

NOTICE TO THE BAR

UPDATES TO MODEL CRIMINAL JURY CHARGES

The Supreme Court Committee on Model Criminal Jury Charges has approved the following Model Criminal Jury Charges. All approved 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>.

Non 2C Charges

Attempted Suicide I and II (9/10/12)

[To Avoid Prosecution as Consciousness of Guilt]

These two charges are new.

Criminal Final Charge (1/14/13)

This charge was broken down into parts to simplify placing other model charges in the order in which they would be read to the jury once the charges are generated by the Automated Model Criminal Jury Charges System into a single Word document. In addition, a paragraph was added in the "General Information" section in Part 1 to explain to the jury that there are four parts to these instructions. Introductory language on each part was also added at the beginning of those sections. In the "Jury Questions" section in Part 3, language was added about testimony being "read or played back, or video or audio played back," as well as information on the court officer. The "False in One-False in All" instruction has been removed since it is already a separate non 2C Charge. Additional instructions have been removed and made into separate Non 2C charges since they are essentially instructions for the judge on handling the jury, such as selecting and charging alternates, rather than information pertaining to the defendant's criminal case.

Specifically, the four parts of the Criminal Final Charge are:

Parts 1 and 2 (General Information to Credibility of Witnesses);

Part 3 (Criminal Offenses to Where More than One Defendant);

Part 4 (Deliberations to Jury Questions).

False in One - False in All (1/14/13)

This charge was revised to incorporate the cited cases in a footnote rather than at the end of the charge.

Instructions After Jury is Sworn (10/15/12)

This charge was revised to address circumstances where a witness testifies with the assistance of a certified court interpreter. Jurors are advised that “Every juror is bound by the translation provided by the interpreter, whether or not the juror agrees or disagrees with the interpretation, because every juror must consider the same evidence during deliberations.”

Judge’s Instructions For Selecting and Charging Alternates and Appointing Foreperson (1/14/13)

These instructions were removed from the Criminal Final Charge and made into a separate Non 2C charge.

Judge’s Instructions When Alternate Juror Empaneled After Deliberations Have Begun (1/14/13)

This instruction was removed from the Criminal Final Charge and made into a separate Non 2C charge. In addition a footnote was added on State v. Banks, 395 N.J. Super. 205 (App. Div.), certif. denied, 192 N.J. 598 (2007) (reversing conviction because juror substituted after panel announced it was deadlocked).

Judge’s Instructions on Further Jury Deliberations (1/14/13)

This instruction was removed from the Criminal Final Charge and made into a separate Non 2C charge. In addition, the footnote was revised to include that a “mistrial for a jury unable to reach a verdict will not prevent retrial.”

Judge’s Instructions on the Form for Taking a Verdict and Polling Jury (1/14/13)

These instructions were removed from the Criminal Final Charge and made into a separate Non 2C charge.

Written Copy Of Jury Instructions (1/14/13)

This is a new charge.

2C:12-1a(2)

Simple Assault (Negligently Causing Bodily Injury with a Deadly Weapon) (9/10/12)

This is a new charge.

2C:15-1

Robbery in the First Degree (9/10/12)

Footnote 7 was updated to include State v. Whitaker, 200 N.J. 444 (2009), in which the Supreme Court stressed that a defendant can be held liable as an accomplice to robbery only if he/she possessed the purpose to promote or facilitate the theft committed by the principal. A defendant

cannot be convicted of robbery as an accomplice based solely on conduct occurring after the principal's commission of the theft. Id. at 461-64.

2C:22-1a(1)**Disturbing/Desecrating Human Remains (10/15/12)**

This is a new charge.

2C:35-10**Unlawful Possession of A Controlled Dangerous Substance (1/14/13)**

This charge was updated to conform to the standard format of the model charges. In addition, footnote 7 was revised to delete references to the *Official Commentary to the Comprehensive Drug Reform Act of 1986*, and to point out that it is an open question whether the mandatory community service sentencing provision of N.J.S.A. 2C:35-10(a) would be considered an element of the offense that would then be required to be found by a jury prior to imposition.

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.

/s/ Glenn A. Grant

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