

**Report of the Committee on  
Model Jury Instructions on Homicide  
March 21, 2013**

In 1999, the Justices of the Supreme Judicial Court approved and recommended the use of Model Jury Instructions on Homicide. In 2010, the Justices created a new Committee on Model Jury Instructions on Homicide (Committee), and charged it with reviewing and updating the 1999 Model Jury Instructions. The Justices appointed the following judges to serve on the Committee:

Hon. Ralph Gants, Supreme Judicial Court (Committee Chair)  
Hon. Margot Botsford, Supreme Judicial Court  
Hon. John Corbett, Juvenile Court  
Hon. Kenneth Fishman, Superior Court  
Hon. Frank Gaziano, Superior Court  
Hon. Marianne Hinkle, District Court  
Hon. Diane Kottmyer, Superior Court  
Hon. David Poole, Boston Municipal Court

On March 16, 2012, the Committee published Proposed Revised Model Jury Instructions on Homicide and invited public comment. (Instructions on motor vehicle homicide were not included in that publication and are not a part of these Instructions.) The Committee received nine sets of comments, some of which contained many detailed suggestions. These comments were submitted by prosecutors, defense counsel, judges, and one bar association. Following receipt of these comments, the Committee carefully reviewed each suggestion or criticism received and made numerous revisions to the Instructions. In addition, the Committee made certain other revisions that were prompted by new case law.

As the Committee noted when it published its initial version for public comment, several goals motivated the Committee's work. These are:

- To update the jury instructions to reflect current constitutional, statutory, and case law, and provide explanatory comments and citations to relevant precedent. The instructions are intended to reflect the law of murder, not revise it, and detailed citations have been provided in support of each instruction;

- To tie together cohesively and in a logical order the crimes charged, lesser included offenses, and common defenses so that juries will better understand the instructions. While the Committee has aimed for clarity and precision, it concluded that it could not reasonably aspire to transform the homicide instructions into "plain language." The Commonwealth's law of murder is too complex to permit plain language as to many issues relevant to homicide; and
- To use words consistent with their ordinary meaning where the legal definition of a term differs from the ordinary meaning. For example, the Committee no longer uses the term "malice" because its legal meaning differs from its lay meaning, and its legal meaning for murder in the first degree with deliberate premeditation differs from its legal meaning for murder in the first degree with extreme atrocity or cruelty and murder in the second degree. The Committee has not replaced other legal terminology (e.g. "wanton and reckless," "heat of passion") because these terms, while archaic, are used consistently with their ordinary meaning.

The Committee has strived to minimize repetition in these instructions where possible. The Committee therefore includes detailed instructions on certain issues (e.g. criminal responsibility, joint venture, self-defense and defense of another) before the instructions on the applicable murder charge.

To assist jurors to understand these Model Jury Instructions on Homicide, the Committee has also prepared a "chalk" that summarizes the requirements of proof in cases of first degree murder, second degree murder, and manslaughter. The Committee recommends that judges provide jurors with a chalk appropriately modified to the particular case, a recording of the judge's charge, and a written copy of the charge where one is available.

Because these Model Jury Instructions on Homicide reflect existing law, they will be reviewed and revised by the Supreme Judicial Court as the law develops or changes. Comments regarding these model instructions may be sent to [modelhomicide@sjc.state.ma.us](mailto:modelhomicide@sjc.state.ma.us) and will be considered in future revisions of these instructions.