11.103
Definition Of Predatory Criminal Sexual Assault Of A Child

A person commits the offense of predatory criminal sexual assault of a child when he [(intentionally) (knowingly) (recklessly)] commits an act of sexual penetration when he is 17 years of age or older and the victim is under 13 years of age when the act is committed.

Committee Note

720 ILCS 5/12-14.1(a)(1), added by P.A. 89-462, effective May 29, 1996.

Give Instruction 11.104.

When great bodily harm is alleged as set forth in section 12-14.1(a)(2), see Instruction 11.105. Section 12-14.1(b) specifies an enhanced sentencing range when Section 12-14.1(a)(2) is violated.

Section 12-14.1(a) sets forth an offense which formerly was set forth as aggravated criminal sexual assault under Section 12-14(b)(1) (720 ILCS 5/12-14(b)(1)). P.A. 89-462, effective May 29, 1996, deleted Section 12-14(b)(1) and made this section a part of the new offense of predatory criminal sexual assault of a child.

In People v. Terrell, 132 Ill.2d 178, 547 N.E.2d 145, 138 Ill.Dec. 176 (1989), the Illinois Supreme Court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that in the legislature's silence a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill.2d at 210, 547 N.E.2d at 159, 138 Ill.Dec. at 190. In People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), the supreme court held that even though the criminal hazing statute listed no mental state, 720 ILCS 5/4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*See also* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982), for cases in which the supreme court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) In accordance with Anderson, the Committee has decided to provide three alternative mental states pursuant to Section 4-3(b) because Section 12-14.1(a)(1) does not include a mental state. Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental state may be included in the instruction.

The Committee acknowledges that the appellate court in People v. Burton, 201 Ill.App.3d 116, 558 N.E.2d 1369, 146 Ill.Dec. 1035 (4th Dist.1990), held that Terrell does not require the mental states to be included in the jury instruction for aggravated criminal sexual assault (720 ILCS 5/12-14). *See also* People v. Smith, 209 Ill.App.3d 1043, 568 N.E.2d 482, 154 Ill.Dec. 482 (4th Dist.1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault. However, because of the mandate expressed by the supreme court in Anderson and Gean, the Committee believes that mental states are required and must be proved by the State for this offense of predatory criminal sexual assault

of a child. *See also* People v. Nunn, 77 Ill.2d 243, 32 Ill.Dec. 914, 396 N.E.2d 27 (1979), and People v. Valley Steel Products, 71 Ill.2d 408, 17 Ill.Dec. 13, 375 N.E.2d 1297 (1978).