to ____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-16(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-16(b) (1991)).

Give Instruction 11.61.

See the Committee Note to Instruction 11.61 to distinguish recent additions to the statute.

The term “family member” is defined in Instruction 11.65B.

The phrase “person responsible for the child's welfare” is defined in Instruction 11.65H.

Insert in the blanks the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.63
Defense Of Consent

It is a defense to the charge of ____ that ____ consented.

Committee Note

720 ILCS 5/12-17(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-17(a) (1991)).

Give this Instruction when the defense of consent is raised in offenses where proof of force or threat of force is an element under Chapter 38, Sections 12-13 through 12-16 and the issue is raised by the evidence. See Introduction to Chapter 24-25.00.

Give Instruction 11.63A, defining the word "consent."

Insert in the appropriate blanks the name of the charged offense and the victim's name.

For an example of the use of this instruction, see Sample Set 27.03.

11.63A
Definition Of Consent

The word “consent” means a freely given agreement to the act of [(sexual penetration) (sexual conduct)] in question. Lack of verbal or physical resistance or submission by the victim resulting from the use of force or threat of force by the defendant [or the victim's manner of dress] shall not constitute consent.

Committee Note

720 ILCS 5/12-17(a) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-17(a) (1991)).

See Instruction 11.63.

The bracketed language referring to the victim's manner of dress was added as a result of P.A. 87-438, effective January 1, 1992, which amended Section 12-17(a).

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.03.

11.64
Defense To Criminal Sexual Abuse And Aggravated Criminal Sexual Abuse

It is a defense to the charge of [(criminal sexual abuse) (aggravated criminal sexual abuse)] that the defendant reasonably believed ____ to be [(16) (17)] years of age or older.

Committee Note

720 ILCS 5/12-17(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-17(b) (1991)).

Give this instruction when the defendant is charged with criminal sexual abuse under Chapter 720, Section 12-15(b), or with aggravated criminal sexual abuse under Chapter 720, Section 12-16(d), and the issue is raised by the evidence. The appropriate age to be chosen from within the brackets should be determined by when the offense occurred as the legislature has amended the underlying statutes by changing the applicable age classifications. See the Committee Notes to Instructions 11.59 and 11.61. Also give Instruction 4.13. See Introduction to Chapter 24-25.00.

Insert in the blank the name of the victim.

11.65
Definition Of Accused

The word "accused" means a person accused of the offense of [(criminal sexual assault) (aggravated criminal sexual assault) (criminal sexual abuse) (aggravated criminal sexual abuse)] [or a person for whose conduct he is legally responsible].

Committee Note

720 ILCS 5/12-12(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-12(a) (1991)).

Use applicable bracketed material.

11.65A
Definition Of Bodily Harm

The term "bodily harm" means physical harm and includes, but is not limited to, sexually transmitted disease, pregnancy, and impotence.

Committee Note

720 ILCS 5/12-12(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-12(b) (1991)).

11.65B
Definition Of Family Member

The term "family member" means a parent, grandparent, or child, whether by whole-blood, half-blood, or adoption and includes a step-grandparent, step-parent, or step-child.

[The term "family member" also means, where the victim is a child under 18 years of age, an accused who has resided in the household with such child continuously for at least one year.]

Committee Note

720 ILCS 5/12-12(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-12(c) (1991)).

Use applicable bracketed material.

11.65C
Definition Of Force Or Threat Of Force

The term "force or threat of force" means the use of force or violence or the threat of force or violence [including but not limited to [(when the accused threatens to use force or violence [(on the victim) (on any other person)] and the victim under the circumstances reasonably believed that the accused had the ability to execute that threat) (when the accused has overcome the victim by use of [(superior strength) (superior size) (physical restraint) (physical confinement)])].

Committee Note

720 ILCS 5/12-12(d) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-12(d) (1991)).

Use applicable bracketed material.

11.65D
Definition Of Sexual Conduct

The term "sexual conduct" means any intentional or knowing touching or fondling by [(the victim) (the accused)], either directly or through the clothing, of [(the sex organ) (anus) (breast)] of [(the victim) (the accused)] [any part of the body of a child under 13 years of age], for the purpose of sexual gratification or arousal of the victim or the accused.

Committee Note

720 ILCS 5/12-12(e) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-12(e) (1991)).

Sexual conduct with a victim requires actual physical contact between the victim and accused, not merely sexual conduct in the presence of the victim. People v. Gann, 141 Ill.App.3d 34, 489 N.E.2d 924, 95 Ill.Dec. 362 (3d Dist.1986).

Use applicable bracketed material.

11.65E
Definition Of Sexual Penetration

The term "sexual penetration" means any

[1] contact, however slight, between the sex organ or anus of one person and [(an object) (the [(sex organ) (mouth) (anus)] of another person)].

[or]

[2] intrusion, however slight, of any part of [(the body of one person) (any animal) (any object)] into the [(sex organ) (anus)] of another person[, including but not limited to [(cunnilingus) (fellatio) (anal penetration)]]. [Evidence of emission of semen is not required to prove sexual penetration.]

Committee Note

720 ILCS 5/12-12(f) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-12(f) (1991)), amended by P.A. 88-167, effective January 1, 1994.

The statutory definition of sexual penetration, unlike that of sexual conduct upon which most of the sexual abuse offenses are based, does not contain a mental state. Therefore, under People v. Terrell, 132 Ill.2d 178, 547 N.E.2d 145, 138 Ill.Dec. 176 (1989), the mental states of knowledge, intention, and recklessness are assigned to the offenses based on sexual penetration and, accordingly, those mental states are set out in the appropriate definitional and issues instructions. *See also* People v. Williams, 191 Ill.App.3d 269, 547 N.E.2d 608, 138 Ill.Dec. 441 (4th Dist.1989); see also 720 ILCS 5/4-3 through 4-6 (formerly Ill.Rev.Stat. ch. 38, §§4-3 through 4-6 (1991)), and the Committee Notes to Instructions 5.01A and 5.01B.

P.A. 88-167, effective January 1, 1994, amended 720 ILCS 5/12-12(f), defining "sexual penetration", by adding kinds of "contact", as described in bracketed paragraph [1] of this instruction.

A victim's finger can be an "object" within the statutory definition of sexual penetration. People v. Scott, 271 Ill.App.3d 307, 313, 648 N.E.2d 86, 89, 207 Ill.Dec. 630, 633 (1st Dist.1994).

People v. Scott also held that when only the defendant and the victim are involved in offenses based on sexual penetration, the defendant cannot be held liable under an accountability theory. *Scott*, 271 Ill.App.3d at 314, 648 N.E.2d at 90, 207 Ill.Dec. at 634.

Use applicable bracketed material.

11.65F
Definition Of Victim

The term "victim" means a person [(alleging) (alleged)] to have been subjected to the offense[s] of [(criminal sexual assault) (aggravated criminal sexual assault) (criminal sexual abuse) (aggravated criminal sexual abuse)].

Committee Note

720 ILCS 5/12-12(g) (West 1995) (formerly Ill.Rev.Stat. ch. 38, §12-12(g) (1991)).

Although Section 12-12(g) defines "victim" as a person "alleging" to have been sexually assaulted, the Committee believes the definition must include those "alleged" to have been sexually assaulted, such as infants or toddlers, who are not capable of making such allegations.

Use applicable bracketed material.

11.65G
Definition Of Institutionalized Severely Or Profoundly Mentally Retarded Person

The phrase "severely or profoundly intellectually disabled person" means a person

[1] whose intelligence quotient does not exceed 40.

[or]

[2] whose intelligence quotient does not exceed 55 and who suffers from significant mental illness to the extent that the person's ability to exercise rational judgment is impaired.

Committee Note

Instruction and Committee Note Approved May 24, 2013.

720 ILCS 5/2-10.1 (West 2013), effective January 1, 2012.

In P.A. 97-277, the Illinois General Assembly substituted the term "intellectually disabled person" for "mentally retarded person" in all statutes which use the term "mentally retarded". In doing so, the General Assembly declared that this substitution was done without any intent to change the substantive rights, responsibilities, coverage, eligibility, or definitions referred to in the amended provisions represented in P.A. 97-277. Accordingly, the Committee believes that the term "intellectually disabled" should be used in place of "mentally retarded" even where the offense occurred before the effective date of P.A. 97-277.

11.65H
Definition Of A Person Responsible For The Child's Welfare

The phrase "a person responsible for the child's welfare" means the child's guardian, foster parent, elementary or secondary school teacher, or any other person responsible for the child's care at the time the act was committed.

Committee Note

720 ILCS 5/12-13(a)(3) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-13(a)(3) (1991)).

See Instruction 11.55.

11.66
Statements Admitted Under Section 115-10 Of The Code Of Criminal Procedure

You have before you evidence that ____ made [(a statement) (statements)] concerning [(an) (the)] offense[s] charged in this case. It is for you to determine [whether the statement[s] [(was) (were)] made, and, if so,] what weight should be given to the statement[s]. In making that determination, you should consider the age and maturity of ____, the nature of the statement[s], [and] the circumstances under which [(a) (the)] statement[s] [(was) (were)] made[, and ____].

Committee Note

725 ILCS 5/115-10(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §115-10(c) (1991)).

P.A. 85-837, effective January 1, 1988, significantly changed Section 115-10 of the Code of Criminal Procedure. That Section provides for the admissibility under certain circumstances of out-of-court statements made by a child under the age of 13 who is the alleged victim of criminal sexual assault, aggravated criminal sexual assault, criminal sexual abuse, or aggravated criminal sexual abuse (Chapter 720, Sections 12-13 through 12-16).

As amended, Section 115-10(c) now provides that when such a statement is admitted under that Section, the jury "shall" be instructed as provided in this instruction.

The Committee takes no position on whether this instruction should be given orally to the jury at the time an out-of-court statement of the alleged victim is received in evidence.

Insert in the first two blanks the name of the child whose statement was received into evidence.

Insert in the last blank any other relevant factor concerning the weight and credibility of the statement.

Use applicable bracketed material.

11.67
Definition Of Criminal Transmission Of HIV (Human Immunodeficiency Virus)

A person commits the offense of criminal transmission of HIV when he, knowing that he is infected with HIV,

[1] engages in intimate contact with another.

[or]

[2] [(transfers) (donates) (provides)] his [(blood) (tissue) (semen) (organs) (potentially infectious body fluids)] for [(transfusion) (transplantation) (insemination) (administration)] to another.

[or]

[3] [(dispenses) (delivers) (exchanges) (sells) (transfers)] nonsterile [(intravenous) (intramuscular)] drug paraphernalia to another.

[It is not necessary that an infection with HIV actually result from that conduct.]

Committee Note

720 ILCS 5/12-16.2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-16.2 (1991)).

Give Instructions 11.67B and 11.68.

When applicable, give Instruction 11.67C, defining the phrase "intimate contact with another," and Instruction 11.67D, defining the phrase "intravenous or intramuscular drug paraphernalia."

Although the name of the offense implies otherwise, transmission of the disease is not an element of the crime. See Section 12-16.2(c). The last bracketed sentence of the instruction may be included when necessary to avoid confusion.

Use applicable paragraphs and bracketed material.

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

11.67A
Affirmative Defense To Criminal Transmission Of HIV

It is a defense to the charge of criminal transmission of HIV that the person exposed to HIV consented to the ____ knowing that the defendant was infected with HIV and knowing that this conduct could result in an infection with HIV.

Committee Note

720 ILCS 5/12-16(d) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-16(d) (1991)).

Give this instruction when the issue is raised by the evidence. See Chapter 720, Section 3-2 and the Introduction to Chapter 24-25.00.

Insert in the blank a description of the conduct forming the basis of the charge. For example, if the defendant is charged with committing the offense by engaging in intimate contact with another, insert the phrase “intimate contact with the defendant” in the blank. If the defendant is charged with donating blood for transfusion to another, insert the phrase “donation of defendant's blood for transfusion” in the blank. If the defendant is charged with delivery of nonsterile intramuscular drug paraphernalia to another, insert the phrase “delivery of the nonsterile intramuscular drug paraphernalia” in the blank.

11.67B
Definition Of HIV

The term "HIV" means the human immunodeficiency virus or any other identified causative agent of acquired immunodeficiency syndrome.

Committee Note

720 ILCS 5/12-16.2(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-16.2(b) (1991)).

11.67C
Definition Of Intimate Contact With Another

The phrase "intimate contact with another" means the exposure of the body of one person to a bodily fluid of another person in a manner that could result in the transmission of HIV.

Committee Note

720 ILCS 5/12-16(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-16(b) (1991)).

11.67D
Definition Of Intravenous Or Intramuscular Drug Paraphernalia

The phrase "[(intravenous) (intramuscular)] drug paraphernalia" means any equipment, product, or material which is peculiar to and marketed for use in injecting a substance into the human body.

Committee Note

720 ILCS 5/12-16.2(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-16.2(b) (1991)).

11.68
Issues In Criminal Transmission Of HIV (Human Immunodeficiency Virus)

To sustain the charge of criminal transmission of HIV, the State must prove the following propositions:

First Proposition: That the defendant engaged in intimate contact with another;

[or]

First Proposition: That the defendant [(transferred) (donated) (provided)] his [(blood) (tissue) (semen) (organs) (potentially infectious body fluids)] for [(transfusion) (transplantation) (insemination) (administration)] to another;

[or]

First Proposition: That the defendant [(dispensed) (delivered) (exchanged) (sold) (transferred)] nonsterile [(intravenous) (intramuscular)] drug paraphernalia to another;

and

Second Proposition: That when the defendant did so, he knew he was infected with HIV[; and

Third Proposition: That ____ did not consent to the ____ knowing that the defendant was infected with HIV and knowing that this conduct could result in an infection with HIV].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-16.2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-16.2 (1991)).

Give Instructions 11.67 and 11.67B.

When applicable, give Instruction 11.67C, defining the phrase "intimate contact with another," and Instruction 11.67D, defining the phrase "intravenous or intramuscular drug paraphernalia."

Section 12-16.2(c) specifically provides that transmission of the disease is not an element of the offense.

Give the Third Proposition when the issue is raised by the evidence. When there is

sufficient evidence to raise the affirmative defense, the burden is on the State to overcome the defense beyond a reasonable doubt. See Chapter 720, Section 3-2 and the Introduction to Chapter 24-25.00.

Insert in the first blank in the Third Proposition the name of the person exposed to the HIV infection, and in the second blank a description of the conduct forming the basis of the charge. For examples, see the Committee Note to Instruction 11.67A.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.69
Definition Of Abuse Of A Long Term Care Facility Resident

A person commits the offense of abuse of a long term care facility resident when he [(knowingly) (intentionally)] [(causes any physical or mental injury to) (commits a sexual offense upon)] a long term care facility resident.

Committee Note

720 ILCS 5/12-19 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-19 (1991)).

Give Instructions 11.69A and 11.70.

When the defendant is charged with committing a sexual offense upon a long term care facility resident, the definition of the specific sexual offense charged must be given.

Section 12-19 contains certain exceptions to criminal liability. That section does not apply to a physician or nurse providing care within the scope of his or her professional judgment and within accepted standards of care. The section also does not apply to medical supervision or control of the care or treatment of residents of a facility operated for those who rely upon treatment by prayer or spiritual means. It will be necessary to give additional instructions if the defendant relies upon either of these exceptions.

Use applicable bracketed material.

11.69A
Definition Of Long Term Care Facility

The phrase "long term care facility" means a private home, institution, building, residence, or any other place, whether operated for profit or not, or a county home for the infirm and chronically ill or any similar institution operated by a political subdivision of the State of Illinois, which provides, through its ownership or management, personal care, sheltered care or nursing for three or more persons not related to the owner by blood or marriage.

Committee Note

720 ILCS 5/12-19(d)(7) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-19(d)(7) (1991)).

For a definition of the word "owner" of a long term care facility, see Chapter 720, Section 12-19(d)(5), and Chapter 210, Section 45/1-119.

11.70
Issues In Abuse Of A Long Term Care Facility Resident

To sustain the charge of abuse of a long term care facility resident, the State must prove the following propositions:

First Proposition: That [(victim)] was a long term care facility resident; and

Second Proposition: That the defendant [(knowingly) (intentionally)] caused [(physical harm) (mental injury)] to [(victim)].

[or]

Second Proposition: That the defendant [(knowingly) (intentionally)]committed that offense of [(sexual offense)] upon [(victim)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-19 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-19 (1991)).

Give Instruction 11.69.

Insert in the appropriate blanks the name of the victim, and when applicable, the type of sexual offense allegedly committed.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.71
Definition Of Gross Neglect Of A Long Term Care Facility Resident

A person commits the offense of gross neglect of a long term care facility resident when he recklessly fails to provide adequate [(medical) (personal)] [(care) (maintenance)] to a long term care facility resident and that failure results in [(physical injury) (mental injury) (the deterioration of a long term care facility resident's [(physical) (mental)] condition)].

Committee Note

720 ILCS 5/12-19 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-19 (1991)).

Give Instructions 11.72, 11.69A, and 5.01.

Section 12-19 contains certain exceptions to criminal liability. That section does not apply to a physician or nurse providing care within the scope of his or her professional judgment and within accepted standards of care. The section also does not apply to medical supervision or control of the care or treatment of residents of a facility operated for those who rely upon treatment by prayer or spiritual means. It will be necessary to give additional instructions if the defendant relies upon either of these exceptions.

Use applicable bracketed material.

11.72
Issues In Gross Neglect Of A Long Term Care Facility Resident

To sustain the charge of gross neglect of a long term care facility resident, the State must prove the following propositions:

First Proposition: That the defendant recklessly failed to provide adequate [(medical) (personal)] [(care) (maintenance)] to ____; and

Second Proposition: That the defendant's failure resulted in [(physical injury to ____) (mental injury to ____) (the deterioration of ____'s [(physical) (mental)] condition)]; and

Third Proposition: That ____ was a long term care facility resident.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your considerations of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-19 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-19 (1991)).

Give Instruction 11.71.

Insert in the blanks the name of the alleged victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.73
Definition Of Sale Of Body Parts

A person commits the offense of sale of body parts when he knowingly [(buys) (sells) (offers to buy) (offers to sell)] [(a human body) (any part of a human body)].

Committee Note

720 ILCS 5/12-20 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-20 (1991)).

Give Instruction 11.74.

Section 12-20(b) contains several exceptions to the offense of the sale of body parts. The statute does not prohibit: (1) an anatomical gift made pursuant to statute; (2) the removal and use of a human cornea pursuant to statute; (3) reimbursement of the actual expenses incurred by a living donor in donating an organ, tissue, or other body part; (4) payments provided under a plan of insurance or other health care coverage; (5) reimbursement of reasonable costs associated with the removal, storage, or transportation of a human body or body part donated for medical or scientific purposes; (6) purchase or sale of blood, plasma, blood products or derivatives, or other body fluids, or human hair; or (7) purchase or sale of drugs, reagents or other substances made from human bodies or body parts, for use in medical or scientific research, treatment, or diagnosis. If the defendant relies upon any of those exceptions, it will be necessary to give additional instructions.

Use applicable bracketed material.

11.74
Issue In Sale Of Body Parts

To sustain the charge of sale of body parts, the State must prove the following proposition:

That the defendant knowingly [(bought) (sold) (offered to buy) (offered to sell)] [(a human body part) (any part of a human body)].

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-20 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-20 (1991)).

Give Instruction 11.73.

Section 12-20 contains several exceptions to the offense of the sale of body parts, and additional instructions must be given when the defendant relies upon one or more of those exceptions. See Committee Note to Instruction 11.73.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.75
Definition Of Criminal Neglect Of An Elderly Or Disabled Person

A person commits the offense of criminal neglect of [(an elderly) (a disabled)] person when he is a caregiver and he knowingly

[1] performs acts which cause the [(elderly) (disabled)] person's life to be endangered, health to be injured, or pre-existing physical or mental condition to deteriorate.

[or]

[2] fails to perform acts which he knows or reasonably should know are necessary to maintain or preserve the life or health of the [(elderly) (disabled)] person and such failure causes the [(elderly) (disabled)] person's life to be endangered, health to be injured, or pre-existing physical or mental condition to deteriorate.

[or]

[3] abandons the [(elderly) (disabled)] person.

Committee Note

720 ILCS 5/12-21(a) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-21(a) (1991)), added by P.A. 86-153, effective January 1, 1990, amended by P.A. 86-1028, effective February 5, 1990, and P.A. 87-1072, effective January 1, 1993.

Give Instructions 11.75A and 11.76.

Give either Instruction 11.75B, defining the term “elderly person,” or 11.75C, defining the term “disabled person.”

When using the third alternative, give Instruction 11.75D, defining the term “abandon.”

Section 12-21(d) and (e) set forth exceptions to the offense of criminal neglect of an elderly or disabled person. The statute does not apply to a person who has made a good faith effort to provide for the health and personal care of an elderly or disabled person, but through no fault of his own has been unable to provide such care. The statute also does not prohibit a person from providing treatment by spiritual means through prayer alone and care consistent therewith in lieu of medical care and treatment in accordance with the tenets and practices of any church or religious denomination of which the elderly or disabled person is a member. It will be necessary to give additional instructions if the defendant relies upon either of those exceptions.

Use applicable paragraphs and bracketed material.

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

11.75A
Definition Of Caregiver--Criminal Neglect

The word “caregiver” means a person who has a duty to provide for [(an elderly) (a disabled)] person's health and personal care, at such person's place of residence, including but not limited to, food and nutrition, shelter, hygiene, prescribed medication, and mental care and treatment, and includes

[1] a [(parent) (spouse) (adult child) (relative by blood or marriage)] who [(resides) (resides in the same building)] with and regularly visits the [(elderly) (disabled)] person and knows or reasonably should know of such person's physical or mental impairment, and knows or should know that such person is unable to adequately provide for his own health and personal care.

[or]

[2] a person who is employed by the [(elderly) (disabled)] person or by another to reside with or regularly visit the [(elderly) (disabled)] person and provide for such person's health and personal care.

[or]

[3] a person who has agreed for consideration to reside with or regularly visit the [(elderly) (disabled)] person and provide for such person's health and personal care.

[or]

[4] a person who has been appointed by a private or public agency or by a court of competent jurisdiction to provide for the [(elderly) (disabled)] person's health and personal care.

Committee Note

720 ILCS 5/12-21(b)(3) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-21(b)(3) (1991)).

Section 12-21(b)(3) sets forth an exception to the offense of criminal neglect of an elderly or disabled person. The statute does not apply to a long-term care facility licensed or certified under the Nursing Home Care Act (Chapter 210, Section 45/1-119), or any administrative, medical, or other personnel of such a facility, or health care provider who is licensed under the Medical Practice Act (Chapter 225, Section 60/1) and who renders care in the ordinary course of his profession. It will be necessary to give additional instructions if the defendant relies on this exception.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and

should not be included in the instruction submitted to the jury.

11.75B
Definition Of Elderly Person--Criminal Neglect

The term "elderly person" means a person 60 years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by physical, mental, or emotional dysfunctioning to the extent that such person is incapable of adequately providing for his own health and personal care.

Committee Note

720 ILCS 5/12-21(b)(1) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-21(b)(1) (1991)).

11.75C
Definition Of Disabled Person--Criminal Neglect

The term "disabled person" means a person who suffers from a permanent physical or mental impairment, resulting from disease, injury, functional disorder, or congenital condition, which renders such person incapable of adequately providing for his own health and personal care.

Committee Note

720 ILCS 5/12-21(b)(2) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-21(b)(2) (1991)).

11.75D
Definition Of Abandon--Criminal Neglect

The term "abandons" means to desert or knowingly forsake [(an elderly) (a disabled)] person under circumstances in which a reasonable person would continue to provide care and custody.

Committee Note

720 ILCS 5/12-21(b)(4) (West 1992), added by P.A. 87-1072, effective January 1, 1993.

Use applicable bracketed material.

11.76
Issues In Criminal Neglect Of An Elderly Or Disabled Person

To sustain the charge of criminal neglect of [(an elderly) (a disabled)] person, the State must prove the following propositions:

First Proposition: That the defendant was a caregiver; and

[1] *Second Proposition*: That the defendant knowingly performed acts which caused the [(elderly) (disabled)] person's life to be endangered, health to be injured, or pre-existing physical or mental condition to deteriorate.

[or]

[2] *Second Proposition*: That the defendant knowingly failed to perform acts which he knew or should have known were necessary to maintain or preserve the life or health of the [(elderly) (disabled)] person and such failure caused the [(elderly) (disabled)] person's life to be endangered, health to be injured, or pre-existing physical or mental condition to deteriorate.

[or]

[3] *Second Proposition*: That the defendant knowingly abandoned the [(elderly) (disabled)] person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-21(a) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-21(a) (1991)), added by P.A. 86-153, effective January 1, 1990; amended by P.A. 86-1028, effective February 5, 1990; and P.A. 87-1072, effective January 1, 1993.

Give Instruction 11.75.

Use the applicable Second Proposition and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.77
Definition Of Violation Of Order Of Protection

A person commits the offense of violation of an order of protection when, having been served notice of the contents of an order of protection, or otherwise having acquired actual knowledge of the contents of the order, he [(commits an act which was prohibited by a court) (fails to commit an act which was ordered by a court)] in an order of protection.

Committee Note

720 ILCS 5/12-30 (West 2011) (formerly Ill.Rev.Stat. ch. 38, §12-3- (1991)). See also Domestic Violence Act, Chapter 750, section 60/101 *et seq.*, as amended by P.A. 86-542, effective January 1, 1990.

When applicable, give Instruction 5.01C, defining "actual knowledge".

Give Instruction 11.78.

Section 12-30 proscribes acts committed in violation of a "remedy" in a valid order of protection. The Domestic Violence Act (Chapter 750, section 60/214) defines the phrase "remedy in an order of protection" by listing all of the types of directives that can be included in an order of protection. While that definition presumably limits the types of orders that can be entered under the Domestic Violence Act, the Committee believes that the court, and not the jury, is to determine whether an order of protection is valid or whether a particular directive of such an order falls within the definition of remedy and that the jury should not be instructed on the extensive definition of remedy. Without its technical definition, the word "remedy" could be confusing to the jury, and has, therefore, been omitted in defining the offense. Moreover, since the court and not the jury will determine whether an order of protection is valid, the word "valid" has been omitted from instructions on this offense.

Use applicable bracketed material.

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

11.78
Issues In Violation Of Order Of Protection

To sustain the charge of violation of an order of protection, the State must prove the following propositions:

First Proposition: That the defendant _____; and

Second Proposition: That an order of protection prohibited the defendant from performing *[(that act) (those acts)]*;

[(or)]

Second Proposition: That an order of protection directed the defendant to perform *[(that act) (those acts)]*;

and

Third Proposition: That the order of protection was in effect at the time the defendant ____; and

Fourth Proposition: That at the time the defendant ____, he had been served notice of the contents of an order of protection or otherwise had acquired actual knowledge of the contents of the order.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-30 (West 2011) (formerly Ill.Rev.Stat. ch. 38, §12-3- (1991)). See also Domestic Violence Act, Chapter 750, section 60/101 *et seq.*, as amended by P.A. 86-542, effective January 1, 1990.

When applicable, give Instruction 5.01C, defining "actual knowledge".

Give Instruction 11.77.

Insert in the blanks the specific act or failure to act alleged in the charging instrument.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. Give Instruction 5.03.

Use applicable bracketed material.

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

11.78A
Definition Of Family Or Household Member--Violation Of Order Of Protection

The phrase "family or household member" means spouses, former spouses, parents, children, stepchildren, and other persons related by blood or marriage, persons who share or formerly shared a common dwelling, and persons who have or allegedly have a child in common. [In the case of high-risk adult with disabilities, the phrase "family or household member" also includes any person who has the responsibility for a high-risk adult as a result of a family relationship or who has assumed responsibility for all or a portion of the care of a high-risk adult with disabilities voluntarily, or by express or implied contract, or by court order.]

Committee Note

750 ILCS 60/103(5), amended by P.A. 86-542, effective January 1, 1990.

Give this instruction when the phrase "family or household member" is used either in the description of the act or failure to act which has been inserted in Instruction 11.78 or in the portion of the order of protection allegedly violated.

Use the bracketed language only when the case involves an order of protection entered to protect a high-risk adult with disabilities, and in such a case, give Instruction 11.78B, defining the phrase "high-risk adult with disabilities."

See Instruction 11.78.

11.78B
Definition Of High-Risk Adult With Disabilities--Violation Of Order Of Protection

The phrase "high-risk adult with disabilities" means a person of age 18 or over whose physical or mental disability impairs his ability to seek or obtain protection from abuse, neglect, or exploitation.

Committee Note

750 ILCS 60/103(8), amended by P.A. 86-542, effective January 1, 1990.

Give this instruction when the phrase "high-risk adult with disabilities" is used either in the description of the act or failure to act which has been inserted in Instruction 11.78, or in the portion of the order of protection allegedly violated.

See Instruction 11.78.

11.78C
Definition Of Abuse--Violation Of Order Of Protection

The word "abuse" means [(physical abuse) (harassment) (intimidation of a dependent) (interference with personal liberty) (wilful deprivation)] [but does not include reasonable direction of a minor child by a parent or person acting in the place of a parent].

Committee Note

750 ILCS 60/103(1), amended by P.A. 86-542, effective January 1, 1990.

Give this instruction when the word "abuse" is used either in the description of the act or failure to act which has been inserted in Instruction 11.78, in the portion of the order of protection allegedly violated, or in another definition. See, e.g., Instruction 11.78B, defining the phrase "high-risk adult with disabilities."

Give Instructions 11.78E, 11.78F, 11.78G, 11.78I, and 11.78J, whenever the terms defined in those instructions are included in this instruction.

See Instruction 11.78.

Use applicable bracketed material.

11.78D
Definition Of Exploitation--Violation Of Order Of Protection

The word "exploitation" means the illegal[, including tortious,] [(use of a high-risk adult with disabilities) (use of the assets or resources of a high-risk adult with disabilities)], including

[1] the misappropriation of assets or resources of a high-risk adult with disabilities [(by undue influence) (by breach of a fiduciary relationship) (by fraud) (by deception) (by extortion)].

[or]

[2] the use of the assets or resources of a high-risk adult with disabilities in a manner contrary to law.

Committee Note

750 ILCS 60/103(5), amended by P.A. 86-542, effective January 1, 1990.

Give Instruction 11.78B, defining the phrase "high-risk adult with disabilities."

Give this instruction when the word "exploitation" is used either in the description of the act or failure to act which has been inserted in Instruction 11.78 or in the portion of the order of protection allegedly violated.

See Instruction 11.78.

Use applicable paragraphs and bracketed material.

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

11.78E
Definition Of Harassment--Violation Of Order Of Protection

The word "harassment" means knowing conduct which would cause a reasonable person emotional distress, which does cause emotional distress to the petitioner, and which is not necessary to accomplish a purpose that is reasonable under the circumstances.

Committee Note

750 ILCS 60/103(8), amended by P.A. 86-542, effective January 1, 1990.

Give this instruction when the word "harassment" is used either in the description of the act or failure to act which has been inserted in Instruction 11.78 or in the portion of the order of protection allegedly violated.

In addition to the above definition, the Domestic Violence Act creates a mandatory presumption, to be rebutted by a preponderance of the evidence, that certain types of conduct cause emotional distress. See Chapter 40, Section 2311-3(6). Because of constitutional difficulties that would arise if that presumption were applied in criminal cases, the Committee believes that no instruction on the presumption should be given in a criminal prosecution for violation of an order of protection. *See* Mullaney v. Wilbur, 421 U.S. 684, 95 S.Ct. 1881, 44 L.Ed.2d 508 (1975); County Court v. Allen, 442 U.S. 140, 99 S.Ct. 2213, 60 L.Ed.2d 777 (1979); Sandstrom v. Montana, 442 U.S. 510, 99 S.Ct. 2450, 61 L.Ed.2d 39 (1979).

See Instruction 11.78.

11.78F
Definition Of Interference With Personal Liberty--Violation Of Order Of Protection

The phrase "interference with personal liberty" means committing or threatening physical abuse, harassment, intimidation, or wilful deprivation so as to compel another [(to engage in conduct from which he has a right to abstain) (to refrain from conduct in which he has a right to engage)].

Committee Note

750 ILCS 60/103(9), amended by P.A. 86-542, effective January 1, 1990.

Give this instruction when the phrase "interference with personal liberty" is used either in the description of the act or failure to act which has been inserted in Instruction 11.78 or in the portion of the order of protection allegedly violated.

See Instruction 11.78.

Use applicable bracketed material.

See People v. Marquis, 54 Ill.App.3d 209, 369 N.E.2d 372, 11 Ill.Dec. 918 (4th Dist.1977), concerning the required mental state of wilfulness; see also Chapter 38, Section 4-5.

11.78G
Definition Of Intimidation Of A Dependent--Violation Of Order Of Protection

The phrase "intimidation of a dependent" means subjecting a person who is dependent because of age, health, or disability to [(participate in) (witness)] [(physical force against another) (physical confinement or restraint of another which constitutes physical abuse)].

Committee Note

750 ILCS 60/103(10), amended by P.A. 86-542, effective January 1, 1990.

Give this instruction when the phrase "intimidation of a dependent" is used either in the description of the act or failure to act which has been inserted in Instruction 11.78 or in the portion of the order of protection allegedly violated.

Give Instruction 11.78I, defining the term "physical abuse" when the jury is instructed on physical confinement or restraint constituting physical abuse.

See Instruction 11.78.

Use applicable bracketed material.

11.78H
Definition Of Neglect--Violation Of Order Of Protection

The word "neglect" means the failure to exercise that degree of care toward a high-risk adult with disabilities which a reasonable person would exercise under the circumstances and includes

[1] the failure to take reasonable steps to protect a high-risk adult with disabilities from acts of abuse.

[or]

[2] the repeated, careless imposition of unreasonable confinement.

[or]

[3] the failure to provide food, shelter, clothing, and personal hygiene to a high-risk adult with disabilities who requires such assistance.

[or]

[4] the failure to provide medical and rehabilitative care for the physical and mental health needs of a high-risk adult with disabilities.

[or]

[5] the failure to protect a high-risk adult with disabilities from health and safety hazards.

Committee Note

750 ILCS 60/103(11), amended by P.A. 86-542, effective January 1, 1990.

Give Instruction 11.78B, defining the phrase "high-risk adult with disabilities."

Give this instruction when the word "neglect" is used either in the description of the act or failure to act which has been inserted in Instruction 11.78 or in the portion of the order of protection allegedly violated.

See Instruction 11.78.

Use applicable paragraphs and bracketed material.

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

11.78I
Definition Of Physical Abuse--Violation Of Order Of Protection

The term "physical abuse" [includes sexual abuse and] means
[1] knowing or reckless use of physical force, confinement, or restraint.

[or]

[2] knowing, repeated, and unnecessary sleep deprivation.

[or]

[3] knowing or reckless conduct which creates an immediate risk of physical harm.

Committee Note

750 ILCS 60/103(14), amended by P.A. 86-542, effective January 1, 1990.

Give this instruction when the term "physical abuse" is used either in the description of the act or failure to act which has been inserted in Instruction 11.78, in the portion of the order of protection allegedly violated, or in another definition upon which the jury is to be instructed. See, e.g., Instructions 11.78C, 11.78F, and 11.78G.

See Instruction 11.78.

Use applicable paragraphs and bracketed material.

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

11.78J
Definition Of Wilful Deprivation--Violation Of Order Of Protection

The term "wilful deprivation" means wilfully denying a person who, because of [(age) (health) (disability)], requires [(medication) (medical care) (shelter) (food) (a therapeutic device) (____)], and the denial exposes that person to the risk of physical, mental, or emotional harm, except with regard to medical care or treatment when the dependent person has expressed an intent to forego such medical care or treatment.

Committee Note

750 ILCS 60/103(15), amended by P.A. 86-542, effective January 1, 1990.

Give this instruction whenever the term "wilful deprivation" is used either in the description of the act or failure to act which has been inserted in Instruction 11.78 or in the portion of the order of protection allegedly violated.

See Instruction 11.78.

Insert in the blank any other type of physical assistance required by the person who allegedly has been deprived.

Use applicable bracketed material.

11.79
Definition Of Inducement To Commit Suicide--Coercing A Suicide

A person commits the offense of inducement to commit suicide when he coerces another to commit suicide and that person [(commits) (attempts to commit)] suicide as a direct result of the coercion, and the defendant exercises substantial control over that person through [(control of that person's physical location or circumstances) (use of psychological pressure) (use of actual or ostensible religious, political, social, philosophical, or other principles)].

Committee Note

720 ILCS 5/12-31(a)(1) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-31 (1991)), added by P.A. 86-980, effective July 1, 1990, and amended by P.A. 87-1167, effective January 1, 1993. P.A. 87-1167 added the phrase "or attempts to commit" suicide to Section 12-31.

Give Instruction 11.80.

If the phrase "attempts to commit suicide" is used, then give Instruction 11.79A, defining that phrase.

P.A. 88-392, effective August 20, 1993, added a new subsection to this offense (Section 12-31(a)(2)) that, while retaining the name of inducement to commit suicide, is essentially an entirely new offense, focusing on acts which assist a person in committing suicide. Thus, the Committee decided to provide separate definitional and issues instructions for that new offense, Instructions 11.79X and 11.80X, and to call that new offense "Inducement To Commit Suicide--Providing the Means or Participating in a Physical Act." Similarly, the Committee modified the title of this instruction by adding the phrase "--Coercing a Suicide."

Use applicable bracketed material.

11.79A
Definition Of Attempts To Commit Suicide--Inducement To Commit Suicide

The phrase "attempts to commit suicide" means any act done with the intent to commit suicide that constitutes a substantial step toward commission of suicide.

Committee Note

720 ILCS 5/12-31 (West Supp.1993), amended by P.A. 87-1167, effective January 1, 1993. P.A. 87-1167 added the phrase "or attempts to commit" suicide to Section 12-31.

Because Section 12-31, which contains this definition, states that "attempts to commit suicide" has the above meaning "[f]or the purposes of Section [12-31]" the Committee cautions that this definition may not apply to prosecutions other than for inducement to commit suicide.

11.79X
Definition Of Inducement To Commit Suicide--Providing The Means Or Participating In A Physical Act

A person commits the offense of inducement to commit suicide when, with knowledge that another person intends to [(commit) (attempt to commit)] suicide, he intentionally [(offers and provides the physical means) (participates in a physical act)] by which another person [(commits) (attempts to commit)] suicide.

Committee Note

720 ILCS 5/12-31(a)(2) (West Supp.1993), added by P.A. 88-392, effective August 20, 1993.

Give Instruction 11.80X.

If the phrase "attempts to commit suicide" is used, then give Instruction 11.79A, defining that phrase.

P.A. 88-392, effective August 20, 1993, added a new subsection to Section 12-31 that, while retaining the name of inducement to commit suicide, is essentially an entirely new offense, focusing on acts which assist a person in committing suicide. Thus, the Committee decided to provide these separate definitional and issues instructions for this new offense called "Inducement To Commit Suicide--Providing the Means or Participating in a Physical Act." Similarly, the Committee modified the title of Instructions 11.79 and 11.80 by adding the phrase "--Coercing a Suicide."

Use applicable bracketed material.

11.80
Issues In Inducement To Commit Suicide--Coercing A Suicide

To sustain the charge of inducement to commit suicide, the State must prove the following propositions:

First Proposition: That the defendant coerced ____ to commit suicide; and

Second Proposition: That ____[(committed) (attempted to commit)] suicide as a direct result of the defendant's coercion; and

Third Proposition: That the defendant exercised substantial control over ____ through

[1] control of the physical location or circumstances of ____.

[or]

[2] use of psychological pressure.

[or]

[3] use of actual or ostensible religious, political, social, philosophical, or other principles.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-31(a)(1) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-31 (1991)), added by P.A. 86-980, effective July 1, 1990, and amended by P.A. 87-1167, effective January 1, 1993. P.A. 87-1167 added the phrase “or attempts to commit” suicide to Section 12-31.

Give Instruction 11.79.

If the phrase “attempts to commit suicide” is used, then give Instruction 11.79A, defining that phrase.

Insert in the blank the name of the victim.

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

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.80X
Issues In Inducement To Commit Suicide--Providing The Means Or Participating In A Physical Act

To sustain the charge of inducement to commit suicide, the State must prove the following propositions:

First Proposition: That the defendant intentionally [(offered and provided the physical means) (participated in a physical act)] by which ____[(committed) (attempted to commit)] suicide; and

Second Proposition: That the defendant knew that ____ intended to [(commit) (attempt to commit)] suicide.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-31(a)(2) (West Supp.1993), added by P.A. 88-392, effective August 20, 1993.

Give Instruction 11.79X.

If the phrase “attempts to commit suicide” is used, then give Instruction 11.79A, defining that phrase.

Insert in the blank the name of the victim.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.81
Ritual Mutilation

A person commits the offense of ritual mutilation when he [(intentionally) (knowingly) (recklessly)] mutilates, dismembers, or tortures another person as part of a ceremony, rite, initiation, observance, performance, or practice,

[1] and the victim did not consent.

[or]

[2] under such circumstances that the defendant knew or should have known that the victim was unable to render effective consent.

Committee Note

720 ILCS 5/12-32 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-32 (1991)).

Give Instruction 11.82.

Use the mental state that conforms to the allegation in the charge. *See* People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

The offense of ritual mutilation does not include the practice of circumcision or a ceremony, rite, initiation, observance, or performance related thereto. See Section 12-32(c).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

11.82
Issues In Ritual Mutilation

To sustain the charge of ritual mutilation, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] mutilated, dismembered, or tortured ____; and

Second Proposition: That the mutilation, dismemberment, or torture occurred as part of a ceremony, rite, initiation, observance, performance, or practice; and

Third Proposition: That ____ did not consent to the mutilation, dismemberment, or torture.

[or]

Third Proposition: That defendant knew or should have known that under the circumstances present, ____ was unable to render effective consent to the mutilation, dismemberment, or torture.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-32 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §12-32 (1991)), added by P.A. 86-864, effective January 1, 1990.

Give Instruction 11.81.

Use the mental state that conforms to the allegation in the charge. *See* People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Insert in the blank the name of the victim.

Use the applicable Third Proposition.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.83
Definition Of Cemetery Vandalism

A person commits the offense of cemetery vandalism when he[, without proper legal authority,] wilfully and knowingly

[1] [(destroys) (damages)] the remains of a deceased human being.

[or]

[2] removes any portion of the remains of a deceased human being from a [(burial ground where skeletal remains are buried) (grave) (crypt) (vault) (mausoleum) (repository of human remains)].

[or]

[3] desecrates human remains.

[or]

[4] [(obliterates) (vandalizes) (desecrates)]

[a] a [(burial ground where skeletal remains are buried) (grave) (crypt) (vault) (mausoleum) (repository of human remains)] and the amount of damage is [(less than $500) (at least $500 and less than $10,000) (at least $10,000 and less than $100,000) ($100,000 or more)].

[or]

[b] a park or other area clearly designated to preserve and perpetuate the memory of a deceased person or group of persons and the amount of damage is [(less than $500) (at least $500 and less than $10,000) (at least $10,000 and less than $100,000) ($100,000 or more)].

[or]

[c] [(plants) (trees) (shrubs) (flowers)] located upon or around a repository for human remains or within a human graveyard or cemetery and the amount of damage is [(less than $500) (at least $500 and less than $10,000) (at least $10,000 and less than $100,000) ($100,000 or more)].

[or]

[d] [(fence) (rail) (curb) [or structure of a similar nature]] intended for the

protection or ornamentation of any [(tomb) (monument) (gravestone) [or other structure of like character]] and the amount of damage is [(less than $500) (at least $500 and less than $10,000) (at least $10,000 and less than $100,000) ($100,000 or more)].

[or]

[5] [(defaces) (vandalizes) (injures) (removes)] a [(gravestone or other memorial) (monument) (marker commemorating a deceased person [or group of persons])] [whether located within or outside of a recognized [(cemetery) (memorial park) (battlefield)]] and damages [(at least one but no more than 4 gravestones) (at least 5 but no more than 10 gravestones) (more than 10 gravestones)].

Committee Note

765 ILCS 835/1(a) and (b) (West 1992) (formerly Ill.Rev.Stat. ch. 21, §§15(a) and (b) (1991)), amended by P.A. 87-527, effective September 16, 1991; and P.A. 89-36, effective January 1, 1996.

Give Instruction 11.84.

Use paragraphs [1] through [3] for charges brought under Section 1(a), and paragraphs [4] or [5] for charges brought under Section 1(b).

Use the phrase “without proper legal authority” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 1961 (720 ILCS 5/7-1 through 5/7-14).

Section 1(c) of the statute excludes from the statute's provisions “the removal or unavoidable breakage or injury by a cemetery authority of anything placed in or upon any portion of its cemetery in violation of any of the rules and regulations of the cemetery authority, [or] the removal of anything placed in the cemetery by or with the consent of the cemetery authority that in the judgment of the cemetery authority has become wrecked, unsightly, or dilapidated.”

Use applicable bracketed material.

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

See People v. Marquis, 54 Ill.App.3d 209, 369 N.E.2d 372, 11 Ill.Dec. 918 (4th Dist.1977), concerning the required mental state of wilfulness; see also 720 ILCS 5/4-5 (1992) (formerly Ill.Rev.Stat. ch. 38, §4-5 (1991)).

11.84
ISSUES IN CEMETERY VANDALISM

To sustain the charge of cemetery vandalism, the State must prove the following proposition:

[1] That the defendant[, without proper legal authority,] wilfully and knowingly [(destroyed) (damaged)] the remains of a deceased human being.

[or]

[2] That the defendant[, without proper legal authority,] wilfully and knowingly removed any portion of the remains of a deceased human being from a [(burial ground where skeletal remains are buried) (grave) (crypt) (vault) (mausoleum) (repository of human remains)].

[or]

[3] That the defendant[, without proper legal authority,] wilfully and knowingly desecrated human remains.

[or]

[4] That the defendant[, without proper legal authority,] wilfully and knowingly [(obliterated) (vandalized) (desecrated)]

[a] a [(burial ground where skeletal remains are buried) (grave) (crypt) (vault) (mausoleum) (repository of human remains)] and the amount of damage was [(less than $500) (at least $500 and less than $10,000) (at least $10,000 and less than $100,000) ($100,000 or more)].

[b] a park or other area clearly designated to preserve and perpetuate the memory of a deceased person or group of persons and the amount of damage was [(less than $500) (at least $500 and less than $10,000) (at least $10,000 and less than $100,000) ($100,000 or more)].

[or]

[c] [(plants) (trees) (shrubs) (flowers)] located upon or around a repository for human remains or within a human graveyard or cemetery and the amount of damage was [(less than $500) (at least $500 and less than $10,000) (at least $10,000 and less than $100,000) ($100,000 or more)].

[or]

[d] [(fence) (rail) (curb) [or structure of a similar nature]] intended for the protection or ornamentation of any [(tomb) (monument) (gravestone) [or other

structure of like character]] and the amount of damage was [(less than $500) (at least $500 and less than $10,000) (at least $10,000 and less than $100,000) ($100,000 or more)].

[or]

[5] That the defendant[, without proper legal authority,] wilfully and knowingly [(defaced) (vandalized) (injured) (removed)] a [(gravestone or other memorial) (monument) (marker commemorating a deceased person [or group of persons])] [whether located within or outside of a recognized [(cemetery) (memorial park) (battlefield)]] and damaged [(at least one but no more than 4 gravestones) (at least 5 but no more than 10 gravestones) (more than 10 gravestones)].

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

765 ILCS 835/1(a) and (b) (West 1992) (formerly Ill.Rev.Stat. ch. 21, §§15(a) and (b) (1991)), amended by P.A. 87-527, effective September 16, 1991; and P.A. 89-36, effective January 1, 1996.

Give Instruction 11.83.

See the Committee Note to Instruction 11.83 to distinguish separate sections of the statute.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase "without proper legal authority" in Instruction 11.83 (see Committee Note to Instruction 11.83), and this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Since the additional proposition or propositions that will thereby be included require the jury to find that the defendant acted without proper legal authority, the Committee has concluded that the phrase "without proper legal authority" need not be used in this issues instruction.

Use applicable bracketed material.

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

See People v. Marquis, 54 Ill.App.3d 209, 369 N.E.2d 372, 11 Ill.Dec. 918 (4th Dist.1977), concerning the required mental state of wilfulness; see also 720 ILCS 5/4-5 (1992) (formerly Ill.Rev.Stat. ch. 38, §4-5 (1991)).

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.85
Definition Of Compelling A Person Under 18 Years Of Age To Join An Organization Or Association

A person commits the offense of compelling a person under 18 years of age to join an organization or association when he, being 18 years of age or older, [(expressly or impliedly threatens to do bodily harm to a person under 18 years of age) (does bodily harm to a person under 18 years of age) (uses ____)] with the intent to [(solicit or cause any person under 18 years of age to join) (deter any person under 18 years of age from leaving)] any organization or association, regardless of the nature of such organization or association.

Committee Note

720 ILCS 5/12-6.1 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §12-6.1 (1991)); amended by P.A. 89-8, effective March 21, 1995.

Give Instruction 11.86.

Give this instruction for charges brought under the second paragraph of Section 12-6.1. Use Instruction 11.43 (Definition of Compelling Organization Membership of Persons) for charges brought under the first paragraph of Section 12-6.1.

The third alternative means of compelling organization membership--”any criminally unlawful means”--applies only to something other than threats to do bodily harm or actually inflicting bodily harm. Insert in the blank the “criminally unlawful means” to which the information or indictment refers.

Use applicable bracketed material.

11.86
Issues In Compelling A Person Under 18 Years Of Age To Join An Organization Or Association

To sustain the charge of compelling a person under 18 years of age to join an organization or association, the State must prove the following propositions:

First Proposition: That the defendant [(expressly or impliedly threatened to do bodily harm to a person under 18 years of age) (did bodily harm to a person under 18 years of age (used ____)]; and

Second Proposition: That the defendant did so with the intent to [(solicit or cause a person under 18 years of age to join) (deter a person under 18 years of age from leaving)] any organization or association; and

Third Proposition: That when the defendant did so, he was 18 years of age or older.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-6.1 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-6.1 (1991)); amended by P.A. 89-8; effective March 21, 1995.

Give Instruction 11.85.

Give this instruction only for charges brought under the second paragraph of Section 12-6.1 Use Instruction 11.44 (Issues in Compelling Organization Membership of Persons) for charges brought under the first paragraph of Section 12-6.1.

If at issue, insert in the blank the criminally unlawful means. See Committee Note to Instruction 11.85.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.87
Definition Of Stalking (Until August 20, 1993)

A person commits the offense of stalking when he transmits a threat to another person with the intent to place that person in reasonable apprehension of [(death) (bodily harm) (sexual assault) (confinement) (restraint)], and in furtherance of that threat does [any one or more of] the following act[s] on at least two separate occasions:

[1] knowingly follows the person, other than within the residence of the defendant.

[or]

[2] knowingly places the person under surveillance by remaining present outside [(the person's school) (the person's place of employment) (the person's vehicle) (any place occupied by the person) (the person's residence other than the residence of the defendant)].

Committee Note

P.A. 88-402, effective August 20, 1993, substantially redefined the offense of stalking. Thus, this instruction may be used *only* in cases in which the alleged stalking occurred before August 20, 1993.

720 ILCS 5/12-7.3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-7.3 (1991)), added by P.A. 87-870 and P.A. 87-871, effective July 12, 1992.

Give Instruction 11.88.

Section 12-7.3(c) exempts picketing occurring at the workplace that is otherwise lawful and arises out of a *bona fide* labor dispute from the offense of stalking. The defendant bears the burden of proving this exception by a preponderance of the evidence. *See* People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978); People v. Foster, 195 Ill.App.3d 926, 552 N.E.2d 1112, 142 Ill.Dec. 371 (5th Dist.1990); People v. McQueen, 241 Ill.App.3d 509, 608 N.E.2d 1333, 181 Ill.Dec. 859 (4th Dist.1993).

Use the bracketed phrase “any one or more of” when instructing the jury on both paragraphs [1] and [2].

Use applicable bracketed material.

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

11.87A
Definition Of Follows Another Person

The phrase "follows another person" means [(to move in relative proximity to a person as that person moves from place to place) (to remain in relative proximity to a person who is stationary or whose movements are confined to a small area)].

[The phrase "follows another person" does not include a following within the residence of the defendant.]

Committee Note

720 ILCS 5/12-7.3(e) (West 1994), amended by P.A. 89-377, effective August 18, 1995.

Give this instruction when the phrase "follows another person" is at issue.

Use applicable bracketed material.

11.87B
Definition Of *Bona Fide* Labor Dispute

The phrase "*bona fide* labor dispute" means any controversy concerning wages, salaries, hours, working conditions, or benefits, including health and welfare, sick leave, insurance, and pension or retirement provisions, the making or maintaining of collective bargaining agreements, and the terms to be included in those agreements.

Committee Note

720 ILCS 5/12-7.3(f) (West 1994), added by P.A. 89-377, effective August 18, 1995.

Give this instruction when the phrase "*bona fide* labor dispute" is at issue.

11.87C
Definition Of Places A Person Under Surveillance

The phrase "places a person under surveillance" means that the defendant remained present outside [(the school of ____) (the place of employment of ____) (the vehicle of ____) (any place occupied by ____) (a residence other than the residence of the defendant)].

Committee Note

720 ILCS 5/12-7.3(d) (West 1994).

Give this instruction when the phrase "places a person under surveillance" is at issue.

Insert in the blanks the name of the alleged victim. The name of only one person should appear in each of the blanks of this instruction, and it should be the same name throughout.

This instruction used to be bracketed paragraph [3] in Instruction 11.87X.

11.87X
Definition Of Stalking (As Of August 20, 1993)

A person commits the offense of stalking when he knowingly [without lawful justification] on at least 2 separate occasions [(follows another person) (places another person under surveillance) (follows another person or places another person under surveillance)] and

[1] at any time knowingly transmits a threat to that person of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)].

[or]

[2] places that person in reasonable apprehension of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)].

Committee Note

720 ILCS 5/12-7.3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-7.3 (1991)), added by P.A. 87-870 and P.A. 87-871, effective July 12, 1992, and amended by P.A. 88-402, effective August 20, 1993.

Note that this instruction may be used *only* in cases in which the alleged stalking occurred on or after August 20, 1993, the effective date of P.A. 88-402, which substantially rewrote the definition of stalking. For cases involving stalking that allegedly occurred before August 20, 1993, use Instruction 11.87.

Give Instruction 11.88X.

When the phrase "follows another person" is at issue, give Instruction 11.87A, defining that phrase and explaining what it does not include.

When the phrase "places a person under surveillance" is at issue, give Instruction 11.87C, defining that phrase.

Section 12-7.3(c) provides that picketing occurring at the workplace that is otherwise lawful and arises out of a *bona fide* labor dispute does not come within the definition of stalking. When a *bona fide* labor dispute is at issue, give Instruction 11.87B, defining that phrase. P.A. 88-402, effective August 20, 1993, added that "any exercise of the right of free speech or assembly that is otherwise lawful" similarly does not come within the definition of stalking. See 720 ILCS 5/12-7.3(c) (West 1994). The defendant bears the burden of proving these exceptions by a preponderance of the evidence. *See* People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978); People v. Foster, 195 Ill.App.3d 926, 552 N.E.2d 1112, 142 Ill.Dec. 371 (5th Dist.1990); People v. McQueen, 241 Ill.App.3d 509, 608 N.E.2d 1333, 181 Ill.Dec. 859 (4th Dist.1993).

Use applicable bracketed material.

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 1961 (720 ILCS 5/7-1 *et seq.*). *See* People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

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

11.88
Issues In Stalking (Until August 20, 1993)

To sustain the charge of stalking, the State must prove the following propositions:

First Proposition: That the defendant transmitted a threat to ____; and

Second Proposition: That the defendant did so with the intent to place ____ in reasonable apprehension of [(death) (bodily harm) (sexual assault) (confinement) (restraint)]; and

Third Proposition: That the defendant, in furtherance of that threat, did [any one or more of] the following act[s] on at least two separate occasions:

[1] knowingly followed ____, other than within the residence of the defendant.

[or]

[2] knowingly placed ____ under surveillance by remaining present outside [(the school of ____) (the place of employment of ____) (the vehicle of ____) (any place occupied by ____) (the residence of ____ other than the residence of the defendant)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

P.A. 88-402, effective August 20, 1993, substantially redefined the offense of stalking. Thus, this instruction may be used *only* in cases in which the alleged stalking occurred before August 20, 1993.

720 ILCS 5/12-7.3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-7.3 (1991)), added by P.A. 87-870 and P.A. 87-871, effective July 12, 1992.

Give Instruction 11.87.

Use the bracketed phrase “any one or more of” when instructing the jury on both paragraphs [1] and [2].

Insert in the blanks the name of the alleged victim. The name of only one person should appear in each of the blanks of this instruction, and it should be the same name throughout.

Use applicable bracketed material.

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

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.88X
Issues In Stalking (As Of August 20, 1993)

To sustain the charge of stalking, the State must prove the following propositions:

First Proposition: That the defendant on at least two separate occasions knowingly [without lawful justification] [(followed ____) (placed ____ under surveillance) (followed or placed ____ under surveillance)]; and

[1] *Second Proposition*: That the defendant at any time knowingly transmitted a threat to ____ of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)].

[or]

[2] *Second Proposition*: That the defendant knowingly placed ____ in reasonable apprehension of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-7.3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-7.3 (1991)), added by P.A. 87-870 and P.A. 87-871, effective July 12, 1992, and amended by P.A. 88-402, effective August 20, 1993.

Note that this instruction may be used *only* in cases in which the alleged stalking occurred on or after August 20, 1993, the effective date of P.A. 88-402, which substantially rewrote the definition of stalking. For cases involving stalking that allegedly occurred before August 20, 1993, use Instruction 11.88.

Give Instruction 11.87X.

Insert in the blanks the name of the alleged victim. The name of only one person should appear in each of the blanks of this instruction, and it should be the same name throughout.

Use applicable bracketed material.

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 1961 (720 ILCS 5/7-1 *et seq.*). *See* People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.89
Definition Of Aggravated Stalking--Bodily Harm, Confinement, Or Restraint

A person commits the offense of aggravated stalking when, in conjunction with committing the offense of stalking, he [(intentionally) (knowingly) (recklessly)] [(causes bodily harm to) (confines or restrains)] the victim.

Committee Note

720 ILCS 5/12-7.4(a)(1) and (a)(2) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-7.4(a)(1) and (a)(2) (1991)), added by P.A. 87-870 and P.A. 87-871, effective July 12, 1992.

Give Instruction 11.87.

Give Instruction 11.90.

Section 12-7.4(c) provides that picketing occurring at the workplace that is otherwise lawful and arises out of a *bona fide* labor dispute does not come within the definition of stalking. P.A. 88-402, effective August 20, 1993, added that "any exercise of the right of free speech or assembly that is otherwise lawful" similarly does not come within the definition of aggravated stalking. See 720 ILCS 5/12-7.4(c) (West 1994). The defendant bears the burden of proving these exceptions by a preponderance of the evidence. *See* People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978); People v. Foster, 195 Ill.App.3d 926, 552 N.E.2d 1112, 142 Ill.Dec. 371 (5th Dist.1990); People v. McQueen, 241 Ill.App.3d 509, 608 N.E.2d 1333, 181 Ill.Dec. 859 (4th Dist.1993).

Based on People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), the Committee believes that one of the three bracketed mental states must describe a defendant's mental state when he allegedly caused bodily harm to, confined, or restrained the victim. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used 720 ILCS 5/4-3(b) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

The Committee decided to divide the offense of aggravated stalking into two separate sets of definitional and issues instructions--aggravated stalking based on bodily harm, confinement, or restraint (Instructions 11.89 and 11.90), and aggravated stalking based on the violation of a court order (Instructions 11.91 and 11.92)--because the Committee believed one set of definitional and issues instructions for this offense might prove unnecessarily complicated.

P.A. 88-402, effective August 20, 1993, also substantially redefined the offense of stalking and required the Committee to prepare Instructions 11.87X, 11.88X, 11.90X, and 11.92X to address this statutory change. However, because this instruction merely refers by name to the offense of stalking, the Committee had no need to modify it.

Use applicable bracketed material.

11.90
Issues In Aggravated Stalking--Bodily Harm, Confinement, Or Restraint (Until August 20, 1993)

To sustain the charge of aggravated stalking, the State must first prove that the defendant committed the offense of stalking. To sustain the charge of stalking, the State must prove the following propositions:

First Proposition: That the defendant transmitted a threat to ____; and

Second Proposition: That the defendant did so with the intent to place ____ in reasonable apprehension of [(death) (bodily harm) (sexual assault) (confinement) (restraint)]; and

Third Proposition: That the defendant, in furtherance of that threat, did [any one or more of] the following act[s] on at least two separate occasions:

[1] knowingly followed ____, other than within the residence of the defendant;

[or]

[2] knowingly placed ____ under surveillance by remaining present outside [(the school of ____) (the place of employment of ____) (the vehicle of ____) (any place occupied by ____) (the residence of ____ other than the residence of the defendant)].

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations on these charges should end and you should return a verdict of not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you have concluded that the defendant committed the offense of stalking. You should now go on with your deliberations to decide whether the defendant is guilty of aggravated stalking.

To sustain the charge of aggravated stalking, the State must prove the following additional proposition:

Fourth Proposition: That, in conjunction with committing the offense of stalking, the defendant [(intentionally) (knowingly) (recklessly)] [(caused bodily harm to ____) (confined or restrained ____)].

If you find from your consideration of all the evidence that this Fourth Proposition has also been proved beyond a reasonable doubt, you should find the defendant guilty of aggravated stalking.

If you find from your consideration of all the evidence that this Fourth Proposition has not been proved beyond a reasonable doubt, then you should find the defendant not guilty of aggravated stalking [and guilty of stalking].

Committee Note

P.A. 88-402, effective August 20, 1993, substantially redefined the offense of stalking. Thus, this instruction may be used *only* in cases in which the alleged aggravated stalking occurred before August 20, 1993.

720 ILCS 5/12-7.4(a)(1) and (a)(2) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §§12-7.4(a)(1) and (a)(2) (1991)), added by P.A. 87-870 and P.A. 87-871, effective July 12, 1992.

Give Instruction 11.89.

Use the bracketed phrase “any one or more of” when instructing the jury on both paragraphs [1] and [2].

After considerable discussion, the Committee decided to have the jury first instructed on the elements of stalking and then on the aggravating factor that changes stalking to aggravated stalking. The Committee chose to do so because of the difficulty in otherwise addressing in jury instructions the phrase “in *conjunction with committing* the offense of stalking” (emphasis added), a phrase that does not appear anywhere else in Illinois criminal law.

Insert in the blanks the name of the victim. The name of only one person should appear in each of the blanks of this instruction, and it should be the same name throughout.

Based on People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), the Committee believes that one of the three bracketed mental states must describe a defendant's mental state when he allegedly caused bodily harm to, confined, or restrained the victim. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used 720 ILCS 5/4-3(b) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable bracketed material.

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

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.90X
Issues In Aggravated Stalking--Bodily Harm, Confinement, Or Restraint (As Of August 20, 1993)

To sustain the charge of aggravated stalking, the State must first prove that the defendant committed the offense of stalking. To sustain the charge of stalking, the State must prove the following propositions:

First Proposition: That the defendant on at least two separate occasions knowingly [(followed ____) (placed ____ under surveillance) (followed or placed ____ under surveillance)]; and

[1] *Second Proposition:* That the defendant at any time knowingly transmitted a threat to ____ of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)].

[or]

[2] *Second Proposition:* That the defendant knowingly placed ____ in reasonable apprehension of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)].

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations on these charges should end and you should return a verdict of not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you have concluded that the defendant committed the offense of stalking. You should now go on with your deliberations to decide whether the defendant is guilty of aggravated stalking.

To sustain the charge of aggravated stalking, the State must prove the following additional proposition:

Third Proposition: That, in conjunction with committing the offense of stalking, the defendant [(intentionally) (knowingly) (recklessly)] [(caused bodily harm to ____) (confined or restrained ____)].

If you find from your consideration of all the evidence that this Third Proposition has also been proved beyond a reasonable doubt, you should find the defendant guilty of aggravated stalking.

If you find from your consideration of all the evidence that this Third Proposition has not been proved beyond a reasonable doubt, then you should find the defendant not guilty of aggravated stalking [and guilty of stalking].

Committee Note

720 ILCS 5/12-7.4(a)(1) and (a)(2) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §§12-7.4(a)(1) and (a)(2) (1991)), added by P.A. 87-870 and P.A. 87-871, effective July 12, 1992, and amended by P.A. 88-402, effective August 20, 1993.

Note that this instruction may be used *only* in cases in which the alleged stalking occurred on or after August 20, 1993, the effective date of P.A. 88-402, which substantially rewrote the definition of stalking. For cases involving aggravated stalking that allegedly occurred before August 20, 1993, use Instruction 11.90.

Give Instruction 11.89.

Insert in the blanks the name of the victim. The name of only one person should appear in each of the blanks of this instruction, and it should be the same name throughout.

After considerable discussion, the Committee decided to have the jury first instructed on the elements of stalking and then on the aggravating factor that changes stalking to aggravated stalking. The Committee chose to do so because of the difficulty in otherwise addressing in jury instructions the phrase "in *conjunction with committing* the offense of stalking" (emphasis added), a phrase that does not appear anywhere else in Illinois criminal law.

Based on People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), the Committee believes that one of the three bracketed mental states must describe a defendant's mental state when he allegedly caused bodily harm to, confined, or restrained the victim. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used 720 ILCS 5/4-3(b) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable bracketed material.

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

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.91
Definition Of Aggravated Stalking--Violation Of A Court Order

A person commits the offense of aggravated stalking when, in conjunction with committing the offense of stalking, he [(intentionally) (knowingly) (recklessly)] violates [(a temporary restraining order) (an order of protection) (an injunction)] prohibiting the [(harassment) (interference with personal liberty) (physical abuse) (willful deprivation) (neglect) (exploitation) (intimidation of a dependent)] of the victim.

The term [("harassment") ("interference with personal liberty") ("physical abuse") ("willful deprivation") ("neglect") ("exploitation") ("intimidation of a dependent")] means ____.

Committee Note

720 ILCS 5/12-7.4(a)(3) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-7.4(a)(3) (1991)), added by P.A. 87-870 and 87-871, effective July 12, 1992.

Give Instruction 11.87.

Give Instruction 11.90.

Section 12-7.4(c) provides that picketing occurring at the workplace that is otherwise lawful and arises out of a *bona fide* labor dispute does not come within the definition of stalking. P.A. 88-402, effective August 20, 1993, added that "any exercise of the right of free speech or assembly that is otherwise lawful" similarly does not come within the definition of aggravated stalking. See 720 ILCS 5/12-7.4(c) (West 1994). The defendant bears the burden of proving these exceptions by a preponderance of the evidence. *See* People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978); People v. Foster, 195 Ill.App.3d 926, 552 N.E.2d 1112, 142 Ill.Dec. 371 (5th Dist.1990); People v. McQueen, 241 Ill.App.3d 509, 608 N.E.2d 1333, 181 Ill.Dec. 859 (4th Dist.1993).

Based on People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), the Committee believes that one of the three bracketed mental states must describe a defendant's mental state when he allegedly violated the temporary restraining order, order of protection, or injunction at issue. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used 720 ILCS 5/4-3(b) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

The Committee decided to divide the offense of aggravated stalking into two separate sets of definitional and issues instructions--aggravated stalking based on bodily harm, confinement, or restraint (Instructions 11.89 and 11.90), and aggravated stalking based on the violation of a court order (Instructions 11.91 and 11.92)--because the Committee believed one set of definitional and issues instructions for this offense might prove too complicated.

Section 12-7.4(a)(3), which defines this form of aggravated stalking, incorporates the provisions of 750 ILCS 60/214(b)(1) (West 1992) (formerly Ill.Rev.Stat. ch. 40, §2312-14(b)(1) (1991)) by specific reference. The behavior specified in this instruction, which raises the offense of stalking (a Class 4 felony) to aggravated stalking (a Class 3 felony), is thus derived from 750 ILCS 60/214(b)(1).

P.A. 88-402, effective August 20, 1993, also substantially redefined the offense of stalking and required the Committee to prepare Instructions 11.87X, 11.88X, 11.90X, and 11.92X to address this statutory change. However, because this instruction merely refers by name to the offense of stalking, the Committee had no need to modify it.

Insert in the blank the definition of the term that is used in the last bracketed alternative in the first paragraph of this instruction. Give the definition for this term as set forth in Section 103 of the Illinois Domestic Violence Act (750 ILCS 60/103 (West 1992) (formerly Ill.Rev.Stat. ch. 40, §2311-3 (1991))).

Use applicable bracketed material.

11.92
Issues In Aggravated Stalking--Violation Of A Court Order (Until August 20, 1993)

To sustain the charge of aggravated stalking, the State must first prove that the defendant committed the offense of stalking. To sustain the charge of stalking, the State must prove the following propositions:

First Proposition: That the defendant transmitted a threat to ____; and

Second Proposition: That the defendant did so with the intent to place ____ in reasonable apprehension of [(death) (bodily harm) (sexual assault) (confinement) (restraint)]; and

Third Proposition: That the defendant, in furtherance of that threat, did [any one or more of] the following act[s] on at least two separate occasions:

[1] knowingly followed ____, other than within the residence of the defendant;

[or]

[2] knowingly placed ____ under surveillance by remaining present outside [(the school of ____) (the place of employment of ____) (the vehicle of ____) (any place occupied by ____) (the residence of ____ other than the residence of the defendant)];

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations on these charges should end and you should return a verdict of not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you have concluded that the defendant committed the offense of stalking. You should now go on with your deliberations to decide whether the defendant is guilty of aggravated stalking.

To sustain the charge of aggravated stalking, the State must prove the following additional proposition:

Fourth Proposition: That, in conjunction with committing the offense of stalking, the defendant [(intentionally) (knowingly) (recklessly)] violated [(a temporary restraining order) (an order of protection) (an injunction)] prohibiting the [(harassment) (interference with personal liberty) (physical abuse) (willful deprivation) (neglect) (exploitation) (intimidation of a dependent)] of ____.

If you find from your consideration of all the evidence that this Fourth Proposition has also been proved beyond a reasonable doubt, you should find the defendant guilty of aggravated stalking.

If you find from your consideration of all the evidence that this Fourth Proposition has not been proved beyond a reasonable doubt, then you should find the defendant not guilty of aggravated stalking [and guilty of stalking].

Committee Note

P.A. 88-402, effective August 20, 1993, substantially redefined the offense of stalking. Thus, this instruction may be used *only* in cases in which the alleged stalking occurred before August 20, 1993.

720 ILCS 5/12-7.4(a)(3) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-7.4(a)(3) (1991)), added by P.A. 87-870 and P.A. 87-871, effective July 12, 1992.

Give Instruction 11.91.

Use the bracketed phrase “any one or more of” when instructing the jury on both paragraphs [1] and [2].

Insert in the blanks the name of the alleged victim. The name of only one person should appear in each of the blanks of this instruction, and it should be the same name throughout.

Based on People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), the Committee believes that one of the three bracketed mental states must describe a defendant's mental state when he allegedly violated the temporary restraining order, order of protection, or injunction at issue. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used 720 ILCS 5/4-3(b) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

After considerable discussion, the Committee decided to have the jury first instructed on the elements of stalking and then on the aggravating factor that changes stalking to aggravated stalking. The Committee chose to do so because of the difficulty in otherwise addressing in jury instructions the phrase “in *conjunction with committing* the offense of stalking” (emphasis added), a phrase that does not appear anywhere else in Illinois criminal law.

Use applicable bracketed material.

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

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.92X
Issues In Aggravated Stalking--Violation Of A Court Order (As Of August 20, 1993)

To sustain the charge of aggravated stalking, the State must first prove that the defendant committed the offense of stalking. To sustain the charge of stalking, the State must prove the following propositions:

First Proposition: That the defendant on at least two separate occasions knowingly [(followed ____) (placed ____ under surveillance) (followed or placed ____ under surveillance)]; and

[1] *Second Proposition:* That the defendant at any time knowingly transmitted a threat to ____ of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)].

[or]

[2] *Second Proposition:* That the defendant knowingly placed ____ in reasonable apprehension of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)].

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations on these charges should end and you should return a verdict of not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you have concluded that the defendant committed the offense of stalking. You should now go on with your deliberations to decide whether the defendant is guilty of aggravated stalking.

To sustain the charge of aggravated stalking, the State must prove the following additional proposition:

Third Proposition: That, in conjunction with committing the offense of stalking, the defendant [(intentionally) (knowingly) (recklessly)] violated [(a temporary restraining order) (an order of protection) (an injunction)] prohibiting the [(harassment) (interference with personal liberty) (physical abuse) (willful deprivation) (neglect) (exploitation) (intimidation of a dependent)] of ____.

If you find from your consideration of all the evidence that this Third Proposition has also been proved beyond a reasonable doubt, you should find the defendant guilty of aggravated stalking.

If you find from your consideration of all the evidence that this Third Proposition has not been proved beyond a reasonable doubt, then you should find the defendant not guilty of aggravated stalking [and guilty of stalking].

Committee Note

720 ILCS 5/12-7.4(a)(3) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-7.4(a)(3) (1991)), added by P.A. 87-870 and P.A. 87-871, effective July 12, 1992, and amended by P.A. 88-402, effective August 20, 1993.

Note that this instruction may be used *only* in cases in which the alleged stalking occurred on or after August 20, 1993, the effective date of P.A. 88-402, which substantially rewrote the definition of stalking. For cases involving aggravated stalking that allegedly occurred before August 20, 1993, use Instruction 11.92.

Give Instruction 11.91.

Insert in the blanks the name of the victim. The name of only one person should appear in each of the blanks of this instruction, and it should be the same name throughout.

After considerable discussion, the Committee decided to have the jury first instructed on the elements of stalking and then on the aggravating factor that changes stalking to aggravated stalking. The Committee chose to do so because of the difficulty in otherwise addressing in jury instructions the phrase "in *conjunction with committing* the offense of stalking" (emphasis added), a phrase that does not appear anywhere else in Illinois criminal law.

Based on People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), the Committee believes that one of the three bracketed mental states must describe a defendant's mental state when he allegedly violated the temporary restraining order, order of protection, or injunction at issue. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used 720 ILCS 5/4-3(b) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable bracketed material.

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

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.93
Definition Of Vehicular Invasion

A person commits the offense of vehicular invasion when he knowingly, by force [and without lawful justification], [(enters) (reaches into)] the interior of a motor vehicle while the motor vehicle is occupied by another person, with the intent to commit therein [(a theft) (the offense of ____)].

Committee Note

720 ILCS 5/12-11.1(a) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-11.1(a) (1991)), added by P.A. 86-1392, effective January 1, 1991.

Give Instruction 11.94.

Give the definition of the offense (theft or the specified felony) that is alleged as the objective of the vehicular invasion.

Give Instruction 23.43B, defining the term "motor vehicle", if there is an issue as to whether the object of entry or penetration is a motor vehicle.

Use the phrase "and without lawful justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 1961 (720 ILCS 5/7-1 *et seq.*).

Insert in the blank the intended offense alleged in the charge.

Use applicable bracketed material.

11.94
Issues In Vehicular Invasion

To sustain the charge of vehicular invasion, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(entered) (reached into)] the interior of a motor vehicle; and

Second Proposition: That the defendant did so by force; and

Third Proposition: That the motor vehicle was occupied by another person; and

Fourth Proposition: That the defendant did so with the intent to commit therein [(a theft) (the offense of ____)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-11.1(a) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-11.1(a) (1991)), added by P.A. 86-1392, effective January 1, 1991.

Give Instruction 11.93.

Give the definition of the offense (theft or the specified felony) that is alleged as the objective of the vehicular invasion.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase "and without lawful justification" in Instruction 11.93 (see Committee Note to Instruction 11.93), and this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without lawful justification, the Committee has concluded that the phrase "and without lawful justification" need not be used in this issues instruction.

Insert in the blank the intended offense alleged in the charge.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.95
Definition Of Ritualized Abuse Of A Child

A person commits the offense of ritualized abuse of a child when he [(intentionally) (knowingly) (recklessly)] commits [any of] the following act[s] [(with) (upon) (in the presence of)] a child under 18 years of age as part of a ceremony, rite, or any similar observance:

[1] actually or in simulation, tortures, mutilates, or sacrifices any warm-blooded animal or human being.

[or]

[2] forces ingestion, injection, or other application of any narcotic, drug, hallucinogen, or anesthetic for the purpose of dulling sensitivity, cognition, recollection of, or resistance to, any criminal activity.

[or]

[3] forces ingestion, or external application, of human or animal urine, feces, flesh, blood, bones, body secretions, nonprescribed drugs, or chemical compounds.

[or]

[4] involves the child in a mock, unauthorized or unlawful marriage ceremony with another person or representation of any force or deity, followed by sexual contact with the child.

[or]

[5] places the living child into a coffin or open grave containing a human corpse or remains.

[or]

[6] threatens death or serious harm to the child, the child's parents, family, pets, or friends that instills a well-founded fear in the child that the threat will be carried out.

[or]

[7] unlawfully dissects, mutilates, or incinerates a human corpse.

Committee Note

720 ILCS 5/12-33 (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, §12-33 (1992)).

Give Instruction 11.96.

Because Section 12-33 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

11.96
Issues In Ritualized Abuse Of A Child

To sustain the charge of ritualized abuse of a child, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] committed [any of] the following act[s] [(with) (upon) (in the presence of)] a child under 18 years of age:

[1] actually or in simulation, tortures, mutilates, or sacrifices any warm-blooded animal or human being; and

[or]

[2] forces ingestion, injection, or other application of any narcotic, drug, hallucinogen, or anesthetic for the purpose of dulling sensitivity, cognition, recollection of, or resistance to any criminal activity; and

[or]

[3] forces ingestion, or external application, of human or animal urine, feces, flesh, blood, bones, body secretions, nonprescribed drugs, or chemical compounds; and

[or]

[4] involves the child in a mock, unauthorized or unlawful marriage ceremony with another person or representation of any force or deity, followed by sexual contact with the child; and

[or]

[5] places the living child into a coffin or open grave containing a human corpse or remains; and

[or]

[6] threatens death or serious harm to the child, the child's parents, family, pets, or friends that instills a well-founded fear in the child that the threat will be carried out; and

[or]

[7] unlawfully dissects, mutilates, or incinerates a human corpse; and

Second Proposition: That the defendant did so as part of a ceremony, rite, or any similar observance.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-33 (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, §12-33 (1992)).

Give Instruction 11.95.

Because Section 12-33 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.97
Definition Of Vehicular Endangerment

A person commits the offense of vehicular endangerment when he, with the intent to strike a motor vehicle, causes by any means an object to fall from an overpass in the direction of a moving motor vehicle traveling upon any highway, and that object strikes a motor vehicle [resulting in death].

Committee Note

720 ILCS 5/12-2.5 (West Supp.1993), added by P.A. 88-467, effective July 1, 1994.

Give Instruction 11.98.

Use the bracketed language "[resulting in death]" only in cases in which the State alleged that death resulted, thereby raising the offense from a Class 2 felony to a Class 1 felony. See Section 12-2.5(b).

Give Instruction 11.97A, defining the terms "object" and "overpass", if either term is at issue.

Give Instruction 23.43B, defining the term "motor vehicle", if there is an issue whether the vehicle on the highway is a motor vehicle.

Give Instruction 11.97B, defining the term "highway", if there is an issue whether the location of the motor vehicle is a highway.

Use applicable bracketed material.

11.97A
Definitions Of Object And Overpass

[The term “object” means any object or substance that by its size, weight, or consistency is likely to cause great bodily harm to any occupant of a motor vehicle.]

[The term “overpass” means any structure that passes over a highway.]

Committee Note

720 ILCS 5/12-2.5(c) (West Supp.1993), added by P.A. 88-467, effective July 1, 1994.

Use applicable bracketed material.

11.97B
Definition Of Highway

The term "highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

Committee Note

625 ILCS 5/1-126 (West 1992); see also 720 ILCS 5/12-2.5(c) (West Supp.1993), added by P.A. 88-467, effective July 1, 1994.

11.98
Issues In Vehicular Endangerment

To sustain the charge of vehicular endangerment, the State must prove the following propositions:

First Proposition: That the defendant caused by any means an object to fall from an overpass; and

Second Proposition: That the defendant did so with the intent to strike a motor vehicle; and

Third Proposition: That the defendant caused the object to fall in the direction of a moving motor vehicle traveling upon any highway; and

Fourth Proposition: That the object struck a motor vehicle[(.) (; and)]

[*Fifth Proposition:* That death resulted.]

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-2.5 (West Supp.1993), added by P.A. 88-467, effective July 1, 1994.

Give Instruction 11.97.

Use the bracketed Fifth Proposition only in cases in which the State alleged that death resulted, thereby raising the offense from a Class 2 felony to a Class 1 felony. See Section 12-2.5(b).

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.99
Definition Of Permitting The Sexual Abuse Of A Child

A person commits the offense of permitting the sexual abuse of a child when he is a [(parent) (step-parent) (legal guardian) (person having custody)] of a child and he knowingly

[1] allows or permits an act of [(criminal sexual abuse) (aggravated criminal sexual abuse) (criminal sexual assault) (aggravated criminal sexual assault)] upon the child and fails to take reasonable steps to prevent the commission of the act [or future occurrences of such acts].

[or]

[2] [(permits) (induces) (promotes) (arranges for)] the child to engage in prostitution and fails to take reasonable steps to prevent the commission of the act [or future occurrences of such acts].

The word "child" means a person under 17 years of age.

Committee Note

720 ILCS 150/5.1 (West 1992) (formerly Ill.Rev.Stat. ch. 23, §2355.1 (1991)), amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 11.100.

Give the definitional instructions for the appropriate underlying offense: criminal sexual abuse--Instruction 11.59; aggravated criminal sexual abuse--Instruction 11.61; criminal sexual assault--Instruction 11.55; aggravated criminal sexual assault--Instruction 11.57; or prostitution--Instruction 9.09.

Use the bracketed phrase "[or future occurrences of such acts]" when appropriate.

Use applicable paragraphs and bracketed material.

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

11.100
Issues In Permitting The Sexual Abuse Of A Child

To sustain the charge of permitting the sexual abuse of a child, the State must prove the following propositions:

First Proposition: That the defendant was the [(parent) (step-parent) (legal guardian) (person having custody)] of ____; and

Second Proposition: That ____ was under 17 years of age; and

[1] *Third Proposition:* That the defendant knowingly allowed or permitted an act of [(criminal sexual abuse) (aggravated criminal sexual abuse) (criminal sexual assault) (aggravated criminal sexual assault)] upon ____; and

[or]

[2] *Third Proposition:* That the defendant knowingly [(permitted) (induced) (promoted) (arranged for)] ____ to engage in prostitution; and

Fourth Proposition: That the defendant failed to take reasonable steps to prevent the commission of the act [or future occurrences of such acts].

Committee Note

720 ILCS 150/5.1 (West 1992) (formerly Ill.Rev.Stat. ch. 23, §2355.1 (1991)), amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 11.99.

Insert in the blanks the name of the child.

The bracketed alternatives [1] and [2] of the Second Proposition correspond to the alternatives of the same number in Instruction 11.99, the definitional instruction for this offense. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Use the bracketed phrase “[or future occurrences of such acts]” when appropriate.

Use applicable paragraphs and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.101
Definition Of Hazing

A person commits the offense of hazing when he knowingly requires a student or other person in [(a school) (a college) (a university) (an educational institution)] of this State to perform any act for the purpose of induction or admission into a [(group) (organization) (society)] associated or connected with that institution and the act is not [(sanctioned) (authorized)] by that educational institution and the act results in [(bodily harm) (great bodily harm) (death)] to any person.

Committee Note

720 ILCS 120/5, added by P.A. 89-292, effective January 1, 1996.

Give Instruction 11.102.

Select the bracketed alternative so that the instruction is no broader than the charging instrument. Hazing is a Class A misdemeanor, except hazing that results in death or great bodily harm is a Class 4 felony. 720 ILCS 120/10, added by P.A. 89-292, effective January 1, 1996.

Use applicable bracketed material.

11.102
Issues In Hazing

To sustain the charge of hazing, the State must prove the following propositions:

First Proposition: That the defendant knowingly required a student or other person in [(a school) (a college) (a university) (an educational institution)] of this State to perform an act; and

Second Proposition: That the act was for the purpose of induction or admission into a [(group) (organization) (society)] associated or connected with that educational institution; and

Third Proposition: That the act was not [(sanctioned) (authorized)] by that educational institution; and

Fourth Proposition: That the act resulted in [bodily harm] [(great bodily harm) (death)] to a person.

Committee Note

720 ILCS 120/5, added by P.A. 89-292, effective January 1, 1996.

Give Instruction 11.101.

Select the bracketed alternative so that the instruction is no broader than the charging instrument. Hazing is a Class A misdemeanor, except hazing that results in death or great bodily harm is a Class 4 felony. 720 ILCS 120/10, added by P.A. 89-292, effective January 1, 1996.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.103
Definition Of Predatory Criminal Sexual Assault Of A Child

A person commits the offense of predatory criminal sexual assault of a child when he [(intentionally) (knowingly) (recklessly)] commits an act of sexual penetration when he is 17 years of age or older and the victim is under 13 years of age when the act is committed.

Committee Note

720 ILCS 5/12-14.1(a)(1), added by P.A. 89-462, effective May 29, 1996.

Give Instruction 11.104.

When great bodily harm is alleged as set forth in section 12-14.1(a)(2), see Instruction 11.105. Section 12-14.1(b) specifies an enhanced sentencing range when Section 12-14.1(a)(2) is violated.

Section 12-14.1(a) sets forth an offense which formerly was set forth as aggravated criminal sexual assault under Section 12-14(b)(1) (720 ILCS 5/12-14(b)(1)). P.A. 89-462, effective May 29, 1996, deleted Section 12-14(b)(1) and made this section a part of the new offense of predatory criminal sexual assault of a child.

In People v. Terrell, 132 Ill.2d 178, 547 N.E.2d 145, 138 Ill.Dec. 176 (1989), the Illinois Supreme Court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that in the legislature's silence a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill.2d at 210, 547 N.E.2d at 159, 138 Ill.Dec. at 190. In People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), the supreme court held that even though the criminal hazing statute listed no mental state, 720 ILCS 5/4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*See also* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982), for cases in which the supreme court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) In accordance with Anderson, the Committee has decided to provide three alternative mental states pursuant to Section 4-3(b) because Section 12-14.1(a)(1) does not include a mental state. Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental state may be included in the instruction.

The Committee acknowledges that the appellate court in People v. Burton, 201 Ill.App.3d 116, 558 N.E.2d 1369, 146 Ill.Dec. 1035 (4th Dist.1990), held that Terrell does not require the mental states to be included in the jury instruction for aggravated criminal sexual assault (720 ILCS 5/12-14). *See also* People v. Smith, 209 Ill.App.3d 1043, 568 N.E.2d 482, 154 Ill.Dec. 482 (4th Dist.1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault. However, because of the mandate expressed by the supreme court in Anderson and Gean, the Committee believes that mental states are required and must be proved by the State for this offense of predatory criminal sexual assault

of a child. *See also* People v. Nunn, 77 Ill.2d 243, 32 Ill.Dec. 914, 396 N.E.2d 27 (1979), and People v. Valley Steel Products, 71 Ill.2d 408, 17 Ill.Dec. 13, 375 N.E.2d 1297 (1978).

11.104
Issues In Predatory Criminal Sexual Assault Of A Child

To sustain the charge of predatory criminal sexual assault of a child, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] committed an act of sexual penetration with ____; and

Second Proposition: That the defendant was 17 years of age or older when the act was committed; and

Third Proposition: That ____ was under 13 years of age when the act was committed.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-14.1(a) (1), added by P.A. 89-462, effective May 29, 1996.

Give Instruction 11.103.

See Committee Note to Instruction 11.103 regarding the use of mental states in this instruction.

Insert in the blanks the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.105
Definition Of Predatory Criminal Sexual Assault Of A Child--Great Bodily Harm

A person commits the offense of predatory criminal sexual assault of a child resulting in great bodily harm when he [(intentionally) (knowingly) (recklessly)] commits an act of sexual penetration when he is 17 years of age or older and the victim is under 13 years of age when the act is committed and he causes great bodily harm to the victim that [(resulted in permanent disability) (was life threatening)].

Committee Note

720 ILCS 5/12-14.1(a)(2), added by P.A. 89-462, effective May 29, 1996.

Give Instruction 11-106.

See the Committee Note for Instruction 11.103 regarding the relationship between this new offense of predatory criminal sexual assault of a child as set forth in Section 12-14.1(a) and the offense of aggravated criminal sexual assault formerly set forth in Section 12-14(b)(1) (720 ILCS 5/12-14(b)(1)).

In People v. Terrell, 132 Ill.2d 178, 547 N.E.2d 145, 138 Ill.Dec. 176 (1989), the Illinois Supreme Court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that in the legislature's silence a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill.2d at 210, 547 N.E.2d at 159, 138 Ill.Dec. at 190. In People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), the supreme court held that even though the criminal hazing statute listed no mental state, 720 ILCS 5/4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*See also* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982), for cases in which the supreme court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) In accordance with Anderson, the Committee has decided to provide three alternative mental states pursuant to Section 4-3(b) because Section 12-14.1(a)(1) does not include a mental state. Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental state may be included in the instruction.

The Committee acknowledges that the appellate court in People v. Burton, 201 Ill.App.3d 116, 558 N.E.2d 1369, 146 Ill.Dec. 1035 (4th Dist.1990), held that Terrell does not require the mental states to be included in the jury instruction for aggravated criminal sexual assault (720 ILCS 5/12-14). *See also* People v. Smith, 209 Ill.App.3d 1043, 568 N.E.2d 482, 154 Ill.Dec. 482 (4th Dist.1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault. However, because of the mandate expressed by the supreme court in Anderson *and* Gean, the Committee believes that mental states are required and must be proved by the State for this offense of predatory criminal sexual assault of a child. *See also* People v. Nunn, 77 Ill.2d 243, 32 Ill.Dec. 914, 396 N.E.2d 27 (1979), and People v. Valley Steel Products, 71 Ill.2d 408, 17 Ill.Dec. 13, 375 N.E.2d 1297 (1978).

11.106
Issues In Predatory Criminal Sexual Assault Of A Child--Great Bodily Harm

To sustain the charge of predatory criminal sexual assault of a child resulting in great bodily harm, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] committed an act of sexual penetration with ____; and

Second Proposition: That the defendant was 17 years of age or older when the act was committed; and

Third Proposition: That ____ was under 13 years of age when the act was committed; and

Fourth Proposition: That the defendant caused great bodily harm to ____ that [(resulted in permanent disability) (was life threatening)].

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5 /12-14.1(a)(2), added by P.A. 89-462, effective May 29, 1996.

Give Instruction 11.105.

See Committee Note to Instruction 11.105 regarding the use of mental states in this instruction.

Insert in the blanks the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.107 Definition Of Aggravated Battery -- Based On Injury

A person commits the offense of aggravated battery when he knowingly [without legal justification] and by any means, other than by the discharge of a firearm, [(causes bodily harm) (makes physical contact of an insulting or provoking nature)]; and

(1) causes [(great bodily harm) (permanent disability) (permanent disfigurement)] to an individual.

[or]

(2) causes [(severe and permanent disability) (great bodily harm) (disfigurement)] to another by means of a [(caustic substance) (flammable substance) (poisonous gas) (deadly [(biological) (chemical)] [(contaminant) (agent)]) (radioactive substance) (bomb) (explosive compound).

[or]

(3) causes [(great bodily harm) (permanent disability) (disfigurement)] to an individual whom the person knows to be a [(peace officer) (community policing volunteer) (fireman) (private security officer) (correctional institution employee) (Department of Human Services employee [(supervising) (controlling)] sexually [(dangerous) (violent)] persons)] [(performing his official duties) (battered to prevent performance of his official duties) (battered in retaliation for performing his official duties)].

[or]

(4) causes [(great bodily harm) (permanent disability) (disfigurement)] to an individual 60 years of age or older.

[or]

(5) strangles another individual.

Committee Note
Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(a) (West 2016), amended and renumbered by P.A. 96-1551 effective July 1, 2011, amended by P.A.s 97-313, 97-467, 97-597 effective January 1, 2012, amended by P.A. 97-1109 effective January 1, 2013, and P.A.s 98-369, 98-385 effective January 1, 2014.

The current aggravated battery statute, 720 ILCS 5/12-3.05, has seven separate categories: (1) Offense based on injury; (2) Offense based on injury to a child or person with an intellectual disability; (3) Offense based on location or conduct; (4) Offense based on status of victim; (5) Offense based on use of firearm; (6) Offense based on use of a weapon or device; and, (7) Offense based on certain conduct. There are separate sets of jury instructions for each category.

Give Instruction 11.107 when the defendant is charged under 720 ILCS 5/12-3.05(a).

Give Instruction 11.108.

When applicable, give Instruction 11.107A defining the word “strangle”.

When applicable, give Instruction 4.26, defining “correctional institutional employee”.

When the defendant is charged with causing great bodily harm under 720 ILCS 5/12-3.05(a)(1), (2), (3), or (4), it is not necessary to include the bracketed material alleging the defendant also caused bodily harm or made contact of an insulting or provoking nature. See the Committee Comment after Instruction 11.108.

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 2012 (720 ILCS 5/7-1 *et seq.*). See *People v. Worsham*, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

The definition of aggravated battery under Section 12-3.05 includes various legislative amendments that have occurred over several years. These amendments have added a number of designations of individuals who are to receive special protection. Court and counsel should ensure that a particular category of persons mentioned in a charge under this Section was in fact included within the statute when the alleged criminal behavior occurred.

Use applicable bracketed material.

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

11.107A Definition Of Strangle

The word “strangle” means intentionally impeding the normal breathing or circulation of the blood of an individual by applying pressure on the throat or neck of that individual or by blocking the nose or mouth of that individual.

Committee Note
Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(i) (West 2016).

11.108 Issues In Aggravated Battery--Based on Injury

To sustain the charge of aggravated battery, the State must prove the following proposition(s):

[1] *First Proposition*: That the defendant knowingly caused great bodily harm, other than by the discharge of a firearm, to _____ [(.) (, and)]

Second Proposition: That the defendant did so by means of a [(caustic substance) (flammable substance) (poisonous gas) (deadly [(biological) (chemical)] [(contaminant) (agent)]) (radioactive substance) (bomb) (explosive compound).

[or]

Second Proposition: That the defendant knew _____ to be a [(peace officer) (community policing volunteer) (fireman) (private security officer) (correctional institution employee)]; and

Third Proposition: That the defendant [(knew _____ was performing) (battered _____ to prevent performance of) (battered _____ in retaliation for performing)] his official duties.

[or]

Second Proposition: That at the time the defendant did so, he knew _____ to be a Department of Human Services employee; and

Third Proposition: That at the time the defendant did so, he knew that _____ was [(supervising) (controlling)] sexually [(dangerous) (violent)] persons); and

Fourth Proposition: That the defendant [(knew that _____ was performing) (battered _____ to prevent performance of) (battered _____ in retaliation for performing)] his official duties.

[or]

Second Proposition: That at the time the defendant did so, _____ was 60 years of age or older.

[or]

[2] *First Proposition*: That the defendant knowingly [(caused bodily harm) (made physical contact of an insulting or provoking nature)], other than by the discharge of a firearm, with _____; and

Second Proposition: That the defendant caused [(permanent disability) (permanent disfigurement)] to _____.

[or]

Second Proposition: That the defendant caused [(severe and permanent disability) (disfigurement)] to _____; and

Third Proposition: That the defendant did so by means of [(a caustic substance) (a flammable substance) (a poisonous gas) (a deadly [(biological) (chemical)] [(contaminant) (agent)]) (a radioactive substance) (a bomb) (an explosive compound).

[or]

Second Proposition: That the defendant caused [(permanent disability) (disfigurement)] to _____; and

Third Proposition: That at the time the defendant did so, he knew _____ to be a [(peace officer) (community policing volunteer) (fireman) (private security officer) (correctional institution employee)]; and

Fourth Proposition: That the defendant [(knew _____ was performing) (battered _____ to prevent performance of) (battered _____ in retaliation for performing)] his official duties.

[or]

Second Proposition: That at the time the defendant did so, he knew _____ to be a Department of Human Services employee; and

Third Proposition: That at the time the defendant did so, he knew that _____ was [(supervising) (controlling)] sexually [(dangerous) (violent)] persons); and

Fourth Proposition: That the defendant [(knew that _____ was performing) (battered _____ to prevent performance of) (battered _____ in retaliation for performing)] his official duties.

[or]

Second Proposition: The defendant caused (permanent disability) (disfigurement)] to _____; and

Third Proposition: That at the time the defendant did so, _____ was 60 years of age or older.

[or]

Second Proposition: That the defendant strangled _____.

If you find from your consideration of all the evidence that [(each one of these propositions) (this proposition)] has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that [(any one of these propositions) (this proposition)] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note
Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(a) (West 2016), amended and renumbered by P.A. 96-1551 effective July 1, 2011, and amended by P.A.s 97-313, 97-467, 97-597 effective January 1, 2012, P.A. 97-1109 effective January 1, 2013, and P.A.s 98-369, 98-385 effective January 1, 2014.

Give Instruction 11.107.

Insert in the blank(s) the name of the victim.

When the defendant is charged with causing great bodily harm under section (a) (1), (2), (3) or (4) of 720 ILCS 5/12-3.05, it is not necessary to include the bracketed material alleging the defendant caused bodily harm or made contact of an insulting or provoking nature. If the defendant is charged with causing great bodily harm, use the instructions in the first set of propositions, bracketed "[1]". If the defendant is charged with causing permanent disability, severe and permanent disability, or disfigurement, use the second set of propositions, bracketed "[2]". Because "great bodily harm" necessarily includes "bodily harm", the Committee believes it is not necessary for the jury to separately find that the defendant committed a battery. The second set of propositions contain the predicate allegations of battery as otherwise required by the statutory language i.e., "when, in committing a battery".

Whenever the jury is to be instructed on an affirmative defense, this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction, although it does need to be included in Instruction 11.107 (see the Committee Note to Instruction 11.107).

Use applicable paragraphs and bracketed material.

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

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.109 Definition Of Aggravated Battery--Based On Injury To A Child Or Person With An Intellectual Disability

A person commits the offense of aggravated battery of a [(child) (person with an intellectual disability)] when he, being a person of the age of 18 years or more, knowingly [without legal justification] by any means, [(causes [great] bodily harm to) (makes physical contact of an insulting or provoking nature with)] [(any child under the age of 13 years) (any severely or profoundly intellectually disabled person)] and causes [(disability) (disfigurement) (permanent disability) (permanent disfigurement)] to that [(child) or (severely or profoundly intellectually disabled person)].

Committee Note
Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(b) (West 2016), amended by P.A. 96-1551, effective July 1, 2011. (P.A. 96-1551 also added to this Section a crime for "bodily harm" (as opposed to "great bodily harm") and "disability or disfigurement" (as opposed to "permanent disability or disfigurement").

The current aggravated battery statute, 720 ILCS 5/12-3.05 has seven separate categories: (1) Offense based on injury; (2) Offense based on injury to a child or person with an intellectual disability; (3) Offense based on location or conduct; (4) Offense based on status of victim; (5) Offense based on use of firearm; (6) Offense based on use of a weapon or device; and, (7) Offense based on certain conduct. There are separate sets of jury instructions for each category.

Give Instruction 11.109 when the defendant is charged under 720 ILCS 5/12-3.05(b).

Give Instruction 11.110.

When the defendant is charged with causing great bodily harm under 720 ILCS 5/12-3.05(b), it is not necessary to include the bracketed material alleging the defendant also caused bodily harm or made contact of an insulting or provoking nature. See the Committee Comment after Instruction 11.108.

Give Instruction 11.65G when the alleged victim is an intellectually disabled person.

The definition of aggravated battery under Section 12-3.05 includes various legislative amendments that have occurred over several years. These amendments have added a number of designations of individuals who are to receive special protection. Court and counsel should ensure that a particular category of persons mentioned in a charge under this Section was in fact included within the statute when the allegedly criminal behavior occurred.

Use the phrase "without legal justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 1961 (720 ILCS 5/7-1 et seq.). See *People v. Worsham*, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Use applicable bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.110 Issues In Aggravated Battery--Based On Injury To A Child Or Person With An Intellectual Disability

To sustain the charge of aggravated battery of a [(child) (person with an intellectual disability)], the State must prove the following propositions:

[1] *First Proposition*: That the defendant knowingly by any means caused [great] bodily harm to _____; and

Second Proposition: At the time of the act, the defendant was at least 18 years of age; and

Third Proposition: At the time of the act, _____ was a [(child under 13 years of age) (severely or profoundly intellectually disabled person)].

[or]

[2] *First Proposition*: That the defendant knowingly by any means [(caused bodily harm) (made physical contact of an insulting or provoking nature)] with _____; and

Second Proposition: That the defendant caused [(permanent disability) (permanent disfigurement)] to _____; and

Third Proposition: That when the defendant did so, the defendant was at least 18 years of age; and

Fourth Proposition: That when the defendant did so, _____ was a [(child under 13 years of age) (severely or profoundly intellectually disabled person)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note
Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(b) (West 2016), amended by P.A.96-1551, effective July 1, 2011.

When the defendant is charged with causing bodily harm or great bodily harm under 720 ILCS 5/12-3.05(b), it is not necessary to include the predicate allegations of battery as otherwise required by the statutory language ("when, in committing a battery). In that situation, use the first set of propositions, bracketed "[1]". If the defendant is charged with causing disability, permanent disability, disfigurement or permanent disfigurement, use the second set of propositions, bracketed "[2]".

Insert in the blanks the name of the victim.

Whenever the jury is to be instructed on an affirmative defense, this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction, although it does need to be included in Instruction 11.109 (see the Committee Note to Instruction 11.109).

Use applicable paragraphs and bracketed material.

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

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.111 Definition Of Aggravated Battery --Based On Location Of Conduct

A person commits the offense of aggravated battery when he knowingly [without legal justification] and by any means, other than by the discharge of a firearm, [(causes bodily harm) (makes physical contact of an insulting or provoking nature)] with an individual and in doing so, [(he) (the other person)] is on or about [(a public way) (public property) (a public place of accommodation) (a public place of amusement) (a sports venue) (a domestic violence shelter)].

Committee Note
Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(c) (West 2016), amended by P.A. 96-1551, effective July 1, 2011.

The current aggravated battery statute, 720 ILCS 5/12-3.05 has seven separate categories: (1) Offense based on injury; (2) Offense based on injury to a child or person with an intellectual disability; (3) Offense based on location or conduct; (4) Offense based on status of victim; (5) Offense based on use of firearm; (6) Offense based on use of a weapon or device; and, (7) Offense based on certain conduct. There are separate sets of jury instructions for each category.

Give Instruction 11.111 when the defendant is charged under 720 ILCS 5/12-3.05(c).

Give Instruction 11.112. [P1]

When applicable, give Instruction 4.27 defining "sports venue".

When applicable, give Instruction 4.28 defining "domestic violence shelter".

Use the phrase "without legal justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 2012 (720 ILCS 5/7-1 et seq.). See *People v. Worsham*, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Use applicable bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.112 Issues In Aggravated Battery--Based on Location Of Conduct

To sustain the charge of aggravated battery, the State must prove the following propositions:

First Proposition: That the defendant knowingly by any means, other than by the discharge of a firearm, [(caused bodily harm) (made physical contact of an insulting or provoking nature)] with _____; and

Second Proposition: That when the defendant did so, [(he) (_____)] was on or about [(a public way) (public property) (a public place of accommodation) (a public place of amusement) (a sports venue) (a domestic violence shelter)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note
Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(c) (West 2016), amended by P.A. 96-1551, effective July 1, 2011.

Give Instruction 11.111.

When applicable, give Instruction 4.27 defining "sports venue".

When applicable, give Instruction 4.28 defining "domestic violence shelter".

Insert in the blank(s) the name of the victim.

Whenever the jury is to be instructed on an affirmative defense, this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction, although it does need to be included in Instruction 11.111 (see the Committee Note to Instruction 11.111).

Use applicable bracketed material.

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

11.113. Definition Of Aggravated Battery--Based On Status Of Victim

A person commits the offense of aggravated battery when he knowingly [without legal justification] and by any means, other than by the discharge of a firearm, [(causes bodily harm to) (makes physical contact of an insulting or provoking nature with)] another person, and in doing so, he knows the individual harmed to be

[1] 60 years of age or older.

[or]

[2] pregnant.

[or]

[3] a person who has a physically disability. [P1]

[or]

[4] a [(teacher) (school employee)] [(upon school grounds) (upon grounds adjacent to a school) (in any part of a building used for school purposes)].

[or]

[5] a [(peace officer) (community policing volunteer) (fireman) (private security officer) (correctional institution employee) (Department of Human Services employee [(supervising) (controlling)] sexually [(dangerous) (violent)] persons)] [(performing his official duties) (battered to prevent performance of his official duties) (battered in retaliation for performing his official duties)].

[or]

[6] a [(judge) (emergency management worker) (emergency medical technician) (utility worker)] [(performing his official duties) (battered to prevent performance of his official duties) (battered in retaliation for performing his official duties)].

[or]

[7] an [(officer) (employee)] of [(the State of Illinois) (a unit of local government) (a school district)] while performing his official duties.

[or]

[8] a transit employee performing his official duties.

[or]

[9] a transit passenger.

[or]

[10] a taxi driver on duty.

[or]

[11] a merchant who detains the person for an alleged commission of retail theft.

[or]

[12] a [(person authorized to serve process) (special process server appointed by the circuit court)] in the performance of his duties as a process server.

[or]

[13] a nurse in the performance of his duties as a nurse.

Committee Note
Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(d) (West 2016) amended by P.A 96-1551, effective July 1, 2011.

The current aggravated battery statute, 720 ILCS 5/12-3.05 has seven separate categories: (1) Offense based on injury; (2) Offense based on injury to a child or person with an intellectual disability; (3) Offense based on location or conduct; (4) Offense based on status of victim; (5) Offense based on use of firearm; (6) Offense based on use of a weapon or device; and, (7) Offense based on certain conduct. There are separate sets of jury instructions for each category.

Give Instruction 11.113 when the defendant is charged under 720 ILCS 5/12-3.05(d).

Give Instruction 11.114.

When applicable, give Instruction 4.29 defining “physically handicapped person”.

When applicable, give Instruction 4.26 defining “correctional institution employee”.

When applicable, give Instruction 4.30 defining “emergency medical technician”.

When applicable, give Instruction 4.31 defining “utility worker”.

When applicable, give Instruction 4.32 defining “transit employee”.

When applicable, give Instruction 4.33 defining “transit passenger”.

When applicable, give Instruction 13.46B defining "merchant"[JY2].

The definition of aggravated battery under Section 12-3.05 includes various legislative amendments that have occurred over several years. These amendments have added a number of designations of individuals who are to receive special protection. Court and counsel should ensure that a particular category of persons mentioned in a charge under this Section was in fact included within the statute when the allegedly criminal behavior occurred.

Use the phrase "without legal justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 2012 (720 ILCS 5/7-1 et seq.). See *People v. Worsham*, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist. 1975).

Use applicable paragraphs and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.114 Issues In Aggravated Battery --Based On Status Of Victims

To sustain the charge of aggravated battery, the State must prove the following propositions:

First Proposition: That the defendant knowingly, by any means, other than by the discharge of a firearm, [(caused bodily harm to _____) (made physical contact of an insulting or provoking nature with _____)]; and

[1] *Second Proposition*: That at the time the defendant did so, he knew _____ to be

[a] 60 years of age or older.

[or]

[b] pregnant.

[or]

[c] a person who has a physically disability.

[or]

[2] *Second Proposition*: That at the time the defendant did so, he knew _____ to be a [(teacher)(school employee)]; and

Third Proposition: That at the time the defendant did so, he knew _____ was [(upon the grounds of a school) (upon grounds adjacent to a school) (in any part of a building used for school purposes)].

[or]

[3] *Second Proposition*: That at the time the defendant did so, he knew _____ to be a [(peace officer) (community policing volunteer) (fireman) (private security officer) (correctional institution employee)]; and

Third Proposition: That the defendant [(knew that _____ was performing) (battered _____ to prevent performance of) (battered _____ in retaliation for performing)] his official duties.

[or]

[4] *Second Proposition*: That at the time the defendant did so, he knew _____ to be a Department of Human Services employee; and

Third Proposition: That at the time the defendant did so, he knew that _____ was [(supervising) (controlling)] sexually [(dangerous) (violent)] persons; and

Fourth Proposition: That the defendant [(knew that _____ was performing) (battered _____ to prevent performance of) (battered _____ in retaliation for performing)] his official duties.

[or]

[5] *Second Proposition*: That at the time the defendant did so, he knew _____ to be [(a judge) (an emergency management worker) (an emergency medical technician) (a utility worker)]; and

Third Proposition: That the defendant [(knew that _____ was performing) (battered _____ to prevent performance of) (battered _____ in retaliation for performing)] his official duties.

[or]

[6] *Second Proposition*: That at the time the defendant did so, he knew _____ to be an [(officer) (employee)] of [(the State of Illinois) (a unit of local government) (a school district)], and

Third Proposition: That the defendant knew _____ was performing his official duties.

[or]

[7] *Second Proposition*: That at the time the defendant did so, he knew _____ to be a transit employee; and

Third Proposition: That the defendant knew _____ was performing his official duties.

[or]

[8] *Second Proposition*: That at the time the defendant did so, he knew _____ to be a transit passenger.

[or]

[9] *Second Proposition*: That at the time the defendant did so, he knew _____ to be a taxi driver; and

Third Proposition: That the defendant knew _____ was on duty.

[or]

[10] *Second Proposition*: That at the time the defendant did so, he knew _____ to be a merchant; and

Third Proposition: That the defendant knew _____ was detaining the defendant for an alleged commission of retail theft.

[or]

[11] *Second Proposition*: That at the time the defendant did so, he knew _____ to be a [(person authorized to serve process) (special process server appointed by the circuit court)]; and

Third Proposition: That the defendant knew _____ to be in the performance of his official duties as a process server.

[or]

[12] *Second Proposition*: That at the time the defendant did so, he knew _____ to be a nurse; and

Third Proposition: That the defendant knew _____ to be in the performance of his official duties.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(d) (West 2016), amended by P.A. 96-1551, effective July 1, 2011.

Give Instruction 11.113.

Whenever the jury is to be instructed on an affirmative defense, this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction, although it does need to be included in Instruction 11.113 (see the Committee Note to Instruction 11.113).

Insert in the blanks the name of the victim.

Use applicable paragraphs, subparagraphs, and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.115 Definition Of Aggravated Battery -- Based On Use Of A Firearm

A person commits the offense of aggravated battery when he knowingly [without legal justification] and by any means, [(causes bodily harm to) (makes physical contact of an insulting or provoking nature with)] another person, and

[1] discharges a firearm, other than a machine gun or a firearm equipped with a silencer, and causes any injury to another person.

[or]

[2] discharges a firearm, other than a machine gun or a firearm equipped with a silencer, and causes any injury to a person he knows to be [(a peace officer) (a community policing volunteer) (a person summoned by a peace officer) (a fireman) (a private security officer) (a correctional institution employee) (an emergency management worker)] [(performing his official duties) (battered to prevent performance of his official duties) (battered in retaliation for performing his official duties)].

[or]

[3] discharges a firearm, other than a machine gun or a firearm equipped with a silencer, and causes any injury to a person he knows to be an emergency medical technician employed by a [(municipality) (governmental unit)] [(performing his official duties) (battered to prevent performance of his official duties) (battered in retaliation for performing his official duties)].

[or]

[4] discharges a firearm and causes any injury to a person he knows to be a [(teacher) (student in a school) (school employee)] and such [(teacher) (student) (school employee)] is [(on the grounds of a school) (on the grounds adjacent to a school) (in any part of a building used for school purposes)].

[or]

[5] discharges a machine gun or a firearm equipped with a silencer, and causes any injury to another person.

[or]

[6] discharges a [(machine gun) (firearm equipped with a silencer)], and causes any injury to a person he knows to be [(a peace officer) (a community policing volunteer) (a person summoned by a peace officer) (a fireman) (a private security officer) (a correctional institution employee) (an emergency management worker)] [(performing his official duties) (battered to prevent performance of his official duties) (battered in retaliation for performing his official duties)].

[or]

[7] discharges a [(machine gun) (firearm equipped with a silencer)], and causes any injury to a person he knows to be an emergency medical technician employed by a [(municipality) (governmental unit)] [(performing his official duties) (battered to prevent performance of his official duties) (battered in retaliation for performing his official duties)].

[or]

[8] discharges a [(machine gun) (firearm equipped with a silencer)], and causes any injury to a person he knows to be a [(teacher) (student in a school) (school employee)] and such [(teacher) (student) (school employee)] is [(on the grounds of a school) (on the grounds adjacent to a school) (in any part of a building used for school purposes)].

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(e) (West 2016), amended by P.A. 96-1551, effective July 1, 2011.

The current aggravated battery statute, 720 ILCS 5/12-3.05 has seven separate categories: (1) Offense based on injury; (2) Offense based on injury to a child or person with an intellectual disability; (3) Offense based on location or conduct; (4) Offense based on status of victim; (5) Offense based on use of firearm; (6) Offense based on use of a weapon or device; and, (7) Offense based on certain conduct. There are separate sets of jury instructions for each category.

Give Instruction 11.115 when the defendant is charged under 720 ILCS 5/12-3.05(e).

Give Instruction 11.116.

When applicable, give Instruction 11.23A defining “firearm”.

When applicable, give Instruction 11.115A defining “machine gun”.

When applicable, give Instruction 4.26 defining “correctional institution employee”.

When applicable, give Instruction 4.30 defining “emergency medical technician”.

When applicable, give Instruction 4.31 defining “utility worker”.

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 2012 (720 ILCS 5/7-1 *et seq*.). See *People v. Worsham*, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Use applicable paragraphs and bracketed material.

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

11.116 Issues In Aggravated Battery--Based On Use Of A Firearm

To sustain the charge of aggravated battery the State must prove the following propositions:

First Proposition: That the defendant knowingly discharged a [(firearm) (machine gun) (firearm equipped with a silencer)]; and

Second Proposition: That, in discharging the [(firearm) (machine gun) (firearm equipped with a silencer)], the defendant caused any injury to _____ [(.) (; and)]

[[1] *Third Proposition*: That the defendant knew that _____ was [(a peace officer) (community policing volunteer) (a person summoned by a peace officer) (a fireman) (a private security officer) (a correctional institution employee) (an emergency management worker)]; and

Fourth Proposition: That the defendant [(knew that _____ was performing) (battered _____ to prevent performance of) (battered _____ in retaliation for performing)] his official duties.]

[or]

[[2] *Third Proposition*: That the defendant knew that _____ was an emergency medical technician; and

Fourth Proposition: That _____ was employed by a [(municipality) (governmental unit)], and

Fifth Proposition: That the defendant [(knew that _____ was performing) (battered _____ to prevent performance of) (battered _____ in retaliation for performing)] his official duties.]

[or]

[[3] *Third Proposition*: That the defendant knew that _____ was a [(teacher) (student in school) (school employee)]; and

Fourth Proposition: That _____ was [(on the grounds of a school) (on grounds adjacent to a school) (in any part of a building used for school purposes)].]

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(e) (West 2016) amended by P.A. 96-1551, effective July 1, 2011.

Give Instruction 11.115.

When the defendant is charged with injuring a person not in one of the specifically stated statutory designations, use only the First and Second Propositions. When the defendant is charged with injuring a peace officer, community policing volunteer, a person summoned by a peace officer, a fireman, a private security officer, a correctional institution employee, an emergency management worker, or an emergency medical technician, and the other statutory requirements are met (while performing his official duties, etc.), use the first set of the Third and Fourth Propositions, bracketed [1]. If the defendant is charged with injuring a teacher, student or school employee, use the second set of the Third and Fourth Propositions bracketed [2].

Whenever the jury is to be instructed on an affirmative defense, this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction, although it does need to be included in Instruction 11.115 (see the Committee Note to Instruction 11.115).

Use applicable paragraphs and bracketed material.

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

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.117 Definition Of Aggravated Battery--Based On Use Of A Weapon Or Device

A person commits the offense of aggravated battery when he knowingly [without legal justification] and by any means, [(causes bodily harm to) (makes physical contact of an insulting or provoking nature with)] another person, and

[1] in doing so, he uses [(a deadly weapon other than by the discharge of a firearm) (an air rifle)].

[or]

[2] in doing so, he wears a hood, robe, or mask to conceal his identity.

[or]

[3] knowingly shines or flashes a [(laser gunsight) (laser device)] [(attached to a firearm) (used in concert with a firearm)] so that the laser beam strikes upon or against another person.

[or]

[4] knowingly video or audio records the offense with the intent to disseminate the recording.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(f) (West 2016) amended by P.A. 96-1551, effective July 1, 2011. The current aggravated battery statute, 720 ILCS 5/12-3.05 has seven separate categories: (1) Offense based on injury; (2) Offense based on injury to a child or person with an intellectual disability; (3) Offense based on location or conduct; (4) Offense based on status of victim; (5) Offense based on use of firearm; (6) Offense based on use of a weapon or device; and, (7) Offense based on certain conduct. There are separate sets of jury instructions for each category.

Give Instruction 11.117 when the defendant is charged under 720 ILCS 5/12-3.05(f).

Give Instruction 11.118.

When applicable, give Instruction 4.35 defining “air rifle”.

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 2012 (720 ILCS 5/7-1 *et seq*.). See People v. Worsham, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Use applicable paragraphs and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.118 Issues In Aggravated Battery--Based On Use Of A Weapon Or Device

To sustain the charge of aggravated battery, the State must prove the following propositions:

First Proposition: That the defendant knowingly and by any means [(caused bodily harm to _____) (made physical contact of an insulting or provoking nature with _____)]; and

[1] *Second Proposition*: That the defendant used [(a deadly weapon other than by the discharge of a firearm) (an air rifle)].

[or]

[2] *Second Proposition*: That the defendant wore a [(hood) (robe) (mask)] to conceal his identity.

[or]

[3] *Second Proposition*: That the defendant knowingly [(shined) (flashed)] a [(laser gunsight) (laser device)] [(attached to a firearm) (used in concert with a firearm)] so that the laser beam struck upon or against _____.

[or]

[4] *Second Proposition*: That the defendant knowingly [(video) (audio)] recorded the offense with the intent to disseminate the recording.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note
Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(f) (West 2016) (formerly 720 ILCS 5/12-4.2 (West 1992)).

Give Instruction 11.117.

When applicable, give Instruction 4.35 defining the term “air rifle”.

Insert in the blanks the name of the victim.

Whenever the jury is to be instructed on an affirmative defense, this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Because the additional

proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction, although it does need to be included in Instruction 11.117 (see the Committee Note to Instruction 11.117).

Use applicable subparagraphs, and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.119 Definition Of Aggravated Battery--Based On Certain Conduct

A person commits the offense of aggravated battery , other than by discharge of a firearm, when he

[1] knowingly, other than as authorized by the Illinois Controlled Substances Act, delivers a controlled substance to another and any person experiences [(great bodily harm) (permanent disability)] as a result of the [(injection) (inhalation) (ingestion)] of any amount of that controlled substance.

[or]

[2] knowingly [(administers to an individual) (causes an individual to take)] [(without the individual's consent) (by threat) (by deception)] for other than medical purposes, any [(intoxicating) (poisonous) (stupefying) (narcotic) (anesthetic) (controlled)] substance.

[or]

[3] knowingly, for other than medical purposes, gives to another person any food that contains any [(substance) (object)] that is intended to cause physical injury if eaten.

[or]

[4] knowingly [(causes) (attempts to cause)] a [(correctional institutional) (Department of Human Services)] employee to come into contact with [(blood) (seminal fluid) (urine) (feces)] by [(throwing) (tossing) (expelling)] the [(fluid) (material)] and the defendant is [(an inmate of a penal institution) ([a sexually (violent) (dangerous) person] in the custody of the Department of Human Services)].

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(g) (West 2016) amended by P.A. 96-1551, effective July 1, 2011.

The current aggravated battery statute, 720 ILCS 5/12-3.05 has seven separate categories: (1) Offense based on injury; (2) Offense based on injury to a child or person with an intellectual disability; (3) Offense based on location or conduct; (4) Offense based on status of victim; (5) Offense based on use of firearm; (6) Offense based on use of a weapon or device; and, (7) Offense based on certain conduct. There are separate sets of jury instructions for each category.

Give Instruction 11.119 when the defendant is charged under paragraph (g) of 720 ILCS 5/12-3.05.

Give Instruction 11.120.

When applicable, give Instruction 4.26 defining “correctional institution employee”.

When the Aggravated Battery statute was reorganized by P.A. 96-1551, two then-existing sections of Aggravated Battery and two new offenses were placed in this Section720 ILCS 5/12-3.05(g) – Aggravated Battery Based On Certain Conduct. For offenses contained in [2] or [3] which occurred prior to the new Aggravated Battery statute’s effective date of July 1, 2011, refer to IPI’s 11.17-11.20 that were in effect prior to July 1, 2011.

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 2012 (720 ILCS 5/7-1 *et seq*.). See *People v. Worsham*, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Use applicable paragraphs and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.120 Issues In Aggravated Battery--Based On Certain Conduct

To sustain the charge of aggravated battery, the State must prove the following propositions:

[1] *First Proposition*: That the defendant knowingly delivered a controlled substance to _____; and

Second Proposition: That the defendant was not authorized under the Illinois Controlled Substances Act to deliver the controlled substance to _____; and

Third Proposition: That _____ experienced [(great bodily harm) (permanent disability)] as a result of the [(injection) (inhalation) (ingestion)] of any amount of the controlled substance.

[or]

[2] *First Proposition*: That the defendant knowingly [(administered to _____) (caused _____ to take)] [(an intoxicating) (a poisonous) (a stupefying) (a narcotic) (an anesthetic) (a controlled)] substance; and

Second Proposition: That _____ [(did not consent) (was threatened by the defendant) (was deceived by the defendant)]; and

Third Proposition: That the defendant acted for other than medical purposes.

[or]

[3] *First Proposition*: That the defendant knowingly gave food to another person; and

Second Proposition: That the food contained any [(substance) (object)] intended to cause physical injury if eaten; and

Third Proposition: That the defendant knew the food contained such [(a substance) (an object)].

[or]

[4] *First Proposition*: That the defendant knew _____ to be [(correctional institutional) (Department of Human Services)], and

Second Proposition: That the defendant knowingly [(caused) (attempted to cause)] _____to come into contact with [(blood) (seminal fluid) (urine) (feces)], and

Third Proposition: That the defendant did so by [(throwing) (tossing) (expelling)] the [(fluid) (material)]; and

Fourth Proposition: That the defendant is [(an inmate of a penal institution) ([a sexually (violent) (dangerous)] person in the custody of the Department of Human Services)].

If you find from your consideration of all the evidence that the State has proved each one of these propositions beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that the State has not proved any one of these propositions beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(g) (West 2016) amended by P.A. 96-1551, effective July 1, 2011.

Give Instruction 11.119.

When applicable, give Instruction 4.26 defining "correctional institution employee".

In the first set of propositions, bracketed [1], the person that received the controlled substance from the defendant does not necessarily have to be the same person that experienced great bodily harm or permanent disability from using the controlled substance. Insert in the blanks in the First Proposition and the Second Proposition of the first set of propositions the name of the person receiving the controlled substance from the defendant. In the Third Proposition of the first set of propositions, insert the name of the person who experienced the great bodily harm or permanent disability. In the second, third, and fourth sets of propositions, insert in the blanks the name of the victim.

Whenever the jury is to be instructed on an affirmative defense, this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase "without legal justification" need not be used in this issues instruction, although it does need to be included in Instruction 11.119 (see the Committee Note to Instruction 11.119).

Use applicable bracketed material.

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

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.