2.00
BURDEN OF PROOF

INTRODUCTORY NOTE

The instructions in this chapter deal with the indictment, information or complaint, burden of proof, and the presumption of innocence. One of the 2.01 *et seq.* instructions, Instruction 2.02, and one of the 2.03 *et seq.* instructions must be given in all cases. Instruction 2.04 should be given only at the defendant's request, and then it must be given.

The Committee is aware of instances where a confused jury has returned logically or legally inconsistent verdicts. (For examples of problems the Committee is seeking to avoid, *see* People v. Hoffer, 106 Ill.2d 186, 478 N.E.2d 335, 88 Ill.Dec. 20 (1985), cert. denied 474 U.S. 847, 106 S.Ct. 139, 88 L.Ed.2d 114 (1985) (guilty of murder, voluntary manslaughter, and involuntary manslaughter), People v. Spears, 130 Ill.App.3d 1006, 475 N.E.2d 8, 86 Ill.Dec. 202 (3d Dist.1985), judgment affirmed 112 Ill.2d 396, 493 N.E.2d 1030, 98 Ill.Dec. 9 (1986) (guilty of attempt murder, armed violence, and reckless conduct), and People v. Coleman, 131 Ill.App.3d 76, 475 N.E.2d 565, 86 Ill.Dec. 351 (1st Dist.1985) (guilty of attempt murder and reckless conduct).) To avoid such confusion in future cases, the Committee has expanded the concluding instructions (Instruction 26.01 *et seq.*) to be given to the jury and has made those instructions more specific depending upon the particular charges to be considered by the jury and the relationship of those charges to each other.

As part of the Committee's plan to avoid jury confusion, the Committee has similarly expanded Chapter 2.00. Thus the form of the 2.01 charging instruction should always correlate to the form of the 26.01 concluding instruction. [Example: if Instruction 2.01E is given, then Instruction 26.01E must be given as well.]

The Committee is aware that choosing among the 2.01 *et seq.* instructions at first may seem confusing and difficult. However, the Committee decided that having these options available to cover as many fact situations as possible would ultimately prove to be of great benefit to the bench and bar. Were these options not available, counsel and the court would be required in an appropriate case to concoct modifications of those instructions in IPI-Criminal closest to the case at hand. Devising instructions in the midst of a complex, perhaps hard-fought trial is not a desirable course of action. It is far preferable to permit the court and counsel to choose from among the detailed instructions provided by the Committee to meet almost any fact situation that might arise.

In the 28 instructions that comprise the 2.01 series, the Committee has attempted to provide a particular charging instruction to meet any factual variation present when the jury is to be instructed about one or more of the following areas: second degree murder, involuntary manslaughter, lesser included offenses, the guilty but mentally ill verdict, and the insanity defense.

Only one instruction of the 2.01 series (and its corresponding partner from the 26.01 series) should be appropriate to any given set of facts. The Committee has attempted to anticipate and include all potential factual situations. If, however, the court determines that the Committee

has failed to provide an instruction in the 2.01 series that is appropriate to the factual situation of the case on trial, the court should then utilize Instruction 2.01 and modify it as may be needed.

In People v. Reddick, 123 Ill.2d 184, 526 N.E.2d 141, 122 Ill.Dec. 1 (1988), the Illinois Supreme Court changed how a jury should be instructed when it is to consider both murder and voluntary manslaughter as those offenses were defined prior to P.A. 84-1450, which created the offense of second degree murder. (See Committee Note to Instruction 7.02A.) The Committee believes that the instructions contained in parts II and III of the 2.01 series, dealing with first and second degree murder and involuntary manslaughter in various combinations, are fully applicable to murder-voluntary manslaughter cases being tried under the statutes in effect before amendments contained in P.A. 84-1450, with only two slight modifications: (1) any reference in a 2.01 instruction to first degree murder should be changed to murder, and (2) any reference to second degree murder should be changed to voluntary manslaughter.

Guidelines for Choosing Among the 2.01 series Instructions

The 2.01 series has been divided into five parts to reduce the difficulty of finding the appropriate instruction for use in any given factual setting.

PART I.

GENERAL CHARGING INSTRUCTION

Introductory Note

Instruction 2.01 is the general instruction concerning the charge against the defendant (with some modifications) that previously appeared in earlier editions of IPI-Criminal. It should be used when none of the 27 other, more specific, instructions from the 2.01 series is applicable.

2.01
The Charge Against The Defendant--Jury Is Not To Be Instructed On Second Degree Murder--Jury Is Not To Be Instructed On A Lesser Included Offense--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict

The defendant[s] [(is) (are)] charged with the offense[s] of ____. The defendant[s] [(has) (have)] pleaded not guilty.

Committee Note

Whenever this instruction is given, Instruction 26.01 must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on second degree murder, (2) the jury is to be instructed on a lesser offense, (3) the jury is to be instructed on the insanity defense, or (4) the jury is to be instructed on the guilty but mentally ill verdict.

See Introductory Note at 2.00.

Insert in the blank all offenses specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

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

PART II.
FIRST AND SECOND DEGREE MURDER--NO INVOLUNTARY MANSLAUGHTER

2.01A
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty of second degree murder.

Committee Note

Whenever this instruction is given, Instruction 26.01A must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever the jury is to be instructed *only* on first and second degree murder.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, (2) the jury is to be instructed on the insanity defense, or (3) the jury is to be instructed on some charge other than first degree murder and second degree murder.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 2.01I.

See Introductory Note at 2.00.

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.01.

2.01B
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) guilty of first degree murder; or (3) guilty of second degree murder.

The defendant[s] [(is) (are)] also charged with the offense of ____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01B must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, and (2) the jury is to be instructed on some other charge or charges.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, or (2) the jury is to be instructed on the insanity defense.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 2.01J.

See Introductory Note at 2.00.

Insert in the blanks any charge as to which the jury is to be instructed other than first and second degree murder. The second paragraph should be repeated for each such additional charge other than first and second degree murder. Only one charge at a time should be referred to in the second paragraph. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use this second paragraph; instead, use the first paragraph of Instruction 2.01R, modifying the first sentence to read: “The defendant[s] [(is) (are)] also charged with . . . .”

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

The Committee considered and rejected the idea of making one of the verdict forms read, “not guilty of first degree murder and not guilty of second degree murder.” See Committee Note to Instruction 26.01B.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

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

2.01C
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty but mentally ill of first degree murder; or (4) guilty of second degree murder; or (5) guilty but mentally ill of second degree murder.

Committee Note

Whenever this instruction is given, Instruction 26.01C must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, and (2) the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the insanity defense, or (2) the jury is to be instructed on some charge other than first and second degree murder.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 2.01K.

See Introductory Note at 2.00.

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01D
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) guilty of first degree murder; or (3) guilty but mentally ill of first degree murder; or (4) guilty of second degree murder; or (5) guilty but mentally ill of second degree murder.

The defendant[s] [(is) (are)] also charged with the offense of ____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01D must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on the guilty but mentally ill verdict, and (3) the jury is to be instructed on some other charge or charges.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 2.01L.

Do *not* use this instruction if the jury is to be instructed on the insanity defense.

See Introductory Note at 2.00.

Insert in the blanks any charge as to which the jury is to be instructed other than first and second degree murder. The second paragraph should be repeated for each such additional charge other than first and second degree murder. Only one charge at a time should be referred to in the second paragraph. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use this second paragraph; instead, use the first paragraph of Instruction 2.01T, modifying the first sentence to read: “The defendant[s] [(is) (are)] also charged with . . . .”

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

The Committee considered and rejected the idea of making one of the verdict forms read, “not guilty of first degree murder and not guilty of second degree murder.” See Committee Note to Instruction 26.01D.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In

either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01E
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) not guilty by reason of insanity of second degree murder; or (5) guilty of second degree murder.

Committee Note

Whenever this instruction is given, Instruction 26.01E must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, and (2) the jury is to be instructed on the insanity defense.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, or (2) the jury is to be instructed on some charge other than first and second degree murder.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 2.01M.

See Introductory Note at 2.00.

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01F
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) not guilty by reason of insanity of second degree murder; or (5) guilty of second degree murder.

The defendant[s] [(is) (are)] also charged with the offense of ____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01F must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on the insanity defense, and (3) the jury is to be instructed on some other charge or charges.

Do *not* use this instruction if the jury is to be instructed on the guilty but mentally ill verdict.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 2.01N.

See Introductory Note at 2.00.

Insert in the blanks any charge as to which the jury is to be instructed other than first and second degree murder. The second paragraph should be repeated for each such additional charge other than first and second degree murder. Only one charge at a time should be referred to in the second paragraph. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use this second paragraph; use instead the first paragraph of Instruction 2.01V, modifying the first sentence to read: “The defendant[s] [(is) (are)] also charged with . . . .”

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

The Committee considered and rejected the idea of making one of the verdict forms read, “not guilty of first degree murder and not guilty of second degree murder.” See Committee Note to Instruction 26.01F.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the

guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01G
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; or (5) not guilty by reason of insanity of second degree murder; or (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder.

Committee Note

Whenever this instruction is given, Instruction 26.01G must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on the guilty but mentally ill verdict, and (3) the jury is to be instructed on the insanity defense.

Do *not* use this instruction if the jury is to be instructed on some charge other than first and second degree murder.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 2.01O.

See Introductory Note at 2.00.

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.04B.

2.01H
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; (5) not guilty by reason of insanity of second degree murder; (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder.

The defendant[s] [(is) (are)] also charged with the offense of ____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01H must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on the guilty but mentally ill verdict, (3) the jury is to be instructed on the insanity defense, and (4) the jury is to be instructed on some other charge or charges.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 2.01P.

See Introductory Note at 2.00.

Insert in the blanks any charge as to which the jury is to be instructed other than first and second degree murder. The second paragraph should be repeated for each such additional charge other than first and second degree murder. Only one charge at a time should be referred to in the second paragraph. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use this second paragraph; use instead the first paragraph of Instruction 2.01X, modifying the first sentence to read: “The defendant[s] [(is) (are)] also charged with . . . .”

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

The Committee considered and rejected the idea of making one of the verdict forms read, “not guilty of first degree murder and not guilty of second degree murder.” See Committee Note to Instruction 26.01H.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In

either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

PART III.
FIRST AND SECOND DEGREE MURDER AND INVOLUNTARY MANSLAUGHTER

2.01I
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty of second degree murder; or (4) guilty of involuntary manslaughter.

Committee Note

Whenever this instruction is given, Instruction 26.01I must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, and (2) the jury is to be instructed on involuntary manslaughter.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, (2) the jury is to be instructed on the insanity defense, or (3) the jury is to be instructed on some charge other than first degree murder, second degree murder, and involuntary manslaughter.

See Introductory Note at 2.00.

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

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

2.01J
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder and not guilty of involuntary manslaughter; or (2) guilty of first degree murder; or (3) guilty of second degree murder; or (4) guilty of involuntary manslaughter.

The defendant[s] [(is) (are)] also charged with the offense of ____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01J must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, and (3) the jury is to be instructed on some other charge or charges.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, or (2) the jury is to be instructed on the insanity defense.

See Introductory Note at 2.00.

Insert in the blanks any charge as to which the jury is to be instructed other than first and second degree murder and involuntary manslaughter. The second paragraph should be repeated for each such additional charge other than first and second degree murder. Only one charge at a time should be referred to in the second paragraph. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use this second paragraph; instead, use the first paragraph of Instruction 2.01R, modifying the first sentence to read: “The defendant[s] [(is) (are)] also charged with . . . .”

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

The Committee considered and rejected the idea of making one of the verdict forms read, “not guilty of first degree murder, second degree murder, and involuntary manslaughter.” See Committee Note to Instruction 26.01J.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly

modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01K
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty but mentally ill of first degree murder; or (4) guilty of second degree murder; or (5) guilty but mentally ill of second degree murder; or (6) guilty of involuntary manslaughter; or (7) guilty but mentally ill of involuntary manslaughter.

Committee Note

Whenever this instruction is given, Instruction 26.01K must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, and (3) the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the insanity defense, or (2) the jury is to be instructed on some charge other than first degree murder, second degree murder, and involuntary manslaughter.

See Introductory Note at 2.00.

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01L
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder and not guilty of involuntary manslaughter; or (2) guilty of first degree murder; or (3) guilty but mentally ill of first degree murder; or (4) guilty of second degree murder; or (5) guilty but mentally ill of second degree murder; or (6) guilty of involuntary manslaughter; or (7) guilty but mentally ill of involuntary manslaughter.

The defendant[s] [(is) (are)] also charged with the offense of ____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01L must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, (3) the jury is to be instructed on the guilty but mentally ill verdict, and (4) the jury is to be instructed on some other charge or charges.

Do *not* give this instruction if the jury is to be instructed on the insanity defense.

See Introductory Note at 2.00.

Insert in the blanks any charge as to which the jury is to be instructed other than first and second degree murder and involuntary manslaughter. The second paragraph should be repeated for each such additional charge other than first and second degree murder and involuntary manslaughter. Only one charge at a time should be referred to in the second paragraph. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use this second paragraph; instead, use the first paragraph of Instruction 2.01T, modifying the first sentence to read: “The defendant[s] [(is) (are)] also charged with . . . .”

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

The Committee considered and rejected the idea of making one of the verdict forms read, “not guilty of first degree murder, second degree murder, and involuntary manslaughter.” See Committee Note to Instruction 26.01L.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In

either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01M
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) not guilty by reason of insanity of second degree murder; or (5) guilty of second degree murder; or (6) not guilty by reason of insanity of involuntary manslaughter; or (7) guilty of involuntary manslaughter.

Committee Note

Whenever this instruction is given, Instruction 26.01M must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, and (3) the jury is to be instructed on the insanity defense.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, or (2) the jury is to be instructed on any charge other than first degree murder, second degree murder, and involuntary manslaughter.

See Introductory Note at 2.00.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01N
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder and not guilty of involuntary manslaughter; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) not guilty by reason of insanity of second degree murder; or (5) guilty of second degree murder; or (6) not guilty by reason of insanity of involuntary manslaughter; or (7) guilty of involuntary manslaughter.

The defendant[s] [(is) (are)] also charged with the offense of ____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01N must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, (3) the jury is to be instructed on the insanity defense, and (4) the jury is to be instructed on some other charge or charges.

Do *not* use this instruction if the jury is to be instructed on the guilty but mentally ill verdict.

See Introductory Note at 2.00.

Insert in the blanks any charge as to which the jury is to be instructed other than first and second degree murder and involuntary manslaughter. The second paragraph should be repeated for each such additional charge other than first and second degree murder and involuntary manslaughter. Only one charge at a time should be referred to in the second paragraph. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use this second paragraph; instead, use the first paragraph of Instruction 2.01AA, modifying the first sentence to read: "The defendant[s] [(is) (are)] also charged with . . . ."

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder, second degree murder, and involuntary manslaughter." See Committee Note to Instruction 26.01N.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly

modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01O
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; or (5) not guilty by reason of insanity of second degree murder; or (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder; or (8) not guilty by reason of insanity of involuntary manslaughter; or (9) guilty of involuntary manslaughter; or (10) guilty but mentally ill of involuntary manslaughter.

Committee Note

Whenever this instruction is given, Instruction 26.01O must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, (3) the jury is to be instructed on the guilty but mentally ill verdict, and (4) the jury is to be instructed on the insanity defense.

Do *not* give this instruction if the jury is to be instructed on any other charge.

See Introductory Note at 2.00.

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01P
The Charge Against The Defendant--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder and not guilty of involuntary manslaughter; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; or (5) not guilty by reason of insanity of second degree murder; or (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder; or (8) not guilty by reason of insanity of involuntary manslaughter; or (9) guilty of involuntary manslaughter; or (10) guilty but mentally ill of involuntary manslaughter.

The defendant[s] [(is) (are)] also charged with the offense of ____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01P must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, (3) the jury is to be instructed on the guilty but mentally ill verdict, (4) the jury is to be instructed on the insanity defense, and (5) the jury is to be instructed on some other charge or charges.

See Introductory Note at 2.00.

Insert in the blanks any charge as to which the jury is to be instructed other than first and second degree murder and involuntary manslaughter. The second paragraph should be repeated for each such additional charge other than first and second degree murder and involuntary manslaughter. Only one charge at a time should be referred to in the second paragraph. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use this second paragraph; instead, use the first paragraph of Instruction 2.01X, modifying the first sentence to read: “The defendant[s] [(is) (are)] also charged with . . . .”

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

The Committee considered and rejected the idea of making one of the verdict forms read, “not guilty of first degree murder, not guilty of second degree murder, and not guilty of involuntary manslaughter.” See Committee Note to Instruction 26.01P.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other. In either

instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

PART IV.
LESSER INCLUDED OFFENSES

2.01Q
The Charge Against The Defendant--Jury Is To Be Instructed On One Or More Charges Including Lesser Offenses--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Charge Other Than The Greater And Lesser Included Offenses

The defendant[s] [(is) (are)] [also] charged with the offense of [greater offense]. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with [greater offense] may be found (1) not guilty [of [greater offense] and not guilty of [lesser offense]]; or (2) guilty of [greater offense]; or (3) guilty of [lesser offense].

Committee Note

Whenever this instruction is given, Instruction 26.01Q must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever the jury is to be instructed on one or more charges which include a lesser offense.

This instruction should not be used under any of the following circumstances: (1) the jury is to be instructed on any charge other than the greater and the lesser included offenses, (2) the jury is to be instructed on the insanity defense, (3) the jury is to be instructed on the guilty but mentally ill verdict, or (4) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

When appropriate, this instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter, and the jury is not to be instructed on second degree murder.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a verdict form. The clauses which refer to a verdict of guilty of the lesser offense should be repeated for each such lesser offense that the jury will be instructed upon.

Repeat this instruction for each separate charge for which the jury is to be instructed on greater and lesser included offenses, including the bracketed word “also” for each additional charge, and then also include the bracketed words “of [greater offense] and not guilty of [lesser offense]” for all the charges, inserting the greater and lesser included offenses where indicated.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the codefendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the codefendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.07.

2.01R
The Charge Against The Defendant--Jury Is To Be Instructed On One Or More Charges Including Lesser Offenses--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Charge Other Than The Greater And Lesser Included Offenses

[1] The defendant[s] [(is) (are)] [also] charged with the offense of [greater offense]. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with [greater offense] may be found (1) not guilty of [greater offense] and not guilty of [lesser offense]; or (2) guilty of [greater offense]; or (3) guilty of [lesser offense].

[2] The defendant[s] [(is) (are)] also charged with the offense of ____. The defendant[s] [(has) (have)] pleaded not guilty.

Committee Note

Whenever this instruction is given, Instruction 26.01R must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on *one or more charges which include a lesser* offense and (2) the jury is also to be instructed on some other charge or charges.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the insanity defense, (2) the jury is to be instructed on the guilty but mentally ill verdict, or (3) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

When appropriate, this instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter, and the jury is not to be instructed on second degree murder.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a verdict form. The clauses which refer to a verdict of guilty of the lesser offense should be repeated for each such lesser offense that the jury will be instructed upon.

Repeat paragraph [1] for each separate charge for which the jury is to be instructed on greater and lesser included offenses, including the bracketed word “also” for each additional charge.

Insert in the blanks in paragraph [2] the other charge that will be submitted to the jury, other than the greater and lesser included offenses. Paragraph [2] should refer to only one such charge and should be repeated in its entirety for each such charge.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction

submitted to the jury.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the codefendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the codefendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

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 Set 27.07.

2.01S
The Charge Against The Defendant--Jury Is To Be Instructed On A Lesser Included Offense--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of [greater offense]. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with [greater offense] may be found (1) not guilty; or (2) guilty of [greater offense]; or (3) guilty but mentally ill of [greater offense]; or (4) guilty of [lesser offense; or (5) guilty but mentally ill of [lesser offense].

Committee Note

Whenever this instruction is given, Instruction 26.01S must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, and (2) the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the insanity defense, (2) the jury is to be instructed on any charge other than the greater and the lesser included offenses, or (3) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

When appropriate, this instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter, and the jury is not to be instructed on second degree murder.

Insert in the blanks as indicated the greater offense specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated the lesser included offense as to which the jury will receive a form of verdict. The clauses which refer to a verdict of guilty of the lesser offense should be repeated for each such lesser offense that the jury will be instructed upon.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01T
The Charge Against The Defendant--Jury Is To Be Instructed On A Lesser Included Offense--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] also charged with the offense of [greater offense]. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with [greater offense] may be found (1) not guilty of [greater offense] and not guilty of [lesser offense]; or (2) guilty of [greater offense]; or (3) guilty but mentally ill of [greater offense]; or (4) guilty of [lesser offense]; or (5) guilty but mentally ill of [lesser offense].

The defendant[s] [(is) (are)] also charged with the offense of ____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01T must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, (2) the jury is to be instructed on the guilty but mentally ill verdict, and (3) the jury is to be instructed on some other charge or charges.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the insanity defense, or (2) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

When appropriate, this instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter, and the jury is not to be instructed on second degree murder.

Insert in the blanks as indicated the greater offense specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated the lesser included offense as to which the jury will receive a form of verdict. The clauses which refer to a verdict of guilty of the lesser offense should be repeated for each such lesser offense that the jury will be instructed upon.

Insert in the blanks in the third paragraph the other charge that will be submitted to the jury other than the greater and lesser included offenses. The third paragraph should refer to only one such charge and should be repeated in its entirety for each such charge.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 2.01 series for each defendant being jointly tried if

(1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01U
The Charge Against The Defendant--Jury Is To Be Instructed On A Lesser Included Offense--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of [greater offense]. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with [greater offense] may be found (1) not guilty; or (2) not guilty by reason of insanity of [greater offense]; or (3) guilty of [greater offense]; or (4) not guilty by reason of insanity of [lesser offense]; or (5) guilty of [lesser offense].

Committee Note

Whenever this instruction is given, Instruction 26.01U must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, and (2) the jury is to be instructed on the insanity defense.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, (2) the jury is to be instructed on any charge other than the greater and lesser included offenses, or (3) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

When appropriate, this instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter, and the jury is not to be instructed on second degree murder.

Insert in the blanks as indicated the greater offense specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a form of verdict. The last two clauses of the second paragraph, which refer to a verdict of guilty of a lesser offense, should be repeated for each such lesser offense that the jury will be instructed upon.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01V
The Charge Against The Defendant--Jury Is To Be Instructed On A Lesser Included Offense--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of [greater offense]. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with [greater offense] may be found (1) not guilty of [greater offense] and [lesser offense]; or (2) not guilty by reason of insanity of [greater offense]; or (3) guilty of [greater offense]; or (4) not guilty by reason of insanity of [lesser offense]; or (5) guilty of [lesser offense].

The defendant[s] [(is) (are)] also charged with the offense of ____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01V must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, (2) the jury is to be instructed on the insanity defense, and (3) the jury is to be instructed on some other charge or charges.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, or (2) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

When appropriate, this instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter, and the jury is not to be instructed on second degree murder.

Insert in the blanks as indicated the greater offense specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks in the third paragraph the other charge that will be submitted to the jury other than the greater and lesser included offenses. The third paragraph should refer to only one such charge and should be repeated in its entirety for each such charge.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a form of verdict. The last clause of the second paragraph, which refers to a verdict of guilty of the lesser offense, should be repeated for each such lesser offense that the jury will be instructed upon.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01W
The Charge Against The Defendant--Jury Is To Be Instructed On A Lesser Included Offense--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of [greater offense]. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with [greater offense] may be found (1) not guilty; or (2) not guilty by reason of insanity of [greater offense]; or (3) guilty of [greater offense]; or (4) guilty but mentally ill of [greater offense]; or (5) not guilty by reason of insanity of [lesser offense]; or (6) guilty of [lesser offense]; or (7) guilty but mentally ill of [lesser offense].

Committee Note

Whenever this instruction is given, Instruction 26.01W must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, (2) the jury is to be instructed on the insanity defense, (3) the jury is to be instructed on the guilty but mentally ill verdict, and (4) the jury is not to be instructed on any charge other than the greater and lesser included offenses.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on any charge other than the greater and lesser included offenses, or (2) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

When appropriate, this instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter, and the jury is not to be instructed on second degree murder.

Insert in the blanks as indicated the greater offense specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a form of verdict. The last clause of the second paragraph, which refers to a verdict of guilty of the lesser offense, should be repeated for each such lesser offense that the jury will be instructed upon.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly

modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01X
The Charge Against The Defendant--Jury Is To Be Instructed On A Lesser Included Offense--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of [greater offense]. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with [greater offense] may be found (1) not guilty of [greater offense] and not guilty of [lesser offense]; or (2) not guilty by reason of insanity of [greater offense]; or (3) guilty of [greater offense]; or (4) guilty but mentally ill of [greater offense]; or (5) not guilty by reason of insanity of [lesser offense]; or (6) guilty of [lesser offense]; or (7) guilty but mentally ill of [lesser offense].

The defendant[s] [(is) (are)] also charged with the offense of ____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01X must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, (2) the jury is to be instructed on the insanity defense, (3) the jury is to be instructed on the guilty but mentally ill verdict, and (4) the jury is to be instructed on some other charge or charges.

Do *not* use this instruction if the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

When appropriate, this instruction may be used when the jury is to be instructed on first degree murder and involuntary manslaughter and some other charge or charges as well.

Insert in the blanks as indicated the greater offense specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a form of verdict. The last two clauses of the second paragraph, which refer to a verdict of guilty of the lesser offense, should be repeated for each such lesser offense that the jury will be instructed upon.

Insert in the blanks in the third paragraph the other charge that will be submitted to the jury other than the greater and lesser included offenses. The third paragraph should refer to only one such charge and should be repeated in its entirety for each such charge.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 2.01 series for each defendant being jointly tried if

(1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

PART V.
NO LESSER INCLUDED OFFENSES

2.01Y
The Charge Against The Defendant--Jury Is Not To Be Instructed On A Lesser Included Offense--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict

The defendant[s] [(is) (are)] charged with the offense[s] of ____. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with ____ may be found (1) not guilty; or (2) not guilty by reason of insanity of ____; or (3) guilty of ____.

Committee Note

Whenever this instruction is given, Instruction 26.01Y must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever the jury is to be instructed on the insanity defense.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, (2) the jury is to be instructed on a lesser included offense, or (3) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

Insert in the blank all offenses specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict. If the jury is to be instructed on more than one charge, then the third sentence of this instruction should be repeated for each such charge, and the reference to a general not guilty verdict should be changed as well. Under these circumstances, specific not guilty verdicts for each charge should be used.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other. In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01Z
The Charge Against The Defendant--Jury Is Not To Be Instructed On A Lesser Included Offense--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict

The defendant[s] [(is) (are)] charged with the offense[s] of ____. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with ____ may be found (1) not guilty; or (2) guilty of ____; or (3) guilty but mentally ill of ____.

Committee Note

Whenever this instruction is given, Instruction 26.01Z must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on a lesser included offense, (2) the jury is to be instructed on the insanity defense, or (3) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

Insert in the blank all offenses specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict. If the jury is to be instructed on more than one charge, then the third sentence of this instruction should be repeated for each such charge, and the reference to a general not guilty verdict should be changed as well. Under these circumstances, specific not guilty verdicts for each charge should be used.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel. These numbers should be in the instruction as it is submitted to the jury.

Use applicable bracketed material.

2.01AA
The Charge Against The Defendant--Jury Is Not To Be Instructed On A Lesser Included Offense--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict

The defendant[s] [(is) (are)] charged with the offense[s] of ____. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with ____ may be found (1) not guilty; or (2) not guilty by reason of insanity of ____; or (3) guilty of ____; or (4) guilty but mentally ill of ____.

Committee Note

Whenever this instruction is given, Instruction 26.01AA must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on the insanity defense, and (2) the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on a lesser included offense, or (2) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

Insert in the first blank all offenses specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict. If the jury is to be instructed on more than one charge, then the third sentence of this instruction should be repeated for each such charge, and the reference to a general not guilty verdict should be changed as well. Under these circumstances, specific not guilty verdicts for each charge should be used.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel. These numbers should be in the instruction as it is submitted to the jury.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.04A.

2.02
Information--Indictment--Complaint Not Evidence

The charge[s] against the defendant[s] in this case [(is) (are)] contained in a document called the [(information) (indictment) (complaint)]. This document is the formal method of charging the defendant[s] and placing the defendant[s] on trial. It is not any evidence against the defendant[s].

Committee Note

By the time the jury is instructed, this proposition has been communicated to them in *voir dire* examination and closing argument. Nevertheless, it should be reinforced by the court's charge.

The Committee has received reports from trial judges that the use of the term "information" in this instruction without clarification (as it appears in the bound volume of IPI-Criminal (3d ed.)) has sometimes confused juries. Because "information" is a term unfamiliar to most laymen, the Committee has rephrased this instruction to make clear that an information is merely a charging document.

The Committee also decided to delete the last clause of the last sentence of this instruction--"and does not create any inference of guilt"--because the Committee believed that clause both redundant and unclear to a large percentage of jurors.

Use applicable bracketed material.

2.03
Presumption Of Innocence--Reasonable Doubt--Burden Of Proof Generally

[(The) (Each)] defendant is presumed to be innocent of the charge[s] against him. This presumption remains with [(him) (each defendant)] throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that he is guilty.

The State has the burden of proving the guilt of [(the) (each)] defendant beyond a reasonable doubt, and this burden remains on the State throughout the case. [(The) (A)] defendant is not required to prove his innocence.

Committee Note

The firm commitment to presumed innocence which can be overcome only by proof beyond a reasonable doubt is the touchstone of American criminal jurisprudence. This instruction must be given in *all* cases except when the only charges for the jury to consider are first and second degree murder. Under those circumstances, give Instruction 2.03A instead of this instruction.

When insanity is an issue, give this instruction and Instruction 2.03B.

For an example of the use of this instruction, see Sample Sets 27.02, 27.03, 27.04A, 27.06, and 27.07.

2.03A
Presumption Of Innocence--Reasonable Doubt--Burden Of Proof In First Degree-Second Degree Murder Cases

The defendant is presumed to be innocent of the charge against him of first degree murder. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving that the defendant is guilty of first degree murder, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

If the State proves beyond a reasonable doubt that the defendant is guilty of first degree murder, the defendant then 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, and not guilty of first degree murder. In deciding whether a mitigating factor is present, you should consider all of the evidence bearing on this question. [The defendant is not required to present any evidence in order to establish the existence of a mitigating factor.]

Committee Note

This instruction is to be given in place of Instruction 2.03 when the jury is to be instructed on both first and second degree murder under P.A. 84-1450. However, if there is any other charge before the jury, then give *both* this instruction and Instruction 2.03, with the court reading Instruction 2.03 first.

P.A. 84-1450 took effect on July 1, 1987. *See* People v. Shumpert, 126 Ill.2d 344, 533 N.E.2d 1106, 128 Ill.Dec. 18 (1989).

Give Instruction 4.18, defining the phrase “preponderance of the evidence.”

Use bracketed material in the third paragraph of Instruction 2.03A at the defendant's request when the only evidence of second degree murder has come out during the prosecution's case.

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

2.03B
Presumption Of Innocence--Reasonable Doubt--Burden Of Proof--Insanity

The defense of insanity has been presented during the trial. The burden of proof is on the defendant to prove by [(clear and convincing) (a preponderance of the)] evidence that the defendant is not guilty by reason of insanity. However, the burden remains on the State to prove beyond a reasonable doubt each of the propositions of [each of] the offense[s] charged. You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity until and unless you have first determined that the State has proved the defendant guilty beyond a reasonable doubt of the offense[s] with which he is charged.

Committee Note

720 ILCS 5/6-2(e) (1992) (formerly Ill.Rev.Stat. ch. 38, §6-2(e) (1991)), amended by P.A. 89-404, effective August 20, 1995.

When the defense of insanity is an issue, give this instruction in addition to either Instruction 2.03 or Instruction 2.03A.

P.A. 89-404, effective August 20, 1995, modified the insanity defense by eliminating the volitional prong, which provided that a person is insane if, as a result of a mental disease or defect, he lacks substantial capacity to conform his conduct to the requirements of law. P.A. 89-404 also changed the burden on the defendant to establish the insanity defense from "preponderance of the evidence" to "clear and convincing evidence." Accordingly, for offenses allegedly committed on or after August 20, 1995, use the bracketed phrase "clear and convincing."

For offenses allegedly occurring before August 20, 1995, give Instruction 4.18, defining the phrase "preponderance of the evidence." For offenses allegedly occurring on or after August 20, 1995, give Instruction 4.19, defining the phrase "clear and convincing evidence."

This instruction has been revised to be consistent with a modification adopted in the Third Edition of IPI-Criminal. In the third sentence, the phrase "of the elements" has been modified by substituting the word "propositions" for the word "elements." This change reflects the fact that the jury is told that the State must prove propositions, not elements, in order to sustain a charge.

2.04
Failure Of Defendant To Testify

The fact that [(a) (the)] defendant[s] did not testify must not be considered by you in any way in arriving at your verdict.

Committee Note

This instruction should be given only at the defendant's request and, then, it must be given. See *People v. Greben*, 352 Ill. 582, 186 N.E. 162 (1933); *People v. Borneman*, 66 Ill.App.2d 251, 213 N.E.2d 52 (2d Dist.1966).

The Committee substituted the word “must” for the word “should” that appeared in the Second Edition's version of Instruction 2.04. It sought to give greater emphasis to the jury's obligation not to consider the defendant's failure to testify.

Do not give this instruction at a proceeding determining a defendant’s fitness to stand trial. A fitness trial in the criminal court process is a civil proceeding. *People v. Rosochacki*, 41 Ill.2d 483, 489-490 (1969); *People v. Williams*, 205 Ill.App.3d 715, 721 (1990). Illinois law is unsettled as to whether a defendant has the right against self-incrimination at a fitness trial. For jury instructions for fitness proceedings, see Chapter 29.

For an example of the use of this instruction, see Sample Set 27.04A.

2.05
Definition Of Reasonable Doubt

Committee Note

The Committee recommends that no instruction be given defining the term "reasonable doubt." In People v. Malmenato, 14 Ill.2d 52, 61, 150 N.E.2d 806, 811 (1958), the Illinois Supreme Court stated:

> "Reasonable doubt is a term which needs no elaboration and we have so frequently discussed the futility of attempting to define it that we might expect the practice to be discontinued. (People v. Schuele, 326 Ill. 366, 157 N.E. 215; People v. Rogers, 324 Ill. 224, 154 N.E. 909.) ..."

See also People v. Bowlby, 51 Ill.App.2d 51, 201 N.E.2d 136 (4th Dist.1964).

2.06
Bill Of Particulars

Committee Note

The Committee recommends that no instruction be given on this subject. The question whether the evidence complies with a bill of particulars (when one is granted) is for the court. The bill of particulars does not go to the jury, but it does limit the character of evidence. McDonald v. People, 126 Ill. 150, 18 N.E. 817 (1888); People v. Parker, 355 Ill. 258, 189 N.E. 352 (1934).

2.07
Venue (Before August 11, 1995)

The State must prove beyond a reasonable doubt that the offense[s] of ____ occurred in ____ County, Illinois.

Committee Note

P.A. 89-288, effective August 11, 1995, amends Section 1-6(a) of the Criminal Code (720 ILCS 5/1-6(a) (West 1994)) to provide that the State is not required to prove venue. Because previous case law held that venue is an element of every offense that the State had to prove beyond a reasonable doubt, this instruction should continue to be used in cases in which the alleged offense was committed before August 11, 1995, and the court determines that venue is a material issue.

Give Instruction 2.08.

Give this instruction at the request of either party, or *sua sponte* by the trial court if the court determines venue is a material issue in the case. *See* People v. Adams, 161 Ill.2d 333, 341, 641 N.E.2d 514, 518, 204 Ill.Dec. 290, 294 (1994), wherein the court held that "venue is a material allegation which must be proved by the State beyond a reasonable doubt along with the other elements of an offense."

If venue is a contested issue, then the question of venue must be submitted to the jury for resolution. People v. Turner, 179 Ill.App.3d 510, 534 N.E.2d 179, 128 Ill.Dec. 159 (2d Dist.1989). Therefore, when there is a material question of fact as to whether an offense occurred in the county charged in the complaint, indictment, or information, this instruction should be given.

When the offense occurs in a moving vehicle, *see* People v. McClain, 60 Ill.App.3d 320, 376 N.E.2d 774, 17 Ill.Dec. 628 (4th Dist.1978). For a discussion of venue generally, *see* People v. Lambert, 195 Ill.App.3d 314, 552 N.E.2d 300, 141 Ill.Dec. 932 (4th Dist.1990), for guidance.

This instruction is not included in Chapter 24-25.00 because venue is not a defense.

Insert in the first blank the offense or offenses that have venue issues and in the second blank the county charged in the complaint, indictment, or information.

2.07X
Venue (As Of August 11, 1995)

Committee Note

P.A. 89-288, effective August 11, 1995, amends Section 1-6(a) of the Criminal Code (720 ILCS 5/1-6(a) (West 1994)) to provide that the State is not required to prove venue. Thus, no instruction on venue should be given in cases in which the alleged offense was committed on or after August 11, 1995.

2.08
Issues In Venue (Before August 11, 1995)

____ *Proposition:* That the offense of ____ occurred in ____ County.

Committee Note

P.A. 89-288, effective August 11, 1995, amends section 1-6(a) of the Criminal Code (720 ILCS 5/1-6(a) (West 1994)) to provide that the State is not required to prove venue. Because previous case law held that venue was an element of every offense that the State had to prove beyond a reasonable doubt, this instruction should continue to be used in cases in which the alleged offense was committed before August 11, 1995, and the court determines that venue is a material issue.

Give Instruction 2.07.

Give this instruction at the request of either party, or *sua sponte* by the trial court if the court determines venue is a material issue in the case. See the Committee Note to Instruction 2.07.

Give this instruction as the final proposition in the issues instruction for the offense charged.

Insert in the first blank the number of the proposition, in the second blank the offense that has a venue issue, and in the third blank the county charged in the complaint, indictment, or information.

2.08X
Issues In Venue (As Of August 11, 1995)

Committee Note

P.A. 89-288, effective August 11, 1995, amends Section 1-6(a) of the Criminal Code (720 ILCS 5/1-6(a) (West 1994)) to provide that the State is not required to prove venue. Thus, no instruction on venue should be given in cases in which the alleged offense was committed on or after August 11, 1995.