

## **Model Homicide Instructions**

### **List of Principal Revisions**

**April, 2018**

1. The instruction regarding the consequences of a verdict of not guilty by reason of lack of criminal responsibility includes a statement explaining that there is no limit to the number of renewed orders of commitment, so long as the defendant continues to be mentally ill and dangerous (Criminal Responsibility at pp. 10-12)<sup>1</sup>;

2. The joint venture instruction is modified in light of *Commonwealth v. Brown*, 477 Mass. 805 (2017), to state that where a defendant is charged with felony-murder, the Commonwealth must prove beyond a reasonable doubt that the defendant knowingly participated in the commission of the underlying life felony, that the defendant did so with the intent required to commit the underlying crime, and that the defendant had or shared the intent to kill, the intent to cause grievous bodily harm, or the intent to do an act which, in the circumstances known to the defendant, a reasonable person would have known created a plain and strong likelihood that death would result (Joint Venture at pp. 16-17);

3. The joint venture instruction includes an instruction to be given when there is evidence to support the defendant's claims of withdrawal from knowing participation in the crime, including where there is evidence of multiple crimes and the defendant withdrew from knowing participation in the commission of a subsequent crime after the defendant knowingly participated in the commission of an earlier crime (Joint Venture at pp. 18-20);

4. The self-defense instruction clarifies that a defendant may claim self-defense even if the defendant was the first to use force, where the defendant used non-deadly force and the deceased was the first to use deadly force (Self-Defense at p. 34);

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<sup>1</sup> Page references are to the Model Homicide Instructions dated April, 2018.

5. The first degree murder instructions include an instruction to be given where there is evidence of accident (Murder with Deliberate Premeditation at p. 45 and Murder with Extreme Atrocity or Cruelty at p. 53);

6. The first degree murder instructions include an instruction to be given where there is evidence of transferred intent (Murder with Deliberate Premeditation at pp. 45-46 and Murder with Extreme Atrocity or Cruelty at pp. 53-54);

7. The instructions regarding felony-murder in the first degree are wholly modified in light of *Brown, supra* (Felony-Murder in the First Degree at pp. 58-71);

8. In the 2013 instructions regarding felony-murder in the first degree, a note to the judge declared, "If there is evidence of self-defense or defense of another, the jury must be instructed that the Commonwealth is not required to prove that the defendant did not act in proper self-defense or proper defense of another to prove felony-murder. However, it may be necessary to instruct on self-defense in connection with the underlying felony." The current instructions provide in a note to the judge, "An instruction on self-defense is generally not warranted where the theory of murder is felony-murder alone, but might be warranted where the killing occurred during the defendant's escape or attempted escape, or where the defendant was unarmed and the victim was the first to use deadly force." (Felony-Murder in the First Degree at p. 60);

9. A note to the judge clarifies that, in light of *Brown, supra*, there is no longer a crime of second degree felony-murder, but instructs the judge that a defendant charged with murder in the first degree on a theory of felony-murder is likely to be entitled to an instruction of second degree murder as a lesser included offense to first degree murder based upon evidence that the defendant caused the victim's death with an intent that satisfied one or more of the three prongs of malice. The note also states that the defendant may also be entitled to an instruction on voluntary manslaughter or involuntary manslaughter if any view of the evidence supports these lesser included offenses (Felony-Murder in the First Degree at pp. 70-71);

10. The voluntary manslaughter instruction regarding mitigation due to heat of passion on reasonable provocation clarifies existing language relating to the circumstances in which spoken words and physical contact constitute reasonable provocation (Voluntary Manslaughter at pp. 77-78);

11. The instruction regarding involuntary manslaughter caused by wanton or reckless conduct states that the appropriate standard is wanton or reckless conduct, as opposed to wanton and reckless conduct (Involuntary Manslaughter Caused by Wanton or Reckless Conduct at pp. 84-99);

12. The instruction regarding involuntary manslaughter caused by wanton or reckless conduct includes an instruction to be given where there is evidence of mental impairment or evidence of consumption of alcohol or drugs (Involuntary Manslaughter Caused by Wanton or Reckless Conduct at pp. 91, 98-99);

13. A new supplemental instruction explains that all persons charged with murder who are fourteen years of age or older are tried as adults in Massachusetts (Charging a Minor with Murder at p. 104);

14. A new supplemental instruction is provided for instances when a jury reports a deadlock on murder in the first degree (Jury Reports Deadlock on Murder in the First Degree at pp. 107-108).