11.105
Definition Of Predatory Criminal Sexual Assault Of A Child--Great Bodily Harm
As Of July 1, 2011

A person commits the offense of predatory criminal sexual assault of a child resulting in great bodily harm when he [(intentionally) (knowingly) (recklessly)] commits an act of sexual penetration when he is 17 years of age or older and the victim is under 13 years of age when the act is committed and he causes great bodily harm to the victim that [(resulted in permanent disability) (was life threatening)].

Committee Note
Instruction and Committee Note Approved April 29, 2016.

"The Predatory Criminal Sexual Assault of Child statute was amended effective July 1, 2011. Instructions that reflect this amendment are found at 11.107 through 11. 120. For the charge of "Predatory Criminal Sexual Assault of a Child" which was committed on or after July 1, 2011, use the appropriate Illinois Pattern Jury instruction in that series. Do not use this Instruction for the charge of "Predatory Criminal Sexual Assault of a Child" which was committee on or after July 1, 2011.

720 ILCS 5/12-14.1(a)(2), added by P.A. 89-462, effective May 29, 1996.

Give Instruction 11-106.

See the Committee Note for Instruction 11.103 regarding the relationship between this new offense of predatory criminal sexual assault of a child as set forth in Section 12-14.1(a) and the offense of aggravated criminal sexual assault formerly set forth in Section 12-14(b)(1) (720 ILCS 5/12-14(b)(1)).

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

The Committee acknowledges that the apellate court in People v. Burton, 201 Ill.App.3d 116, 558 N.E.2d 1369 (4th Dist.1990), held that Terrell does not require the mental states to be included in the jury instruction for aggravated criminal sexual assault (720 ILCS 5/12-14). *See also* People v. Smith, 209 Ill.App.3d 1043, 568 N.E.2d 482 (4th Dist.1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault. However, because of the mandate expressed by the supreme court in Anderson *and* Gean, the Committee believes that mental states are required and must be proved by the State for this offense of predatory criminal sexual assault of a child. *See also* People v. Nunn, 77 Ill.2d 243, 32 Ill.Dec. 914, 396 N.E.2d 27 (1979), and People v. Valley Steel Products, 71 Ill.2d 408, 17 Ill.Dec. 13, 375 N.E.2d 1297 (1978).