24-25.00.
DEFENSES

INTRODUCTION

Chapters 24 and 25 of the original IPI instructions are combined in this edition into one chapter. This has been done to bring the presentation of affirmative defense instructions into conformity with the general format followed in most of this edition (*i.e.*, the definitional instruction followed immediately by the issues instruction).

The Committee believes that elements or issues of an affirmative defense should be treated in two ways: *first,* by definition following the definition of the crime with which the defendant is charged; *second,* in the same instruction with the issues or elements of the crime and the State's burden of proof. See Chapters 6 through 23, *supra.* The appropriate issues and burden of proof defenses instruction should be superimposed upon the appropriate issues and burden of proof crimes instruction so that the jury receives a single instruction covering all of the issues in the case. See Chapter 27, *infra,* for examples.

24-25.01 Definition Of Insanity

A person is insane and not criminally responsible for his conduct if at the time of the conduct, as a result of mental disease or mental defect, he lacks substantial capacity [either] to appreciate the criminality of his conduct [or to conform his conduct to the requirements of the law

[Abnormality manifested only by repeated criminal, or otherwise anti-social conduct, is not mental disease or mental defect.]

Committee Note

720 ILCS 5/6-2 (West 1994) (formerly Ill.Rev.Stat. ch. 38, §6-2), amended by P.A. 89-404, effective August 20, 1995.

Give this instruction when the issue is properly one for the jury. See Introduction to this Chapter.

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. Accordingly, for offenses allegedly committed on or after August 20, 1995, do not use the bracketed material in the first paragraph of this instruction. P.A. 89-404 also changed the defendant's burden to establish the insanity defense from “preponderance of the evidence” to “clear and convincing evidence.”

Give the bracketed second paragraph only when the evidence shows repeated criminal or other anti-social conduct. People v. Fierer, 124 Ill.2d 176, 529 N.E.2d 972, 124 Ill.Dec. 855 (1988); People v. Foster, 43 Ill.App.3d 490, 356 N.E.2d 1288, 2 Ill.Dec. 1 (5th Dist.1976); People v. Bourlef, 52 Ill.App.2d 437, 202 N.E.2d 46 (3d Dist.1964).

Give Instruction 2.03B, concerning burden of proof in insanity cases.

24-25.01A Issues In Defense Of Insanity

[Place at the top of this instruction the issues for the offense charged.]

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of ____], your deliberations [on this charge] should end, and you should return the verdict of not guilty [of ____].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations [on this charge] to decide whether the defendant has proved by a preponderance of the evidence that he is not guilty by reason of insanity [of ____].

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 ____].

If you find from your consideration of all the evidence that the defendant has proved by [(clear and convincing evidence) (a preponderance of the)] evidence that he is not guilty by reason of insanity [of ____], your deliberations [on this charge] should end, and you should return the verdict of not guilty by reason of insanity [of ____].

If you find from your consideration of all the evidence that the defendant has not proved by [(clear and convincing evidence) (a preponderance of the)] evidence that he is not guilty by reason of insanity, you should find the defendant guilty [of ____].

Committee Note

720 ILCS 5/6-2(e) (West, 1999) formerly Ill.Rev.Stat. ch. 38, §6-2(e) (1991).

Give Instruction 24-25.01, defining "insanity" and Instruction 4.18, defining the phrase "preponderance of the evidence."

These paragraphs should be included in the issues instructions for each charge when the defense of insanity has been raised. These paragraphs should be substituted for the two concluding paragraphs which otherwise are present in the issues instructions for all charges. Give these admonitions to the jury immediately following the listing of the propositions which the State must prove. When the jury is instructed on both insanity and the guilty but mentally ill verdict, do not use this instruction; instead, use Instruction 24-25.01D. When both first degree murder and second degree murder also are in issue, give the appropriate instructions chosen from 24-25.01E through 24-25.01K.

The Committee takes no position on the question of whether the special verdict form of guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See People v. Gurga, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986); People v. Fields, 170 Ill.App.3d 1, 523 N.E.2d 1196, 120 Ill.Dec. 285 (1st Dist.1988)

For crimes committed on or after January 1, 1984 up to August 19, 1995, P.A. 83-288 places the burden on a defendant to prove his insanity by a preponderance of the evidence. *See* People v. Skorka, 147 Ill.App.3d 976, 498 N.E.2d 607, 101 Ill.Dec. 283 (1st Dist. 1986); People v. Hickman, 143 Ill.App.3d 195, 492 N.E.2d 1041, 97 Ill.Dec. 382 (5th Dist. 1986). For these offenses, use the bracketed phrase "preponderance of the evidence." Give Instruction 4.18 defining the phrase "preponderance of the evidence."

However, for crimes committed August 20, 1995 and after, P.A. 89-404 places the burden on the defendant to establish the insanity defense by "clear and convincing evidence." Accordingly, for offenses allegedly committed on August 20, 1995 and after, use the bracketed phrase "clear and convincing evidence." Give Instruction 4.19 defining the phrase "clear and convincing evidence."

Use applicable bracketed material.

24-25.01b Guilty But Mentally Ill

A person may be found guilty but mentally ill and is not relieved of criminal responsibility for his conduct if at the time of the commission of the offense he was not insane but was suffering from a mental illness.

Committee Note

720 ILCS 5/6-2(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38,§6-2(c) (1991)).

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

24-25.01C Definition Of Mentally Ill

A person is mentally ill if, at the time of the commission the offense, he was afflicted by a substantial disorder of thought, mood, or behavior which impaired his judgment, but not to the extent that he was unable to appreciate the wrongfulness of his behavior [or was unable to conform his conduct to the requirements of the law].

Committee Note

720 ILCS 5/6-2 (West 1994) (formerly Ill.Rev.Stat. ch. 38, §6-21), amended by P.A. 89-404, effective August 20, 1995.

P.A. 89-404, effective August 20, 1995, modified the definition of mentally ill, by eliminating the volitional prong of the insanity defense, 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 the law. Accordingly, for offenses committed on or after August 20, 1995, do not use the bracketed material.

24-25.01D Issues In Defense Of Insanity When Jury Is To Be Instructed On Guilty But Mentally Ill Verdict

[Place at the top of this instruction the issues for the offense charged.]

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of ____], your deliberations [on this charge] should end, and you should return the verdict of not guilty [of ____].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations [on this charge] to decide whether the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity [of ____].

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 ____].

If you find from your consideration of all the evidence that the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity [of ____], your deliberations [on this charge] should end, and you should return the verdict of not guilty by reason of insanity [of ____].

If you find from your consideration of all the evidence that the defendant has not proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity [of ____], then you should continue your deliberations [on this charge] to determine whether the defendant is guilty but mentally ill [of ____].

A special verdict of guilty but mentally ill may be returned by you instead of a general verdict of guilty if you find each of the following circumstances to be present in this case:

First: That the State has proved beyond a reasonable doubt that the defendant is guilty of ____; and

Second: That the defendant has not proved by [(clear and convincing) (a preponderance of the)] evidence that he was insane at the time he committed the offense of ____; and

Third: That the defendant has proved by a preponderance of the evidence that he was mentally ill at the time he committed the offense of ____.

If you find from your consideration of all the evidence that each one of these circumstances is present, you may return the special verdict finding the defendant guilty but mentally ill [of ____].

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt that the defendant is guilty of ____ and if you find that either the second or third circumstance concerning the guilty but mentally ill verdict is not present, you should return the general verdict finding the defendant guilty [of ____].

Committee Note

720 ILCS 5/6-2(e) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §§6-2(e) and 115-4(j)), amended by P.A. 89-404, effective August 20, 1995.

P.A. 86-392, effective January 1, 1990, amended Section 115-4(j) by (1) repealing the previous requirement of Section 115-4(j) that the State had to prove beyond a reasonable doubt that the defendant was not insane, and (2) placing the burden on the defendant to prove by a preponderance of the evidence that he was mentally ill. The first of these changes makes Section 115-4(j) consistent with Section 6-2(e). See People v. Fierer, 124 Ill.2d 176, 529 N.E.2d 972,

124 Ill.Dec. 855 (1988), for the court's discussion of the problems presented by the previous statute. The Committee takes no position as to whether P.A. 86-392 applies to offenses committed before January 1, 1990, but tried after that date.

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 defendant's burden 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."

Give Instruction 24-25.01, defining "insanity," Instruction 24-25.01B, defining "guilty but mentally ill," and Instruction 24-25.01C, defining "mentally ill."

When insanity or guilty but mentally ill is an issue in a first degree murder and second degree murder case, give the appropriate instruction to be chosen from Instructions 24-25.01E through 24-25.01K.

These paragraphs should be included in the issues instructions for each charge when the defense of insanity has been raised and the evidence warrants providing the jury with a special verdict form of guilty but mentally ill as to each offense charged. These paragraphs should be substituted for the two concluding paragraphs which otherwise are present in the issues instructions for all charges. Give these admonitions to the jury immediately following the listing of the propositions which the State must prove.

Do not use this instruction if the jury is to be instructed on the insanity defense, but, for whatever reason, the special verdict form of guilty but mentally ill is not to be provided to the jury. The Committee takes no position on the question of whether the special verdict form of guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See People v. Gurga, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986); People v. Fields, 170 Ill.App.3d 1, 523 N.E.2d 1196, 120 Ill.Dec. 285 (1st Dist.1988). The Committee takes no position on whether the phrase "may be returned" is permissive or mandatory. See Gurga.

Use applicable bracketed material if more than one charge is at issue.

24-25.01E Issues In Defense Of Insanity When Jury Is To Be Instructed On Both First Degree Murder And Second Degree Murder (Provocation)--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict

[Place at the top of this instruction the issues for the offense charged.]

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of first degree murder], your deliberations [on these charges] should end, and you should return the verdict of not guilty [of first degree murder].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

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

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

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity on the charge of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity on the charge of first degree murder.

You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity on either the charge of first degree murder or the charge of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

If you find from your consideration of all the evidence that the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity, then you should find the defendant not guilty by reason of insanity of whichever murder charge, either first degree murder or second degree murder, you found earlier to be applicable, your deliberations [on that charge] should end, and you should return a verdict of not guilty by reason of insanity on that murder charge.

If you find from your consideration of all the evidence that the defendant has not proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity, you should find the defendant guilty of whichever murder charge, either first degree murder or second degree murder, you found earlier to be applicable, and you should return a

verdict of guilty on that murder charge.

If you find from your consideration of all the evidence that the defendant has not proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity, you should find the defendant guilty of whichever murder charge, either first degree murder or second degree murder, you found earlier to be applicable, and you should return a verdict of guilty on that murder charge.

Committee Note

720 ILCS 5/6-2(c) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §6-2(e)), amended by P.A. 89-404, effective August 20, 1995.

Give Instruction 24-25.01, defining "insanity."

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 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."

These paragraphs should be included in the issues instructions for first degree murder when the court has determined that the jury should be instructed on both the insanity defense and second degree murder based upon provocation. Give these paragraphs to the jury immediately following the listing of the propositions which the State must prove in Instruction 7.04A.

When the jury is to be instructed on the insanity defense and second degree murder (provocation), and is also to receive the special verdict form of guilty but mentally ill, do not use this instruction; instead, use Instruction 24-25.01F. The Committee takes no position on the question of whether the special verdict form on guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See People v. Gurga, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986); People v. Fields, 170 Ill.App.3d 1, 523 N.E.2d 1196, 120 Ill.Dec. 285 (1st Dist.1988).

See Committee Notes for Instructions 7.04A, 24-25.01, 24-25.01A, and 24-25.01D.

Use bracketed material if there is more than one charge at issue.

24-25.01F Issues In Defense Of Insanity When Jury Is To Be Instructed On First And Second Degree Murder (Provocation) And The Guilty But Mentally Ill Verdict

[Place at the top of this instruction the issues for the offense charged.]

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of first degree murder], your deliberations [on these charges] should end, and you should return the verdict of not guilty [of first degree murder].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

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

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

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity on the charge of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity on the charge of first degree murder.

You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity on either the charge of first degree murder or the charge of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

If you find from your consideration of all the evidence that the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity, then you should find the defendant not guilty by reason of insanity of whichever murder charge, either first degree murder or second degree murder, you found earlier to be applicable, your deliberations [on that charge] should end, and you should return a verdict of not guilty by reason of insanity on that murder charge.

If you find from your consideration of all the evidence that the defendant has not proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity of first degree or second degree murder, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill on that murder charge.

A special verdict of guilty but mentally ill may be returned by you instead of a general verdict of guilty if you find each of the following circumstances to be present in this case:

First: That the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder; and

Second: That the defendant has not proved by [(clear and convincing) (a preponderance of the)] evidence that he was insane at the time he committed whichever murder you found earlier to apply; and

Third: That the defendant has proved by a preponderance of the evidence that he was mentally ill at the time he committed that murder.

If you find from your consideration of all the evidence that each one of these circumstances concerning the guilty but mentally ill verdict is present, you may return the special verdict finding the defendant guilty but mentally ill of the murder charge that you found earlier to be applicable.

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder and if you find that either the second or third circumstance concerning the guilty but mentally ill verdict is not present, you should return the general verdict finding the defendant guilty of the murder charge that you found earlier to be applicable.

Committee Note

720 ILCS 5/6-2(e), 9-2(a)(1), 9-2(b), 9-2(c) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §§6-2(e), 9-2(a)(1), 9-2(b), 9-2(c), and 115-4(j), amended by P.A. 89-404, effective August 20, 1995. P.A. 86-392, effective January 1, 1990, amended Section 115-4(j) by (1) repealing the previous requirement of Section 115-4(j) that the State had to prove beyond a reasonable doubt the defendant was not insane, and (2) placing the burden on the defendant to prove by a preponderance of the evidence that he was mentally ill. The first of these changes makes Section 115-4(j) consistent with Section 6-2(e). See People v. Fierer, 124 Ill.2d 176, 529 N.E.2d 972, 124 Ill.Dec. 855 (1988), for the court's discussion of the problems presented by the previous statute. The Committee takes no position as to whether P.A. 86-392 applies to offenses committed before January 1, 1990, but tried after that date.

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 defendant's burden 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."

Give Instruction 24-25.01, defining "insanity," Instruction 24-25.01B, defining "guilty but mentally ill," and Instruction 24-25.01C, defining "mentally ill."

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."

These paragraphs should be included in the issues instructions for first degree murder when the jury is to be instructed on second degree murder (provocation) and the insanity defense, and is also to receive the special verdict form of guilty but mentally ill. Give these admonitions

to the jury immediately following the listing of the propositions in Instruction 7.04A which the State must prove.

See Committee Notes for Instructions 7.04A, 24-25.01D, and 24-25.01E.

Use bracketed material if more than one charge is at issue.

24-25.01G Issues In Defense Of Insanity When Jury Is To Be Instructed On Both First Degree Murder And Second Degree Murder (Belief In Justification)--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict

[Place at the top of this instruction the issues for the offense charged.]

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of first degree murder], your deliberations [on these charges] should end, and you should return the verdict of not guilty [of first degree murder].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

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

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

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity on the charge of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity on the charge of first degree murder.

You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity on either the charge of first degree murder or the charge of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

If you find from your consideration of all the evidence that the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity, then you should find the defendant not guilty by reason of insanity of whichever murder charge, either first degree murder or second degree murder, you found earlier to be applicable, your deliberations [on that charge] should end, and you should return a verdict of not guilty by reason of insanity on that murder charge.

If you find from your consideration of all the evidence that the defendant has not proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity, you should find the defendant guilty of whichever murder charge, either first degree murder or second degree murder, you found earlier to be applicable, and you should return a verdict of guilty on that murder charge.

Committee Note

720 ILCS 5/6-2 (West 1994) (formerly Ill.Rev.Stat. ch. 38, §§6-2(e), 9-2(a)(1), 9-2(b), 9-2(c), and 115-4(j), amended by P.A. 89-404, effective August 20, 1995.

Give Instruction 24-25.01, defining "insanity."

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 defendant's burden 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."

These paragraphs should be included in the issues instructions for first degree murder when the court has determined that the jury should be instructed on both the insanity defense and second degree murder based upon provocation. Give these paragraphs to the jury immediately following the listing of the propositions which the State must prove in Instruction 7.04A.

When the jury is to be instructed on the insanity defense and second degree murder (provocation), and is also to receive the special verdict form of guilty but mentally ill, do not use this instruction; instead, use Instruction 24-25.01F. The Committee takes no position on the question of whether the special verdict form on guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See People v. Gurga, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986); People v. Fields, 170 Ill.App.3d 1, 523 N.E.2d 1196, 120 Ill.Dec. 285 (1st Dist.1988).

See Committee Notes for Instructions 7.04A, 24-25.01, 24-25.01A, and 24-25.01D.

Use bracketed material if more than one charge is at issue.

24-25.01H Issues In Defense Of Insanity When Jury Is To Be Instructed On First And Second Degree Murder (Belief In Justification) And The Guilty But Mentally Ill Verdict

[Place at the top of this instruction the issues for the offense charged.]

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of first degree murder], your deliberations [on these charges] should end, and you should return a verdict of not guilty [of first degree murder].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

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

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

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity on the charge of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity on the charge of first degree murder.

You may not consider whether the defendant has met the burden of proving that he is not guilty by reason of insanity on either the charge of first degree murder or the charge of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

If you find from your consideration of all the evidence that the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity, then you should find the defendant not guilty by reason of insanity of whichever murder charge, either first degree murder or second degree murder, you found earlier to be applicable, your deliberations [on that charge] should end, and you should return a verdict of not guilty by reason of insanity on that murder charge.

If you find from your consideration of all the evidence that the defendant has not proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity of first degree murder or second degree murder, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill on that murder charge.

A special verdict of guilty but mentally ill may be returned by you instead of a general verdict of guilty if you find each of the following circumstances to be present in this case:

First: That the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder; and

Second: That the defendant has not proved by [(clear and convincing) (a preponderance of the)] evidence that he was insane at the time he committed whichever murder you found earlier to apply; and

Third: That the defendant has proved by a preponderance of the evidence that he was mentally ill at the time he committed that murder.

If you find from your consideration of all the evidence that each one of these circumstances concerning the guilty but mentally ill verdict is present, you may return the special verdict finding the defendant guilty but mentally ill of the murder charge that you found earlier to apply.

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder and if you find that either the second or third circumstance concerning the guilty but mentally ill verdict is not present, you should return a general verdict finding the defendant guilty of the murder charge that you found earlier to be applicable.

Committee Note

720 ILCS 5/6-2(e), 9-2(a)(2), 9-2(c) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §§6-2(e), 9-2(a)(2), 9-2(c), and 115-4(j), amended by P.A. 89-404, effective August 20, 1995. P.A. 86-392, effective January 1, 1990, amended Section 115-4(j) by (1) repealing the previous requirement of Section 115-4(j) that the State had to prove beyond a reasonable doubt that the defendant was not insane, and (2) placing the burden on the defendant to prove by a preponderance of the evidence that he was mentally ill. The first of these changes makes Section 115-4(j) consistent with Section 6-2(e). See People v. Fierer, 124 Ill.2d 176, 529 N.E.2d 972, 124 Ill.Dec. 855 (1988), for the court's discussion of the problems presented by the previous statute. The Committee takes no position as to whether P.A. 86-392 applies to offenses committed before January 1, 1990, but tried after that date.

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 defendant's burden 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."

Give Instruction 24-25.01, defining "insanity," Instruction 24-25.01B, defining "guilty but mentally ill," and Instruction 24-25.01C, defining "mentally ill."

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."

These paragraphs should be included in the issues instruction for first degree murder when the jury is also to be instructed on second degree murder (belief of justification) and the insanity defense, and is also to receive the special verdict form of guilty but mentally ill. Give

these admonitions to the jury immediately following the listing of the propositions in Instruction 7.06A which the State must prove.

See Committee Notes for Instructions 7.06A, 24-25.01D, and 24-25.01G.

Use bracketed material if more than one charge is at issue.

24-25.01I Issues When Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On The Insanity Defense

[Place at top of this instruction the issues for the offense charged.]

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of ____], your deliberations [on this charge] should end, and you should return a verdict of not guilty [of ____].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill [on this charge].

A special verdict of guilty but mentally ill may be returned by you instead of a general verdict of guilty if you find each of the following circumstances to be present in this case:

First: That the State has proved beyond a reasonable doubt that the defendant is guilty of ____; and

Second: That the defendant has not proved by a preponderance of the evidence that he was insane at the time he committed ____; and

Third: That the defendant has proved by a preponderance of the evidence that he was mentally ill at the time he committed ____.

If you find from your consideration of all the evidence that each one of these circumstances is present, you may return the special verdict finding the defendant guilty but mentally ill [of ____].

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt that the defendant is guilty of ____ and if you find that either the second or third circumstances concerning the guilty but mentally ill verdict is not present, you should return the general verdict finding the defendant guilty [of ____].

Committee Note

Chapter 38, Section 115-4(j). P.A. 86-392, effective January 1, 1990, amended Section 115-4(j) by (1) repealing the previous requirement of Section 115-4(j) that the State had to prove beyond a reasonable doubt the defendant was not insane, and (2) placing the burden on the defendant to prove by a preponderance of the evidence that he was mentally ill. The first of these changes makes Section 115-4(j) consistent with Section 6-2(e). See People v. Fierer, 124 Ill.2d 176, 529 N.E.2d 972, 124 Ill.Dec. 855 (1988), for the court's discussion of the problems presented by the previous statute. The Committee takes no position as to whether P.A. 86-392 applies to offenses committed before January 1, 1990, but tried after that date.

Give Instruction 24-25.01, defining "insanity," Instruction 24-25.01B, defining "guilty but mentally ill," Instruction 4.18, defining the phrase "preponderance of the evidence," and Instruction 24-25.01C, defining "mentally ill."

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

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

These paragraphs should be included in the issues instructions for each charge when the evidence warrants providing the jury with a special verdict form of guilty but mentally ill as to

each offense charged. These paragraphs should be substituted for the two concluding paragraphs which otherwise are present in the issues instructions for all charges. Give these admonitions to the jury immediately following the listing of the propositions which the State must prove.

The Committee takes no position on whether the phrase "may be returned" is permissive or mandatory. People v. Gurga, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986).

For crimes committed on or after January 1, 1984, P.A. 83-288 places the burden on a defendant to prove his insanity by a preponderance of the evidence. See People v. Skorka, 147 Ill.App.3d 976, 498 N.E.2d 607, 101 Ill.Dec. 283 (1st Dist.1986); People v. Hickman, 143 Ill.App.3d 195, 492 N.E.2d 1041, 97 Ill.Dec. 382 (5th Dist.1986).

Use bracketed material if there is more than one charge at issue.

24-25.01J Issues When The Jury Is To Be Instructed On First And Second Degree Murder (Provocation) And The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On The Insanity Defense

[Place at the top of this instruction the issues for the offense charged.]

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of first degree murder], your deliberations [on this charge] should end, and you should return a verdict of not guilty [of first degree murder].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

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

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

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that he is guilty of the lesser offense of second degree murder instead of first degree murder, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill of the offense of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that he is guilty of the lesser offense of second degree murder instead of first degree murder, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill of the offense of first degree murder.

A special verdict of guilty but mentally ill may be returned by you instead of a general verdict of guilty if you find each of the following circumstances to be present in this case:

First: That the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder; and

Second: That the defendant has not proved by a preponderance of the evidence that he was insane at the time he committed whichever murder you found earlier to apply; and

Third: That the defendant has proved by a preponderance of the evidence that he was mentally ill at the time he committed that murder.

If you find from your consideration of all the evidence that each one of these circumstances concerning the guilty but mentally ill verdict is present, you may return the special verdict finding the defendant guilty but mentally ill of the murder charge that you found earlier to apply.

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder and if you find that either the second or third circumstance concerning the guilty but mentally ill verdict is not present, you

should return the general verdict finding the defendant guilty of the murder charge that you found earlier to be applicable.

Committee Note

Chapter 38, Section 9-2(a)(1), 9-2(b), 9-2(c), and 115-4(j). P.A. 86-392, effective January 1, 1990, amended Section 115-4(j) by (1) repealing the previous requirement of Section 115-4(j) that the State had to prove beyond a reasonable doubt that the defendant was not insane, and (2) placing the burden on the defendant to prove by a preponderance of the evidence that he was mentally ill. The first of these changes makes Section 115-4(j) consistent with Section 6-2(e). See People v. Fierer, 124 Ill.2d 176, 529 N.E.2d 972, 124 Ill.Dec. 855 (1988), for the court's discussion of the problems presented by the previous statute. The Committee takes no position as to whether P.A. 86-392 applies to offenses committed before January 1, 1990, but tried after that date.

Give Instruction 24-25.01B, defining "guilty but mentally ill," Instruction 24-25.01C, defining "mentally ill," Instruction 4.18, defining the phrase "preponderance of the evidence," and Instruction 24-25.01, defining "insanity."

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

The Committee takes no position on whether the phrase "may be returned" is permissive or mandatory. See People v. Gurga, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986).

See Committee Notes for Instructions 7.04A and 24-25.01D.

Use bracketed material if there is more than one charge at issue.

24-25.01K Issues When Jury Is To Be Instructed On First And Second Degree Murder (Belief In Justification) And The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On The Insanity Defense

[Place at the top of this instruction the issues for the offense charged.]

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of first degree murder], your deliberations [on this charge] should end, and you should return a verdict of not guilty [of first degree murder].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

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

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

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that he is guilty of the lesser offense of second degree murder instead of first degree murder, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill of the offense of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that he is guilty of the lesser offense of second degree murder instead of first degree murder, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill of the offense of first degree murder.

A special verdict of guilty but mentally ill may be returned by you instead of a general verdict of guilty if you find each of the following circumstances to be present in this case:

First: That the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder; and

Second: That the defendant has not proved by a preponderance of the evidence that he was insane at the time he committed whichever murder you found earlier to apply; and

Third: That the defendant has proved by a preponderance of the evidence that he was mentally ill at the time he committed that murder.

If you find from your consideration of all the evidence that each one of these circumstances concerning the guilty but mentally ill verdict is present, you may return the special verdict finding the defendant guilty but mentally ill of the murder charge that you found earlier to apply.

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder and if you find that either the second or third circumstances concerning the guilty but mentally ill verdict is not present, you should return the general verdict finding the defendant guilty of the murder charge that you

found earlier to be applicable.

Committee Note

Chapter 38, Section 9-2(a)(2), 9-2(c), and 115-4(j). P.A. 86-392, effective January 1, 1990, amended Section 115-4(j) by (1) repealing the previous requirement of Section 115-4(j) that the State had to prove beyond a reasonable doubt that the defendant was not insane, and (2) placing the burden on the defendant to prove by a preponderance of the evidence that he was mentally ill. The first of these changes makes Section 115-4(j) consistent with Section 6-2(e). See People v. Fierer, 124 Ill.2d 176, 529 N.E.2d 972, 124 Ill.Dec. 855 (1988), for the court's discussion of the problems presented by the previous statute. The Committee takes no position as to whether P.A. 86-392 applies to offenses committed before January 1, 1990, but tried after that date.

Give Instruction 24-25.01B, defining "guilty but mentally ill," Instruction 24-25.01C, defining "mentally ill," Instruction 4.18, defining the phrase "beyond a reasonable doubt," and Instruction 24-25.01, defining "insanity."

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

The Committee takes no position on whether the phrase "may be returned" is permissive or mandatory. See People v. Gurga, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986).

See Committee Notes for Instructions 7.06A and 24-25.01D.

Use bracketed material if there is more than one charge at issue.

24-25.02 Definition Of Voluntary Intoxication Or Drugged Condition

A voluntarily [(intoxicated) (drugged)] person is criminally responsible for his conduct unless his [(intoxication) (drugged condition)] is so extreme as to suspend the power of reason and render him incapable of forming a specific intent which is an element of the offense of ____.

[A voluntarily [(intoxicated) (drugged)] condition is not a defense to the charge of ____.]

Committee Note

Committee Note Approved July 29, 2016

720 ILCS 5/6-3(a) (West, 2002).

Give Instruction 24-25.02A.

Public Act 92-466, effective January 1, 2002, amended Section 6-3 of the Criminal Code to delete voluntary intoxication or drugged condition as an affirmative defense.

Public Act 85-670, effective January 1, 1988, amended Section 6-3(a) of the Criminal Code to change the definition of voluntarily intoxicated or drugged condition. For offenses allegedly committed before that date, use the form of this instruction as it appeared in the IPI-Criminal Second Edition (1981). *See People v. Marinez*, 196 Ill.App.3d 316, 553 N.E.2d 765, 143 Ill.Dec. 58 (3d Dist.1990).

Under the statute before January 1, 1988, a voluntarily intoxicated or drugged condition was not a defense where the mental state involved is recklessness or wilfulness. *See People v. Arndt*, 50 Ill.2d 390, 280 N.E.2d 230 (1972); *People v. Olson*, 60 Ill.App.3d 535, 377 N.E.2d 371, (4th Dist.1978). Since January 1, 1988, it is a defense only to crimes with an element of specific intent. Accordingly, the Committee believes use of the bracketed paragraph might be appropriate in a case in which the jury is to be instructed both on (1) an offense to which voluntary intoxication or drugged condition is a defense, and (2) an offense to which voluntary intoxication or drugged condition is *not* a defense. In this situation, the latter offense should be inserted in the blank in the bracketed paragraph.

This instruction does not relate to involuntary intoxication or drugged condition. See Instructions 24-25.03 and 24-25.03A.

Insert in the first blank the name of the appropriate offense to which this instruction applies.

Use applicable bracketed material.

24-25.02A Issue In Defense Of Voluntary Intoxication Or Drugged Condition

____ *Proposition:* That at the time of the offense, the defendant's voluntarily intoxicated or drugged condition was not so extreme as to suspend the power of reason and render him incapable of forming a specific intent which is an element of the offense of ____.

Committee Note

Committee Note Approved July 29, 2016

720 ILCS 5/6-3(a) (West,2002).

Public Act 92-466, effective January 1, 2002, amended Section 6-3 of the Criminal Code to delete voluntary intoxication or drugged condition as an affirmative defense.

Give Instruction 24-25.02 and see its Committee Note.

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

For offenses allegedly committed before January 1, 1988, use the form of this instruction as it appeared in the IPI-Criminal Second Edition (1981).

Insert in the blank the number of the proposition.

24-25.03 Involuntary Intoxication Or Drugged Condition

A person who is in [(an intoxicated) (a drugged)] condition which has been involuntarily produced is not criminally responsible for his conduct if the condition deprives him of substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

Committee Note

720 ILCS 5/6-3(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §6-3(b) (1991)).

Give Instruction 24-25.03A.

Give this instruction when the issue is properly one for the jury. See Introduction to this Chapter. See People v. King, 58 Ill.App.3d 199, 373 N.E.2d 1045, 15 Ill.Dec. 573 (4th Dist.1978).

Use applicable bracketed material.

24-25.03A Issue In Defense Of Involuntary Intoxication Or Drugged Condition

____ *Proposition:* That at the time of the offense, the defendant had substantial capacity to appreciate the criminality of his conduct and to conform his conduct to the requirements of law.

Committee Note

720 ILCS 5/6-3(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §6-3(b) (1991)).

Give Instruction 24-25.03.

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

Insert in the blank the number of the proposition.

24-25.04 Definition Of Entrapment

It is a defense to the charge made against the defendant that he was entrapped, that is, that for the purpose of obtaining evidence against the defendant, he was incited or induced by [(a public officer) (a public employee) (an agent of a public officer) (an agent of a public employee)] to commit an offense.

However, the defendant was not entrapped if he was predisposed to commit the offense and [(a public officer) (a public employee) (an agent of a public officer) (an agent of a public employee)] merely afforded to the defendant the opportunity or facility for committing an offense.

Committee Note

720 ILCS 5/7-12 (West 1994) (formerly Ill.Rev.Stat. ch. 38, §7-12 (1991)), amended by P.A. 89-332, effective August 17, 1995, which added that a defendant was not entrapped if "he was predisposed to commit the offense."

Give Instruction 24-25.04A.

Give this instruction when the issue is properly one for the jury. See Introduction to this Chapter.

The defense of entrapment is not available to a defendant who denies having committed or participated in the unlawful transaction. People v. Landwer, 166 Ill.2d 475, 655 N.E.2d 848, 211 Ill.Dec. 465 (1995); People v. Fleming, 50 Ill.2d 141, 277 N.E.2d 872 (1971); People v. Calcaterra, 33 Ill.2d 541, 213 N.E.2d 270 (1965).

Use applicable bracketed material.

24-25.04A Issues In Defense Of Entrapment

____ *Proposition:* That the defendant was not entrapped.

Committee Note

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

Give Instruction 24-25.04.

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

Insert in the blank the number of the proposition.

24-25.05 Alibi

Committee Note

The Committee recommends that no instruction be given on this subject.

Alibi is not an affirmative defense. People v. Pearson, 19 Ill.2d 609, 169 N.E.2d 252 (1960); People v. Shelton, 33 Ill.App.3d 871, 338 N.E.2d 585 (3d Dist.1975). See Chapter 38, Section 3-2.

The Committee decided to omit instructions on this subject because of its view that instructions should avoid commenting on particular types of evidence. See People v. Poe, 48 Ill.2d 506, 272 N.E.2d 28 (1971). See also People v. Therriault, 42 Ill.App.3d 876, 356 N.E.2d 999, 1 Ill.Dec. 717 (1st Dist.1976).

24-25.06 Use Of Force In Defense Of A Person

A person is justified in the use of force when and to the extent that he reasonably believes that such conduct is necessary to defend [(himself) (another)] against the imminent use of unlawful force.

[However, a person is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent [(imminent death or great bodily harm to [(himself) (another)]) (the commission of ____)].]

Committee Note

720 ILCS 5/7-1, 7-14, and 3-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§7-1, 7-14, and 3-2 (1991)).

Give Instruction 24-25.06A.

Use the bracketed paragraph when there is some evidence that the force used by the defendant was likely to cause death or great bodily harm. See People v. Kite, 153 Ill.2d 40, 44-45, 605 N.E.2d 563, 565, 178 Ill.Dec. 769, 771 (1992); People v. Everette, 141 Ill.2d 147, 565 N.E.2d 1295, 152 Ill.Dec. 377 (1990).

Give this instruction when the issue is properly one for the jury. See Introduction to this Chapter.

When applicable, insert in the blank the forcible felony.

Use applicable bracketed material.

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

24-25.06A Issue In Defense Of Justifiable Use Of Force

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

Committee Note

720 ILCS 5/7-1 through 7-9 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§7-1 through 7-9 (1991)).

Give Instruction 24-25.06.

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

Insert in the blank number of the proposition.

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

24-25.07 Use Of Force In Defense Of Dwelling

A person is justified in the use of force when and to the extent that he reasonably believes that such conduct is necessary to [(prevent) (terminate)] another's unlawful [(entry into) (attack upon)] a dwelling.

[However, a person is justified in the use of force which is intended or likely to cause death or great bodily harm only if

[1] the entry is made or attempted in a violent, riotous, or tumultuous manner and he reasonably believes that such force is necessary to prevent an [(assault upon) (offer of personal violence to)] himself or another then in the dwelling.

[or]

[2] he reasonably believes that such force is necessary to prevent the commission of a felony in the dwelling.]

Committee Note

720 ILCS 5/7-2, 7-14, and 3-2 (West 2022).

Give Instruction 24-25.06A.

Give this instruction when the trial court has determined there is some evidence as to use of force in defense of a dwelling. See *People v. Kite*, 153 Ill.2d 40, 44-45, 605 N.E.2d 563, 565 (1992); *People v. Everette*, 141 Ill.2d 147, 565 N.E.2d 1295 (1990).

A home dweller is not required to wait for unlawful entry to be accomplished before using justifiable force against the invader. *People v. Yanez*, 2022 IL App (3d) 200007, ¶ 29, --- N.E.3d ---. Further, unlike self-defense, defense of a dwelling does not require danger to life or great bodily harm in order to invoke the right to kill. *Id.(*citing *People v. Eatman*, 405 Ill. 491, 497, 91 N.E.2d 387 (1950)). In applying a defense of dwelling defense, the issue is whether the facts and circumstances induced a reasonable belief that the threatened danger, whether real or apparent, existed. *Id*. The reasonableness of a defendant's subjective belief that he was justified in using deadly force is a question of fact for the fact finder. *Id.* at ¶30.

Use the bracketed paragraph when there is some evidence that the force used by the defendant was likely to cause death or great bodily harm.

Use applicable paragraphs and bracketed material.

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

24-25.08 Use Of Force In Defense Of Property

A person is justified in the use of force when and to the extent that he reasonably believes that such conduct is necessary to [(prevent) (terminate)] another's [(trespass on) (wrongful interference with)] [(real property other than a dwelling) (personal property)] lawfully [(in his possession) (in the possession of another who is a member of his [(immediate family) (household)]) (in the possession of a person whose property he has a legal duty to protect)].

[However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent the commission of ____.]

Committee Note

720 ILCS 5/7-3, 7-4, and 3-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§7-3, 7-4, and 3-2 (1991)).

Give Instruction 24-25.06A.

Give this instruction when the trial court has determined there is some evidence as to use of force in defense of a property such that the issue is properly one for the jury. See People v. Kite, 153 Ill.2d 40, 44-45, 605 N.E.2d 563, 565, 178 Ill.Dec. 769, 771 (1992); People v. Everette, 141 Ill.2d 147, 565 N.E.2d 1295, 152 Ill.Dec. 377 (1990).

Use the bracketed paragraph when there is some evidence that the force used by the defendant was likely to cause death or great bodily harm.

When applicable, insert in the blank the forcible felony.

Use applicable paragraphs and bracketed material.

24-25.09 Initial Aggressor's Use Of Force

A person who initially provokes the use of force against himself is justified in the use of force only if

[1] the force used against him is so great that he reasonably believes he is in imminent danger of death or great bodily harm, and he has exhausted every reasonable means to escape the danger other than the use of force which is likely to cause death or great bodily harm to the other person.

[or]

[2] in good faith, he withdraws from physical contact with the other person and indicates clearly to the other person that he desires to withdraw and terminate the use of force, but the other person continues or resumes the use of force.

Committee Note

720 ILCS 5/7-4(c), 7-14, and 3-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§7-4(c), 7-14, and 3-2 (1991)).

See People v. Barnett, 48 Ill.App.3d 121, 362 N.E.2d 420, 5 Ill.Dec. 949 (4th Dist.1977); People v. Crue, 47 Ill.App.3d 771, 362 N.E.2d 430, 6 Ill.Dec. 1 (4th Dist.1977).

Use applicable paragraphs.

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

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

24-25.09X Non-Initial Aggressor--No Duty To Retreat

A person who has not initially provoked the use of force against himself has no duty to attempt to escape the danger before using force against the aggressor.

Committee Note

See People v. Hughes, 46 Ill.App.3d 490, 360 N.E.2d 1363, 4 Ill.Dec. 930 (1st Dist.1977); People v. Miller, 259 Ill.App.3d 257, 630 N.E.2d 1125, 197 Ill.Dec. 1 (1st Dist. 1994)

Give either 24-25.06 or 24-25.07 or 24-25.08.

In appropriate cases, both instruction 24-25.09 and 24-25.09X should be given. In other cases only one or the other instruction should be given.

24-25.10 Forcible Felon Not Entitled To Use Force

A person is not justified in the use of force if he is [(attempting to commit) (committing) (escaping after the commission of)] ____.

Committee Note

720 ILCS 5/7-4(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §7-4(a) (1991)).

Insert in the blank the forcible felony committed or attempted.

Use applicable bracketed material.

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

24-25.11 Provocation Of First Force As Excuse For Retaliation

A person is not justified in the use of force if he initially provokes the use of force against himself with the intent to use that force as an excuse to inflict bodily harm upon the other person.

Committee Note

720 ILCS 5/7-4(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §7-4(b) (1991)).

24-25.12 Peace Officer's Use Of Force In Making Arrest

A peace officer need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest or to defend [(himself) (another)] from bodily harm while making the arrest.

[However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent

[1] death or great bodily harm to [(himself) (another)].

[or]

[2] the arrest from being defeated by resistance or escape and the person to be arrested has committed or attempted ____ which involves the infliction or threatened infliction of great bodily harm.

[or]

[3] the arrest from being defeated by resistance or escape and the person to be arrested is attempting to escape by use of a deadly weapon or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.]

[A peace officer making an arrest pursuant to an invalid warrant is justified in the use of any force which he would be justified in using if the warrant were valid, unless he knows that such warrant is invalid.]

Committee Note

720 ILCS 5/7-5(a) and 2-13 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§7-5(a) and 2-13 (1991)), as amended by P.A. 84-1426, effective September 24, 1986.

Give Instruction 24-25.06A.

Use the first bracketed paragraph when there is some evidence that the force used by the defendant was likely to cause death or great bodily harm. See People v. Kite, 153 Ill.2d 40, 44-45, 605 N.E.2d 563, 565, 178 Ill.Dec. 769, 771 (1992); People v. Everette, 141 Ill.2d 147, 565 N.E.2d 1295, 152 Ill.Dec. 377 (1990). If used, also give Instruction 24-25.15.

Use the final bracketed paragraph when there is some evidence to present the issue to the jury.

Give Instruction 4.08, defining the term “peace officer,” and Instruction 4.09, defining the term “penal institution,” when appropriate.

See Instructions 24-25.13 and 24-25.14.

See People v. Taylor, 53 Ill.App.3d 810, 368 N.E.2d 950, 11 Ill.Dec. 342 (5th Dist.1977).

Insert in the blank in paragraph [2] the forcible felony committed or attempted.

Use applicable paragraphs and bracketed material.

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

24-25.13 Peace Officer's Use Of Force To Prevent Escape From Custody

A peace officer who has an arrested person in his custody is justified in the use of any force which he reasonably believes to be necessary to prevent the escape of the arrested person or to defend [(himself) (another)] from bodily harm while preventing the escape.

[However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force

[1] is necessary to prevent death or great bodily harm to [(himself) (another)].

[or]

[2] is necessary to prevent the escape and the person attempting to escape has committed or attempted ____.

[or]

[3] is necessary to prevent the escape and the person is attempting to escape by use of a deadly weapon or otherwise indicates that he will endanger human life or inflict bodily harm unless prevented from escaping without delay.]

Committee Note

720 ILCS 5/7-5, 7-9, and 2-13 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§7-5, 7-9, and 2-13 (1991)).

Give Instruction 24-25.06A.

Use the bracketed paragraph when there is some evidence that the force used by the defendant was likely to cause death or great bodily harm. See People v. Kite, 153 Ill.2d 40, 44-45, 605 N.E.2d 563, 565, 178 Ill.Dec. 769, 771 (1992); People v. Everette, 141 Ill.2d 147, 565 N.E.2d 1295, 152 Ill.Dec. 377 (1990).

Give Instruction 4.08, defining the term "peace officer," and Instruction 4.09, defining the term "penal institution," when appropriate.

See Instruction 24-25.14 and 24-25.15.

When appropriate, insert in the blank the forcible felony committed or attempted.

Use applicable paragraphs and bracketed material.

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

24-25.14 Peace Officer's Use Of Force To Prevent Escape From Penal Institution

A guard or other peace officer is justified in the use of force, including force likely to cause death or great bodily harm, which he reasonably believes to be necessary to prevent the escape from a penal institution of a person whom the officer reasonably believes to be lawfully detained in the institution [(under sentence for an offense) (awaiting trial for an offense) (awaiting commitment for an offense)].

Committee Note

720 ILCS 5/7-9(b), 2-13, and 2-14 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§7-9(b), 2-13, and 2-14 (1991)).

Give Instruction 24-25.06A.

Give Instruction 4.08, defining the term "peace officer," and Instruction 4.09, defining the term "penal institution," when appropriate.

Give Instruction 24-25.15 when appropriate.

Use applicable bracketed material.

24-25.15 Definition Of Force Likely To Cause Death Or Great Bodily Harm

Force which is likely to cause death or great bodily harm includes [(the firing of a firearm in the direction of the person to be arrested, even though no intent exists to kill or inflict great bodily harm) (the firing of a firearm at a vehicle in which the person to be arrested is riding)].

Committee Note

720 ILCS 5/7-8 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §7-8 (1991)).

Use applicable bracketed material.

24-25.16 Private Person's Use Of Force In Making Arrest--Not Summoned By Peace Officer

A private person who [(makes) (assists another private person in making)] a lawful arrest need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend [(himself) (another)] from bodily harm while making the arrest.

[However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to [(himself) (another)].]

Committee Note

720 ILCS 5/7-5(a) and 7-6(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§7-5(a) and 7-6(a) (1991)).

Give Instruction 24-25.06A.

Use the bracketed paragraph when there is some evidence that the force used by the defendant was likely to cause death or great bodily harm. See People v. Kite, 153 Ill.2d 40, 44-45, 605 N.E.2d 563, 565, 178 Ill.Dec. 769, 771 (1992); People v. Everette, 141 Ill.2d 147, 565 N.E.2d 1295, 152 Ill.Dec. 377 (1990).

Give Instruction 24-25.15 when appropriate.

Use applicable bracketed material.

24-25.17 Private Person's Use Of Force In Making Arrest--Summoned By Peace Officer

A private person who is summoned or directed by a peace officer to assist him need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest or to defend [(himself) (another)] from bodily harm while making the arrest.

[However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes

[1] that such force is necessary to prevent death or great bodily harm to [(himself) (another)].

[or]

[2] that such force is necessary to prevent the arrest from being defeated by resistance or escape and the person to be arrested has committed or attempted ____.

[or]

[3] that such force is necessary to prevent the arrest from being defeated by resistance or escape and the person to be arrested is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.]

[A private person who is summoned or directed by a peace officer to assist in making an arrest which is unlawful, is justified in the use of any force which he would be justified in using if the arrest were lawful, unless he knows that the arrest is unlawful.]

Committee Note

720 ILCS 5/7-5(a), 7-6(b), and 2-13 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§7-5(a), 7-6(b), and 2-13 (1991)).

Give Instruction 24-25.06A.

Give Instruction 24-25.15 when appropriate.

Use the first bracketed paragraph when there is some evidence that the force used by the defendant was likely to cause death or great bodily harm. See People v. Kite, 153 Ill.2d 40, 44-45, 605 N.E.2d 563, 565, 178 Ill.Dec. 769, 771 (1992); People v. Everette, 141 Ill.2d 147, 565 N.E.2d 1295, 152 Ill.Dec. 377 (1990).

Use the final bracketed paragraph when there is some evidence to make that paragraph an issue for the jury.

When applicable, insert in the blank the forcible felony committed or attempted.

Use applicable paragraphs and bracketed material.

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

24-25.18 Private Person's Use Of Force To Prevent Escape--Not Summoned By Peace Officer

A private person who has an arrested person in his custody is justified in the use of any force which he reasonably believes to be necessary to prevent the escape of the arrested person, or to defend [(himself) (another)] from bodily harm while preventing the escape.

[However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to [(himself) (another)].]

Committee Note

720 ILCS 5/7-9(a), 7-5(a), and 7-6(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§7-9(a), 7-5(a), and 7-6(a) (1991)).

Give Instruction 24-25.06A.

Use the bracketed paragraph when there is some evidence that the force used by the defendant was likely to cause death or great bodily harm. See People v. Kite, 153 Ill.2d 40, 44-45, 605 N.E.2d 563, 565, 178 Ill.Dec. 769, 771 (1992); People v. Everette, 141 Ill.2d 147, 565 N.E.2d 1295, 152 Ill.Dec. 377 (1990).

Give Instruction 24-25.15 when appropriate.

Use applicable bracketed material.

24-25.19 Private Person's Use Of Force To Prevent Escape--Summoned By Peace Officer

A private person who is summoned or directed by a peace officer to assist him in preventing the escape of an arrested person is justified in the use of any force which he reasonably believes to be necessary to prevent the escape or to defend [(himself) (another)] from bodily harm while preventing the escape.

[However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes

[1] that such force is necessary to prevent death or great bodily harm to [(himself) (another)].

[or]

[2] that such force is necessary to prevent the escape and the person escaping has committed or attempted ____.

[or]

[3] that such force is necessary to prevent the escape and the person is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless prevented from escaping without delay.]

[A private person who is summoned or directed by a peace officer to assist in preventing an escape from an arrest which is unlawful, is justified in the use of any force which he would be justified in using if the arrest were lawful, unless he knows that the arrest is unlawful.]

Committee Note

720 ILCS 5/7-5(a), 7-6(b), and 7-9(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§7-5(a), 7-6(b), and 7-9(a) (1991)).

Give Instruction 24-25.06A.

Give Instruction 24-25.15 when appropriate.

Use the first bracketed paragraph when there is some evidence that the force used by the defendant was likely to cause death or great bodily harm. See People v. Kite, 153 Ill.2d 40, 44-45, 605 N.E.2d 563, 565, 178 Ill.Dec. 769, 771 (1992); People v. Everette, 141 Ill.2d 147, 565 N.E.2d 1295, 152 Ill.Dec. 377 (1990).

Use the final bracketed paragraph when there is some evidence to present that issue to the jury.

When applicable, insert in the blank the forcible felony committed or attempted.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and

should not be included in the instruction submitted to the jury.

24-25.20 Private Person's Use Of Force In Resisting Arrest

A person is not authorized to use force to resist an arrest which he knows is being made by a [(peace officer) (private person summoned and directed by a peace officer to make the arrest)], even if he believes that the arrest is unlawful and the arrest in fact is unlawful.

Committee Note

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

Use applicable bracketed material.

24-25.21 Definition Of Compulsion

It is a defense to the charge made against the defendant that he acted under the compulsion of threat or menace of the imminent infliction of death or great bodily harm, if he reasonably believed death or great bodily harm would be inflicted upon him if he did not perform the conduct with which he is charged.

Committee Note

720 ILCS 5/7-11 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §7-11 (1991)).

Give Instruction 24-25, 21A.

This defense is not available when the charge is murder. People v. Gleckler, 82 Ill.2d 145, 411 N.E.2d 849, 44 Ill.Dec. 483 (1980).

Give this instruction when the issue is properly one for the jury. See Introduction to this Chapter.

24-25.21A Issue In Defense Of Compulsion

____ *Proposition:* That the defendant did not act under compulsion.

Committee Note

720 ILCS 5/7-11 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §7-11 (1991)).

Give Instruction 24-25.21.

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

Insert in the blank the number of the proposition.

24-25.22 Necessity

Conduct which would otherwise be an offense is justifiable by reason of necessity if the defendant was without blame in occasioning or developing the situation and reasonably believed that such conduct was necessary to avoid a public or private injury greater than the injury which might reasonably result from his own conduct.

Committee Note

720 ILCS 5/7-13 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §7-13 (1991)).

Give Instruction 24-25.22A.

Give this instruction when the issue is properly one for the jury. See Introduction to this Chapter in the bound volume.

In a prosecution for the offense of escape, see People v. Unger, 66 Ill.2d 333, 362 N.E.2d 319, 5 Ill.Dec. 848 (1977).

This defense is not available for the offense of unlawful possession of a weapon by a person in custody of the Department of Corrections facilities, as set forth in 720 ILCS 5/24-1.1(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §24-1.1(b) (1991)). See 720 ILCS 5/24-1.1(d) (West 1992).

24-25.22A Issue In Defense Of Necessity

____ *Proposition:* That the defendant did not act out of necessity.

Committee Note

720 ILCS 5/7-13 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §7-13 (1991)).

Give Instruction 24-25.22.

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

Insert in the blank the number of the proposition.

24-25.23 Prosecutions Brought Under Exceptions To The Statute Of Limitations Normally Applicable (Before January 1, 2018)

A prosecution for _____ must be commenced within _____ after the alleged commission of that offense unless the following exception[s] [(is) (are)] present: _____.

The State has the burden of proving beyond a reasonable doubt that the above exception[s] [(is) (are)] present in this case.

Committee Note

P.A. 100-434, effective January 1, 2018, amended 720 ILCS 5/3-6 (extended limitations) and 720 ILCS 5/3-7 (periods excluded from limitations) to provide that the State is no longer required to prove exceptions and exclusions to the general statute of limitations (720 ILCS 5/3-5). Previous case law held that exceptions and exclusions were elements that, if applicable, the State had to prove beyond a reasonable doubt. *People v. Morris*, 135 Ill. 2d 540, 544 N.E.2d 150 (1990). The elimination of an element of an offense affects a defendant's substantive rights and cannot apply retroactively. *People v. Holmes*, 292 Ill. App. 3d 855, 860–61 (2nd Dist. 1997). As a result, this instruction should continue to be used in cases in which the alleged offense was committed before January 1, 2018, and the court determines an exception or exclusion is a material issue.

720 ILCS 5/3-5, 3-6, 3-7, and 3-8 (West, 1999).

Give Instruction 24-25.23A.

Insert in the first blank the name of the offense charged.

Insert in the second blank the applicable statutory period of exception relied upon by the State.

Use applicable bracketed material.

24-25.23A Issue In Statute Of Limitations Exceptions (Before January 1, 2018)

_____ Proposition: That an exception permitting this prosecution is present in this case.

Committee Note

P.A. 100-434, effective January 1, 2018, amended 720 ILCS 5/3-6 (extended limitations) and 720 ILCS 5/3-7 (periods excluded from limitations) to provide that the State is no longer required to prove exceptions and exclusions to the general statute of limitations (720 ILCS 5/3-5). Previous case law held that exceptions and exclusions were elements that, if applicable, the State had to prove beyond a reasonable doubt. *People v. Morris*, 135 Ill. 2d 540, 544 N.E.2d 150 (1990). The elimination of an element of an offense affects a defendant's substantive rights and cannot apply retroactively. *People v. Holmes*, 292 Ill. App. 3d 855, 860–61 (2nd Dist. 1997). As a result, this instruction should continue to be used in cases in which the alleged offense was committed before January 1, 2018, and the court determines an exception or exclusion is a material issue.

720 ILCS 5/3-5, 3-6, 3-7, and 3-8 (West, 1999).

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

Give Instruction 24-25.23, and see the Committee Note to that instruction.

Insert in the blank the number of the proposition.

24-25.23X Prosecutions Brought Under Exceptions To The Statute Of Limitations Normally Applicable (As Of January 1, 2018)

Committee Note

P.A. 100-434, effective January 1, 2018, amended 720 ILCS 5/3-6 (extended limitations) and 720 ILCS 5/3-7 (periods excluded from limitations) to provide that the State is no longer required to prove exceptions and exclusions to the general statute of limitations (720 ILCS 5/3-5). Thus, no instruction on exceptions or exclusions to the statute of limitations should be given in cases in which the alleged offense was committed on or after January 1, 2018.

24-25.23Y Issue In Statute Of Limitations Exceptions (As Of January 1, 2018)

Committee Note

P.A. 100-434, effective January 1, 2018, amended 720 ILCS 5/3-6 (extended limitations) and 720 ILCS 5/3-7 (periods excluded from limitations) to provide that the State is no longer required to prove exceptions and exclusions to the general statute of limitations (720 ILCS 5/3-5). Thus, no instruction on exceptions or exclusions to the statute of limitations should be given in cases in which the alleged offense was committed on or after January 1, 2018.

24-25.24 Definition Of Defense Of Mistake Of Fact

A defendant's mistake as to a matter of fact is a defense if the mistake shows that the defendant did not have the [(intent) (knowledge) (recklessness)] necessary for the offense charged.

Committee Note

720 ILCS 5/4-8(a) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §4-8(a) (1991)).

Give Instruction 24-25.24A.

Give this instruction when the issue is properly one for the jury. See the Introduction to this Chapter in the bound volume.

In People v. Crane, 145 Ill.2d 520, 585 N.E.2d 99, 165 Ill.Dec. 703 (1991), the Illinois Supreme Court held that when the defendant presented some evidence supporting a mistake of fact defense and requested an instruction on that defense, it was reversible error for the trial court to not instruct the jury on the defendant's mistake of fact defense. The Committee thus decided that this instruction was necessary.

This instruction relates to the general affirmative defense instruction which tracks Section 4-8(a). That section provides as follows:

> "A person's ... mistake as to a matter of [fact] ... is a defense if it negates the existence of the mental state which [is] an element of the offense."

Select the mental state consistent with the charge.

24-25.24A Issues In Defense Of Mistake Of Fact

____ *Proposition:* That the defendant was not mistaken as to a matter of fact that would show he did not have the [(intent) (knowledge) (recklessness)] necessary for the offense charged.

Committee Note

720 ILCS 5/4-8(a) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §4-8(a) (1991)).

Give Instruction 24-25.24.

See Committee Note to Instruction 24-25.24 regarding the Illinois Supreme Court's decision in People v. Crane, 145 Ill.2d 520, 585 N.E.2d 99, 165 Ill.Dec. 703 (1991).

Insert in the blank the number of the proposition.

24-25.25 Defense To Home Invasion

It is a defense to the charge of home invasion that the defendant who knowingly enters the dwelling place of another and remains in such dwelling place until he [(knows) (has reason to know)] one or more persons is present [(immediately leaves such premises) (surrenders to the person or persons lawfully present therein)] without [(attempting to cause) (causing)] serious bodily injury to any person present therein.

Committee Note

720 ILCS 5/12-11(b) (West, 2003) (formerly Ill.Rev.Stat. ch. 38, Sec. 12-11(b)).

Give Instruction 24-25.25A.

Use applicable bracketed material.

24-25.25A Issue In Defense To Home Invasion

____ *Proposition:* That the defendant, when he [(knew) (had reason to know)] that one or more persons was present in such dwelling place, did not [(immediately leave such premises) (surrender to the person or persons lawfully present therein)] without [(attempting to cause) (causing)] serious bodily injury to any person present therein.

Committee Note

720 ILCS 5/12-11(b) (West, 2003) (formerly Ill.Rev.Stat. ch. 38, Sec. 12-11(b)).

Give Instruction 24-25.25.

Use applicable bracketed material.

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

Insert in the blank the number of the proposition.

24-25.26 Exemption To Perjury--Contradictory Statements

Committee Note

720 ILCS 32-2(c) (West 2011) (formerly Ill.Rev.Stat. ch. 38, §32-2(c) (1991)).

The Committee recommends that no instruction be given on this subject.

Though the statute bars a prosecution where contradictory statements are made in the same continuous trial and the alleged offender admits in that same continuous trial the falsity of a contradictory statement, the decision whether the prosecution is barred is a question of law which should be decided by a trial court. Generally, bars to prosecution (*e.g.* speedy trial violations) are questions of law for the court, not the jury.

24-25.27 Defense To Criminal Damage To Property And Arson

It is a defense to the charge of [(criminal damage to property) (arson)] when the owner of the property or land damaged consented to the damage.

Committee Note

Instruction and Committee Note Approved October 26, 2018

720 ILCS 5/21-1(c) (West 2018).

Give Instruction 24-25.27A.

24-25.27A Issues In Defense To Criminal Damage To Property And Arson

_____ *Proposition:* That the owner of the property or land damaged did not consent to the damage.

Committee Note

Instruction and Committee Note Approved October 26, 2018

720 ILCS 5/21-1(c) (West 2018).

Give Instruction 24-25.27.