9.00
SEX OFFENSES

9.01
Definition Of Indecent Solicitation Of A Child

[1] A person of the age of 17 years or older commits the offense of indecent solicitation of a child when, with the intent that the offense of [(aggravated criminal sexual assault) (criminal sexual assault) (predatory criminal sexual assault of a child) (aggravated criminal sexual abuse)] be committed, he knowingly solicits [(a child under the age of 17 years) (one whom he believes to be a child under the age of 17 years)] to perform an act of sexual [(penetration) (conduct)].

[or]

[2] A person of the age of 17 years or older commits the offense of indecent solicitation of a child when, with the intent that the offense of [(aggravated criminal sexual assault) (predatory criminal sexual assault of a child) (aggravated criminal sexual abuse)] be committed, he knowingly discusses an act of sexual [(conduct) (penetration)] with [(a child under the age of 17 years) (one whom he believes to be a child under the age of 17 years)] by means of the Internet.

[It is not a defense to this offense that the person did not solicit the child to perform an act of sexual [(conduct) (penetration)] with the person.]

Committee Note

Instruction and Committee Note Approved January 18, 2013.

720 ILCS 5/11-6 (West 2013) (formerly Ill.Rev.Stat. ch. 38, § 11-6 (1991)), amended by P.A. 91-226, § 5, effective July 22, 1999; P.A. 95-143, § 5, effective January 1, 2008; P.A. 96-1551, Art. 2, § 5, effective July 1, 2011.

This Instruction has been revised to conform with the rewriting and amendment of 720 ILCS 5/11-6 (West 1999), as acknowledged by the Illinois Appellate Court in *People v. Carter*, 405 Ill.App.3d 246, 939 N.E.2d 46 (1st Dist. 2010). Public Act 91-226, section 5, effective July 22, 1999, rewrote Section 11-6 by adding the elements of intent and knowledge, changing the age range of potential victims to children under the age of 17, and deleting the provision that it was not a defense that the accused reasonably believed the child to be of the age of 13 years and upwards. Public Act 95-143, section 5, effective January 1, 2008, added subsections concerning a person knowingly discussing an act of sexual conduct or sexual penetration with a child by means of the Internet.

Give Instruction 9.02.

When applicable, give Instruction 11.57 defining "aggravated criminal sexual assault".

When applicable, give Instruction 11.55 defining "criminal sexual assault".

When applicable, give Instruction 11.103 defining "predatory criminal sexual assault of a child".

When applicable, give Instruction 11.61 defining "aggravated criminal sexual abuse".

When applicable, give Instruction 9.01C defining "solicit".

When applicable, give Instruction 11.65E defining "sexual penetration".

When applicable, give Instruction 11.65D defining "sexual conduct".

When applicable, give Instruction 4.27 defining "access".

When applicable, give Instruction 4.32 defining "computer".

When applicable, give Instruction 4.38 defining "Internet".

When applicable, give Instruction 4.48 defining "online".

When applicable, give Instruction 4.69 defining "wireless device".

The offense option of criminal sexual assault cannot be used with alternative [2]. *See* 720 ILCS 5/11-6(a-5) (West 2013).

It is also not a defense to Section 11-6(a-5) that the person did not solicit the child to perform sexual conduct or sexual penetration with the person. *See* 720 ILCS 5/11-6(a-6) (West 2013). When this issue is raised and the person is charged under Section 11-6(a-5), the committee suggests giving the last-bracketed sentence with alternative [2].

Use applicable bracketed material.

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

9.01A
Definition Of Solicit Or Solicitation

The words "solicit" or "solicitation" mean to command, authorize, urge, incite, request, or advise another to commit an offense.

Committee Note

Amended Instruction and Committee Note Approved January 18, 2013.

720 ILCS 5/2-20 (West 2013) (formerly Ill.Rev.Stat. ch. 38, § 2-20 (1991)).

When a defendant is charged with indecent solicitation of a child, do not use this definition. Under those circumstances, give Instruction 9.01C. *See* 720 ILCS 5/11-6(b) (West 2013).

9.01B
Belief Of Age No Defense To Indecent Solicitation Of A Child

It is not a defense to the charge of indecent solicitation of a child that the defendant reasonably believed the child to be of the age of 13 years or older.

Committee Note

Amended Instruction and Committee Note Approved January 18, 2013.

720 ILCS 5/11-6(b) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 11-6(b) (1991)).

This Committee Note has been edited to conform with the rewriting and amendment of 720 ILCS 5/11-6 (West 1999), as acknowledged by the Illinois Appellate Court in *People v. Carter*, 405 Ill.App.3d 246, 939 N.E.2d 46 (1st Dist. 2010).

Public Act 91-226, section 5, effective July 22, 1999, rewrote Section 11-6 by adding the elements of intent and knowledge, changing the age range of potential victims to children under the age of 17, and deleting the provision that it was not a defense that the accused reasonably believed the child to be of the age of 13 years and upwards. Consequently, Instruction 9.01B, concerning the accused's belief about the child's age being 13 years and upwards, should only be used for offenses committed before July 22, 1999.

9.01C
Definition Of Solicit

The word "solicit" means to command, authorize, urge, incite, request, or advise another to perform an act by any means, including, but not limited to, in person, over the phone, in writing, by computer, or by advertisement of any kind.

Committee Note

Instruction and Committee Note Approved January 18, 2013.

720 ILCS 5/11-6 (West 2013) (formerly Ill.Rev.Stat. ch. 38, § 11-6 (1991)), amended by P.A. 91-226, § 5, effective July 22, 1999; P.A. 95-143, § 5, effective January 1, 2008; P.A. 96-1551, Art. 2, § 5, effective July 1, 2011.

This definition is to be used when a defendant is charged with indecent solicitation of a child. Do not use the definition of solicit found in Instruction 9.01A.

9.02
Issues In Indecent Solicitation Of A Child

To sustain the charge of indecent solicitation of a child, the State must prove the following propositions:

[1] *First Proposition*: That the defendant knowingly solicited [(a child under the age of 17 years) (one whom the defendant believed to be a child under the age of 17 years)] to perform an act of sexual [(penetration) (conduct)]; and

Second Proposition: That when the defendant did so, he intended that the offense of [(aggravated criminal sexual assault) (criminal sexual assault) (predatory criminal sexual assault of a child) (aggravated criminal sexual abuse)] be committed; and

Third Proposition: That the defendant was then 17 years of age or older.

[or]

[2] *First Proposition:* That the defendant knowingly discussed an act of sexual [(conduct) (penetration)] with [(a child under the age of 17 years) (one whom the defendant believed to be a child under the age of 17 years)] by means of the Internet; and

Second Proposition: That when the defendant did so, he intended that the offense of [(aggravated criminal sexual assault) (predatory criminal sexual assault of a child) (aggravated criminal sexual abuse)] be committed; and

Third Proposition: That the defendant was then 17 years of age or older.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

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.

Committee Note

Amended Instruction and Committee Note Approved January 18, 2013.

720 ILCS 5/11-6 (West 2013) (formerly Ill.Rev.Stat. ch. 38, § 11-6 (1991)), amended by P.A. 91-226, § 5, effective July 22, 1999; P.A. 95-143, § 5, effective January 1, 2008; P.A. 96-1551, Art. 2, § 5, effective July 1, 2011.

This Instruction has been revised to conform with the rewriting and amendment of 720 ILCS 5/11-6 (West 1999), as acknowledged by the Illinois Appellate Court in *People v. Carter*, 405 Ill.App.3d 246, 939 N.E.2d 46 (1st Dist. 2010).

Give Instruction 9.01.

When applicable, give Instruction 11.57 defining "aggravated criminal sexual assault".

When applicable, give Instruction 11.55 defining "criminal sexual assault".

When applicable, give Instruction 11.103 defining "predatory criminal sexual assault of a child".

When applicable, give Instruction 11.61 defining "aggravated criminal sexual abuse".

When applicable, give Instruction 9.01C defining "solicit".

When applicable, give Instruction 11.65E defining "sexual penetration".

When applicable, give Instruction 11.65D defining "sexual conduct".

When applicable, give Instruction 4.27 defining "access".

When applicable, give Instruction 4.32 defining "computer".

When applicable, give Instruction 4.38 defining "Internet".

When applicable, give Instruction 4.48 defining "online".

When applicable, give Instruction 4.69 defining "wireless device".

The offense option of criminal sexual assault cannot be used in the Second Proposition of alternative [2]. *See* 720 ILCS 5/11-6(a-5) (West 2013).

It is also not a defense to Section 11-6(a-5) that the defendant did not solicit the child to perform sexual conduct or sexual penetration with the defendant. *See* 720 ILCS 5/11-6(a-6) (West 2013). When this issue is raised and the defendant is charged under Section 11-6(a-5), the committee suggests giving the last-bracketed sentence included in alternative [2] of Instruction 9.01.

Use applicable bracketed material.

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

When accountability is an issue, ordinarily the phrase "or one for whose conduct he is legally responsible" is inserted after the word "defendant" in each proposition. Give Instruction 5.03. However, some statutes appear to require that particular conduct be committed by the defendant personally or that a status that is an element of the offense pertain to the defendant himself. Whenever accountability language is to be inserted in an issues instruction, caution should be exercised to assure that accountability language is not used in any proposition that involves such conduct or status. *See* Committee Note to Instruction 5.03. Do not insert accountability language in the Third Proposition of this instruction. *See People v. Griffin*, 247 Ill. App. 3d 1, 616 N.E.2d 1242 (1st Dist. 1993) (holding that accountability language should not have been inserted into Instruction 11.58B, the aggravated criminal sexual assault issues

instruction, where the age of the person who actually penetrated the victim defines whether that crime ever occurred).

9.02A
Consent Of Child No Defense To Indecent Solicitation Of A Child

Consent of the child is not a defense to the charge of indecent solicitation of a child.

Committee Note

Amended Committee Note Approved January 18, 2013.

720 ILCS 5/11-6 (West 2013) (formerly Ill.Rev.Stat. ch. 38, § 11-6 (1991)), amended by P.A. 91-226, § 5, effective July 22, 1999; P.A. 95-143, § 5, effective January 1, 2008; P.A. 96-1551, Art. 2, § 5, effective July 1, 2011.

Give this Instruction with Instruction 9.01 only when the issue of consent is raised by the evidence. See Introduction to Chapter 24-25.00.

See Instruction 11.63A.

9.03
Definition Of Public Indecency

A person of the age of 17 years or older commits the offense of public indecency when, in a place where the conduct may reasonably be expected to be viewed by others, he performs [(an act of sexual penetration) (an act of sexual conduct) (a lewd exposure of the body done with the intent to arouse or to satisfy the sexual desire of the person)].

[Breast-feeding of an infant is not an act of public indecency.]

Committee Note

720 ILCS 5/11-9 (West 1994) (formerly Ill.Rev.Stat. ch. 38, §11-9 (1991)), amended by P.A. 83-1067, effective July 1, 1984; and P.A. 89-59, effective January 1, 1996.

Give Instruction 9.04.

Give Instruction 11.65E when it is alleged that an act of sexual penetration is the indecent act. Give Instruction 11.65D when it is alleged that an act of sexual conduct is the indecent act.

P.A. 89-59, effective January 1, 1996, provides that breast-feeding of infants is not an act of public indecency. Accordingly, the Committee has provided the bracketed alternative in case such an issue arises.

Use applicable bracketed material.

9.04
Issues In Public Indecency

To sustain the charge of public indecency, the State must prove the following propositions:

First Proposition: That the defendant performed [(an act of sexual penetration) (an act of sexual conduct) (a lewd exposure of the body done with the intent to arouse or satisfy the sexual desire of the person)]; and

Second Proposition: That the defendant performed the [(act) (lewd exposure)] in a place where his conduct might reasonably be expected to be viewed by others; and

Third Proposition: That the defendant was then 17 years of age or older.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

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.

Committee Note

720 ILCS 5/11-9 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-9 (1991)).

Give Instruction 9.03.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.05
Definition Of Bigamy

A person commits the offense of bigamy when [(he) (she)], having a [(husband) (wife)], marries another [and thereafter cohabits in this state].

Committee Note

720 ILCS 5/11-12(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-12(a) (1991)).

Give the last clause only when the second marriage takes place outside Illinois and give Instruction 9.05A.

Use applicable bracketed material.

9.05A
Definition Of Cohabit

The word "cohabit" means the living together of a man and woman in the same manner as if they were married to one another.

Committee Note

See Searls v. People, 13 Ill. 597, 598 (1852) ("In order to constitute this crime [adultery], the parties must dwell together openly and notoriously, upon terms as if the conjugal relation existed between them."). This definition is applicable to offenses other than adultery, such as bigamy.

9.05B
Affirmative Defenses To Bigamy

It is a defense to a charge of bigamy that, at the time of the marriage charged in the [(indictment) (information)],

[1] the defendant's prior marriage was dissolved or declared invalid by court judgment.

[or]

[2] the defendant reasonably believed [(his) (her)] prior [(husband) (wife)] to be dead.

[or]

[3] the prior [(husband) (wife)] had been continually absent for a period of five years, during which time the defendant did not know the prior [(husband) (wife)] to be alive.

[or]

[4] the defendant reasonably believed that [(he) (she)] was legally eligible to remarry.

Committee Note

720 ILCS 5/11-12(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-12(b) (1991)).

Give this instruction only when the issue is raised by the evidence. See Chapter 720, Section 3-2 and the Introduction to Chapter 24-25.00.

The word "judgment," as used in paragraph [1], is defined in Supreme Court Rule 2(b)(2).

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 instructions submitted to the jury.

9.06
Issues In Bigamy

To sustain the charge of bigamy, the State must prove the following propositions:

First Proposition: That the defendant married ____ [and thereafter cohabited with [(him) (her)] in this State]; and

Second Proposition: That at the time of [(his) (her)] marriage to ____, the defendant was married to ____;

and

Third Proposition: That the defendant's prior marriage was not dissolved or declared invalid by court judgment.

[or]

Third Proposition: That the defendant did not reasonably believe that [(his) (her)] prior [(husband) (wife)] was dead.

[or]

Third Proposition: That the defendant's prior [(husband) (wife)] had not been continually absent for a period of 5 years during which time the defendant did not know the prior [(husband) (wife)] to be alive.

[or]

Third Proposition: That the defendant did not reasonably believe that [(he) (she)] was legally eligible to remarry.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of the propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-12 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-12 (1991)).

Give Instruction 9.05.

The Third Proposition presents alternative defenses. Give one or more of these alternatives when the issue is raised by the evidence. See Chapter 720, Section 3-2 and the Introduction to Chapter 24-25.00. If more than one is used they should be stated in the

conjunctive because the State must overcome every defense.

Use applicable paragraphs and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.07
Definition Of Marrying A Bigamist

A person commits the offense of marrying a bigamist when [(he) (she)] knowingly marries another known to [(him) (her)] to be married [and thereafter cohabits in this State].

Committee Note

720 ILCS 5/11-13 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-13 (1991)).

Give Instruction 9.08.

Give the last clause only when the second marriage took place outside Illinois.

Use applicable bracketed material.

9.07A
Affirmative Defenses To Marrying A Bigamist

It is a defense to the charge of marrying a bigamist that at the time of the marriage
[1] the prior marriage of the other person was dissolved or declared invalid by court judgment.

[or]

[2] the defendant reasonably believed the prior [(husband) (wife)] of the other person to be dead.

[or]

[3] the other person's prior [(husband) (wife)] had been continually absent for a period of five years, during which time the defendant did not know that the other person's prior [(husband) (wife)] was alive.

[or]

[4] the defendant reasonably believed that the other person was legally eligible to remarry.

Committee Note

720 ILCS 5/11-12 and 11-13 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§11-12 and 11-13 (1991)).

Give this instruction only when the issue is raised by the evidence. See Chapter 720, Section 3-2 and the Introduction to Chapter 24-25.00.

The word "judgment," as used in paragraph [1], is defined in Supreme Court Rule 2(b)(2).

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 instructions submitted to the jury.

9.08
Issues In Marrying A Bigamist

To sustain the charge of marrying a bigamist, the State must prove the following propositions:

First Proposition: That the defendant married ____ [and thereafter cohabited with [(him) (her)] in this State]; and

Second Proposition: That defendant then knew that ____ was then married to another person[; and

Third Proposition: That ____'s prior marriage was not dissolved or declared invalid by court judgment

[or]

Third Proposition: That the defendant did not reasonably believe that ____'s prior [(husband) (wife)] was dead

[or]

Third Proposition: That ____'s prior [(husband) (wife)] had not been continually absent for a period of five years, during which time the defendant did not know [(he) (she)] was alive

[or]

Third Proposition: That the defendant did not reasonably believe that ____ was legally eligible to remarry].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

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.

Committee Note

720 ILCS 5/11-12(b) and 11-13 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §§11-12(b) and 11-13 (1991)).

Give Instruction 9.07.

See Instruction 9.07A.

The Third Proposition presents alternative defenses. Give one or more of these alternatives if the issue is raised by the evidence. See Chapter 720, Section 3-2 and the Introduction to Chapter 24-25.00. If more than one alternative is used they should be stated in the conjunctive because the State must overcome every defense.

Use applicable paragraphs and bracketed material.

9.09
Definition Of Prostitution

A person commits the offense of prostitution when [(he) (she)] [(intentionally) (knowingly)] [(performs) (offers to perform) (agrees to perform)] [(any act of sexual penetration) (any touching or fondling of the sex organs of one person by another person for the purpose of sexual arousal or gratification)] for any money, property, token, object, or article or anything of value.

Committee Note

720 ILCS 5/11-14 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §11-14 (1991)), amended by P.A. 83-1067, effective July 1, 1984; and P.A. 88-680, effective January 1, 1995.

Give Instruction 9.10.

When sexual penetration is an issue, give Instruction 11.65E.

Because Section 11-14 does not include a mental state, the Committee decided to provide two alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness.

In 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), the Illinois 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. Consistent with these cases and the Committee's view that it would be inappropriate to speak of a defendant's "recklessly" committing prostitution under Section 11-14, the Committee has provided only the alternative mental states of "intentionally" and "knowingly." 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 states may be included in the instruction.

This instruction has been revised to conform to the interpretation placed upon the prostitution statute by the Appellate Court in People v. Pettigrew, 215 Ill.App.3d 393, 395, 574 N.E.2d 1282, 1283-84, 158 Ill.Dec. 889, 890-91 (4th Dist.1991). In Pettigrew, the court found that a "purpose of sexual arousal or gratification" is an element of the offense only when an offer, agreement, or act of *touching or fondling* is alleged. The court held that proof of a "purpose of sexual arousal or gratification" is not required where an offer, agreement, or act of *sexual penetration* is alleged.

Use applicable bracketed material.

9.10
Issue In Prostitution

To sustain the charge of prostitution, the State must prove the following proposition:

That the defendant [(intentionally) (knowingly)] [(performed) (offered to perform) (agreed to perform)] [(any act of sexual penetration) (any touching or fondling of the sex organs of one person by another person for the purpose of sexual arousal or gratification)] for any money, property, token, object, or article or anything of value.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-14 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §11-14 (1991)), amended by P.A. 83-1067, effective July 1, 1984; and P.A. 88-680, effective January 1, 1995.

Give Instruction 9.09.

When sexual penetration is an issue, give Instruction 11.65E.

Because Section 11-14 does not include a mental state, the Committee decided to provide two alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness.

In 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), the Illinois 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. Consistent with these cases and the Committee's view that it would be inappropriate to speak of a defendant's "recklessly" committing prostitution under Section 11-14, the Committee has provided only the alternative mental states of "intentionally" and "knowingly." 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 states may be included in the instruction.

This instruction has been revised to conform to the interpretation placed upon the prostitution statute by the Appellate Court in People v. Pettigrew, 215 Ill.App.3d 393, 574 N.E.2d 1282, 158 Ill.Dec. 889 (4th Dist.1991). See Committee Note to Instruction 9.09.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he

is legally responsible" after the word "defendant" in the proposition. See Instruction 5.03.

9.11
Definition Of Soliciting For A Prostitute

A person commits the offense of soliciting for a prostitute when he [(solicits another) (arranges or offers to arrange a meeting of persons) (directs another to a place knowing such direction is)] for the purpose of prostitution.

Committee Note

720 ILCS 5/11-15 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-15 (1991)).

Give Instruction 9.12.

When sexual penetration is an issue, give Instruction 11.65E.

Give Instruction 9.01A, defining the word "solicit." Give Instruction 9.09, defining the word "prostitution."

Use applicable bracketed material.

9.12
Issue In Soliciting For A Prostitute

To sustain the charge of solicitation for a prostitute, the State must prove the following proposition:

That the defendant solicited ____ for the purpose of prostitution.

[or]

That the defendant arranged or offered to arrange a meeting of persons for the purpose of prostitution.

[or]

That the defendant directed ____ to a place knowing such direction was for the purpose of prostitution.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-15 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-15 (1991)).

Give Instruction 9.11.

Use applicable paragraphs.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.13
Definition Of Soliciting For A Juvenile Prostitute [Or Institutionalized Mentally Retarded Person]

A person commits the offense of soliciting for a juvenile prostitute when he [(solicits another) (arranges or offers to arrange a meeting of persons) (directs another to a place knowing such direction is)] for the purpose of prostitution, and the prostitute for whom such person is soliciting is [(under 16 years of age) (an institutionalized severely or profoundly mentally retarded person)].

Committee Note

720 ILCS 5/11-15.1(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-15.1(a) (1991)).

Give Instruction 9.14.

The element concerning the mental disability of the victim was added by P.A. 85-1392, and that portion of the Instruction should only be used for offenses committed after the effective date of that Act. The term "institutionalized mentally retarded person" is defined in Instruction 11.65G.

Give Instruction 9.01A, defining the word "solicit." Give Instruction 9.09, defining the word "prostitution."

When sexual penetration is an issue, give Instruction 11.65E.

Use applicable bracketed material.

9.13A
Affirmative Defense To Soliciting For A Juvenile Prostitute [Or Institutionalized Mentally Retarded Person]

It is a defense to the charge of soliciting for a juvenile prostitute that, at the time of the act giving rise to the charge, the defendant reasonably believed the person involved was [(of the age of 16 years or older) (not an institutionalized severely or profoundly mentally retarded person)].

Committee Note

720 ILCS 5/11-15.1(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-15.1(b) (1991)).

The portion of the Instruction concerning the mental disability of the victim was added by P.A. 85-1392 and should not be used for an offense committed before the effective date of that Act.

See Chapter 720, Section 3-2 and the Introduction to Chapter 24-25.00.

Use applicable bracketed material.

9.14
Issues In Soliciting For A Juvenile Prostitute

To sustain the charge of soliciting for a juvenile prostitute, the State must prove the following propositions:

First Proposition: That the defendant solicited ____ for the purpose of prostitution;

[or]

First Proposition: That the defendant arranged or offered to arrange a meeting of persons for the purpose of prostitution;

[or]

First Proposition: That the defendant directed ____ to a place knowing such direction was for the purpose of prostitution;

and

Second Proposition: That ____, for whom the defendant was soliciting, was [(under the age of 16 years of age) (an institutionalized severely or profoundly mentally retarded person)] at the time of the act giving rise to the charge[; and

Third Proposition: That the defendant did not reasonably believe that ____ was [(of the age of 16 years or older) (not an institutionalized severely or profoundly mentally retarded person)]].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

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.

Committee Note

720 ILCS 5/11-15.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-15.1 (1991)).

Give Instruction 9.13.

Give the Third Proposition when the issue is raised by the evidence. When there is sufficient evidence to raise the issue, the burden is on the State to overcome the defense beyond a reasonable doubt. See Chapter 720, Section 3-2 and the Introduction to Chapter 24-25.00.

The element concerning the mental disability of the alleged prostitute was added by P.A. 85-1392, and that portion of the Instruction should only be used for offenses committed after the effective date of that Act.

Insert in the blanks the name of the alleged prostitute.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.15
Definition Of Pandering

A person commits the offense of pandering when he, for any money, property, token, object, or article or anything of value [(compels a person to become a prostitute) (arranges or offers to arrange a situation in which a person may practice prostitution)].

Committee Note

720 ILCS 5/11-16 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §11-16 (1991)), amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 9.16.

Give Instruction 9.09, defining the word "prostitution," and Instruction 9.21, defining the word "prostitute," as applicable.

Use applicable bracketed material.

9.16
Issues In Pandering

To sustain the charge of pandering, the State must prove the following propositions:
First Proposition: That the defendant compelled ____ to become a prostitute;

[or]

First Proposition: That the defendant arranged or offered to arrange a situation in which ____ might practice prostitution;

and

Second Proposition: That the defendant acted for the purpose of obtaining any money, property, token, object, or article or anything of value.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

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.

Committee Note

720 ILCS 5/11-16 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §11-16); amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 9.15.

To obtain a conviction under Section 11-16, the State need not prove an actual exchange of money. See Committee Comments to Section 11-16; People v. Houston, 43 Ill.App.3d 677, 357 N.E.2d 184, 2 Ill.Dec. 207 (1st Dist.1976). Compare Section 11-19 with Instructions 9.23 and 9.24.

Insert in the blanks the name of the alleged prostitute.

Use applicable paragraphs.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.17
Definition Of Keeping A Place Of Prostitution

A person commits the offense of keeping a place of prostitution when he has or exercises control over the use of any place which could offer seclusion or shelter for the practice of prostitution, if he

[1] knowingly [(grants) (permits)] the use of such place for the purpose of prostitution.

[or]

[2] [(grants) (permits)] the use of such place under circumstances from which he could reasonably know that the place is used or is to be used for purposes of prostitution.

[or]

[3] permits the continued use of a place after becoming aware of facts or circumstances from which he should reasonably know that the place is being used for purposes of prostitution.

Committee Note

720 ILCS 5/11-17 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-17 (1991)).

Give Instruction 9.18.

Give Instruction 9.09, defining the word "prostitution."

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 instructions submitted to the jury.

9.18
Issues In Keeping A Place Of Prostitution

To sustain the charge of keeping a place of prostitution, the State must prove the following propositions:

First Proposition: That the defendant [(had) (exercised control over)] the use of a place which could offer seclusion or shelter for the practice of prostitution; and

Second Proposition: That the place was used for the purposes of prostitution; and

Third Proposition: That the defendant knowingly [(granted) (permitted)] the use of such place for the purposes of prostitution.

[or]

Third Proposition: That the defendant [(granted) (permitted)] the use of the place under circumstances from which he could reasonably have known that the place was used or to be used for prostitution.

[or]

Third Proposition: That the defendant [(granted) (permitted)] the continued use of the place after he became aware of facts or circumstances from which he should have reasonably known that the place was being used for purposes of prostitution.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

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.

Committee Note

720 ILCS 5/11-17 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-17 (1991)).

Give Instruction 9.17.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.19
Definition Of Patronizing A Prostitute

A person commits the offense of patronizing a prostitute when [(he) (she)] with a person not [(his) (her)] spouse [(engages in an act of sexual penetration with a prostitute) (enters or remains in a place of prostitution with intent to engage in an act of sexual penetration)].

Committee Note

720 ILCS 5/11-18 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-18 (1991)).

Give Instruction 9.20.

Give Instruction 11.65E, defining the term "sexual penetration."

If the issue is whether the accused has engaged in an act of sexual penetration with a prostitute, give the definition of the word "prostitute" found in Instruction 9.21.

If the issue is whether the accused entered or remained in a place of prostitution with the intent to engage in an act of sexual penetration, give Instruction 9.22, defining the term "place of prostitution."

Use applicable bracketed material.

9.20
Issue In Patronizing A Prostitute

To sustain the charge of patronizing a prostitute, the State must prove the following proposition:

That the defendant engaged in an act of sexual penetration with a prostitute not [(his) (her)] spouse.

[or]

That the defendant entered or remained in a place of prostitution with the intent to engage in an act of sexual penetration with a person not [(his) (her)] spouse.

If you find from your consideration of the all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-18 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-18 (1991)).

Give Instruction 9.19.

Use applicable paragraph and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in the proposition. See Instruction 5.03.

9.21
Definition Of Prostitute

The word "prostitute" means a person who [(performs) (offers to perform) (agrees to perform)] [(an act of sexual penetration) (any touching or fondling of the sex organs of a person by another person for the purpose of sexual arousal or gratification)] for any money, property, token, object, or article or anything of value.

Committee Note

720 ILCS 5/11-14 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §11-14 (1991)), amended by P.A. 83-1067, effective July 1, 1984; and P.A. 88-680, effective January 1, 1995.

Use applicable bracketed material.

9.22
Definition Of Place Of Prostitution

The term "place of prostitution" means any place which is used for the purpose of offering seclusion or shelter for [(an act of sexual penetration) (any touching or fondling of the sex organs of a person by another person for the purpose of sexual arousal or gratification)] for any money, property, token, object, or article or anything of value.

Committee Note

720 ILCS 5/11-14, 11-17 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §§11-14, 11-17 (1991)), amended by P.A. 88-680, effective January 1, 1995.

Use applicable bracketed material.

9.23
Definition Of Pimping

A person commits the offense of pimping when he receives any money, property, token, object, or article or anything of value from a prostitute, not for lawful consideration, knowing that it was earned in whole or in part from the practice of prostitution.

Committee Note

720 ILCS 5/11-19 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §11-19 (1991)), amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 9.09, defining the word "prostitution," and Instruction 9.21, defining the word "prostitute."

Use applicable bracketed material.

9.24
Issues In Pimping

To sustain the charge of pimping, the State must prove the following propositions:

First Proposition: That the defendant received any money, property, token, object, or article or anything of value from a prostitute; and

Second Proposition: That there was no lawful consideration for the defendant's receipt of the money, property, token, object, or article or thing of value; and

Third Proposition: That the defendant knew that the money, property, token, object, or article or thing of value was earned in whole or in part from the practice of prostitution.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

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.

Committee Note

720 ILCS 5/11-19 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §11-19 (1991)), amended by P.A. 88-680; effective January 1, 1995.

Give Instruction 9.23.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.25
Definition Of Juvenile Pimping [Or Pimping For Institutionalized Mentally Retarded Person]

A person commits the offense of juvenile pimping when he receives any money, property, token, object, or article or anything of value from a prostitute [(under the age of 16 years) (who is an institutionalized severely or profoundly mentally retarded person)], not for lawful consideration, knowing it was earned in whole or in part from the practice of prostitution.

Committee Note

720 ILCS 5/11-19.1(a) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §11-19.1(a) (1991)), amended by P.A. 85-1392, effective January 1, 1989; and P.A. 88-680, effective January 1, 1995.

Give Instruction 9.26.

Give Instruction 9.09, defining the word "prostitution."

Give Instruction 11.656, defining the phrase "institutionalized severely or profoundly mentally retarded person," when applicable.

Use applicable bracketed material.

9.25A
Affirmative Defense To Juvenile Pimping [Or Pimping For Institutionalized Mentally Retarded Person]

It is a defense to the charge of juvenile pimping that, at the time of the act giving rise to the charge, the defendant reasonably believed the person involved was [(of the age of 16 years or older) (not an institutionalized severely or profoundly mentally retarded person)].

Committee Note

720 ILCS 5/11-19.1(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-19.1(b) (1991)).

Give this instruction when the issue is raised by the evidence. See Chapter 38, Section 3-2 and the Introduction to Chapter 24-25.00.

9.26
Issues In Juvenile Pimping [Or Pimping For Institutionalized Mentally Retarded Person]

To sustain the charge of juvenile pimping, the State must prove the following propositions:

First Proposition: That the defendant received any money, property, token, object, or article or anything of value from a prostitute; and

Second Proposition: That there was no lawful consideration for the defendant's receipt of the money, property, token, object, or article or thing of value; and

Third Proposition: That the defendant knew that the money, property, token, object, or article or thing of value was earned in whole or in part from the practice of prostitution; and

Fourth Proposition: That the prostitute was [(under the age of 16 years) (an institutionalized severely or profoundly mentally retarded person)] at the time the defendant received the money, property, token, object, or article or thing of value[; and

Fifth Proposition: That the defendant did not reasonably believe that the prostitute was [(of the age of 16 years or older) (not an institutionalized severely or profoundly mentally retarded person)]].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

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.

Committee Note

720 ILCS 5/11-19.1 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §11-19.1 (1991)), amended by P.A. 85-1392, effective January 1, 1989; and P.A. 88-680, effective January 1, 1995.

Give Instruction 9.25.

Give the bracketed Fifth Proposition when the issue is raised by the evidence. When there is sufficient evidence to raise the issue, the burden is on the State to overcome the defense beyond a reasonable doubt. See Section 3-2 and the Introduction to Chapter 24-25.00.

Give Instruction 4.13, defining the term “reasonable belief”, when requested by the defendant and when the issue is raised by the evidence.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.27
Definition Of Obscenity

A person commits the offense of obscenity when he, [(with knowledge of the nature or content thereof) (recklessly failing to exercise reasonable inspection which would have disclosed the nature or content thereof)],

[1] [(sells) (delivers) (provides) (offers or agrees to) [(sell) (deliver) (provide)]] any obscene [(writing) (picture) (record) [or other representation or embodiment of the obscene]].

[or]

[2] [(presents) (directs)] an obscene [(play) (dance) [or other performance]].

[or]

[3] participates directly in that portion of an obscene [(play) (dance) [or other performance]] which makes it obscene.

[or]

[4] [(publishes) (exhibits) [or otherwise makes available]] anything obscene.

[or]

[5] performs an obscene act [or otherwise presents an obscene exhibition of his body] for gain.

[or]

[6] [(creates) (buys) (procures) (possesses)] obscene matter or material with intent to disseminate it.

[or]

[7] [(creates) (buys) (procures) (possesses)] obscene matter or material with intent to disseminate it in violation of the [(penal laws) (regulations)] of ____.

[or]

[8] advertises or otherwise promotes the sale of material represented or held out by him

to be obscene, whether or not it is obscene.

Committee Note

720 ILCS 5/11-20(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-20(a) (1991)).

Give Instructions 9.27A and 9.28.

Insert in the blank the name of the other jurisdiction.

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.

9.27A
Definition Of Obscene

Any [(material) (performance)] is obscene if

[1. the average person, applying contemporary adult community standards, would find that the work, taken as a whole, appeals to the prurient interest; and

[2] the average person, applying contemporary adult community standards, would find that it depicts or describes, in a patently offensive way, ultimate sexual acts or sadomasochistic sexual acts, whether normal or perverted, actual or simulated, or masturbation, excretory functions, or lewd exhibition of the genitals; and

[3] a reasonable person, taking the [(material) (performance)] as a whole, would find no serious literary, artistic, political, or scientific value.

[Obscenity is judged with reference to the standards of adults, except that it is judged with reference to children or other specially susceptible audiences if it appears from the character of the material or the circumstances of its dissemination to be specially designed for or directed to such an audience.]

In determining how any [(material) (performance)] would be viewed by the average person, you are to consider how it would be viewed by ordinary adults in the whole State of Illinois rather than by the people in any single city or town or region within the State.

Committee Note

720 ILCS 5/11-20(b) and (c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-20(b) and (c) (1991)).

This instruction is based on the present language of Sections 11-20(b) and (c), together with additional language in paragraph [3] suggested by the United States Supreme Court in Pope v. Illinois, 481 U.S. 497, 107 S.Ct. 1918, 95 L.Ed.2d 439 (1987), at footnote 3. *See also* Miller v. California, 413 U.S. 15, 93 S.Ct. 2607, 37 L.Ed.2d 419 (1973), and People v. Ridens, 59 Ill.2d 362, 321 N.E.2d 264 (1974).

The final paragraph of the instruction complies with the requirement of People v. Butler, 49 Ill.2d 435, 275 N.E.2d 400 (1971), and People v. Ridens, 59 Ill.2d 362, 321 N.E.2d 264 (1974), that the jury must be instructed on a state-wide standard.

Use applicable 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.

9.27B
Inferences Of Intent To Disseminate In Obscenity Cases

If you find that the defendant
[1] [(created) (purchased) (procured) (possessed)] a [(mold) (engraved plate) [or other embodiment]] of obscenity specially adopted for reproducing multiple copies,

[or]

[2] possessed more than three copies of the same obscene material,

you may infer that defendant intended to disseminate obscene material.

Committee Note

720 ILCS 5/11-20(e) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-20(e) (1991)).

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 instructions submitted to the jury.

9.27C
Obscenity--Affirmative Defenses

It is a defense to the charge of obscenity that the dissemination
[1] was not for gain and was made to personal associates other than children under 18 years of age.

[or]

[2] was to institutions or individuals having scientific or other special justification for possession of such material.

Committee Note

720 ILCS 5/11-20(f) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-20(f) (1991)).

This instruction presents alternative defenses. Give one or both of these defenses if the issue is raised by the evidence. See Chapter 720, Section 3-2 and the Introduction to Chapter 24-25.00.

Use applicable paragraphs.

9.28
Issues In Obscenity

To sustain the charge of obscenity, the State must prove the following propositions:

First Proposition: That the defendant [(sold) (delivered) (provided) (offered or agreed to [(sell) (deliver) (provide)])] an obscene ____;

[or]

First Proposition: That the defendant [(presented) (directed)] an obscene [(play) (dance) [or other performance]];

[or]

First Proposition: That the defendant participated directly in that portion of an obscene [(play) (dance) [or other performance]] which made it obscene;

[or]

First Proposition: That the defendant [(published) (exhibited) [or otherwise made available]] anything obscene;

[or]

First Proposition: That the defendant performed [(an obscene act) [or otherwise presented an obscene exhibition of his body]] for gain;

[or]

First Proposition: That the defendant [(created) (bought) (procured) (possessed)] obscene matter or material with intent to disseminate it;

[or]

First Proposition: That the defendant advertised or otherwise promoted the sale of material represented or held out by him to be obscene whether or not it was obscene;

and

Second Proposition: That the defendant then knew the nature or content of ____[; and

Third Proposition: That the dissemination was for gain or was made to persons other than personal associates of the defendant.

[or]

Third Proposition: That the dissemination was not to institutions or individuals having scientific or other special justification for possession of such material].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

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.

Committee Note

720 ILCS 5/11-20(a) and (b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-20(a) and (b) (1991)).

Give Instructions 9.27 and 9.27A.

When intent to disseminate is an issue, give Instruction 9.27B.

When the defendant raises the affirmative defense(s) contained in Section 11-20(f), give Instruction 9.27C and use the applicable alternative(s) from the Third Proposition. Once a defense is raised by the introduction of sufficient evidence supporting it, the State must overcome the defense beyond a reasonable doubt. See Chapter 720, Section 3-2 and the Introduction to Chapter 24-25.00.

If the defendant is alleged to have the intent to disseminate obscene matter in violation of the laws of a jurisdiction other than Illinois, the jury must be specifically instructed on the law of the other jurisdiction.

The Third Proposition presents alternative defenses. However, the first alternative is based upon Section 11-20(f)(1) which states the defense in the conjunctive "was not for gain *and* was made to personal associates . . . ." Therefore, if the State overcomes *either* element of the defense it may prevail. Accordingly, when submitted to the jury as an issue in the case, it is phrased in the disjunctive.

Insert in the appropriate blank the name of the other jurisdiction.

Insert in the appropriate blanks the descriptive word, e.g., writing, picture, record, exhibition, or other presentation or embodiment of the obscene.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

9.29
Definition Of Child Pornography

A person commits the offense of child pornography when he
[1] [([(films) (videotapes) (photographs) (depicts) (portrays)] by any means of visual medium or reproduction) (depicts by computer)] any [(child he knows or reasonably should know to be under the age of 18) (institutionalized severely or profoundly mentally retarded person)] where such [(child) (institutionalized severely or profoundly mentally retarded person)] is:

[a] actually or by simulation engaged in any act of sexual intercourse with any [(person) (animal)].

[or]

[b] actually or by simulation engaged in any act of sexual contact involving the sex organs of the [(child) (institutionalized severely or profoundly mentally retarded person)] and the [(mouth) (anus) (sex organs)] of another [(person) (animal)].

[or]

[c] actually or by simulation engaged in any act of sexual contact involving the [(mouth) (anus) (sex organs)] of the [(child) (institutionalized severely or profoundly mentally retarded person)] and the sex organs of another [(person) (animal)].

[or]

[d] actually or by simulation engaged in any act of masturbation.

[or]

[e] actually or by simulation portrayed as [(being the object of) (otherwise engaged in)] any act of lewd [(fondling) (touching) (caressing)] involving another [(person) (animal)].

[or]

[f] actually or by simulation engaged in any act of [(excretion) (urination)] within a sexual context.

[or]

[g] actually or by simulation [(portrayed) (depicted)] as [(bound) (fettered) (subject to sadistic abuse) (subject to masochistic abuse) (subject to sadomasochistic abuse)] in any sexual context.

[or]

[h] [(depicted) (portrayed)] in any [(pose) (posture) (setting)] involving a lewd exhibition of the [(unclothed genitals) (pubic area) (buttocks) (a fully or partially developed breast)] of the [(child) (other person)] [if the [(child) (other person)] is a female].

[or]

[2] with the knowledge of the [(nature) (content)] thereof, [(reproduces) (disseminates) (offers to disseminate) (exhibits) (possesses with the intent to disseminate)] any [(film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] of any [(child) (institutionalized severely or profoundly mentally retarded person)] whom the person knows or reasonably should know to be [(under the age of 18) (an institutionalized severely or profoundly mentally retarded person)] engaged in ____.

[or]

[3] with knowledge of the [(subject matter) (theme)] thereof, produces any [(stage play) (live performance) (film) (videotape) (depiction by computer) [or other similar visual portrayal]] which includes [(a child whom the person knows or reasonably should know to be under the age of 18) (an institutionalized severely or profoundly mentally retarded person)] engaged in ____.

[or]

[4] [(solicits) (uses) (persuades) (induces) (entices) (coerces)] any [(child whom he knows or reasonably should know to be under the age of 18) (institutionalized severely or profoundly mentally retarded person)] to appear in any [(stage play) (live presentation) (film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] in which the [(child) (institutionalized severely or profoundly mentally retarded person)] [(is) (will be depicted, actually,) (will be depicted, by simulation,)] in ____.

[or]

[5] is a [(parent) (step-parent) (legal guardian) (other person having care or custody)] of [(a child whom the person knows or reasonably should know to be under the age of 18)

(an institutionalized severely or profoundly mentally retarded person)] and who knowingly [(permits) (induces) (promotes) (arranges for)] such [(child) (institutionalized severely or profoundly mentally retarded person)] to appear in any [(stage play) (live performance) (film) (videotape) (photograph) (depiction by computer) [or other similar visual presentation, portrayal, or simulation]] in which ____.

[or]

[6] with the knowledge of the [(nature) (content)] thereof, possesses any [(film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] of any [(child) (institutionalized severely or profoundly mentally retarded person)] whom the person knows or reasonably should know to be [(under the age of 18) (an institutionalized severely or profoundly mentally retarded person)] engaged in ____.

[or]

[7] [(solicits) (uses) (persuades) (induces) (entices) (coerces)] a person to provide any [(child under the age of 18) (institutionalized severely or profoundly mentally retarded person)] to appear in any [(stage play) (live presentation) (film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] in which the [(child) (institutionalized severely or profoundly mentally retarded person)] will be depicted, actually or by simulation, in ____.

Committee Note

720 ILCS 5/11-20.1(a) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §11-20.1(a) (1991)), amended by P.A. 84-1029, effective November 18, 1985; P.A. 85-1392, effective January 1, 1989; P.A. 85-1440, effective February 1, 1989; P.A. 85-1447, effective January 1, 1990; P.A. 86-820, effective January 1, 1990; P.A. 86-1168, effective January 1, 1991; P.A. 87-1069, effective January 1, 1993; and P.A. 88-680, effective January 1, 1995.

When paragraphs [2], [3], [4], [5], [6], or [7] are used, the applicable subparagraph or subparagraphs [a] through [h] of paragraph [1] must be included where the blank appears.

When applicable, give Instruction 11.65G, defining the phrase "institutionalized severely or profoundly mentally retarded person."

When applicable, give the definitions of the terms "disseminate," "produce," "reproduce," "depict by computer," and "depiction by computer" as set forth in Instruction 9.29B. If the definition of "computer," "computer program," or "data" becomes an issue, see 720 ILCS 5/16D-2 (West 1994) (formerly Ill.Rev.Stat. ch. 38, §16D-2 (1991)).

When applicable, give Instruction 9.01A, defining the words "solicits" and "solicitation."

Sections 11-20.1(b)(1), (b)(2), and (b)(3) provide affirmative defenses to the offense of child pornography which are set forth in Instruction 9.29A.

Section 11-20.1(b)(4) provides a presumption that under certain circumstances, the defendant possessed child pornography with the intent to disseminate. This presumption is set forth in Instruction 9.29C.

Use applicable paragraphs and bracketed material.

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

9.29A
Affirmative Defenses To Child Pornography

[1] It is a defense to a charge of child pornography that the defendant reasonably believed, under all of the circumstances, that the [(child was 18 years of age or older) (person was not an institutionalized severely or profoundly mentally retarded person)] but only where, prior to the act or acts giving rise to prosecution, he [(took some affirmative action) (made a *bona fide* inquiry)] designed to ascertain whether the [(child was 18 years of age or older) (person was not an institutionalized severely or profoundly mentally retarded person)] and his reliance upon the information so obtained was clearly reasonable.

[or]

[2] It is a defense to a charge of child pornography that the defendant was employed by [(a public library) (any library operated by an institution accredited by a generally recognized accrediting agency)] at the time the act leading to the charge of child pornography took place and such act was committed during the course of employment.

[or]

[3] The charge of child pornography shall not apply to the performance of official duties by [(law enforcement officers) (prosecuting officers) (court personnel) (attorneys) (*bona fide* treatment programs conducted by licensed physicians) (*bona fide* treatment programs conducted by licensed psychologists) (*bona fide* treatment programs conducted by licensed social workers) (professional education programs conducted by licensed physicians) (professional education programs conducted by licensed psychologists) (professional education programs conducted by licensed social workers)].

Committee Note

720 ILCS 5/11-20.1(b) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §11-20.1(b) (1991)), amended by P.A. 84-1029, effective November 18, 1985; and P.A. 85-1392, effective January 1, 1989.

Give this instruction when the defense is raised by the evidence. See 720 ILCS 5/3-2 and the Introduction to Chapter 24-25.00.

Use applicable paragraphs and bracketed material.

9.29B
Definitions Of Disseminate, Produce, And Reproduce Under The Offense Of Child Pornography

[For purposes of the offense of child pornography,] [(the) (The)] word "disseminate" means to

[1] sell, distribute, exchange, or transfer possession, whether with or without consideration.

[or]

[2] make a depiction by computer available for distribution or downloading through facilities of any telecommunications network or through any other means of transferring computer programs or data to a computer.

[For purposes of the offense of child pornography,] [(the) (The)] word "produce" means to direct, promote, advertise, publish, manufacture, issue, present, or show.

[For purposes of the offense of child pornography,] [(the) (The)] word "reproduce" means to make a duplication or copy.

[For purposes of the offense of child pornography,] [(the) (The)] phrase "depict by computer" means to generate, create, or cause to be created or generated a computer program or data that after being processed by a computer, either alone or in conjunction with one or more computer programs, results in a visual depiction on a computer monitor, screen, or display.

[For purposes of the offense of child pornography,] [(the) (The)] phrase "depiction by computer" means a computer program or data that after being processed by a computer, either alone or in conjunction with one or more computer programs, results in a visual depiction on a computer monitor, screen, or display.

Committee Note

720 ILCS 5/11-20.1(f) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §11-20.1(f) (1991)), amended by P.A. 88-680, effective January 1, 1995.

These definitions apply only to the offense of child pornography.

9.29C
Presumption Of Possession With Intent To Disseminate--Child Pornography

If you find that the defendant possessed one or more of the same film, videotape, visual reproduction, or depiction by computer in which child pornography is depicted, you may infer that the defendant possessed these materials with the intent to disseminate them.

Committee Note

720 ILCS 5/11-20.1(b)(4) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §11-20.1(b)(4) (1991)), created by P.A. 85-1447, effective January 1, 1990, amended by P.A. 88-680, effective January 1, 1995.

This presumption applies only to the offense of child pornography.

See Instruction 9.29B regarding the definitions of the terms “disseminate” and “depiction by computer.”

9.30
Issues In Child Pornography

To sustain the charge of child pornography, the State must prove the following propositions:

[1] *First Proposition:* That the defendant [([(filmed) (videotaped) (photographed) (depicted) (portrayed)] by means of visual medium or reproduction) (depicted by computer)] [(a child he knew or reasonably should have known to be under the age of 18) (an institutionalized severely or profoundly mentally retarded person)];

[or]

[2] *First Proposition:* That the defendant with the knowledge of the [(nature) (content)] thereof, [(reproduced) (disseminated) (offered to disseminate) (exhibited) (possessed with the intent to disseminate)] a [(film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] of [(a child) (an institutionalized severely or profoundly mentally retarded person)] whom the defendant knew or reasonably should have known to be [(under the age of 18) (an institutionalized severely or profoundly mentally retarded person)];

[or]

[3] *First Proposition:* That the defendant with the knowledge of the [(subject matter) (theme)] thereof, produced a [(stage play) (live performance) (film) (videotape) (depiction by computer) [or other similar visual portrayal]] which included [(a child whom the defendant knew or reasonably should have known to be under the age of 18) (an institutionalized severely or profoundly mentally retarded person)];

[or]

[4] *First Proposition:* That the defendant [(solicited) (used) (persuaded) (induced) (enticed) (coerced)] [(a child whom he knew or reasonably should have known to be under the age of 18) (an institutionalized severely or profoundly mentally retarded person)] to appear in a [(stage play) (live presentation) (film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] in which the [(child) (institutionalized severely or profoundly mentally retarded person)] [(would be) (would be depicted, actually) (would be depicted, by simulation)] in the following [(act) (pose) (setting)]: ____;

[or]

[5] *First Proposition:* That the defendant was a [(parent) (step-parent) (legal guardian) (other person having care or custody)] of [(a child whom the defendant knew or

reasonably should have known to be under the age of 18) (an institutionalized severely or profoundly mentally retarded person)] and that the defendant knowingly [(permitted) (induced) (promoted) (arranged for)] such [(child) (institutionalized severely or profoundly mentally retarded person)] to appear in a [(stage play) (live performance) (film) (videotape) (photograph) (depiction by computer) [or other similar visual [(presentation) (portrayal) (simulation)]] of the following [(act) (activity)]: ____;

[or]

[6] *First Proposition:* That the defendant with the knowledge of the [(nature) (content)] thereof, possessed a [(film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] of [(a child) (an institutionalized severely or profoundly mentally retarded person)] whom the defendant knew or reasonably should have known to be [(under the age of 18) (an institutionalized severely or profoundly mentally retarded person)];

[or]

[7] *First Proposition:* That the defendant [(solicited) (used) (persuaded) (induced) (enticed) (coerced)] a person to provide [(a child under the age of 18) (an institutionalized severely or profoundly mentally retarded person)] to appear in a [(stage play) (live presentation) (film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] in which the [(child) (institutionalized severely or profoundly mentally retarded person)] would be depicted, actually or by simulation: ____;

and

[a] *Second Proposition:* That such [(child) (institutionalized severely or profoundly mentally retarded person)] actually or by simulation engaged in an act of sexual intercourse with [(a person) (an animal)].

[or]

[b] *Second Proposition:* That such [(child) (institutionalized severely or profoundly mentally retarded person)] actually or by simulation engaged in an act of sexual contact involving the sex organs of the [(child) (institutionalized severely or profoundly mentally retarded person)] and the [(mouth) (anus) (sex organs)] of another [(person) (animal)].

[or]

[c] *Second Proposition:* That such [(child) (institutionalized severely or profoundly mentally retarded person)] actually or by simulation engaged in an act

of sexual contact involving the [(mouth) (anus) (sex organs)] of the [(child) (institutionalized severely or profoundly mentally retarded person)] and the sex organs of another [(person) (animal)].

[or]

[d] *Second Proposition:* That such [(child) (institutionalized severely or profoundly mentally retarded person)] actually or by simulation engaged in an act of masturbation.

[or]

[e] *Second Proposition:* That such [(child) (institutionalized severely or profoundly mentally retarded person)] actually or by simulation was portrayed as [(being the object of) (otherwise engaged in)] an act of lewd [(fondling) (touching) (caressing)] involving another [(person) (animal)].

[or]

[f] *Second Proposition:* That such [(child) (institutionalized severely or profoundly mentally retarded person)] actually or by simulation engaged in an act of [(excretion) (urination)] within a sexual context.

[or]

[g] *Second Proposition:* That such [(child) (institutionalized severely or profoundly mentally retarded person)] actually or by simulation was [(portrayed) (depicted)] as [(bound) (fettered) (subject to sadistic abuse) (subject to masochistic abuse) (subject to sadomasochistic abuse)] in a sexual context.

[or]

[h] *Second Proposition:* That such [(child) (institutionalized severely or profoundly mentally retarded person)] was [(depicted) (portrayed)] in a [(pose) (posture) (setting)] involving a lewd exhibition of the [(unclothed genitals) (pubic area) (buttocks) (a fully or partially developed breast)] of the [(child) (institutionalized severely or profoundly mentally retarded person) (other person)] [if the [(child) (institutionalized severely or profoundly mentally retarded person) (other person)] is a female].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

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.

Committee Note

720 ILCS 5/11-20.1(a) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §11-20.1(a) (1991)), amended by P.A. 84-1029, effective November 18, 1985; P.A. 85-1392, effective January 1, 1989; P.A. 85-1440, effective February 1, 1989; P.A. 85-1447, effective January 1, 1990; P.A. 86-820, effective January 1, 1990; P.A. 86-1168, effective January 1, 1991; P.A. 87-1069, effective January 1, 1993; and P.A. 88-680, effective January 1, 1995.

Give Instruction 9.29.

When applicable, insert in the blank the act, pose, setting, or activity at issue.

The bracketed numbers [1] through [7] for the First Proposition correspond to the alternatives of the same number in Instruction 9.29, the definitional instruction for this offense, and the bracketed letters [a] through [h] for the Second Proposition correspond to the alternatives of the same letter in Instruction 9.29. Select the alternatives that correspond to the alternatives selected from the definitional instruction.

Use applicable bracketed paragraphs and material. Based upon the evidence, one or more alternative propositions may be applicable.

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

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.31
Definition Of Distributing Harmful Material

A person commits the offense of distributing harmful material when he knowingly [(distributes) (sends) (causes to be sent) (exhibits) (offers to distribute) (offers to exhibit)] any harmful material to a child the defendant [(knows) (reasonably should know)] was then under the age of 18 years.

Committee Note

720 ILCS 5/11-21(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-21(a) (1991)).

Give Instructions 9.31A and 9.32.

See Instruction 9.31B.

Use applicable bracketed material.

9.31A
Definitions Of Harmful Material, Distribute, And Knowingly

The term "harmful material" means material which, considered by the average person, applying contemporary standards, and taken as a whole,

[1] predominantly appeals to a prurient interest; that is, a shameful or morbid interest in nudity, sex, or excretion; and

[2] which goes substantially beyond customary limits of candor in describing or representing nudity, sex, or excretion; and

[3] whose redeeming social importance is substantially less than its prurient appeal.

The word "material" means any writing, picture, record, or other representation or embodiment.

The word "distribute" means any transfer of possession, whether with or without consideration.

The word "knowingly" means that the person knew the contents of the subject matter or recklessly failed to exercise reasonable inspection which would have disclosed its contents.

You should consider whether the predominant appeal of the material is to a prurient interest by judging it with reference to average children of the same general age of the child to whom such material allegedly was offered, distributed, sent, or exhibited, unless it appears from the nature of the matter or the circumstances of its dissemination, distribution, or exhibition that it is designed for specially susceptible groups. In that case, you should judge the predominant appeal of the material with reference to the group who was intended to or probably would receive it.

Committee Note

720 ILCS 5/11-21(b) and (c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-21(b) and (c) (1991)).

Give Instructions 9.31 and 9.32.

See Instruction 9.31B.

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.

9.31B
Affirmative Defenses To Charge Of Distributing Harmful Material

It shall be a defense to the charge of distributing harmful material that
[1] the defendant distributed or exhibited the material in aid of a legitimate scientific or educational purpose.

[or]

[2] the defendant was a parent of the child to whom the harmful material was distributed or exhibited.

[or]

[3] the defendant demanded, was shown, and relied upon a document issued by the federal, state, county, or municipal government, or any subdivision or agency of government, as proof of the age of the child. Such documents include, but are not limited to, a motor vehicle operator's license, a registration certificate issued under the Federal Selective Service Act, or an identification card issued to a member of the armed forces.

[or]

[4] where the alleged sale or distribution of the harmful material was the result of an advertisement, and neither the order for the material nor its delivery involved any personal confrontation between the child and the defendant or his employees or agents; and

> [a] the advertisement contained the following statement or one substantially similar to it:
> "NOTICE: It is unlawful for any person under 18 years of age to purchase the matter herein advertised. Any person under 18 years of age who falsely states that he is not under 18 years of age for the purpose of obtaining the material advertised herein, is guilty of a Class B misdemeanor under the laws of the State of Illinois"; and
> [b] the defendant required the child to certify that he was not under the age of 18 years; and
> [c] the child falsely stated that he was not under the age of 18 years.

Committee Note

720 ILCS 5/11-21(e) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-21(e) (1991)).

Give this instruction when the issue is raised by the evidence. See Introduction to Chapter 24-25.00.

Use applicable paragraphs and subparagraphs.

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

9.32
Issues In Distributing Harmful Material

To sustain the charge of distributing harmful material, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(distributed) (sent) (caused to be sent) (exhibited) (offered to distribute) (offered to exhibit)] harmful material to ____; and

Second Proposition: That the defendant [(knew the material was harmful) (recklessly failed to exercise reasonable inspection which would have disclosed that it was harmful)]; and

Third Proposition: That ____ was then under the age of 18 years; and

Fourth Proposition: That the defendant knew or failed to exercise reasonable care in ascertaining that ____ was then under the age of 18 years[; and

Fifth Proposition: That the defendant did not distribute or exhibit the harmful material in aid of a legitimate scientific or educational purpose

[or]

Fifth Proposition: That the defendant was not a parent of ____

[or]

Fifth Proposition: That the defendant did not demand, was not shown, and did not rely upon a government document as proof of the age of ____, such as a motor vehicle operator's license, a Selective Service registration certificate, or an armed forces identification card

[or]

Fifth Proposition: That the defendant, if the transaction did not involve a personal confrontation with ____, did not supply a notice warning ____ against falsely stating his age and that the defendant did not require ____ to certify that he was under the age of 18 years].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

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.

Committee Note

720 ILCS 5/11-21 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-21 (1991)).

Give Instructions 9.31 and 9.31A.

Give the appropriate Fifth Proposition when the issue is raised by the evidence. See the Introduction to Chapter 24-25.00.

See Instruction 9.31B.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.33
Definition Of Sexual Relations Within Families

A person commits the offense of sexual relations within families when he commits an act of sexual penetration and

[1] knows that he is related to the victim as [(brother) (sister)] either of the whole-blood or the half-blood.

[or]

[2] knows that he is related to the victim as [(father) (mother)] regardless of legitimacy and regardless of whether the child was of the whole-blood or was adopted, and the victim was 18 years of age or over when the act was committed.

[or]

[3] knows that he is related to the victim as [(stepfather) (stepmother)] and the victim was 18 years of age or over when the act was committed.

Committee Note

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

Give Instruction 9.34.

The Committee deleted the term "half-blood" from paragraph [2], even though the term is found in the statute, because the term "half-blood" describes a relationship between siblings and does not concern the relationship between a child and his mother or father. *See* People v. Parker, 123 Ill.2d 204, 526 N.E.2d 135, 121 Ill.Dec. 941 (1988).

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.

9.34
Issues In Sexual Relations Within Families

To sustain the charge of sexual relations within families, the State must prove the following propositions:

First Proposition: That the defendant committed an act of sexual penetration upon ____; and

Second Proposition: That the defendant knew that [(he) (she)] was related to ____ as [(brother) (sister)] either of the whole-blood or of the half-blood.

[or]

First Proposition: That the defendant committed an act of sexual penetration upon ____; and

Second Proposition: That the defendant knew that [(he) (she)] was related to ____ as [(father) (mother)] regardless of legitimacy and regardless of whether ____ is of the whole-blood or adopted; and

Third Proposition: That ____ was 18 years of age or over when the act was committed.

[or]

First Proposition: That the defendant committed an act of sexual penetration upon ____; and

Second Proposition: That the defendant knew that [(he) (she)] was related to ____ as [(stepfather) (stepmother)]; and

Third Proposition: That ____ was 18 years of age or over when the act was committed.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

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.

Committee Note

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

Give Instruction 9.33.

The term “sexual penetration” is defined in Instruction 11.65E.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.35
Definition Of Exploitation Of A Child [Or Institutionalized Mentally Retarded Person]

A person commits the offense of exploitation of a child when he confines [(a child under the age of 16 years) (an institutionalized severely or profoundly mentally retarded person)] against his will by [(the infliction or threat of imminent infliction of great bodily harm) (the infliction or threat of imminent infliction of permanent disability or disfigurement) (administering to [(the child) (an institutionalized severely or profoundly mentally retarded person)] without his consent or by threat or deception and for other than medical purposes, any [(alcoholic intoxicant) (drug)])]

and

[(compels [(the child) (the institutionalized severely or profoundly mentally retarded person)] to become a prostitute) (arranges a situation in which [(the child) (the institutionalized severely or profoundly mentally retarded person)] may practice prostitution) (receives any money, property, token, object, or article or anything of value from [(the child) (an institutionalized severely or profoundly mentally retarded person)] knowing it was obtained in whole or in part from the practice of prostitution)].

Committee Note

720 ILCS 5/11-19.2 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §11-19.2 (1991)), amended by P.A. 85-1392, effective January 1, 1989; and P.A. 88-680, effective January 1, 1995.

Give Instruction 9.36.

Give Instruction 9.09, defining the term “prostitution”.

Give Instruction 9.35A when the issue of consent is raised by the evidence.

Give Instruction 11.65G, defining the term “institutionalized severely or profoundly mentally retarded person,” when applicable.

If the administration of a drug is an issue and there arises a need for a definitional instruction concerning the nature of the substance involved, give the appropriate statutory definition found in 720 ILCS 550/3 or 570/102. See the Introduction to Chapter 17.

Use applicable bracketed material.

9.35A
Definition Of Lack Of Consent In Exploitation Of A Child [Or Institutionalized Mentally Retarded Person]

The term "administering [(an alcoholic intoxicant) (a drug)] to [(a child under the age of 13 years) (an institutionalized severely or profoundly mentally retarded person)] without consent" means the [(alcoholic intoxicant) (drug)] is administered without the consent of the [(child's) (person's)] parents or legal guardian.

Committee Note

720 ILCS 5/11-19.2(B) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §11-19.2(B) (1991)).

Give this instruction when the issue of consent is raised by the evidence.

The portion of the instruction concerning the mental disability of the victim was added by P.A. 85-1392 and should not be used for offenses committed prior to the effective date of that Act.

The Committee takes no position as to whether consent by the parents or legal guardian operates as a defense to the offense of exploitation of a child.

Use applicable bracketed material.

9.36
Issues In Exploitation Of A Child [Or Institutionalized Mentally Retarded Person]

To sustain the charge of exploitation of a child, the State must prove the following propositions:

First Proposition: That the defendant confined ____ against his will by inflicting or threatening to imminently inflict great bodily harm;

[or]

First Proposition: That the defendant confined ____ against his will by inflicting or threatening to imminently inflict permanent disability or disfigurement;

[or]

First Proposition: That the defendant confined ____ against his will by administering to ____ without his consent or by threat or deception and for other than medical purposes, any [(alcoholic intoxicant) (drug)];

and

Second Proposition: That ____ at the time was [(under 16 years of age) (an institutionalized severely or profoundly mentally retarded person)]; and

Third Proposition: That the defendant compelled ____ to become a prostitute.

[or]

Third Proposition: That the defendant arranged a situation in which ____ may practice prostitution.

[or]

Third Proposition: That the defendant received any money, property, token, object, or article or anything of value from ____ knowing it was obtained in whole or in part from the practice of prostitution.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

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.

Committee Note

720 ILCS 5/11-19.2 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §11-19.2 (1991)), amended by P.A. 85-1392, effective January 1, 1989; and P.A. 88-680, effective January 1, 1995.

Give Instruction 9.35.

Insert in the blanks the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.37
Definition Of Sexual Exploitation Of A Child

A person commits the offense of sexual exploitation of a child when, while in the presence of a child, and with intent or knowledge that the child would view his acts, he

[1] engages in [(masturbation) (sexual conduct) (sexual penetration)].

[or]

[2] exposes his [(sex organs) (anus) (breast)] for the purpose of sexual arousal or gratification of himself or the child.

The word "child" means a person under 17 years of age.

Committee Note

720 ILCS 5/11-9.1 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §11-9.1 (1992)), added by P.A. 87-1198, effective September 25, 1992.

Give Instruction 9.38.

When "sexual conduct" or "sexual penetration" is an issue, give Instruction 11.65D or 11.65E defining those terms.

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.

9.38
Issues In Sexual Exploitation Of A Child

To sustain the charge of sexual exploitation of a child, the State must prove the following propositions:

First Proposition: That the defendant was in the presence of a child; and

[1] *Second Proposition:* That the defendant engaged in [(masturbation) (sexual conduct) (sexual penetration)]; and

[or]

[2] *Second Proposition:* That the defendant exposed his [(sexual organs) (anus) (breast)] for the purpose of sexual arousal or gratification of himself or the child; and

Third Proposition: That the defendant did so while [(intending) (knowing)] that the child would view his acts; and

Fourth Proposition: That the child was under 17 years of age.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

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.

Committee Note

720 ILCS 5/11-9.1 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §11-9.1 (1992)), added by P.A. 87-1198, effective September 25, 1992.

Give Instruction 9.37.

Use applicable paragraphs and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.39
Definition Of Solicitation Of A Sexual Act

A person commits the offense of solicitation of a sexual act when he offers a person not his spouse any money, property, token, object, or article or anything of value to perform any [(act of sexual penetration) (touching or fondling of the sex organs of one person by another person for the purpose of sexual arousal or gratification)].

Committee Note

720 ILCS 5/11-14.1 (West Supp.1993), added by P.A. 88-325, effective January 1, 1994; amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 9.40.

When sexual penetration is an issue, give Instruction 11.65E.

Use applicable bracketed material.

9.40
Issue In Solicitation Of A Sexual Act

To sustain the charge of solicitation of a sexual act, the State must prove the following proposition:

That the defendant offered a person not his spouse any money, property, token, object, or article or anything of value to perform any [(act of sexual penetration) (touching or fondling of the sex organs of one person by another person for the purpose of sexual arousal or gratification)].

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-14.1 (West Supp.1993), added by P.A. 88-325, effective January 1, 1994; amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 9.39.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.41
Definition Of Indecent Solicitation Of An Adult

A person commits the offense of indecent solicitation of an adult when he [(intentionally) (knowingly) (recklessly)] arranges for a person 17 years of age or over to commit an act of sexual [(penetration) (conduct)] with a person [(under 13 years of age) (13 years of age or older but under 17 years of age) (under 17 years of age)].

Committee Note

720 ILCS 5/11-6.5 (West Supp.1993), added by P.A. 88-165, effective January 1, 1994.

Give Instruction 9.42.

Give either Instruction 11.65D, defining "sexual conduct", or Instruction 11.65E, defining "sexual penetration", whichever applies.

Section 11-6.5(b) enhances the penalty for a violation of this statute when the second person is under 13 years of age. Thus, the Committee has included a bracketed alternative covering the age of the second person. Use the second alternative ("13 years of age or older but under 17 years of age") only when that second person's age is an issue. When age is an issue, it should be resolved by the jury.

Because Section 11-6.5 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* 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 Illinois 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.) 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 states may be included in the instruction.

Use applicable bracketed material.

9.42
Issues In Indecent Solicitation Of An Adult

To sustain the charge of indecent solicitation of an adult, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] arranged for a person 17 years of age or over to commit an act of sexual [(penetration) (conduct)] with a second person; and

Second Proposition: That at the time defendant did so, the second person was [(under 13 years of age) (13 years of age or older but under 17 years of age) (under 17 years of age)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

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.

Committee Note

720 ILCS 5/11-6.5 (West Supp.1993), added by P.A. 88-165, effective January 1, 1994.

Give Instruction 9.41.

Give either Instruction 11.65D, defining "sexual conduct", or Instruction 11.65E, defining "sexual penetration", whichever applies.

See the Committee Note to Instruction 9.41 regarding the bracketed alternative covering the age of the person referred to in the Second Proposition.

Because Section 11-6.5 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* 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 Illinois 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.) 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 states may be included in the instruction.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

9.43
Definition Of "Sex Offender"

"Sex Offender" means any person who is charged with [(a sex offense) (the attempt to commit a sex offense)], [(pursuant to Illinois law) (pursuant to federal law) (pursuant to another state's law) (pursuant to a foreign country's law)], and

is convicted of [(such offense) (an attempt to commit such offense)].

or

is found not guilty by reason of insanity [(pursuant to a discharge hearing) (following a hearing conducted pursuant to a (federal) (state) (foreign country's) law)] of [(such offense) (an attempt to commit such offense)].

or

is the subject of a finding not resulting in an acquittal [(at a discharge hearing) (following a hearing conducted pursuant to a (federal) (state) (foreign country's) law)] for the alleged [(commission) (attempted commission) of such offense].

or

"Sex Offender" means any person who is [(certified as a sexually dangerous person) (found to be a sexually violent person)] [(pursuant to Illinois law) (pursuant to federal law) (pursuant to another state's law) (pursuant to a foreign country's law) (subject to the Interstate Agreements on Sexually Dangerous Persons Act)].

Committee Note

730 ILCS 150/2(A). When the State relies upon a prior conviction or disposition from another jurisdiction, an issue may arise concerning whether that jurisdiction's statute is "substantially similar" to that of Illinois. This is a question of law to be determined by the court rather than a factual question on which the jury should be instructed. *See* People v. Guest, 115 Ill.2d 72, 503 N.E.2d 255, 104 Ill.Dec. 698 (1986); *See also* Committee Note, Instruction 7B.07[3].

See 725 ILCS 205 *et seq.* for Sexually Dangerous Persons Act

See 45 ILCS 20/1 *et seq.* for Interstate Agreements on Sexually Dangerous Persons Act

See 725 ILCS 207/1 *et seq.* for Sexually Violent Persons Commitment Act

Use applicable bracketed material. The bracketed numbers are present solely for the

guidance of the court and counsel and should not be included in the instruction submitted to the jury.

9.43A
Definition Of "Sexual Predator"

A "sexual predator" means any person [(who is convicted of ____.)

or

(who is (certified as sexually dangerous) (found to be a sexually violent person) (convicted of a second or subsequent sex offense which requires registration) [(pursuant to Illinois law) (pursuant to a substantially similar federal law) (pursuant to a substantially similar law in another state) (pursuant to a foreign country's law) (subject to the Interstate Agreements on Sexually Dangerous Persons Act))].

Committee Note

730 ILCS 150/2(E).

See 725 ILCS 205 *et seq.* for Sexually Dangerous Persons Act.

See 45 ILCS 20/1 *et seq.* for Interstate Agreements on Sexually Dangerous Persons Act.

See 725 ILCS 207/1 *et seq.* for Sexually Violent Persons Commitment Act.

Insert appropriate offense(s) in the blank. See 730 ILCS 150/2 (E)(1-2) for each possible alternative definition of qualifying offenses, and their respective effective dates.

Use applicable bracketed material.

9.43B
Definition Of "Sex Offense"

A "sex offense" includes (an attempt to commit) [(pursuant to Illinois law) (pursuant to federal law) (pursuant to another state's law) (pursuant to a foreign country's law)]

[1] [a violation of ____) (a former law substantially equivalent to ____)].

or

[2] a felony violation of ____ when the victim is a person under 18 years of age, the defendant is not a parent of the victim, and the offense was committed on or after January 1, 1996.

or

[3] first degree murder when the victim was a person under 18 years of age, the defendant was at least 17 years of age at the time of the commission of the offense, and the offense was committed on or after June 1, 1996.

or

[4] the offense of sexual relations within families when the victim was a person under 18 years of age and the offense was committed on or after June 1, 1997.

or

[5] the offense of child abduction, committed by [(luring) (attempting to lure) a child under the age of 16 into a [(motor vehicle) (building) (housetrailer (dwelling place)] without the consent of the [(parent) (lawful custodian)] for other than a lawful purpose, when the offense was committed on or after January 1, 1998.

Committee Note:

See 730 ILCS 150/2(B), (C), (C-5) for each possible alternative definition of sex offenses. For child abduction, only paragraph 10 is a qualifying offense; see 720 ILCS 5/10-5(10).

The standards governing whether a felony violation of a former law is "substantially equivalent" to current qualifying offenses has not been determined by Illinois case law. The Committee recommends that this is a question of law to be determined by the court rather than a factual question on which the jury should be instructed. *See* People v. Guest, 115 Ill.2d 72, 503 N.E.2d 255, 104 Ill.Dec. 698 (1986).

Insert applicable offense(s). The bracketed numbers are present solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

9.43C
Definition Of "Law Enforcement Agency Having Jurisdiction"

"Law enforcement agency having jurisdiction" means the [(Chief of Police in the municipality) (sheriff of the county [(if the sex offender intends to reside in an unincorporated area) (in the event no Police Chief exists)] in which the (sex offender) (out-of-state student) (out-of-state employee) expects to reside [(upon his discharge, parole or release) (during the service of his sentence of probation or conditional discharge)].

Committee Note

730 ILCS 150/2(D). Use applicable bracketed material.

9.43D
Definition Of "Out-Of-State Student"

An "out-of-state student" is any (sex offender) (sexual predator) who is enrolled in Illinois, on a (full-time) (part-time) basis, in any (public) (private) educational institution.

Committee Note

See 730 ILCS 150/2(F).

9.43E
Definition Of "Out-Of-State Employee"

An "out-of-state employee" is any (sex offender) (sexual predator) who works in Illinois, regardless of whether he receives payment for services performed, for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year.

[Persons who operate motor vehicles in Illinois accrue one day of employment time for any portion of a day spent in Illinois.]

Committee Note

730 ILCS 150/2(G).

Use applicable bracketed material.

9.43F
Definition Of Failure To Register As A Sex Offender

A person commits the offense of failure to register as a sex offender when he [knowingly fails to register) (knowingly fails to report) (knowingly fails to report a change of [(residence) (address) (place of employment) (educational status)] [(willfully) (knowingly) gives material information required by law that is false] [(intentionally) (knowingly) (recklessly)] seeks to change his name].

Committee Note

730 ILCS 150/10. The statute does not include a scienter requirement for seeking a change of name. The Committee recommends that an applicable mental state be included consistent with 720 ILCS 5/4-3(b).

9.43G
Duty To Register

A (sex offender) (sexual predator) (out-of-state student) (out-of-state employee) shall register in person with the [(Chief of Police of his municipality) (Chicago Police Department Headquarters) [(sheriff of his county if domiciled (in an unincorporated area) (in an incorporated area where no police chief exists)] within 10 days

[1] of establishing (residence) (temporary domicile)]

or

[2] after entry of the sentencing order based upon the conviction

or

[3] of [(release) (discharge) (parole)] from [(confinement) (institutionalization) (imprisonment)].

or

[4] of beginning [(school) (employment)].

[A (person adjudicated to be sexually dangerous) (sexually violent person) (sexual predator) shall register for the period of his natural life]

[A sex offender shall register for a period of 10 years after [(conviction) (adjudication), if not confined to a penal institution, hospital or any other institution or facility] [(parole) (discharge) (release) from a (penal institution) (hospital) (any other institution or facility).]

Committee Note

730 ILCS 150/3; 730 ILCS 150/7.

Use applicable bracketed material.

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

9.43H
Issues In Failure To Register As A Sex Offender

To sustain the charge of failure to register as a sex offender the State must prove the following propositions:

First Proposition: That the defendant is a (sex offender) (sexual predator) [(out-of state (student)(employee)], and

Second Proposition: That the defendant

(knowingly failed to register)

or

(knowingly failed to report)

or

[(knowingly failed to report an (address) (residence) (employment) change within __(days)(years)]

or

(knowingly failed to report a change in (educational) (employment) status)

or

((willingly) (knowingly) gave material information required by law that is false)

or

((intentionally) (knowingly) (recklessly) sought to change his name).

If you find from your consideration of all the evidence that each of these propositions has been proven beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any of these propositions has not been proven beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

730 ILCS 150/10. The statute does not include a scienter requirement for seeking a change of name. The Committee recommends that an applicable mental state be included consistent with 720 ILCS 5/4-3(b).

9.43I
Duty To Report

[A person [(adjudicated) (found) to be sexually (dangerous) (violent)], (if released) (found no longer to be sexually (dangerous) (violent) and discharged)] must report in person to the law enforcement agency with whom he last registered no later than 90 days after the date of his last registration and every 90 days thereafter.]

[A sex offender shall report in person to the law enforcement agency with whom he last registered within one year from the date of that registration and every year thereafter.]

[If a person required to register changes his [(residence) (address) (place of employment)], he shall, in writing, within 10 days inform the law enforcement agency with whom he last registered of his new (residence) (address) (place of employment) and register with the appropriate law enforcement agency within 10 days.]

[If a person required to register establishes (residence) (employment) outside of Illinois, within 10 days of establishing that (residence) (employment), he shall, in writing, inform the law enforcement agency with whom he last registered of his out-of-state (residency) (employment).]

[A person required to register shall complete, sign and return any verification letter sent by the Department of State Police within 10 days of the mailing date of the letter.]

[An out-of-state (student) (employee) must notify the agency having jurisdiction of any change in (educational) (employment) status, in writing, within 10 days of the change.]

Committee Note

730 ILCS 150/6; 730 ILCS 150/5-10, 730 ILCS 150/6-5.

Use applicable bracketed material.

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

9.44
Definition Of Custodial Sexual Misconduct (Employee)

A person commits the offense of custodial sexual misconduct when he is an employee of a [(penal system) (treatment and detention facility)] and [(intentionally) (knowingly) (recklessly)] engages in [(sexual conduct) (sexual penetration)] with a person who is in the custody of that [(penal system) (treatment and detention facility)].

The word "employee" means: [(an employee of any governmental agency of this State or any county or municipal corporation that has by statute, ordinance, or court order the responsibility for the care, control, or supervision of pretrial or sentenced persons in a penal system or persons detained or civilly committed under the Sexually Violent Persons Commitment Act) (a contractual employee of a penal system who works in a penal institution) (a contractual employee of a treatment and detention facility or a contractual employee of the Department of Human Services who provides supervision of persons serving a term of conditional release)].

The word "custody" means: [(pretrial incarceration or detention) (incarceration or detention under a sentence or commitment to a State or local penal institution) (parole or mandatory supervised release) (electronic home detention) (probation) (detention or civil commitment either in secure care or in the community under the Sexually Violent Persons Commitment Act)].

Committee Note

720 ILCS 5/11-9.2(a), 5/11-9.2(g)(3)(i), (ii), (iii) and 5/11-9.2(g)(1) (West 2005).

Give Instruction 11.65D, defining the term "sexual conduct," if sexual conduct is alleged.

Give Instruction 11.65E, defining the term "sexual penetration," if sexual penetration is alleged.

Give Instruction 9.50.

Give applicable Instruction 9.45 defining the term "penal system" or 9.46 defining the term "treatment and detention facility."

Because Section 11-9.2(a) does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 2005). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness.

Use applicable bracketed material.

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

9.45
Definition Of Penal System

The term "penal system" means a[n] [(penitentiary) (state farm) (reformatory) (prison) (jail) (house of correction) (institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses) (county shelter care or detention home)].

Committee Note

720 ILCS 5/11-9.2(g)(2) (West 2005).

See 720 ILCS 5/2-14 (West 2005) for definition of the term "penal institution."

See 55 ILCS 75/1 *et seq.* (West 2005) for County Shelter Care and Detention Home Act.

Use applicable bracketed material.

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

9.46
Definition Of Treatment And Detention Facility

The term "treatment and detention facility" means any Department of Human Services facility established for the detention or civil commitment of persons under the Sexually Violent Persons Commitment Act.

Committee Note

720 ILCS 5/11-9.2(g)(2.1) (West 2005).

See 725 ILCS 207/1 *et seq.* (West 2005) for Sexually Violent Persons Commitment Act.

9.47
Issues In Custodial Sexual Misconduct (Employee)

To sustain the charge of custodial sexual misconduct, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] engaged in [(sexual conduct) (sexual penetration)] with ____; and

Second Proposition: That ____ was in the custody of a [(penal system) (treatment and detention facility)] at the time of the [(sexual conduct) (sexual penetration)]; and

Third Proposition: That the defendant was an employee of that [(penal system) (treatment and detention facility)] at the time of the [(sexual conduct) (sexual penetration)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

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.

Committee Note

720 ILCS 5/11-9.2 (West 2005).

Give Instruction 9.44.

Give applicable Instruction 9.45 defining the term "penal system" or Instruction 9.46 defining the term "treatment and detention facility."

Insert in the blanks the name of the person in custody with whom the defendant is charged with engaging in sexual conduct or sexual penetration.

Because Section 11-9.2(a) does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 2005). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness.

Use applicable bracketed material.

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

9.48
Definition Of Custodial Sexual Misconduct (Probation Officer, Supervising Officer, Surveillance Agent)

A [(probation officer) (supervising officer) (surveillance agent)] commits the offense of custodial sexual misconduct when he [(intentionally) (knowingly) (recklessly)] engages in [(sexual conduct) (sexual penetration)] with a [(probationer) (parolee) (releasee) (person serving a term of conditional release)] who is under the supervisory, disciplinary, or custodial authority of the [(officer) (agent)] so engaging in the [(sexual conduct) (sexual penetration)].

The term [("probation officer" means any person employed in a probation or court services department) ("supervising officer" means any person employed to supervise persons placed on parole or mandatory supervised release) ("surveillance agent" means any person employed or contracted to supervise persons placed on conditional release in the community under the Sexually Violent Persons Commitment Act)].

Committee Note

720 ILCS 5/11-9.2(b) and 5/11-9.2(g)(4), (5), (6), and (7) (West 2005).

Give Instruction 11.65D, defining the term "sexual conduct," if sexual conduct is alleged.

Give Instruction 11.65E, defining the term "sexual penetration," if sexual penetration is alleged.

Give Instruction 9.49, defining the term "conditional release," if the person with whom the defendant engaged in sexual conduct or sexual penetration was serving a term of conditional release.

Because Section 11-9.2(b) does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 2005). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness.

Use applicable bracketed material.

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

9.49
Definition Of Conditional Release

The term "conditional release" means a program of [(treatment and services) (vocational services) (alcohol or other drug abuse treatment)] provided to a person civilly committed and conditionally released to the community under the Sexually Violent Persons Commitment Act.

Committee Notes

720 ILCS 5/11-9.2(g)(2.2) (West 2005).

See 725 ILCS 207/40 (West 2005) for commitment and conditional release provisions of the Sexually Violent Persons Commitment Act.

Use applicable bracketed material.

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

9.50
Issues In Custodial Sexual Misconduct (Probation Officer, Supervising Officer, Surveillance Agent)

To sustain the charge of custodial sexual misconduct, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] engaged in [(sexual conduct) (sexual penetration)] with ____; and

Second Proposition: That ____ was a [(probationer) (parolee) (releasee) (person serving a term of conditional release)] at the time of the [(sexual conduct) (sexual penetration)]; and

Third Proposition: That ____ was under the supervisory, disciplinary, or custodial authority of the defendant at the time of the [(sexual conduct) (sexual penetration)]; and

Fourth Proposition: That the defendant was a [(probation officer) (supervising officer) (surveillance agent)] at the time of the [(sexual conduct) (sexual penetration)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

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.

Committee Note

720 ILCS 5/11-9.2(b) (West 2005).

Give the applicable portion of Instruction 9.48 defining terms "probation officer," "supervising officer," or "surveillance agent."

Give Instruction 9.49, defining the term "conditional release," if the person with whom the defendant engaged in sexual conduct or sexual penetration was serving a term of conditional release.

Insert in the blanks the name of the person who is under the supervisory, disciplinary or custodial authority of the defendant and with whom the defendant is charged with engaging in sexual conduct or sexual penetration.

Because Section 11-9.2(b) does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 2005). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness.

Use applicable bracketed material.

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

9.51
Affirmative Defenses To The Charge Of Custodial Sexual Misconduct

It is a defense to the charge of custodial sexual misconduct that
[1] the defendant was lawfully married to ____before the date of custody.

[or]

[2] the defendant has no knowledge and would have no reason to believe that the person with whom he engaged in custodial sexual misconduct was a person in custody.

Committee Note

720 ILCS 5/11-9.2(f) (West 2005).

Give this instruction only when the issue is raised by the evidence. See Chapter 720 ILCS 5/3-2 and the Introduction to IPI Criminal, Chapter 24-25.00.

Give Instruction 9.52A, if the affirmative defense of marriage is asserted.

Give Instruction 9.52B, if the affirmative defense of lack of knowledge is asserted.

Insert in the blank the name of the person with whom the defendant is charged with engaging in sexual misconduct.

Use applicable bracketed paragraph.

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

9.52A
Issue In Defense Of Previous Marriage

____ *Proposition:* That the defendant was not lawfully married to ____ before the date of custody.

Committee Note

720 ILCS 5/11-9.2(f)(1) (West 2005).

Give Instruction 9.51.

Insert in the first blank the number of the proposition.

Insert in the second blank the name of the person with whom the defendant is charged with engaging in sexual misconduct.

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

9.52B
Issue In Defense Of Knowledge Of Custodial Status

____ *Proposition:* That the defendant [(knew) (had reason to believe)] that ____ was a person in custody.

Committee Note

720 ILCS 5/11-9.2(f) (2) (West 2005).

Give Instruction 9.51.

Insert in the first blank the number of the proposition.

Insert in the second blank the name of the person with whom the defendant is charged with engaging in sexual misconduct.

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

Use applicable bracketed material.

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