

NOTICE TO THE BAR

UPDATES TO MODEL CRIMINAL JURY CHARGES

The Supreme Court Committee on Model Criminal Jury Charges has approved the following Model Criminal Jury Charges. All approved Model Criminal Jury Charges, including these new or revised charges, are available for downloading from the Judiciary's Internet website at <http://www.judiciary.state.nj.us/criminal/juryindx.pdf>.

Non 2C Charges

Failure of Police to Preserve Notes (2/6/12)

This new charge was created to comply with State v. W.B., 205 N.J. 588, 608-09 (2011), in which the Supreme Court advised that "starting thirty days from today [effective May 27, 2011], if notes of a law enforcement officer are lost or destroyed before trial, a defendant, upon request, may be entitled to an adverse inference charge molded, after conference with counsel, to the facts of the case."

Instructions After Jury is Sworn (6/11/12)

This charge was revised to further emphasize that jurors should not seek any outside information on the subject matter of the case, the laws related to the case, or any other factual or legal matter that has any connection to the case. In addition, the charge advises jurors that the deliberations must be based solely on the testimony and exhibits admitted into evidence, and includes a strict prohibition against their doing outside research, either by printed reference materials, the Internet, or any other electronic medium. In addition, this charge was revised to advise jurors to come forward if during the course of the trial circumstances arise that change or alter their answers to questions asked during jury selection, rather than the prior language which only advised jurors to come forward if there was a "misstatement" or "omission."

Instructions Regarding Juror Research-First Recess (6/11/12)

This new charge should be given just before the first break during jury selection and then repeated for each new panel before their first break. The charge advises jurors not to discuss the case among themselves or with anyone else during this or any other recess or when they go home at the end of the day.

They are advised to only discuss the case when deliberations begin. In addition, jurors are told not to read any newspaper accounts, do outside research, or visit the scene(s) of the incident(s) because the case should be decided solely from the evidence produced in the courtroom and nothing else.

Playback of Testimony (4/16/12)

This is a new charge addressing juror requests for the play back of video and digital recorded testimony pursuant to the guidance provided by the Supreme Court in State v. Miller, 205 N.J. 109 (2011). In Miller, the Court authorized the presumptive use of video playbacks but outlined precautionary steps to guard against undue prejudice, including requiring trial judges to give this instruction to jurors at the time the testimony is played back. Id at 123.

Preliminary Instructions to the Jury (6/11/12)

This charge was revised to incorporate the “Instructions Regarding Juror Research – First Recess” charge.

**2C:11-3a(1) and (2);
2C:11-4a, b(1) and b(2)**

Murder, Passion/Provocation and Aggravated/Reckless Manslaughter (1/9/12)

This charge was revised to note the verdict sheet at the end of the charge in footnote 2, rather than the verdict sheet in the *Judges Bench Manual for Capital Causes*.

2C:12-1b(1) and (7)

Aggravated Assault- Serious and Significant Bodily Injury (1/9/12)

Minor changes were made to these two charges.

**2C:13-1a, b(1)-(3),
and b(4)**

Kidnapping (4/16/12)

The definition of “safe place” was added to these three charges.

2C:14-2a(3)

Aggravated Sexual Assault in the Course of a Felony (6/11/12)

This charge was revised to include a footnote to State v. Rangel, 422 N.J. Super. 1 (App. Div. 2011), which held that under this statute aggravated assault on another refers to a situation in which an aggravated assault is committed or attempted upon a third person (not the victim) to compel a victim to submit to a sexual assault. It should be noted that the Supreme Court granted certification for Rangel, 209 N.J. 233 (2012).

2C:14-2a(3)

Aggravated Sexual Assault in the Course of a Felony:

Consent Alleged (6/11/12)

This charge was revised to include a footnote to State v. Rangel, 422 N.J. Super. 1 (App. Div. 2011), which held that under this statute aggravated assault on another refers to a situation in which an aggravated assault is committed or attempted upon a third person (not the victim) to compel a victim to submit to a sexual assault. It should be noted that the Supreme Court granted certification for Rangel, 209 N.J. 233 (2012).

2C:14-2a(7)**Aggravated Sexual Assault (Mentally Incapacitated) (2/6/12)**

This charge was separated into two charges due to P.L. 2011, c. 232, effective March 17, 2012, which eliminated the term “mentally defective.” These charges address offenses arising before and after March 17, 2012.

2C:14-3a [2C:14-2a(2)]**Aggravated Criminal Sexual Contact (6/11/12)**

Stylistic changes were made to this charge to conform to the standard format of the model charges.

2C:14-3a [2C:14-2a(3)]**Aggravated Criminal Sexual Contact in the Course of a Felony (6/11/12)**

This charge was revised to include a footnote to State v. Rangel, 422 N.J. Super. 1 (App. Div. 2011), which held that under this statute aggravated assault on another refers to a situation in which an aggravated assault is committed or attempted upon a third person (not the victim) to compel a victim to submit to a sexual assault. It should be noted that the Supreme Court granted certification for Rangel, 209 N.J. 233 (2012).

2C:14-3a [2C:14-2a(3)]**Aggravated Criminal Sexual Contact in the Course of a Felony: Consent Alleged (6/11/12)**

This charge was revised to include a footnote to State v. Rangel, 422 N.J. Super. 1 (App. Div. 2011), which held that under this statute aggravated assault on another refers to a situation in which an aggravated assault is committed or attempted upon a third person (not the victim) to compel a victim to submit to a sexual assault. It should be noted that the Supreme Court granted certification for Rangel, 209 N.J. 233 (2012).

2C:14-3a [2C:14-2a(4)]**Aggravated Criminal Sexual Contact-While Armed (6/11/12)**

Stylistic changes were made to this charge to conform to the standard format of the model charges.

2C:14-3a [2C:14-2a(5)]**Aggravated Criminal Sexual Contact (6/11/12)**

This charge was updated to conform to the current statutory provisions. Stylistic changes were made to be consistent with the standard format of the model charges. In addition, a footnote was added to State v. Lee, 417 N.J. Super. 219 (App. Div. 2010), certif. denied, 206 N.J. 64 (2011), advising that where defendant's sexual contact is with his own intimate parts in view of an adult victim, a conviction on a charge of criminal sexual contact requires proof of physical force or coercion beyond defendant's act of touching himself; in the absence of such evidence of force or coercion, defendant's conduct may constitute the lesser included offense of lewdness.

2C:14-3a [2C:14-2a(6)]

Aggravated Criminal Sexual Contact (6/11/12)

Stylistic changes were made to this charge to conform to the standard format of the model charges.

2C:14-3a [2C:14-2a(7)]

Aggravated Criminal Sexual Contact (Victim Helpless, Mentally Incapable/Incapacitated) (2/6/12)

This charge was separated into two charges due to P.L. 2011, c. 232, effective March 17, 2012, which eliminated the term "mentally defective." These charges address offenses arising before and after March 17, 2012.

2C:14-3b [2C:14-2c(1)-(4)]

Criminal Sexual Contact (6/11/12)

Stylistic changes were made to conform to the standard format of the model charges. In addition, a footnote was added to State v. Lee, 417 N.J. Super. 219 (App. Div. 2010), certif. denied, 206 N.J. 64 (2011), advising that where defendant's sexual contact is with his own intimate parts in view of an adult victim, a conviction on a charge of criminal sexual contact requires proof of physical force or coercion beyond defendant's act of touching himself; in the absence of such evidence of force or coercion, defendant's conduct may constitute the lesser included offense of lewdness.

2C:22-1a(2) and (3)

Disturbing/Desecrating Human Remains (2/6/12)

These two charges are new.

2C:33-4

Harassment (Lesser-Included Offense) (1/9/12)

This charge was updated to include the first paragraph from the current "Simple Assault (Bodily Injury)(Lesser Included Offense – N.J.S.A. 12-1a(1)" model charge.

9:6-1; 9:6-3

Abuse/Abandonment/Cruelty/Neglect of Child (Parent/Guardian/Person Having Control) (4/16/12)

This is a new charge.

9:6-1; 9:6-3

Abuse/Cruelty to Child (Non-Parent/Guardian/Person Having Control) (4/16/12)

This is a new charge.

9:6-8.21; 9:6-3

Abuse/Neglect of a Child (4/16/12)

This is a new charge.

Questions regarding these revised Model Criminal Jury Charges may be directed to Maria Pogue, Esq., Criminal Practice Division, Administrative Office of the Courts, Hughes Justice Complex, P.O. Box 982, Trenton, New Jersey 08625; telephone (609) 633-2119.

/s/ Glenn A. Grant

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Court

Dated: June 28, 2012