

## 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 web site at <http://www.judiciary.state.nj.us/criminal/juryindx.pdf>.

#### Non 2C

##### **Flight (5/10/10)**

This charge was revised to add a reference in footnote 1 to State v. Horne, 376 N.J. Super. 201 (App. Div. 2001), which found that it is error to give a flight instruction simply because the defendant is being tried in absentia.

##### **Instructions After Jury Is Sworn (4/12/10)**

This charge was revised in accordance with the Assignment Judges memorandum, dated March 17, 2010, which promulgated a revised Judiciary policy that prohibits use of cell phones and other electronic devices by jurors when they are in courtrooms, deliberation rooms, or grand jury rooms.

##### **Preliminary Instructions to the Jury (6/14/10)**

This charge was revised to explain to jurors the purpose of voir dire and the process they will undergo.

##### **Statements of Defendant (6/14/10)**

This charge was revised in accordance with R. 3:17, which requires electronic recordation of a defendant's custodial interrogation in a place of detention. The term "recorded" has been included in the types of statements which may be utilized in a case.

##### **Witness-Failure of the State to Produce (6/14/10)**

This charge was revised to comply with the Supreme Court's opinion in State v. Hill, 199 N.J. 545 (2009), regarding the procedures which must be followed when a party seeks a charge on the State's failure to produce a witness.

##### **Witness – Failure of the Defendant to Produce (6/14/10)**

This new charge has been added to comply with the Supreme Court's opinion in State v. Hill, 199 N.J. 545 (2009), which sets forth the rare circumstances under which a failure to produce a witness charge can be given against a defendant.

Some minor typographical changes were made to this charge.

- 2C:11-4a(2) Manslaughter In Course of Eluding an Officer (4/12/10)**  
This charge was revised due to an amendment to the statute, which changed the offense from N.J.S.A. 2C:11-4b(3) to N.J.S.A. 2C:11-4a(2).
- 2C:15-1 Robbery in the First Degree (5/10/10)**  
This charge was revised to include information on State v. Rolon, 199 N.J. 575 (2009), which held that in a prosecution for first degree robbery involving a non-firearm weapon, “a defendant cannot be considered to have been ‘armed with a deadly weapon’ unless he had immediate access to the potential weapon and an intent to use it in a way that is capable of producing death or serious bodily injury.”
- 2C:18-2b Burglary in the Second Degree (4/12/10)**  
This charge was revised to include a reference to State v. Rolon, 199 N.J. 575 (2009) in footnote 13.
- 2C:21-1a Forgery (6/14/10)**  
This charge was revised to include that the forgery of a check or what purports to be a check is an offense under this statute. In addition, a footnote reference to State v. Felsen, 383 N.J. Super. 154 (App. Div. 2006) was added to the charge.
- 2C:21-4.6a(1)(2)(3) Insurance Fraud (6/14/10)**  
These are new model charges.
- 2C: 34-3c(1)(2) Obscenity for Persons Under 18 (Admitting to Exhibition of An Obscene Film) (4/12/10)**  
These are new model charges.

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

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

Dated: July 30, 2010