

7.01B
Definition Of First Degree Murder

Use For Cases Where The Offense Is Alleged To Have Occurred After June 30, 2021.

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

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

[or]

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

[or]

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

[or]

[4] he, acting [(alone) (with one or more participants)], [(commits) (attempts to commit)] the offense of _____, and [(in the course of) (in furtherance of) (in flight from)] that offense, [(he) (another participant)] causes the death of a person.

Committee Note

720 ILCS 5/9-1 (West 2021), as amended by P.A. 101-0652, effective July 1, 2021.

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

The Committee does not take a position as to whether P.A. 101-0652 is retroactive.

When using paragraph [4] alleging felony murder, use the corresponding paragraph [4] of Instruction 7.02B.

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

When the prosecution is for an inchoate offense (i.e., attempt first degree murder, solicitation to commit first degree murder, conspiracy to commit first degree murder), do not give paragraphs [2], [3], or [4]. In addition, modify the murder definition in paragraph [1] in

attempt first degree murder cases to require that the defendant had the intent to kill another. See *People v. Harris*, 72 Ill.2d 16, 377 N.E.2d 28 (1978).

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

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

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

Use applicable paragraphs and bracketed material.

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

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