

## NOTICE TO THE BAR

### **UPDATES TO MODEL CRIMINAL JURY CHARGES AND CRIMINAL SAMPLE VERDICT SHEETS**

The Supreme Court Committee on Model Criminal Jury Charges has issued the following Model Criminal Jury Charges. All 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>. These updates to the model charges are also included on the Judiciary's "Automated Model Criminal Jury Charges System," at <http://www.judiciary.state.nj.us/criminal/amcjcs/index.htm>.

The Committee has revised the sample verdict sheet for Aggravated Sexual Assault/Sexual Assault/Endangering the Welfare of a Child to delete the section on the endangering offense, and a separate verdict sheet has been issued for the endangering offense. Additionally, the Committee has issued a new sample verdict sheet for the Assault by Auto or Vessel offense. These sample verdict sheets can be downloaded at [http://www.judiciary.state.nj.us/criminal/sample\\_verdict\\_indx.pdf](http://www.judiciary.state.nj.us/criminal/sample_verdict_indx.pdf).

#### **Non-2C Charges Criminal Final Charge (5/12/14)**

This charge was revised to list the three new charges on a defendant or witness testifying in jail or prison garb and a witness testifying while wearing restraints in the "charge if applicable" section on page 6.

#### **Defendant – Testifying in Jail Garb or Prison Garb (5/12/14)**

This is a new charge.

#### **Dismissal of Jury (3/10/14)**

This charge was revised to create a more personal connection with the jury. Additionally, a footnote was added to caution judges against interviewing or consulting with jurors after a verdict is returned.

#### **Preliminary Instructions to the Jury (5/12/14)**

This charge was revised to add language in the voir dire section to address circumstances where the defendant is dressed in jail garb or prison garb. The jury is advised not to speculate on the reasons for such clothing, as it is irrelevant to the issue of whether the State has proven defendant's guilt beyond a reasonable doubt and cannot form the basis of any discussion during their deliberations.

#### **Witness – Testifying in Jail Garb or Prison Garb (5/12/14)**

This is a new charge.

#### **Witness – Testifying While Wearing Restraints (5/12/14)**

This is a new charge.

- 2C:2-1 Possession (6/20/14)**  
This charge was revised to delete the term “dominion” in the explanation of a person having “dominion or control” over an object or item. Additionally, the Supreme Court administratively requested that the definition for “constructive possession” be revised to clarify that the defendant must have had not only the ability to exercise control over an item but also the intention to do so. Due to these changes, model charges which include the “Possession” charge have also been revised.
- 2C:12-1c(4) Assault by Auto or Vessel – third and fourth degree (4/7/14)**  
These three charges are new. A sample verdict sheet has also been issued for this offense.
- 2C:18-3a Criminal Trespass: Unlicensed Entry of Certain Airport Areas (4/7/14)**  
This is a new charge.
- 2C:24-4a(1)(2) Endangering the Welfare of a Child, Sexual Conduct and Abuse or Neglect – second and third degree (4/7/14)**  
In accordance with the reconfiguration of the endangering statute, separate charges have been issued for the sexual conduct offense, N.J.S.A. 2C:24-4a(1) and the abuse or neglect offense, N.J.S.A. 2C:24-4a(2). A reference has been added to State v. Bryant, 419 N.J. Super. 15, 27-28 (App. Div. 2011), in which the court concluded that when sexual activity is involved, it need only be shown that the defendant engaged in the sexual activity knowingly, not that he knew that his conduct would impair or debauch the morals of the child in the sexual conduct charges. In the second degree charges a reference has been added to advise that there should be no reliance upon the definitions in N.J.S.A. 9:6-2 or 9:6-8.21 in describing the role of a parent, guardian or custodian. See State v. McInerney, 428 N.J. Super. 432, 449 (App. Div. 2012), certif. denied, 214 N.J. 175 (2013). Also added was a reference to the legislative change raising the age of the victim for third degree endangering to 18 years old. Additionally, the sample verdict sheet for Aggravated Sexual Assault/Sexual Assault/Endangering was revised to delete the endangering section, and a separate verdict sheet has been issued for the endangering offense.
- 2C:29-3(a)(b) Hindering Apprehension or Prosecution (5/12/14)**  
These two charges were revised to include a reference in footnote 1 to State v. D.A., 191 N.J. 158, 170 (2007), in which the Court found that this statute unlike N.J.S.A. 2C:28-5 (tampering) does not require that defendant know or believe either that a charge has been made or is likely to be made; instead, it is addressed at the “wrongful avoidance of an official action by attempting to prevent a witness from reporting a crime to the police.” Additionally, minor stylistic changes were made to these charges.
- 2C:29-3.1(a) Killing an Animal Used by a Law Enforcement Agency or a Search and Rescue Dog (4/7/14)**  
In accordance with the statutory amendments, this charge was revised to include “search and rescue dog,” and the subsection was added in the caption.

- 2C:29-3.1(b) Injuring an Animal Used by a Law Enforcement Agency or a Search and Rescue Dog (4/7/14)**  
In accordance with the statutory amendments, this charge was revised to include “search and rescue dog,” and the subsection was added in the caption.
- 2C:29-3.1(c) Threatening to Kill, Maim or Inflict Harm Upon an Animal Used by a Law Enforcement Agency or a Search and Rescue Dog (4/7/14)**  
This is a new charge.
- 2C:29-3.1(d) Interfering with a Law Enforcement Officer Using An Animal – Lesser Included (4/7/14)**  
The subsection has been included in the caption in accordance with the statutory amendments.
- 2C:29-3.2 Killing a Service Animal or Guide Dog (6/9/14)**  
This is a new charge.
- 2C:29-3.2 Injuring a Service Animal or Guide Dog (6/9/14)**  
This is a new charge.
- 2C:29-3.2 Interfering with a Service Animal or Guide Dog (6/9/14)**  
This is a new charge.
- 2C:33-28 Solicitation, Recruitment to Join Criminal Street Gang (6/9/14)**  
This charge was revised to include the statutory amendment, which created the third degree crime for commission of this offense on school property.
- 2C:39-5a Unlawful Possession of a Machine Gun (5/12/14)**  
This is a new charge.
- 2C:40-26 Driving While License is Suspended or Revoked for DWI or Refusal to Submit to a Chemical Breath Test (6/9/14)**  
This is a new charge.

Questions regarding these new and revised model criminal jury charges and the criminal sample verdict sheets may be directed to Maria Pogue, Esq., Criminal Practice Division, Administrative Office of the Courts, Hughes Justice Complex, P.O. Box 982, Trenton, New Jersey 08625; telephone 609-633-2119.

/s/ Glenn A. Grant

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

Dated: July 7, 2014