

7.00
HOMICIDE

7.01
Definition Of First Degree Murder

A person commits the offense of first degree murder when he kills an individual [without lawful justification] if, in performing the acts which cause the death,

[1] he intends to kill or do great bodily harm to that individual [or another];

[or]

[2] he knows that such acts will cause death to that individual [or another];

[or]

[3] he knows that such acts create a strong probability of death or great bodily harm to that individual [or another];

[or]

[4] he [(is attempting to commit) (is committing)] the offense of ____.

Committee Note

720 ILCS 5/9-1 (West 1994) (formerly Ill.Rev.Stat. ch. 38, §9-1 (1991)), amended by P.A. 84-1450.

This instruction applies to cases tried under P.A. 84-1450, which abolishes the offense of murder and replaces it with the offense of first degree murder.

Give Instruction 6.05, defining the offense of attempt following the definition of the forcible felony, when the basis for an instruction on felony murder is an alleged attempt to commit a forcible felony. However, no attempt instruction should be given unless the defendant also had been charged with an attempt offense.

When the prosecution is for an inchoate offense (i.e., attempt first degree murder, solicitation to commit first degree murder, conspiracy to commit first degree murder), do not give paragraphs [2], [3], or [4]. In addition, modify the murder definition in paragraph [1] in attempt first degree murder cases to require that the defendant had the intent to kill another. *See People v. Harris*, 72 Ill.2d 16, 377 N.E.2d 28, 17 Ill.Dec. 838 (1978).

Use the phrase “without lawful 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).

When paragraph [4] is given, insert in the blank the applicable forcible felony from those listed in 720 ILCS 5/2-8 (except second degree murder). Follow this instruction with the instruction defining that forcible felony.

The Committee has elected to put the phrase “or another” in brackets because, in the usual case, this portion of the statutory definition is not applicable to the factual context presented, and the presence of this might cause 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.

For an example of the use of this instruction, see Sample Sets 27.01, 27.04A, 27.04B, 27.05, and 27.06.

In *People v. Ehlert*, 274 Ill.App.3d 1026, 1038, 654 N.E.2d 705, 712-13, 211 Ill.Dec. 243, 250-51 (1st Dist.1995), the court held that when some evidence showed that the victim (defendant's newborn child) may have died either shortly before birth or in the birth process, the court should instruct the jury that to find the defendant guilty, the jury must find beyond a reasonable doubt that the victim was born alive. In *Ehlert*, the court proposed the following instruction:

“To sustain the charge of first degree murder, the State must prove the following propositions:

First: That the baby, Jane Doe, was born alive; and

Second: That after the live birth the defendant performed the acts which caused the death of the baby, Jane Doe; and

Third: That when the defendant did so, she intended to kill or do great bodily harm to the baby, Jane Doe, or She [sic] knew that her acts created a strong probability of death or great bodily harm to the baby, Jane Doe.” *Ehlert*, 274 Ill.App.3d at 1038, 654 N.E.2d at 712-13, 211 Ill.Dec. at 250-51.

7.01S

Definition Of Second Degree Murder When First Degree Murder Is Not Charged

A person commits the offense of second degree murder when he kills an individual [without lawful justification] if, in performing the acts which cause the death,

[1] he intends to kill or do great bodily harm to that individual [or another];

[or]

[2] he knows that such acts will cause death to that individual [or another];

[or]

[3] he knows that such acts create a strong probability of death or great bodily harm to that individual [or another].

Committee Note

720 ILCS 5/9-2 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §9-2 (1991)).

Give Instruction 7.02S.

Use the phrase “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 through 5/7-14).

In *People v. Burks*, 189 Ill.App.3d 782, 545 N.E.2d 782, 137 Ill.Dec. 129 (3d Dist.1989), the court held that the State could elect to bring a charge of second degree murder without first charging the defendant with first degree murder. The indictment in *Burks* alleged that the defendant had committed first degree murder by shooting the victim, but that at the time of the killing he had unreasonably believed the circumstances to be such that if they existed would justify or exonerate his action. In this context, the court stated the following:

“By charging a defendant with second degree murder, the State is alleging that it can prove the elements of first degree murder, but is conceding the presence of mitigating factors. Under these circumstances the defendant bears no burden to prove any mitigating factors. Of course, if the instant defendant is tried by a jury and the cause reaches the deliberations stage, special jury instructions will be needed to explain the elements of the offense.” *Burks*, 189 Ill.App.3d at 785, 545 N.E.2d at 784, 137 Ill.Dec. at 131.

The Committee believes this instruction and Instruction 7.02S comply with the directions of *Burks*. In effect, the State is required to prove the elements of first degree murder, but if it

satisfies the jury it has done so, the only verdict and judgment to which it is entitled is guilty of second degree murder. This result follows because the State, in the Burks situation, has conceded the presence of the mitigating factor that reduces the defendant's criminal behavior from first degree murder to second degree murder.

Accordingly, this instruction is identical to Instruction 7.01A except for two changes: (1) the name of the offense is different, and (2) paragraph [4] is omitted. This omission results from the statutory definition of second degree murder which excludes “felony murder” provisions contained in paragraph [4].

This instruction also applies when a defendant is charged with first degree murder, is convicted of second degree murder, and later has that conviction reversed and a new trial ordered. At the new trial, collateral estoppel prevents the State from retrying the defendant for first degree murder. *See* People v. Newbern, 219 Ill.App.3d 333, 354, 579 N.E.2d 583, 597, 161 Ill.Dec. 912, 926 (4th Dist.1991); People v. Thomas, 216 Ill.App.3d 469, 472-73, 576 N.E.2d 1020, 1023-24, 160 Ill.Dec. 66, 69-70 (1st Dist.1991). Under these circumstances, give Instructions 7.01S and 7.02S.

The Committee has elected to put the phrase “or another” in brackets because, in the usual case, this portion of the statutory definition is not applicable to the factual context presented, and the presence of this phrase might cause confusion.

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.

7.01X

Explanation To Jury Of The Reason For Designating One Category Of First Degree Murder To Be (Type A) And Another Category Of First Degree Murder To Be (Type B)

The terms “(Type A)” and “(Type B)” that I used in referring to first degree murder have no legal significance. I use those terms simply to distinguish between different kinds of first degree murder.

Committee Note

Pursuant to 720 ILCS 5/9-2(a), as amended by P.A. 84-1450, effective July 1, 1987, a conviction of second degree murder cannot be based upon a charge of first degree murder under 720 ILCS 5/9-1(a)(3) (felony murder). Accordingly, when both kinds of first degree murder are charged, one kind under Section 9-1(a)(3) (felony murder) and the other kind under Section 9-1(a)(1) or 9-1(a)(2) (“knowing or intentional murder”), and when the court is going to instruct the jury on the lesser offense of second degree murder, Instruction 7.02 should be used for the first degree murder count under Section 9-1(a)(3) and either Instruction 7.04 or 7.06 should be used for the other first degree murder counts upon which the second degree murder instruction is based.

The Committee suggests using the designations (Type A) and (Type B) to distinguish between these two categories of first degree murder. The purpose of this instruction is to explain to the jury why these designations are being used.

The felony murder doctrine, embodied in 720 ILCS 5/9-1(a)(3), is almost never the sole basis for a charge in this State of first degree murder. Instead, the prosecution typically alleges “knowing or intentional murder” under Section 9-1(a)(1) or 9-1(a)(2) when charging first degree murder, and the prosecution adds to those charges a first degree murder count based on the felony murder doctrine if such a count may be supported by the evidence.

Accordingly, the Committee believes that there is no need for this instruction unless the jury is going to be instructed on second degree murder. Since the jury may be instructed on second degree murder as a lesser offense *only* of “knowing or intentional murder” (9-1(a)(1) or 9-1(a)(2)) and not of felony murder (9-1(a)(3)), the court must distinguish in its instructions between these two different categories of first degree murder.

For a further discussion of this subject, see the Committee Notes to Instructions 7.02X, 7.04, and 7.06; see also Sample Instruction 27.05 for an example of the utilization of this instruction.

The Committee recommends that this instruction be read to the jury immediately after the court has read to the jury whichever instruction from the 2.01 series the court found applicable. Failure to use this instruction has been held to be reversible error. *People v. Alvine*, 173 Ill.2d 273, 671 N.E.2d 713, 219 Ill.Dec. 546 (1996).

For an example of the use of this instruction, see Sample Set 27.05.

7.02

Issues In First Degree Murder (When Second Degree Murder Is Not Also An Issue)

To sustain the charge of first degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of ____;
and

Second Proposition: That when the defendant did so,
[1] he intended to kill or do great bodily harm to ____;

[or]

[2] he knew that his acts would cause death to ____;

[or]

[3] he knew that his acts created a strong probability of death or great bodily harm to ____;

[or]

[4] he was [(attempting to commit) (committing)] 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 5/9-1 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §9-1 (1991)), amended by P.A. 84-1450.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24-25.00.

See Instruction 7.01.

Use Instruction 7.02 to set forth the issues in first degree murder only when the court is not also instructing on the lesser offense of second degree murder. When the court is also instructing on second degree murder, instead of using a separate issues instruction for first degree murder, give the combined issues Instruction 7.04 or 7.06.

Insert the name of the victim and the name of the felony (see Committee Note to

Instruction 7.01) in the appropriate blanks. Modify this instruction to fit the transferred intent situation. *See People v. Forrest*, 133 Ill.App.2d 70, 272 N.E.2d 813 (1st Dist.1971).

Use applicable bracketed material.

This instruction--and only one of this instruction--should be given to the jury to explain the issues in first degree murder. Do *not* give separate issues instructions for each of the different ways first degree murder can be charged under Sections 9-1(a)(1) through (a)(4). Instead, use the appropriate paragraphs within the Second Proposition. *People v. Johnson*, 250 Ill.App.3d 887, 620 N.E.2d 506, 189 Ill.Dec. 538 (4th Dist.1993).

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.

In *People v. Ehlert*, 274 Ill.App.3d 1026, 1038, 654 N.E.2d 705, 712-13, 211 Ill.Dec. 243, 250-51 (1st Dist.1995), the court held that when some evidence showed that the victim (defendant's newborn child) may have died either shortly before birth or in the birth process, the court should instruct the jury that to find the defendant guilty, the jury must find beyond a reasonable doubt that the victim was born alive. In *Ehlert*, the court proposed the following instruction:

“To sustain the charge of first degree murder, the State must prove the following propositions:

First: That the baby, Jane Doe, was born alive; and

Second: That after the live birth the defendant performed the acts which caused the death of the baby, Jane Doe; and

Third: That when the defendant did so, she intended to kill or do great bodily harm to the baby, Jane Doe, or She [sic] knew that her acts created a strong probability of death or great bodily harm to the baby, Jane Doe.” *Ehlert*, 274 Ill.App.3d at 1038, 654 N.E.2d at 712-13, 211 Ill.Dec. at 750-51.

7.02S

Issues In Second Degree Murder When First Degree Murder Is Not Charged

To sustain the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of ____;
and

Second Proposition: That when the defendant did so,
[1] he intended to kill or do great bodily harm to ____;

[or]

[2] he knew that his acts would cause death to ____;

[or]

[3] he knew that his acts created a strong probability of death or great bodily harm 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 5/9-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §9-2 (1991)).

Give Instruction 7.01S.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instructions from Chapter 24-25.00.

Insert in the blanks the name of the victim and the name of the felony (see note to Instruction 7.01). When the intended victim is someone other than the deceased, modify this instruction to fit the transferred intent situation. *See* People v. Forrest, 133 Ill.App.2d 70, 272 N.E.2d 813 (1st Dist.1971).

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.

7.02X

Explanation To Jury That It May Not Find Defendant Guilty Of Felony Murder And Not Guilty Of Underlying Felony

To sustain the charge of first degree murder (Type B), the State must prove that when the defendant performed the acts which caused the death of ____, the defendant was committing the offense of _____. Accordingly, you may find the defendant guilty of first degree murder (Type B) only if you also find the defendant guilty of _____.

If you find the defendant not guilty of _____, then you must find the defendant not guilty of first degree murder (Type B).

Committee Note

This instruction should be used to avoid legally inconsistent verdicts that could arise when the jury is to be instructed on first degree murder under Instruction 7.02 and the *sole* basis for conviction is the felony murder doctrine.

When the felony murder doctrine is the sole basis for conviction, only paragraph [4] of the Second Proposition of Instruction 7.02 should be used.

Insert in the first blank the name of the alleged victim. Insert in the following blanks the name of the underlying felony as used in Instruction 7.02.

For an example of the use of this instruction, see Sample Set 27.05.

7.03

Definition Of Mitigating Factor--Second Degree Murder--Provocation

A mitigating factor exists so as to reduce the offense of first degree murder to the lesser offense of second degree murder if, at the time of the killing, the defendant acts under a sudden and intense passion resulting from serious provocation by [(the deceased) (some other person he endeavors to kill, but he negligently or accidentally kills the deceased)]. Serious provocation is conduct sufficient to excite an intense passion in a reasonable person.

Committee Note

720 ILCS 5/9-2(a)(1) and (b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §9-2(a)(1) and (b) (1991)).

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Sets 27.04B and 27.05.

7.04

Issues Where Jury Instructed On Both First Degree Murder And Second Degree Murder-- Provocation

To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of ____;
and

Second Proposition: That when the defendant did so,
[1] he intended to kill or do great bodily harm to ____;

[or]

[2] he knew that such acts would cause death to ____;

[or]

[3] he knew that such acts created a strong probability of death or great bodily harm to ____.

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 [of first degree murder].

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 go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of ____, acted under a sudden and intense passion resulting from serious provocation by [(the deceased) (some other person he endeavors to kill, but he negligently or accidentally kills the deceased)].

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the

defendant guilty of first degree murder.

Committee Note

720 ILCS 5/9-1, 9-2(a)(1), and 9-2(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §§9-1, 9-2(a)(1), and 9-2(b) (1991)), amended by P.A. 84-1450, effective July 1, 1987.

Pursuant to Section 9-2(a), as amended by P.A. 84-1450, the offense of second degree murder may not be based upon first degree murder under Section 9-1(a)(3) (felony murder). When first degree murder is charged under only Section 9-1(a)(3), Instruction 7.02 should be used. When first degree murder under Section 9-1(a)(3) and first degree murder under Section 9-1(a)(1) or 9-1(a)(2) are both charged and the court is also instructing on the lesser offense of second degree murder, Instruction 7.02 should be used for the count under Section 9-1(a)(3), and Instruction 7.04 should be used for the other first degree murder counts upon which second degree murder may be based. See Instructions 7.01X and 7.02X.

Give Instruction 7.01.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24-25.00.

Insert in the blanks the name of the victim. When the intended victim is someone other than the deceased, modify this instruction to fit the transferred intent situation. *See People v. Forrest*, 133 Ill.App.2d 70, 272 N.E.2d 813 (1st Dist.1971).

Use bracketed language “[of first degree murder]” and “[on these charges]” when the jury will be instructed on other offenses in addition to first degree murder and second degree murder.

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.

This instruction--and only one of this instruction--should be given to the jury to explain the issues in first degree murder. Do *not* give separate issues instructions for each of the different ways first degree murder can be charged under 720 ILCS 5/9-1(a)(1) through (a)(4). Instead, use the appropriate paragraphs within the Second Proposition. *People v. Johnson*, 250 Ill.App.3d 887, 620 N.E.2d 506, 189 Ill.Dec. 538 (4th Dist.1993).

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 27.04B.

7.04X

**Issues Where Jury Instructed On First Degree Murder And Second Degree Murder
(Provocation) And Involuntary Manslaughter**

To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of ____;
and

Second Proposition: That when the defendant did so,
[1] he intended to kill or do great bodily harm to ____;

[or]

[2] he knew that such acts would cause death to ____;

[or]

[3] he knew that such acts created a strong probability of death or great bodily harm to ____.

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 first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

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 go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of ____, acted under a sudden and intense passion resulting from serious provocation by [(the deceased) (some other person he endeavors to kill, but he negligently or accidentally kills the deceased)].

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the

lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of first degree murder.

Committee Note

720 ILCS 5/9-1(a), 9-2(a)(1), 9-2(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, pars. 9-1(a), 9-2(a)(1), 9-2(b) (1991)), amended by P.A. 84-1450, effective July 1, 1987.

Pursuant to Section 9-2(a), as amended by P.A. 84-1450, the offense of second degree murder may not be based upon first degree murder under Section 9-1(a)(3) (felony murder). When first degree murder is charged under only Section 9-1(a)(3), Instruction 7.02 should be used. When first degree murder under Section 9-1(a)(3) and first degree murder under Section 9-1(a)(1) or 9-1(a)(2) are both charged and the court is also instructing on the lesser offense of second degree murder and the lesser included offense of involuntary manslaughter, Instruction 7.02 should be used for the count under Section 9-1(a)(3), and Instruction 7.04X should be used for the other first degree murder counts upon which second degree murder and involuntary manslaughter may be based. See Instructions 7.01X and 7.02X.

Give Instructions 7.01 (definition of first degree murder), 7.03 (definition of mitigating factor--second degree murder--provocation), 7.07 (definition of involuntary manslaughter), and 7.08 (issues in involuntary manslaughter).

This instruction should be used in conjunction with Instructions 2.01I and 26.01I through 2.01P and 26.01P, the charging and concluding instructions for use when first degree murder, second degree murder, and involuntary manslaughter are all at issue. Do *not* use this instruction in conjunction with any other instruction from the 2.01 and 26.01 series.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24-25.00.

This instruction should be used *only* when the jury is to be instructed on first degree murder, second degree murder (provocation), and involuntary manslaughter.

This instruction should *not* be used if the jury is to be instructed on: (1) second degree murder (belief in justification); (2) second degree murder (belief in justification *and* provocation); (3) first degree murder only; (4) second degree murder only; (5) first degree murder and second degree murder only; (6) first degree murder and involuntary manslaughter only; or (7) second degree murder and involuntary manslaughter only. See Instructions 7.04A, 7.06A, 7.06B, 7.06X, and 7.06Y.

Insert in the blanks the name of the victim. When the intended victim is someone other than the deceased, modify this instruction to fit the transferred intent situation. See *People v. Forrest*, 133 Ill.App.2d 70, 272 N.E.2d 813 (1st Dist.1971).

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.

7.05

Definition Of Mitigating Factor--Second Degree Murder--Belief In Justification

A mitigating factor exists so as to reduce the offense of first degree murder to the lesser offense of second degree murder if at the time of the killing the defendant believes that circumstances exist which would justify the deadly force he uses, but his belief that such circumstances exist is unreasonable.

Committee Note

720 ILCS 5/9-2(a)(2) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §9-2(a)(2) (1991)).

For an example of the use of this instruction, see Sample Sets 27.01, 27.05, and 27.06.

7.06

Issues Where Jury Instructed On Both First Degree Murder And Second Degree Murder-- Belief In Justification

To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of ____;
and

Second Proposition: That when the defendant did so,
[1] he intended to kill or do great bodily harm to ____;

[or]

[2] he knew that such acts would cause death to ____;

[or]

[3] he knew that such acts created a strong probability of death or great bodily harm to ____;

and

Third Proposition: That the defendant was not justified in using the force which he used.

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 [of first degree murder].

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 go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of ____, believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable.

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of first degree murder.

Committee Note

720 ILCS 5/9-1, 9-2(a), and 9-2(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §§9-1, 9-2(a)(2) (1991)), amended by P.A. 84-1450, effective July 1, 1987.

Pursuant to Section 9-2(a), as amended by P.A. 84-1450, the offense of second degree murder may not be based upon first degree murder under Section 9-1(a)(3) (felony murder). When first degree murder is charged under only Section 9-1(a)(3), Instruction 7.02 should be used. When first degree murder under Section 9-1(a)(3) and first degree murder under Section 9-1(a)(1) or 9-1(a)(2) are both charged and the court is also instructing on the lesser offense of second degree murder, Instruction 7.02 should be used for the count under Section 9-1(a)(3), and Instruction 7.06 should be used for the other first degree murder counts upon which second degree murder may be based. See Instructions 7.01X and 7.02X.

Give Instruction 7.01.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24-25.00.

Insert in the blanks the name of the victim. When the intended victim is someone other than the deceased, modify this instruction to fit the transferred intent situation. *See People v. Forrest*, 133 Ill.App.2d 70, 272 N.E.2d 813 (1st Dist.1971).

Use bracketed language “[of first degree murder]” and “[on these charges]” when the jury will be instructed on other offenses in addition to first degree murder and second degree murder.

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.

This instruction--and only one of this instruction--should be given to the jury to explain the issues in first degree murder. Do *not* give separate issues instructions for each of the different ways first degree murder can be charged under 720 ILCS 5/9-1(a)(1) through (a)(4). Instead, use the appropriate paragraphs within the Second Proposition. *People v. Johnson*, 250 Ill.App.3d 887, 620 N.E.2d 506, 189 Ill.Dec. 538 (4th Dist.1993).

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 27.01, 27.05, and 27.06.

7.06B

**Issues Where Jury Instructed On Both First Degree Murder And Second Degree Murder--
Both Provocation And Belief In Justification**

To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of ____;
and

Second Proposition: That when the defendant did so,
[1] he intended to kill or do great bodily harm to ____;

[or]

[2] he knew that such acts would cause death to ____;

[or]

[3] he knew that such acts created a strong probability of death or great bodily harm to ____;

and

Third Proposition: That the defendant was not justified in using the force which he used.

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 [of first degree murder].

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 go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that either of the following mitigating factors is present: that the defendant, at the time he performed the acts which caused the death of ____,

believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable,

or

acted under a sudden and intense passion resulting from serious provocation by [(the deceased) (some other person he endeavors to kill, but he negligently or accidentally kills the deceased)].

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that either mitigating factor is present so that he is guilty of the lesser offense of second degree murder, instead of first degree murder, you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that either mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of first degree murder.

Committee Note

720 ILCS 5/9-1(a), 9-2(a)(1) and (2) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §§9-1(a), 9-2(a)(1) and (2) (1991)), amended by P.A. 84-1450, effective July 1, 1987.

Pursuant to Section 9-2(a), the offense of second degree murder may not be based upon first degree murder under Section 9-1(a)(3) (felony murder). When first degree murder is charged under only Section 9-1(a)(3), Instruction 7.02 should be used. When first degree murder under Section 9-1(a)(3) and first degree murder under Section 9-1(a)(1) or 9-1(a)(2) are both charged and the court is also instructing on the lesser offense of second degree murder, Instruction 7.02 should be used for the count under Section 9-1(a)(3), and Instruction 7.06B should be used for the other first degree murder counts upon which second degree murder may be based. See Instructions 7.01X and 7.02X.

Give Instructions 7.01 (definition of first degree murder), 7.03 (definition of mitigating factor--second degree murder--provocation), and 7.05 (definition of mitigating factor--second degree murder--belief in justification).

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24-25.00.

The Committee added this instruction for use *only* in cases in which the court will instruct the jury on first degree murder and *both* theories of second degree murder: provocation and belief in justification. Do *not* give this instruction if the jury is to be instructed on only one theory of second degree murder.

If the jury is to be instructed solely on provocation theory second degree murder, give Instruction 7.04.

If the jury is to be instructed solely on belief in justification theory second degree murder, give Instruction 7.06.

Insert in the blanks the name of the victim. When the intended victim is someone other than the deceased, modify this instruction to fit the transferred intent situation. *See People v.*

Forrest, 133 Ill.App.2d 70, 272 N.E.2d 813 (1st Dist.1971).

Use the bracketed language “[of first degree murder]” and “[on these charges]” when the jury will be instructed on other offenses in addition to first degree murder and second degree murder.

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.

This instruction--and only one of this instruction--should be given to the jury to explain the issues in first degree murder. Do *not* give separate issues instructions for each of the different ways first degree murder can be charged under 720 ILCS 5/9-1(a)(1) through (a)(4). Instead, use the appropriate paragraphs within the Second Proposition. *People v. Johnson*, 250 Ill.App.3d 887, 620 N.E.2d 506, 189 Ill.Dec. 538 (4th Dist.1993).

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.

7.06X

Issues Where Jury Instructed On First Degree Murder And Second Degree Murder (Belief In Justification) And Involuntary Manslaughter

To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of ____;
and

Second Proposition: That when the defendant did so,
[1] he intended to kill or do great bodily harm to ____;

[or]

[2] he knew that such acts would cause death to ____;

[or]

[3] he knew that such acts created a strong probability of death or great bodily harm to ____;

and

Third Proposition: That the defendant was not justified in using the force which he used.

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 first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

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 go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of ____, believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable.

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser

offense of second degree murder instead of first degree murder, you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of first degree murder.

Committee Note

720 ILCS 5/9-1(a), 9-2(a)(2) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §§9-1(a), 9-2(a)(2) (1991)), amended by P.A. 84-1450, effective July 1, 1987.

Pursuant to Section 9-2(a), as amended by P.A. 84-1450, the offense of second degree murder may not be based upon first degree murder under Section 9-1(a)(3) (felony murder). When first degree murder is charged under only Section 9-1(a)(3), Instruction 7.02 should be used. When first degree murder under Section 9-1(a)(3) and first degree murder under Section 9-1(a)(1) or 9-1(a)(2) are both charged and the court is also instructing on the lesser offense of second degree murder and the lesser included offense of involuntary manslaughter, Instruction 7.02 should be used for the count under Section 9-1(a)(3), and Instruction 7.06X should be used for the other first degree murder counts upon which second degree murder and involuntary manslaughter may be based. See Instructions 7.01X and 7.02X.

Give Instructions 7.01 (definition of first degree murder), 7.05 (definition of mitigating factor--second degree murder--belief in justification), 7.07 (definition of involuntary manslaughter), and 7.08 (issues in involuntary manslaughter).

This instruction should be used in conjunction with Instructions 2.01I and 26.01I through 2.01P and 26.01P, the charging and concluding instructions for use when first degree murder, second degree murder, and involuntary manslaughter are all at issue. Do *not* use this instruction in conjunction with any other instruction from the 2.01 and 26.01 series.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24-25.00.

This instruction should be used *only* when the jury is to be instructed on first degree murder, second degree murder (belief in justification), and involuntary manslaughter.

This instruction should *not* be used if the jury is to be instructed on: (1) second degree murder (provocation); (2) second degree murder (provocation *and* belief in justification); (3) first degree murder only; (4) second degree murder only; (5) first degree murder and second degree murder only; (6) first degree murder and involuntary manslaughter only; or (7) second degree murder and involuntary manslaughter only. See Instructions 7.04A, 7.04X, 7.06A, 7.06B, and 7.06Y.

Insert in the blanks the name of the victim. When the intended victim is someone other than the deceased, modify this instruction to fit the transferred intent situation. See *People v. Forrest*, 133 Ill.App.2d 70, 272 N.E.2d 813 (1st Dist.1971).

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.

7.06Y

**Issues Where Jury Instructed On First Degree Murder And Second Degree Murder
(Provocation And Belief In Justification) And Involuntary Manslaughter**

To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of ____;
and

Second Proposition: That when the defendant did so,
[1] he intended to kill or do great bodily harm to ____;

[or]

[2] he knew that such acts would cause death to ____;

[or]

[3] he knew that such acts created a strong probability of death or great bodily harm to ____;

and

Third Proposition: That the defendant was not justified in using the force which he used.

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 first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

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 go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that either of the following mitigating factors is present: that the defendant, at the time he performed the acts which caused the death of ____,

believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable,

or

acted under a sudden and intense passion resulting from serious provocation by [(the deceased) (some other person he endeavors to kill, but he negligently or accidentally kills the deceased)].

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that either mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that either mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of first degree murder.

Committee Note

720 ILCS 5/9-1(a), 9-2(a)(1) and (2) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §§9-1(a), 9-2(a)(1) and (2) (1991)), amended by P.A. 84-1450, effective July 1, 1987.

Pursuant to Section 9-2(a), as amended by P.A. 84-1450, the offense of second degree murder may not be based upon first degree murder under Section 9-1(a)(3) (felony murder). When first degree murder is charged under only Section 9-1(a)(3), Instruction 7.02 should be used. When first degree murder under Section 9-1(a)(3) and first degree murder under Section 9-1(a)(1) or 9-1(a)(2) are both charged and the court is also instructing on the lesser offense of second degree murder and the lesser included offense of involuntary manslaughter, Instruction 7.02 should be used for the count under Section 9-1(a)(3), and Instruction 7.06Y should be used for the other first degree murder counts upon which second degree murder and involuntary manslaughter may be based. See Instructions 7.01X and 7.02X.

Give Instructions 7.01 (definition of first degree murder), 7.03 (definition of mitigating factor--second degree murder--provocation), 7.05 (definition of mitigating factor--second degree murder--belief in justification), 7.07 (definition of involuntary manslaughter), and 7.08 (issues in involuntary manslaughter).

This instruction should be used in conjunction with Instructions 2.01I and 26.01I through 2.01P and 26.01P, the charging and concluding instructions for use when first degree murder, second degree murder, and involuntary manslaughter are all at issue. Do *not* use this instruction in conjunction with any other instruction from the 2.01 and 26.01 series.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24-25.00.

This instruction should be used *only* when the jury is to be instructed on first degree murder, second degree murder (provocation *and* belief in justification), and involuntary manslaughter.

This instruction should *not* be used if the jury is to be instructed on: (1) second degree murder (provocation only); (2) second degree murder (belief in justification only); (3) first

degree murder only; (4) second degree murder only; (5) first degree murder and second degree murder only; (6) first degree murder and involuntary manslaughter only; or (7) second degree murder and involuntary manslaughter only. See Instructions 7.04, 7.04X, 7.06, 7.06X, and 7.06B.

Insert in the blanks the name of the victim. When the intended victim is someone other than the deceased, modify this instruction to fit the transferred intent situation. *See People v. Forrest*, 133 Ill.App.2d 70, 272 N.E.2d 813 (1st Dist.1971).

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.

7.07

Definition Of Involuntary Manslaughter

A person commits the offense of involuntary manslaughter when he unintentionally causes the death of an individual [without lawful justification] by acts which are performed recklessly and are likely to cause death or great bodily harm to another.

Committee Note

720 ILCS 5/9-3(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §9-3(a) (1991)).

Give Instruction 5.01, defining the word “recklessness.”

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

For an example of the use of this instruction, see Sample Set 27.06.

7.08
Issues In Involuntary Manslaughter

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

First Proposition: That the defendant performed the acts which caused the death of ____;
and

Second Proposition: That the defendant performed those acts recklessly; and

Third Proposition: That those acts were likely to cause death or great bodily 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 of involuntary manslaughter.

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 5/9-3(a) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §9-3(a) (1991)).

Give Instruction 7.07.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24-25.00.

Insert in the blanks the victim's name.

The Committee added the phrase “of involuntary manslaughter” in the second to the last paragraph to highlight this offense when the jury is also considering first degree murder or second degree murder. See e.g., Instruction 26.01I. However, the Committee chose not to place that phrase in brackets because its inclusion should not interfere with the jury's deliberations in any other context.

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.

7.09
Definition Of Reckless Homicide

A person commits the offense of reckless homicide when he unintentionally causes the death of an individual [without lawful justification] by [(driving a motor vehicle) (operating a snowmobile) (operating an all-terrain vehicle) (operating a watercraft)] recklessly and in a manner likely to cause death or great bodily harm.

[or]

A person commits the offense of reckless homicide when he unintentionally causes the death of an individual while driving a vehicle and recklessly using an incline in a roadway, such as a railroad crossing, bridge approach, or hill, to cause the vehicle to become airborne.

Committee Note

720 ILCS 5/9-3(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38 §9-3(a) (1991)), amended by P.A. 93-682, effective January 1, 2005.

Give Instruction 5.01 defining the word “recklessness.”

Because Section 9-3 does not include a mental state in the second sentence, the Committee decided to provide a mental state 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.

Use applicable paragraph and bracketed material.

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

7.09A
Definition Of Aggravated Reckless Homicide

A person commits the offense of aggravated reckless homicide when he unintentionally causes the death of an individual by recklessly driving a motor vehicle in a manner likely to cause death or great bodily harm while under the influence of alcohol or any other drug or drugs.

Committee Note

720 ILCS 5/9-3(a), (e) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §§9-3(a), (e) (1991)).

Give Instruction 7.10A.

Give Instruction 5.01, defining the word “recklessness.”

Give Instruction 7.09X, defining the phrase “under the influence of alcohol or any other drug or drugs.”

Use this instruction in cases in which the State alleges the defendant was under the influence of alcohol or other drugs. See Section 9-3(e). If the State does not allege the defendant was under the influence of alcohol or other drugs, use Instruction 7.09.

In *People v. Rushton*, 254 Ill.App.3d 156, 172, 626 N.E.2d 1378, 1391-92, 193 Ill.Dec. 827, 840-41 (2d Dist.1993), the court held that when the State charges a defendant with reckless homicide involving intoxication (thereby enhancing the offense from Class 3 to Class 2 felony), the jury should be instructed as to “the standard elements of reckless homicide plus an additional element of intoxication.” (*But see People v. Smith*, 149 Ill.2d 558, 599 N.E.2d 888, 174 Ill.Dec. 804 (1992) (holding that intoxication is not an element of reckless homicide).) Accordingly, the Committee has provided new instructions to be used when intoxication is a factor.

7.09X

Definition Of Under The Influence Of Alcohol--Aggravated Reckless Homicide

A person is under the influence of alcohol or other drugs for the purpose of aggravated reckless homicide when he drives a vehicle while [(the alcohol concentration in his blood or breath is 0.08 or more) (under the influence of alcohol or any other drug or drugs to the degree which renders him incapable of safely driving)].

Committee Note

720 ILCS 5/9-3(c) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §9-3(c) (1991)).

Give this instruction in cases in which the defendant is charged with reckless homicide including an allegation of intoxication. See Committee Note to Instruction 7.09A.

Instruction 23.30A defines the term “alcohol concentration”. See Committee Note to Instruction 23.30A.

Use applicable bracketed material.

7.10
Issues In Reckless Homicide

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

First Proposition: That the defendant caused the death of ____ [without lawful justification] by [(driving a motor vehicle) (operating a snowmobile) (operating an all-terrain vehicle) (operating a watercraft)]; and

Second Proposition: That the defendant [(drove a motor vehicle) (operated a snowmobile) (operated an all-terrain vehicle) (operated a watercraft)] recklessly; and

Third Proposition: That the defendant [(drove a motor vehicle) (operated a snowmobile) (operated an all-terrain vehicle) (operated a watercraft)] in a manner likely to cause death or great bodily 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.

[or]

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

First Proposition: That the defendant caused the death of ____ by driving a vehicle; and

Second Proposition: That the defendant, while driving the vehicle, recklessly used an incline in a roadway to cause the vehicle to become airborne.

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 5/9-3(a) (West 1999) (formerly Ill.Rev.Stat. ch. 38 §9-3(a) (1991)), amended by P.A. 93-682, effective January 1, 2005.

Give Instruction 7.09.

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.

Use applicable paragraphs and bracketed material.

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

7.10A
Issues In Aggravated Reckless Homicide

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

First Proposition: That the defendant caused the death of ____ by driving a motor vehicle; and

Second Proposition: That the defendant drove the motor vehicle recklessly; and

Third Proposition: That the defendant drove the motor vehicle in a manner likely to cause death or great bodily harm; and

Fourth Proposition: That the defendant was then under the influence of alcohol or any other drug or drugs.

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 5/9-3(a), (e) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §§9-3(a), (e) (1991)).

Give Instruction 7.09A.

Insert in the blank the name of the victim.

Use this instruction in cases in which the State alleges the defendant was under the influence of alcohol or other drugs. See Section 9-3(e). If the State does not allege the defendant was under the influence of alcohol or other drugs, use Instruction 7.10.

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.

7.11

Definition Of Concealment Of Homicidal Death

A person commits the offense of concealment of homicidal death when he conceals the death of any other person with knowledge that the other person has died by homicidal means.

Committee Note

720 ILCS 5/9-3.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §9-3.1 (1991)).

7.12
Issues In Concealment Of Homicidal Death

To sustain the charge of concealment of homicidal death, the State must prove the following propositions:

First Proposition: That the defendant performed acts which concealed the death of ____;
and

Second Proposition: That when the defendant did so he knew that ____ had died by homicidal means.

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 5/9-3.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §9-3.1 (1991)).

Give Instruction 7.11.

Give Instruction 7.13, defining the term “homicidal means.”

When applicable, give the definition of the word “concealed” in Instruction 7.14. See Committee Note to Instruction 7.14.

Insert in the blanks the name of the person whose death was concealed.

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.

7.13

Definition Of Homicidal Means

The term “homicidal means” means any act[s], lawful or unlawful, of a person which cause[s] the death of another person.

Committee Note

See People v. Coslet, 39 Ill.App.3d 302, 349 N.E.2d 496 (4th Dist.1976), rev'd in part on other grounds, 67 Ill.2d 127, 364 N.E.2d 67, 7 Ill.Dec. 80 (1977). *See also* People v. Mahon, 77 Ill.App.3d 413, 395 N.E.2d 950, 32 Ill.Dec. 569 (1st Dist.1979).

7.14
Definition Of Concealed

The word “concealed” means the performing of some act or acts for the purpose of preventing or delaying the discovery of a death by homicidal means. “Concealed” requires something more than simply withholding knowledge or failing to disclose information.

Committee Note

See People v. Stiles, 46 Ill.App.3d 359, 360 N.E.2d 1217, 4 Ill.Dec. 842 (3d Dist.1977).

Although the statute does not specifically refer to concealment of the “cause of death,” at least two appellate courts have held the statute includes situations where “the body itself is concealed or where the homicidal nature of death is actively concealed, as in making a homicide appear an accident.” People v. Vath, 38 Ill.App.3d 389, 395, 347 N.E.2d 813, 817 (5th Dist.1976), cited with approval in People v. Hummel, 48 Ill.App.3d 1002, 1004, 365 N.E.2d 122, 124, 7 Ill.Dec. 837, 839 (4th Dist.1977).

7.15
Causation In Homicide Cases Excluding Felony Murder

In order for you to find that the acts of the defendant caused the death of _____, the State must prove beyond a reasonable doubt that defendant's acts were a contributing cause of the death and that the death did not result from a cause unconnected with the defendant. However, it is not necessary that you find the acts of the defendant were the sole and immediate cause of death.

Committee Note

The Illinois Supreme Court has held that a defendant's act need not be the sole or immediate cause of death; it is sufficient if the defendant's act contributed to cause the death. *People v. Brown*, 169 Ill.2d 132, 661 N.E.2d 287 (1996); *People v. Brackett*, 117 Ill.2d 170, 510 N.E.2d 877 (1987). *See also* *People v. Woodard*, 367 Ill.App.3d 304, 854 N.E.2d 674 (1st Dist. 2006); *People v. Martinez*, 348 Ill.App.3d 521, 810 N.E.2d 199 (1st Dist. 2004); *People v. Gruner*, 130 Ill.App.3d 1042, 474 N.E.2d 1355 (2nd Dist. 1985); *People v. Kent*, 111 Ill.App.3d 733, 444 N.E.2d 570 (1st Dist. 1982).

The Committee recommends that this instruction be given whenever causation is an issue under Section 720 ILCS 9-1(a)(1) (intentional murder), 9-1(a)(2) (knowing murder), or 720 ILCS 5/9-3(a) (reckless homicide). However, when felony murder (720 ILCS 9-1(a)(3)) is charged and causation is an issue, Instruction 7.15A should also be given.

For the definition of “proximate cause” in aggravated driving under the influence cases see Instruction 23.28A.

For the definition of “proximate cause” in all other cases see Instruction 4.24.

Insert in the blank the name of the alleged victim.

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

For an example of the use of this instruction, see Sample Set 27.06.

7.15A
Causation In Felony Murder Cases

A person commits the offense of first degree murder when he commits the offense of _____, and the death of an individual results as a direct and foreseeable consequence of a chain of events set into motion by his commission of the offense of _____.

It is immaterial whether the killing is intentional or accidental [(or committed by a confederate without the connivance of the defendant) (or committed by a third person trying to prevent the commission of the offense of _____)].

Committee Note

720 ILCS 5/9-1(a)(3) (West 2008).

In *People v. Hudson*, 222 Ill.2d 392, 408, 856 N.E.2d 1078 (2006), the supreme court set out the above definition of causation in felony murder cases where the defendant did not perform the acts which caused the death of the deceased. The court held that it “simply and concisely states the law on proximate cause as set forth in *People v. Lowery*, 178 Ill.2d 462, 467, 687 N.E.2d 973 (1997)” and should be used in felony murder cases where causation is an issue.

When causation is an issue under section 720 ILCS 5/9-1(a)(1) (intentional murder), 720 ILCS 5/9-1(a)(2) (knowing murder) or 720 ILCS 5/9-3(a) (reckless homicide) as well as felony murder then Instruction 7.15 should also be given.

For the definition of “proximate cause” in aggravated driving under the influence cases see Instruction 23.28A.

For the definition of “proximate cause” in all other cases see Instruction 4.24.

Insert in all three blanks the applicable forcible felony.

Use applicable bracketed material in the second paragraph. In some instances neither clause in the bracketed paragraph is appropriate and under those circumstances the sentence should stop after the word “accidental.” See, for example, *People v. Brackett*, 117 Ill.2d 170, 510 N.E.2d 877 (1987).

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

7.16

Definition Of Intentional Homicide Of An Unborn Child

A person commits the offense of intentional homicide of an unborn child if, in performing the acts which cause the death of an unborn child, [without lawful justification,] he [1] intended to cause the death of or do great bodily harm to the pregnant woman or her unborn child;

[or]

[2] knew that such acts would cause death or great bodily harm to the pregnant woman or her unborn child;

[or]

[3] knew that his acts created a strong probability of death or great bodily harm to the pregnant woman or her unborn child;

and

he knew that the woman was pregnant.

Committee Note

720 ILCS 5/9-1.2 (West 1994) (formerly Ill.Rev.Stat. ch. 38, §9-1.2 (1991)), added by P.A. 85-293, effective September 8, 1987.

Give Instruction 7.17.

Give Instructions 7.24 and 7.25.

Use one or more of paragraphs [1], [2], and [3], as applicable. *See People v. Gillespie*, 276 Ill.App.3d 495, 659 N.E.2d 12, 213 Ill.Dec. 382 (1st Dist.1995) (holding that the defendant's actual knowledge of pregnancy constitutes an element of offense).

Use the phrase “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.*). *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.

7.17
Issues In Intentional Homicide Of An Unborn Child

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

First Proposition: That the defendant performed the acts which caused the death of the unborn child of ____; and

Second Proposition: That when the defendant did so,
[1] he intended to cause the death of or do great bodily harm to ____ or her unborn child;

[or]

[2] he knew that such acts would cause death or great bodily harm to ____ or her unborn child;

[or]

[3] he knew that his acts created a strong probability of death or great bodily harm to ____ or her unborn child;

and

Third Proposition: That the defendant knew ____ was pregnant.

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 5/9-1.2 (West 1994) (formerly Ill.Rev.Stat. ch. 38, §9-1.2 (1991)), added by P.A. 85-293, effective September 8, 1987.

Give Instruction 7.16.

Use paragraph [1], [2], or [3], as applicable. The bracketed numbers correspond to the alternatives of the same number in Instruction 7.16, the definitional instruction for this offense. Select the corresponding alternatives to the alternatives selected from the definitional instruction.

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.

7.18

Definition Of Voluntary Manslaughter Of An Unborn Child--Provocation

A person commits the offense of voluntary manslaughter of an unborn child when he kills an unborn child [without lawful justification] if, in performing the acts which cause the death, he acts under a sudden and intense passion resulting from serious provocation by a person, and

[1] he intends to kill or do great bodily harm to that person, or

[2] he knows that such acts will cause death to that person, or

[3] he knows that such acts create a strong probability of death or great bodily harm to that person, but he negligently or accidentally kills the unborn child.

Serious provocation is conduct sufficient to excite an intense passion in a reasonable person.

Committee Note

720 ILCS 5/9-2.1(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §9-2.1(a) (1991)).

Give Instruction 7.19A or 7.19B, and Instructions 7.24 and 7.25.

Use the phrase “without lawful 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).

Section 9-2.1(a) contains no mental state applicable to the defendant's endeavoring to kill the person causing the serious provocation. Because of Sections 4-3 and 4-9, and cases interpreting those sections (*see People v. Whitlow*, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982); *People v. Langford*, 195 Ill.App.3d 366, 552 N.E.2d 274, 141 Ill.Dec. 906 (4th Dist.1990)), the Committee believes that voluntary manslaughter of an unborn child (under Section 9-2.1(a)) is not an absolute liability offense and must contain some mental states. The Committee decided to use those mental states shown in above paragraphs [1], [2], and [3] because these mental states are consistent with those required for second degree murder of a person and the former offense of voluntary manslaughter. This latter consideration is particularly important because the Committee believes the Illinois Supreme Court decision in *People v. Reddick*, 123 Ill.2d 184, 526 N.E.2d 141, 122 Ill.Dec. 1 (1988), is applicable to the relationship between voluntary manslaughter of an unborn child--provocation and intentional homicide of an unborn child. See Committee Note to Instructions 7.19A and 7.19B.

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.

7.18A

Definition Of Voluntary Manslaughter Of An Unborn Child--Belief In Justification

A person commits the crime of voluntary manslaughter of an unborn child when he kills an unborn child [without lawful justification] if, in performing the acts which cause the death,

- [1] he intends to kill or do great bodily harm to the pregnant woman or her unborn child,
- or
- [2] he knows that such acts will cause death to the pregnant woman or her unborn child,
- or
- [3] he knows that such acts create a strong probability of death or great bodily harm to the pregnant woman or her unborn child,

and, at the time of the killing, he believes that circumstances exist which would justify the deadly force he uses, but his belief that such circumstances exist is unreasonable.

Committee Note

720 ILCS 5/9-2.1(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §9-2.1(a) (1991)).

Give Instruction 7.19A, and Instructions 7.24 and 7.25.

Use the phrase “without lawful 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).

Even though the mental state set forth in Section 9-2.1(b) is that the accused “intentionally or knowingly kills an unborn child,” the Committee elaborated upon those mental states, as shown in paragraphs [1], [2], and [3] above. The Committee did so in order to meld the charges of intentional homicide of an unborn child and voluntary manslaughter of an unborn child (under Section 9-2.1(b)) into one issues instruction having the same mental states. (See Instruction 7.19A and the discussion of *People v. Reddick*, 123 Ill.2d 184, 526 N.E.2d 141, 122 Ill.Dec. 1 (1988), in that instruction's Committee Note.) The Committee believes that the elaborated mental states contained in this instruction are consistent with the “intentionally or knowingly” language of Section 9-2.1(b).

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.

7.19A

Issues In Intentional Homicide Of An Unborn Child When The Jury Is Also To Be Instructed On Voluntary Manslaughter Of An Unborn Child--Provocation By The Pregnant Woman

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

First Proposition: That the defendant performed the acts which caused the death of the unborn child of ____; and

Second Proposition: That when the defendant did so,

[1] he intended to kill or do great bodily harm to the unborn child of ____; or

[2] he knew that his acts would cause death to the unborn child of ____; or

[3] he knew that his acts created a strong probability of death or great bodily harm to the unborn child of ____.

If you find from your consideration of all the evidence that both of these propositions have been proved beyond a reasonable doubt, you should find the defendant guilty of intentional homicide of an unborn child and your deliberations should end.

If you find from your consideration of all the evidence that the First Proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty of intentional homicide of an unborn child and not guilty of voluntary manslaughter of an unborn child and your deliberations should end.

If you find from your consideration of all the evidence that the First Proposition has been proved beyond a reasonable doubt, but the Second Proposition has not been proved beyond a reasonable doubt, you should now consider the following proposition:

Third Proposition: That when the defendant performed the acts which caused the death of the pregnant woman's unborn child,

[1] he intended to kill or do great bodily harm to the pregnant woman; or

[2] he knew that his acts would cause death to the pregnant woman; or

[3] he knew that his acts created a strong probability of death or great bodily harm to the pregnant woman.

If you find from your consideration of all the evidence that this Third Proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty of intentional homicide of an unborn child and not guilty of voluntary manslaughter of an unborn child and your deliberations should end.

If you find from your consideration of all the evidence that this Third Proposition has been proved beyond a reasonable doubt, you should go on with your deliberations to decide whether the defendant is guilty of intentional homicide of an unborn child instead of voluntary manslaughter of an unborn child.

To sustain the charge of intentional homicide of an unborn child instead of voluntary manslaughter of an unborn child, the State must prove beyond a reasonable doubt the following additional proposition:

That the defendant, at the time he performed the acts which caused the death of the unborn child of ____, did not act under a sudden and intense passion resulting from serious provocation by the pregnant woman he endeavored to kill, but he negligently or accidentally killed the unborn child of ____.

If you find from your consideration of all the evidence that the State has proved beyond a

reasonable doubt this additional proposition, you should find the defendant guilty of intentional homicide of an unborn child.

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

Committee Note

720 ILCS 5/9-1.2(a) and 9-2.1(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§9-1.2(a) and 9-2.1(a) (1991)).

Give Instruction 7.18.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instructions from Chapter 24-25.00. Any additional proposition to be considered by the jury pursuant to Chapter 24-25.00 must be added to this instruction as a Third Proposition which the State must prove beyond a reasonable doubt *before* the jury may consider whether the State has proved beyond a reasonable doubt the additional proposition in its determination as to whether the defendant is guilty of murder or voluntary manslaughter.

Because the Committee believes the relationship between intentional homicide of an unborn child and voluntary manslaughter of an unborn child is essentially the same as the relationship between murder and voluntary manslaughter (as those offenses were defined in Chapter 38, Sections 9-1 and 9-2, prior to the enactment of first degree murder and second degree murder under P.A. 84-1450), the Committee has chosen for this instruction to follow the format used in Instruction 7.02B of the Third Edition.

The Committee also believes that the analysis of the Illinois Supreme Court in *People v. Reddick*, 123 Ill.2d 184, 526 N.E.2d 141, 122 Ill.Dec. 1 (1988), is applicable to the relationship between intentional homicide of an unborn child and voluntary manslaughter of an unborn child. In *Reddick*, the court reassessed the elements of murder and voluntary manslaughter in cases in which a jury is to be instructed on both charges. The court stated the following:

“Thus, under the 1961 Code, if a defendant in a murder trial presents sufficient evidence to raise issues which would reduce the charge of murder to voluntary manslaughter, then to sustain the murder conviction, the People must prove beyond a reasonable doubt that those defenses are meritless, and must also prove beyond a reasonable doubt the statutory elements of murder.

The burden-of-proof instructions regarding both voluntary manslaughter and murder in both of these cases were thus incorrect in placing upon the People the burden of proving the existence of intense passion or unreasonable belief in justification. The instructions should have placed upon the People the burden of disproving the existence of either of these two states of mind.” *Reddick*, 123 Ill.2d at 197, 526 N.E.2d at 146, 122 Ill.Dec. at 6.

This instruction follows the mandate of the supreme court by requiring the State, in order to obtain a conviction for intentional homicide of an unborn child, to prove beyond a reasonable doubt each of the elements thereof and then further to prove beyond a reasonable doubt that a

reducing factor which reduces that charge to voluntary manslaughter of an unborn child is *not* present.

Because the elements of intentional homicide of an unborn child and voluntary manslaughter of an unborn child are identical except for the presence of a reducing factor, this issues instruction need not contain a separate set of propositions constituting the elements of voluntary manslaughter of an unborn child. The question of the existence of the reducing factor is one which the jury need not consider until it has first found that the State has proved beyond a reasonable doubt each of the elements of intentional homicide of an unborn child.

In view of *Reddick*, the Committee has not provided a separate issues instruction on the charge of voluntary manslaughter of an unborn child--provocation because the Committee believes that this charge is not likely to be brought by the State without a defendant also being charged with intentional homicide of an unborn child.

Insert in the blanks the name of the pregnant woman. Use this instruction only if the pregnant woman is the source of the serious provocation. If another person is the source of the serious provocation, use Instruction 7.19B.

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.

7.19B

Issues In Voluntary Manslaughter Of An Unborn Child--Provocation By A Person Other Than The Pregnant Woman--Transferred Intent

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

First Proposition: That the defendant performed the acts which caused the death of the unborn child of ____; and

Second Proposition: That when the defendant did so,

[1] he intended to kill or do great bodily harm to a person other than ____; or

[2] he knew that his acts would cause death to a person other than ____; or

[3] he knew that his acts created a strong probability of death or great bodily harm to a person other than ____; and

Third Proposition: That the defendant, at the time he performed the acts which caused the death of the unborn child of ____, acted under a sudden and intense passion resulting from serious provocation by the person he endeavors to kill, but he negligently or accidentally killed the unborn child 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 5/9-2.1(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §9-2.1(a) (1991)).

This instruction is to be given only when the defendant is charged with voluntary manslaughter of an unborn child under a “transferred intent” theory. In this situation, the State is alleging that the defendant, while acting under a passion caused by serious provocation, endeavored to kill a person (other than a pregnant woman), but he negligently or accidentally killed an unborn child.

In a transferred intent situation, the offense of intentional homicide of an unborn child is never an issue, because there is no allegation that the defendant either intentionally or knowingly acted to kill either the pregnant woman or the unborn child. The jury need only consider whether the State has proved all the elements of voluntary manslaughter of an unborn child beyond a reasonable doubt.

Insert in the blanks the name of the pregnant woman.

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.

7.19C

Issues In Intentional Homicide Of An Unborn Child When The Jury Is Also To Be Instructed On Voluntary Manslaughter Of An Unborn Child--Belief In Justification

To sustain either the charge of intentional homicide of an unborn child or the charge of voluntary manslaughter of an unborn child, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of the unborn child of ____; and

Second Proposition: That when the defendant did so,

[1] he intended to kill or do great bodily harm to ____ or her unborn child; or

[2] he knew that his acts would cause death to ____ or her unborn child; or

[3] he knew that his acts created a strong probability of death or great bodily harm to ____ or her unborn child; and

Third Proposition: That the defendant was not justified in using the force that he used.

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 [of intentional homicide of an unborn child and not guilty of voluntary manslaughter] and your deliberations [on these charges] should end.

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 go on with your deliberations to decide whether the defendant is guilty of intentional homicide of an unborn child instead of voluntary manslaughter of an unborn child.

To sustain the charge of intentional homicide of an unborn child instead of voluntary manslaughter of an unborn child, the State must prove beyond a reasonable doubt the following additional proposition:

That the defendant, at the time he performed the acts which caused the death of the unborn child of ____, did not believe that circumstances existed which would have justified the deadly force he used.

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

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

Committee Note

720 ILCS 5/9-2.1(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §9-2.1(a) (1991)).

Give Instruction 7.18A.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instructions from Chapter 24-25.00. Any additional proposition to be considered by the jury pursuant to Chapter 24-25.00 must be added to this instruction as a Fourth Proposition which the State must prove beyond a reasonable doubt *before* the jury may consider whether the State has proved beyond a reasonable doubt the additional proposition in its determination as to

whether the defendant is guilty of murder or voluntary manslaughter.

Because the Committee believes the relationship between intentional homicide of an unborn child and voluntary manslaughter of an unborn child is essentially the same as the relationship between murder and voluntary manslaughter (as those offenses were defined in Chapter 38, Sections 9-1 and 9-2, prior to the enactment of first degree murder and second degree murder under P.A. 84-1450), the Committee has chosen for this instruction to follow the format used in Instruction 7.02C of the Third Edition.

The Committee also believes that the analysis of the Illinois Supreme Court in *People v. Reddick*, 123 Ill.2d 184, 526 N.E.2d 141, 122 Ill.Dec. 1 (1988), is applicable to the relationship between intentional homicide of an unborn child and voluntary manslaughter of an unborn child. In *Reddick*, the court reassessed the elements of murder and voluntary manslaughter in cases in which a jury is to be instructed on both charges. The court stated the following:

“Thus, under the 1961 Code, if a defendant in a murder trial presents sufficient evidence to raise issues which would reduce the charge of murder to voluntary manslaughter, then to sustain the murder conviction, the People must prove beyond a reasonable doubt that those defenses are meritless and must also prove beyond a reasonable doubt the statutory elements of murder.

The burden-of-proof instructions regarding both voluntary manslaughter and murder in both of these cases were thus incorrect in placing upon the People the burden of proving the existence of intense passion or unreasonable belief in justification. The instructions should have placed upon the People the burden of disproving the existence of either of these two states of mind.” *Reddick*, 123 Ill.2d at 197, 526 N.E.2d at 146, 122 Ill.Dec. at 6.

This instruction follows the mandate of the supreme court by requiring the State, in order to obtain a conviction for intentional homicide of an unborn child, to prove beyond a reasonable doubt each of the elements thereof and then further to prove beyond a reasonable doubt that a reducing factor which reduces that charge to voluntary manslaughter of an unborn child is *not* present.

Because the elements of intentional homicide of an unborn child and voluntary manslaughter of an unborn child are identical except for the presence of a reducing factor, this issues instruction need not contain a separate set of propositions constituting the elements of voluntary manslaughter of an unborn child. The question of the existence of the reducing factor is one which the jury need not consider until it has first found that the State has proved beyond a reasonable doubt each of the elements of intentional homicide of an unborn child.

In view of *Reddick*, the Committee has not provided a separate issues instruction on the charge of voluntary manslaughter of an unborn child--belief in justification because the Committee believes that this charge is not likely to be brought by the State without a defendant also being charged with intentional homicide of an unborn child.

Insert in the blanks the name of the pregnant woman.

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.

7.20

Definition Of Involuntary Manslaughter Of An Unborn Child

A person commits the offense of involuntary manslaughter of an unborn child when he unintentionally causes the death of an unborn child [without lawful justification] by acts, whether lawful or unlawful, which are performed recklessly and are likely to cause death or great bodily harm.

Committee Note

720 ILCS 5/9-3.2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §9-3.2 (1991)).

Give Instruction 7.21.

Give Instructions 7.24 and 7.25.

Use the phrase “without lawful 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).

7.21

Issues In Involuntary Manslaughter Of An Unborn Child

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

First Proposition: That the defendant performed the acts which caused the death of the unborn child of ____; and

Second Proposition: That the defendant performed those acts recklessly; and

Third Proposition: That those acts were likely to cause death or great bodily 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

720 ILCS 5/9-3.2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §9-3.2 (1991)).

Give Instruction 7.20.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24-25.00.

Insert in the blank the name of the pregnant woman.

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.

7.22

Definition Of Reckless Homicide Of An Unborn Child

A person commits the offense of reckless homicide of an unborn child when he unintentionally causes the death of an unborn child [without lawful justification] by driving a motor vehicle recklessly and in a manner likely to cause death or great bodily harm.

Committee Note

720 ILCS 5/9-3.2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §9-3.2 (1991)).

Give Instruction 7.23.

Give Instructions 7.24 and 7.25.

Use the phrase “without lawful 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).

7.23

Issues In Reckless Homicide Of An Unborn Child

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

First Proposition: That the defendant caused the death of the unborn child of ____ by driving a motor vehicle; and

Second Proposition: That the defendant drove the motor vehicle recklessly; and

Third Proposition: That the defendant drove the motor vehicle in a manner likely to cause death or great bodily 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

720 ILCS 5/9-3.2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §9-3.2 (1991)).

Give Instruction 7.22.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24-25.00.

Insert in the blank the name of the pregnant woman.

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.

7.24

Definition Of Unborn Child

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

Committee Note

720 ILCS 5/9-1.2(b)(1), 9-2.1(d)(1) and 9-3.2(c)(1) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§9-1.2(b)(1), 9-2.1(d)(1) and 9-3.2(c)(1) (1991)).

This instruction should be given whenever Instruction 7.16, 7.18, or 7.22 are given.

7.25

Definition Of Person As Not Including The Pregnant Woman Whose Unborn Child Is Killed

The word “person” does not include the pregnant woman whose unborn child is killed.

Committee Note

720 ILCS 5/9-1.2(b)(2), 9-2.1(d)(2) and 9-3.2(c)(1) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§9-1.2(b)(2), 9-2.1(d)(2) and 9-3.2(c)(1) (1991)).

This instruction should be given whenever Instruction 7.15, 7.18, 7.20, or 7.22 are given.

7.26

Exclusion Of Acts Performed Under Illinois Abortion Law Or During Medical Procedures From Homicides Involving Unborn Children

The offense of [(intentional homicide) (voluntary manslaughter) (involuntary manslaughter) (reckless homicide)] of an unborn child does not apply to acts which cause the death of an unborn child if those acts are performed [(during an abortion to which the pregnant woman has consented) (pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment)].

Committee Note

720 ILCS 5/9-1.2(c), 9-2.1(e) and 9-3.2(d) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§9-1.2(c), 9-2.1(e) and 9-3.2(d) (1991)).

The Committee believes having this instruction available might prove helpful if the court, in its discretion, deemed it advisable to instruct the jury on what a case before it does *not* concern.

Use applicable bracketed material.

7.27

Definition Of Drug Induced Homicide--Delivery Of Controlled Substances By Weight

A person commits the offense of drug induced homicide when he knowingly delivers to another a substance containing ____, a controlled substance, the substance containing the controlled substance weighs ____ gram[s] or more, and any person dies as a result of the [(injection) (inhalation) (ingestion)] of any amount of that controlled substance.

Committee Note

720 ILCS 5/9-3.3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §9-3.3 (1991)), added by P.A. 85-1259, effective January 1, 1989, and amended by P.A. 87-1198, effective September 25, 1992.

Give Instruction 7.28.

Insert in the blanks the name of the controlled substance and the weight at issue.

If the court chooses to define the word “deliver,” use Instruction 17.05A.

The Committee has divided the definitional and issues instructions for this offense into two separate sets of instructions--one set dealing with delivery of controlled substances as determined by weight (Instructions 7.27 and 7.28), and the other set dealing with delivery of LSD as contained in separate objects or multiple segregated parts of the same object (Instructions 7.29 and 7.30). The Committee believes that this division will avoid jury confusion.

Drug induced homicide is defined by including therein violations of 720 ILCS 401(a) and (c) (West 1992) (formerly Ill.Rev.Stat. ch. 561/2, §1401(a) and 1401(c) (1991)), (defining unlawful delivery of a controlled substance). Those sections differ only as to the weight of the substance containing the controlled substance. Section 401(a) sets forth the greater weights that need to be involved before delivery of a controlled substance becomes a Class X felony, while Section 401(c) sets forth the lesser weights that make such a delivery a Class 1 felony. However, because the drug induced homicide statute (720 ILCS 5/9-3.3) makes no distinction between violations of Section 401(a) and Section 401(c), the actual weight of the substance containing the controlled substance is irrelevant as long as that weight exceeds the minimum threshold in Section 401(c). Accordingly, insert in the blank the *minimum* weight set forth in Section 401(c) for the particular controlled substance in question. Thus, for example, if heroin or morphine is the controlled substance in question, insert the number 10 in the blank. (See Section 401(c)(1), (c)(3).) If cocaine is the controlled substance, insert the number 1. (See Section 401(c)(2).) If a derivative of barbituric acid, peyote, amphetamine, or methamphetamine is involved, insert the number 50. (Section 401(c)(4), (c)(5), and (c)(6).)

Use applicable bracketed material.

7.28

Issues In Drug Induced Homicide--Delivery Of Controlled Substances By Weight

To sustain the charge of drug induced homicide, the State must prove the following propositions:

First Proposition: That the defendant knowingly delivered to another a substance containing _____, a controlled substance; and

Second Proposition: That the weight of the substance containing the controlled substance was _____ grams or more; and

Third Proposition: That any person [(injected) (inhaled) (ingested)] any amount of that controlled substance; and

Fourth Proposition: That _____ died as a result of that [(injection) (inhalation) (ingestion)].

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 5/9-3.3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §9-3.3 (1991)), added by P.A. 85-1259, effective January 1, 1989, and amended by P.A. 87-1198, effective September 25, 1992.

Give Instruction 7.27.

Insert the name of the controlled substance at issue in the blank in the first proposition.

Insert the weight of the controlled substance at issue in the blank in the second proposition. See the Committee Note to Instruction 7.27 for an explanation regarding the weight to be inserted.

Insert the name of the victim in the blank in the fourth proposition. Note that the named victim inserted in the fourth proposition need not be the same person as the person engaging in the conduct described in the third proposition.

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.

7.29

Definition Of Drug Induced Homicide--Delivery Of Objects Or Segregated Parts Containing LSD

A person commits the offense of drug induced homicide when he knowingly delivers to another more than 10 [(objects) (segregated parts of an object)] containing in them or having on them any amount of any substance containing lysergic acid diethylamide (LSD), and any person dies as a result of the [(injection) (inhalation) (ingestion)] of any amount of that LSD.

Committee Note

720 ILCS 5/9-3.3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §9-3.3 (1991)), added by P.A. 85-1259, effective January 1, 1989, and amended by P.A. 87-1198, effective September 25, 1992.

Give Instruction 7.30.

If the court chooses to define the word “deliver,” give Instruction 17.05A.

The Committee has divided the definitional and issues instructions for this offense into two separate sets of instructions--one set dealing with delivery of controlled substances as determined by weight (Instructions 7.27 and 7.28), and the other set dealing with delivery of LSD as contained in separate objects or multiple segregated parts of the same object (Instructions 7.29 and 7.30). The Committee believes that this division will avoid jury confusion.

Use applicable bracketed material.

7.30

Issues In Drug Induced Homicide--Delivery Of Objects Or Segregated Parts Containing LSD

To sustain the charge of drug induced homicide, the State must prove the following propositions:

First Proposition: That the defendant knowingly delivered to another more than 10 [(objects) (segregated parts of an object)] containing in them or having on them any amount of any substance containing lysergic acid diethylamide (LSD); and

Second Proposition: That any person [(injected) (inhaled) (ingested)] any amount of that LSD; and

Third Proposition: That ____ died as a result of that [(injection) (inhalation) (ingestion)].

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 5/9-3.3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §9-3.3 (1991)), added by P.A. 85-1259, effective January 1, 1989, and amended by P.A. 87-1198, effective September 25, 1992.

Give Instruction 7.29.

Insert the name of the victim in the blank in the third proposition. Note that the named victim inserted in the third proposition need not be the same person as the person engaging in the conduct described in the second proposition.

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.