

## NOTICE TO THE BAR

### UPDATES TO MODEL CRIMINAL JURY CHARGES

The Supreme Court Committee on Model Criminal Jury Charges has issued the following Model Criminal Jury Charges. All Model Criminal Jury Charges, including these new or revised charges, are available for downloading from the Judiciary's Internet website at <http://www.judiciary.state.nj.us/criminal/juryindx.pdf>. These updates to the model charges are also included on the Judiciary's "Automated Model Criminal Jury Charges System," at <http://www.judiciary.state.nj.us/criminal/amcjc/index.htm>.

#### **Non-2C Charge**

#### **Credibility – Immigration Consequences of Testimony (6/6/16)**

This charge was revised to explain to the jury that in weighing the witness(es)'s testimony they may consider whether the testimony was "influenced by the hope or expectation for any favorable treatment or reward such as delaying or avoiding removal from the United States by federal immigration authorities." Additionally, a footnote was added advising that "Before this charge is given, the Court should first determine in a hearing outside of the presence of the jury that the probative value of disclosing the immigration status of a witness outweighs the likely prejudice to that witness from that disclosure so that defendant's right to a fair trial by confronting that witness must prevail." (Citing to N.J.R.E. 104, 403, and 404(b) and Serrano v. Underground Utils. Corporation, 407 N.J. Super. 253, 274 (App. Div. 2009).

#### **Judges Instructions when Alternate Juror Empaneled after Deliberations Have Begun (3/14/16)**

This charge was revised to add citations to State v. Musa, 222 N.J. 554, (2015) in footnotes 1 and 2. In Musa, the Court advised that if a bench warrant is issued because of an unexcused absence of a deliberating juror, the court should not advise the remaining jurors of that warrant, as "that information [is] wholly irrelevant to the task before the jury." Id. at 572.

#### **Testimony of a Cooperating Co-Defendant or Witness – Immigration Consequences-Credibility (6/6/16)**

This is a new charge.

#### **2C:11-5.2**

#### **Leaving the Scene of a Boating Incident (Resulting in Death); and Leaving the Scene of a Boating Incident (Resulting in Serious Bodily Injury) (3/14/16)**

These two charges are new.

#### **2C:12-1.2**

#### **Endangering Injured Victim (3/14/16)**

This charge was revised pursuant to State v. Munafu, 22 N.J. 480 (2015), in which the Court noted that the mental state for this crime is "knowingly," as required by the gap filler provision, N.J.S.A. 2C:2-2(c). Id. at 489, 493. Footnote 2 notes that an attempt crime, however,

requires a “purposeful” state of mind. Additionally, footnote 2 provides that the Munaf Court approved of counsels’ decision not to read or discuss those portions of the statute that were not involved in the case (i.e., “solicited, aided, encouraged, attempted or agreed to aid another...”). Id. at 485 n. 1. The charge was also revised to note that “The State need not prove defendant’s flight increased the risk that further harm would come to the victim.” Id. at 489-93.

**2C:18-2a; 2C:18-2b**

**Burglary (Second and Third Degree) (3/14/16)**

These two charges were revised in accordance with State v. Olivero, 221 N.J. 632, 643 (2015). In Olivero, the Court found that a storage lot “can be a ‘structure’ for purposes of the burglary statute as a place adapted for business when it is specifically used for conducting commercial activity and is secured from the public.” Id. at 635, 643. Both charges were revised to include this definition, if appropriate.

**2C:21-4.6a(1)**

**Insurance Fraud: Making False Statement (Claims) (3/14/16)**

**2C:21-4.6a(1)**

**Insurance Fraud: Omission of Material Fact (Claims) (3/14/16)**

**2C:21-4.6a(2)**

**Insurance Fraud: Making False Statement (Application)(3/14/16)**

**2C:21-4.6a(2)**

**Insurance Fraud: Omission of Material Fact (Application) (3/14/16)**

**2C:21-4.6a(3)**

**Insurance Fraud: Making False Statement (Payments) (3/14/16)**

**2C:21-4.6a(3)**

**Insurance Fraud: Omission of Material Fact (Payments)(3/14/16)**

These six charges were revised to include the definition on when an insured’s misstatement is material as set forth in State v. Goodwin, 224 N.J. 102 (2016). In Goodwin, the Court advised that an insured’s misstatement is “material if it could have reasonably affected the decision by an insurance company to provide insurance coverage to a claimant or the decision to provide any benefit pursuant to an insurance policy or the decision to provide reimbursement or the decision to pay a claim.” Id. at 115.

**2C:21-4.6b**

**Insurance Fraud-Insurance from another State (3/14/16)**

This is a new charge.

**2C:33-3a(1)(a)**

**False Public Alarms (5/9/16)**

**2C:33-3a(1)(b)**

**False Public Alarms - Immediate or Heightened Response (6/6/16)**

**2C:33-3a(1)(b)**

**False Public Alarms – Impending Bombing/Hostage**

**Situation/Person Armed with Deadly Weapon (6/6/16)**

**2C:33-3a(1)(c)**

**False Public Alarms- Critical Infrastructure (6/6/16)**

**2C:33-3a(2)**

**False Public Alarms - Transmit to or Within Organization (6/6/16)**

**2C:33-3b**

**False Public Alarms-Facsimile Bomb (Circulates or Initiates) (6/6/16)**

**2C:33-3b**

**False Public Alarms - Facsimile Bomb (Transmits to or Within Organization) (6/6/16)**

**2C:33-3c**

**False Public Alarms – Death (6/6/16)**

**2C:33-3c**

**False Public Alarms – Declared Period of Emergency (6/6/16)**

**2C:33-3c**

**False Public Alarms - Serious Bodily Injury (6/16/16)**

In accordance with the changes to the false public alarms statute enacted by P.L. 2015, c. 156, effective March 1, 2016, separate new charges have been issued for the subsection (a), (b), and (c) offenses.

These charges are for offenses occurring on or after March 1, 2016.

**2C:33-30**

**Promotion of Organized Street Crime (6/6/16)**

This is a new charge.

**2C:40-26**

**Driving While License Is Suspended or Revoked For DWI or Refusal to Submit to a Chemical Breath Test (4/11/16)**

This charge was revised to include the definition for a suspension or revocation of a driver's license pursuant to State v. Perry, 439 N.J. Super. 514 (App. Div.), certif. denied, 222 N.J. 306 (2015). The charge provides that a driver's license is suspended or revoked from the day that a court imposes the suspension or revocation, until the court-imposed period of suspension ends.

Questions regarding these new and revised model criminal jury charges may be directed to Maria Pogue, Esq., Criminal Practice Division, Administrative Office of the Courts, Hughes Justice Complex, P.O. Box 982, Trenton, New Jersey 08625; telephone 609-633-2119.



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Acting Administrative Director of the Court

Dated: July 22, 2016