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44 **CPJC 19.1** **Instructions where Victim Is Unborn Child**

45 The homicide offenses require proof that the accused caused the death of “an indi-
46 vidual.” “Individual” is defined by Tex. Penal Code § 1.07(a)(26) as including “an un-
47 born child at every state of gestation from fertilization until birth.” If the indictment
48 alleges the victim of the charged offense was an unborn child, the instructions must
49 incorporate that specification of the charging instrument. Often this will require that
50 the application portion of the instruction specify that the defendant must be proved to
51 have caused the death of “an unborn child of [*name of mother*] while that unborn child
52 was in gestation of [*name of mother*].” This sort of description of this kind of victim in
53 the charging instrument is apparently adequate to provide the accused with the required
54 notice. *Lawrence v. State*, 240 S.W.3d 912, 916–17 (Tex. Crim. App. 2007), *cert. de-*
55 *nied*, 553 U.S. 1007 (2008).

56 Section 1.07(a)(49) further defines “death,” as applied to an unborn child, as “the
57 failure to be born alive.” This definition would be properly included in a homicide case
58 in which the victim is an unborn child.

59 CPJC 19.2 **Instruction—Murder—Knowingly or Intentionally**

60 **LAW SPECIFIC TO THIS CASE**

61 The state accuses the defendant of having committed the offense of murder.

62 **Relevant Statutes**

63 A person commits the offense of murder if the person intentionally or know-
64 ingly causes the death of an individual.

65 *[Include the following if an instruction on causation is appropriate*
66 *but no issue of concurrent causation is raised by the facts.]*

67 A person causes the death of another if, but for the person's conduct, the death
68 of the other would not have occurred.

69 *[Include the following if the facts raise an issue*
70 *concerning concurrent causation.]*

71 A person causes the death of another if, but for the person's conduct operating
72 either alone or concurrently with another cause, the death of the other would not
73 have occurred, unless the concurrent cause was clearly sufficient to produce the
74 result and the conduct of the person was clearly insufficient.

75 **Definitions**

76 *Intentionally Causing the Death of an Individual*

77 A person intentionally causes the death of an individual if the person has the
78 conscious objective or desire to cause that death.

79 *Knowingly Causing the Death of an Individual*

80 A person knowingly causes the death of an individual if the person is aware
81 that his conduct is reasonably certain to cause that death.

82 **Application of Law to Facts**

83 You must determine whether the state has proved, beyond a reasonable doubt,
84 two elements. The elements are that—

85 1. the defendant, in [*county*] County, Texas, on
86 or about [*date*], caused the death of [*name*] [*insert specific allegations, e.g.,*
87 by shooting [*name*] with a gun]; and

88 2. the defendant did this either intentionally or
89 knowingly.

90 You must all agree on elements 1 and 2 listed above.

91 If you all agree the state has failed to prove, beyond a reasonable doubt, one
92 or both of elements 1 and 2 listed above, you must find the defendant “not
93 guilty.”

94 If you all agree the state has proved, beyond a reasonable doubt, both of the
95 two elements listed above, you must find the defendant “guilty.”

96 *[Insert any other instructions raised by the evidence. Then continue with the*
97 *verdict form found in CPJC 2.1, the general charge.]*

98 **COMMENT**

99 Murder is prohibited by and defined in Tex. Penal Code § 19.02. The definitions of
100 culpable mental states are derived from Tex. Penal Code § 6.03.

101 Several court of criminal appeals decisions suggest that a defendant acts with the
102 culpable mental state required for this kind of murder if, with “a conscious disregard
103 for life,” the defendant intentionally engages in high-risk activity such as initiating a
104 gunfight with police officers. *Blansett v. State*, 556 S.W.2d 322, 325–26 (Tex. Crim.
105 App. 1977) (relying on *People v. Gilbert*, 408 P.2d 365, 373 (Cal. 1965), *rev’d on other*
106 *grounds*, 388 U.S. 263 (1967)); *Dowden v. State*, 758 S.W.2d 264 (Tex. Crim. App.
107 1988) (reaffirming *Blansett* and holding that the defendant caused the officer’s death,
108 even though the officer was shot by a fellow officer during gun battle occurring when
109 defendants raided a jail facility to free a prisoner).

110 *Blansett* and *Dowden* were sufficiency-of-the-evidence cases. Apparently, no effort
111 has been made to incorporate what might be their “holding” into jury instructions per-
112 mitting conviction for intentional murder on a theory of intentionally engaging in ac-
113 tivity involving a high risk to human life. The Committee was not certain about the
114 current significance of these decisions but concluded that they should not be incorpo-
115 rated into jury instructions on intentional murder.

116 CPJC 19.3 **Instruction—Murder—Intent to Cause Serious**
117 **Bodily Injury**

118 **LAW SPECIFIC TO THIS CASE**

119 The state accuses the defendant of having committed the offense of murder.

120 **Relevant Statutes**

121 A person commits the offense of murder if the person intends to cause serious
122 bodily injury and commits an act clearly dangerous to human life that causes
123 the death of an individual.

124 *[Include the following if an instruction on causation is appropriate*
125 *but no issue of concurrent causation is raised by the facts.]*

126 A person causes the death of another if, but for the person’s conduct, the death
127 of the other would not have occurred.

128 *[Include the following if the facts raise an issue*
129 *concerning concurrent causation.]*

130 A person causes the death of another if, but for the person’s conduct operating
131 either alone or concurrently with another cause, the death of the other would not
132 have occurred, unless the concurrent cause was clearly sufficient to produce the
133 result and the conduct of the person was clearly insufficient.

134 **Definitions**

135 *Intent to Cause Serious Bodily Injury*

136 A person intends to cause serious bodily injury to another if it is the person’s
137 conscious objective or desire to cause the serious bodily injury to another.

138 *Bodily Injury*

139 “Bodily injury” means physical pain, illness, or any impairment of physical
140 condition.

141 *Serious Bodily Injury*

142 “Serious bodily injury” means bodily injury that creates a substantial risk of
143 death or that causes death, serious permanent disfigurement, or protracted loss
144 or impairment of the function of any bodily member or organ.

145 **Application of Law to Facts**

146 You must determine whether the state has proved, beyond a reasonable doubt,
147 three elements. The elements are that—

148 1. the defendant, in [*county*] County, Texas, on
149 or about [*date*], committed an act clearly dangerous to human life [*insert spe-*
150 *cific allegations, e.g., by stabbing [name] in the neck with a knife*]; and

151 2. the defendant’s act caused the death of
152 [*name*]; and

153 3. the defendant intended to cause serious bod-
154 ily injury. .

155 You must all agree on elements 1, 2, and 3 listed above.

156 If you all agree the state has failed to prove, beyond a reasonable doubt, one
157 or more of elements 1, 2, and 3 listed above, you must find the defendant “not
158 guilty.”

159 If you all agree the state has proved, beyond a reasonable doubt, each of the
160 three elements listed above, you must find the defendant “guilty.”

161 [*Insert any other instructions raised by the evidence. Then continue with the*
162 *verdict form found in CPJC 2.1, the general charge.*]

163 **COMMENT**

164 Murder is prohibited by and defined in Tex. Penal Code § 19.02. The definition of
165 “bodily injury” is from Tex. Penal Code § 1.07(a)(8). The definition of “serious bodily
166 injury” is from Tex. Penal Code § 1.07(a)(46).

167 CPJC 19.4 **Instruction—Murder—Intentionally/Knowingly or**
168 **Intent to Cause Serious Bodily Injury**

169 **LAW SPECIFIC TO THIS CASE**

170 The state accuses the defendant of having committed the offense of murder
171 by one of two alternative manners.

172 **Relevant Statutes**

173 A person commits the offense of murder if the person (1) intentionally or
174 knowingly causes the death of an individual or (2) intends to cause serious bod-
175 ily injury and commits an act clearly dangerous to human life that causes the
176 death of an individual.

177 *[Include the following if an instruction on causation is appropriate*
178 *but no issue of concurrent causation is raised by the facts.]*

179 A person causes the death of another if, but for the person’s conduct, the death
180 of the other would not have occurred.

181 *[Include the following if the facts raise an issue*
182 *concerning concurrent causation.]*

183 A person causes the death of another if, but for the person’s conduct operating
184 either alone or concurrently with another cause, the death of the other would not
185 have occurred, unless the concurrent cause was clearly sufficient to produce the
186 result and the conduct of the person was clearly insufficient.

187 **Definitions**

188 *Intentionally Causing the Death of an Individual*

189 A person intentionally causes the death of an individual if the person has the
190 conscious objective or desire to cause that death.

191 *Knowingly Causing the Death of an Individual*

192 A person knowingly causes the death of an individual if the person is aware
193 that his conduct is reasonably certain to cause that death.

194 *Intent to Cause Serious Bodily Injury*

195 A person intends to cause serious bodily injury to another if it is the person's
196 conscious objective or desire to cause the serious bodily injury to another.

197 *Bodily Injury*

198 "Bodily injury" means physical pain, illness, or any impairment of physical
199 condition.

200 *Serious Bodily Injury*

201 "Serious bodily injury" means bodily injury that creates a substantial risk of
202 death or that causes death, serious permanent disfigurement, or protracted loss
203 or impairment of the function of any bodily member or organ.

204 **Application of Law to Facts**

205 You must determine whether the state has proved, beyond a reasonable doubt,
206 two elements. The elements are that—

207 1. the defendant, in [county] County, Texas, on
208 or about [date], caused the death of [name] [insert specific allegations, e.g.,
209 by shooting [name] with a gun]; and

210 2.

211 a. the defendant did this intentionally or know-
212 ingly; or

213 b. the defendant intended to cause serious bod-
214 ily injury and committed an act clearly dangerous to
215 human life that caused the death of [name].

216 You must all agree on elements 1 and 2 listed above, but you do not have to
217 agree on which of elements 2.a or 2.b that the state may have proven beyond a
218 reasonable doubt.

219 If you all agree the state has failed to prove beyond a reasonable doubt, one
220 or more of elements 1 and 2, you must find the defendant "not guilty."

221 If you all agree the state has proved, beyond a reasonable doubt, each of the
222 two elements listed above, you must find the defendant "guilty."

223 *[Insert any other instructions raised by the evidence. Then continue with the*
224 *verdict form found in CPJC 2.1, the general charge.]*

225 **COMMENT**

226 Murder is prohibited by and defined in Tex. Penal Code § 19.02. The definition of
227 “bodily injury” is from Tex. Penal Code § 1.07(a)(8). The definition of “serious bodily
228 injury” is from Tex. Penal Code § 1.07(a)(46).

229 CPJC 19.5 **Instruction—Murder (Felony Murder)**

230 **LAW SPECIFIC TO THIS CASE**

231 The state accuses the defendant of having committed the offense of murder.

232 **Relevant Statutes**

233 A person commits the offense of murder if the person commits or attempts to
234 commit a felony, other than manslaughter, and in the course of and in further-
235 ance of the commission or attempt, or in immediate flight from the commission
236 or attempt, he commits or attempts to commit an act clearly dangerous to human
237 life that causes the death of an individual.

238 *[Insert statutes based on specific felony allegations, e.g., A person commits*
239 *the offense of felony injury to a child if he intentionally, knowingly, or reck-*
240 *lessly, by an act, causes bodily injury to a child fourteen years old or younger.]*

241 *[Insert specific felony alleged in the indictment, e.g., Injury to a child]* is a
242 felony other than manslaughter.

243 *[Include the following if an instruction on causation is appropriate*
244 *but no issue of concurrent causation is raised by the facts.]*

245 A person causes the death of another if, but for the person's conduct, the death
246 of the other would not have occurred.

247 *[Include the following if the facts raise an issue*
248 *concerning concurrent causation.]*

249 A person causes the death of another if, but for the person's conduct operating
250 either alone or concurrently with another cause, the death of the other would not
251 have occurred, unless the concurrent cause was clearly sufficient to produce the
252 result and the conduct of the person was clearly insufficient.

253 **Definitions**

254 *[Include definition(s) of the felony or felonies alleged in the*
255 *indictment, such as the following.]*

256 *Felony Injury to a Child*

257 The felony of “injury to a child” has four elements. The elements are that—

- 258 1. the defendant engaged in an act;
259 2. the defendant by this act caused bodily in-
260 jury to another person;
261 3. the person injured was a child fourteen years
262 old or younger; and
263 4. the defendant intentionally, knowingly, or
264 recklessly caused bodily injury to the child.

265 *Intentionally Causing Bodily Injury*

266 A person intentionally causes bodily injury to another if it is the person’s
267 conscious objective or desire to cause the bodily injury to another.

268 *Knowingly Causing Bodily Injury*

269 A person knowingly causes bodily injury to another if the person is aware
270 that the person’s conduct is reasonably certain to cause the bodily injury to an-
271 other.

272 *Recklessly Causing Bodily Injury*

273 A person recklessly causes bodily injury to another if the person is aware of
274 but consciously disregards a substantial and unjustifiable risk that the person’s
275 action will cause bodily injury to another. The risk must be of such a nature and
276 degree that its disregard constitutes a gross deviation from the standard of care
277 that an ordinary person would exercise under all the circumstances as viewed
278 from the actor’s standpoint.

279 *Bodily Injury*

280 “Bodily injury” means physical pain, illness, or any impairment of physical
281 condition.

282 *Attempt to Commit a Felony*

283 A person attempts to commit a felony when, with specific intent to commit
284 the felony, he does an act amounting to more than mere preparation that tends
285 but fails to effect the commission of the felony intended.

286 **Application of Law to Facts**

287 You must determine whether the state has proved, beyond a reasonable doubt,
288 three elements. The elements are that—

289 1. the defendant, in [county] County, Texas, on
290 or about [date], committed or attempted to commit [insert specific felony,
291 e.g., injury to a child by intentionally, knowingly, or recklessly causing bod-
292 ily injury] [insert specific allegations, e.g., by hitting [name], a child fourteen
293 years old or younger, with a blunt object]; and

294 2. in the course of and in furtherance of the
295 commission or attempt, or in immediate flight from the commission or at-
296 tempt of [insert specific felony, e.g., injury to a child], the defendant commit-
297 ted or attempted to commit an act clearly dangerous to human life [insert
298 specific act, e.g., by hitting [name] with a blunt object]; and

299 3. the act clearly dangerous to human life
300 caused the death of [name].

301 You are instructed that [insert specific felony alleged in the indictment, e.g.,
302 injury to a child] is a felony other than manslaughter.

303 You must all agree on elements 1, 2, and 3 listed above.

304 If you all agree the state has failed to prove, beyond a reasonable doubt, one
305 or more of elements 1, 2, and 3 listed above, you must find the defendant “not
306 guilty.”

307 If you all agree the state has proved, beyond a reasonable doubt, each of the
308 three elements listed above, you must find the defendant “guilty.”

309 *[Include the following if applicable.]*

310 This case alleges that the defendant committed or attempted to commit mul-
311 tiple felonies. You need not be unanimous about which of the named felonies
312 constitutes the felony referred to in elements 1 and 2 listed above, as long as
313 every juror finds that the state has proved, beyond a reasonable doubt, that the
314 defendant committed “a felony.”

315 [Insert any other instructions raised by the evidence. Then continue with the
316 verdict form found in CPJC 2.1, the general charge.]

317 **COMMENT**

318 The court of criminal appeals has determined that the underlying felony for a felony
319 murder conviction and the act that constitutes “an act clearly dangerous to human life”
320 under Texas Penal Code section 19.02(b)(3) can be the same act. *Johnson v. State*, 4
321 S.W.3d 254, 258 (Tex. Crim. App. 1999) (defendant’s felony murder conviction was
322 properly predicated on offense of injury to a child, in violation of Penal Code section
323 22.04, even though defendant’s acts of hitting child victim with deadly weapon, which
324 formed offense of injury to a child, were same acts relied on by state to prove defend-
325 ant’s commission of “an act clearly dangerous to human life” under felony murder pro-
326 vision). The court in *Johnson* expressly disavowed “our overly broad statement in *Gar-*
327 *rett* that in order to support a conviction under the felony murder provision, ‘[t]here
328 must be a showing of felonious criminal conduct other than the assault causing the
329 homicide.’ ” *Johnson*, 4 S.W.3d at 258 (quoting *Garrett v. State*, 573 S.W.2d 543, 546
330 (Tex. Crim. App. 1978)). *Garrett* was limited to the proposition that a conviction for
331 felony murder will not stand when the underlying felony is manslaughter or a lesser
332 included offense of manslaughter.

333 Whether a felony is a lesser included offense of manslaughter is determined by ap-
334 plying Texas Code of Criminal Procedure article 37.09. The court of criminal appeals
335 has strictly construed the lesser-included analysis and found several offenses not to
336 constitute lesser included offenses of manslaughter for purposes of the felony-murder
337 statute. For example, an intentional and knowing aggravated assault, in violation of
338 Penal Code sections 22.01(a)(1) and 22.02(a), is not a lesser included offense of man-
339 slaughter and therefore can serve as the predicate offense for a felony murder. *Lawson*
340 *v. State*, 64 S.W.3d 396 (Tex. Crim. App. 2001). “Because the victim’s status as a child
341 is necessarily an element of the offenses of injury to a child and child endangerment,
342 and that element is not within (or deducible from) the statutory elements of manslaugh-
343 ter, the offenses of injury to a child and child endangerment are never lesser-included
344 offenses of manslaughter for the purpose of the felony-murder statute’s manslaughter
345 exclusion.” *Fraser v. State*, 583 S.W.3d 564, 565 (Tex. Crim. App. 2019). Felony DWI,
346 in violation of Penal Code section 49.02, is not a lesser included offense of manslaugh-
347 ter and therefore can be the underlying felony in a felony-murder prosecution. *Lomax*
348 *v. State*, 233 S.W.3d 302 (Tex. Crim. App. 2007).

349 The court has also held that the felony-murder statute itself plainly dispenses with a
350 culpable mental state. *Lomax*, 233 S.W.3d at 304–07 (reversing in part *Rodriguez v.*
351 *State*, 548 S.W.2d 26 (Tex. Crim. App. 1977)). Whether the underlying felony requires

352 a culpable mental state depends on that felony itself; felony DWI plainly dispenses with
353 proof of a culpable mental state. *Lomax*, 233 S.W.3d at 304 n.6, 307.

354 The court of criminal appeals held that when an indictment for felony murder alleges
355 multiple predicate felonies, the specifically named felonies are not elements about
356 which a jury must be unanimous, but rather the named felonies constitute the manner
357 or means that make up the “felony” element of felony murder. *White v. State*, 208
358 S.W.3d 467 (Tex. Crim. App. 2006) (where evidence showed that appellant caused
359 victim’s death during high-speed chase with police, jury need not be unanimous about
360 whether defendant committed state-jail felony of unauthorized use of a vehicle or state-
361 jail felony of evading arrest or detention in vehicle). The *White* court further held that
362 due process was not violated by dispensing with unanimity because the two underlying
363 felonies in that case were “basically morally and conceptually equivalent.” *White*, 208
364 S.W.3d at 469 (citing *Jefferson v. State*, 189 S.W.3d 305, 313–14 (Tex. Crim. App.
365 2006) (Cochran, J., concurring)).

366 Venue is appropriate either in the county in which the act occurred or the county in
367 which the victim died. *See* Tex. Code Crim. Proc. art. 13.07. The above charge assumes
368 that the case is being charged where the felony occurred. If the case is brought where
369 the victim died, and this is a different county than that in which the act occurred, the
370 first and third paragraphs of the application of law to facts unit should be modified.

371 The definition of “bodily injury” is provided in Penal Code section 1.07(a)(8). The
372 culpable mental states are detailed in Penal Code section 6.03.

373 The Committee has not provided a definition of “act clearly dangerous to human
374 life” because it could find no definitive decision approving one. A court does not err in
375 refusing to instruct the jury on a term left undefined by the legislature if the terms have
376 a common and ordinary meaning. *See Depauw v. State*, 658 S.W.2d 628, 634–35 (Tex.
377 App.—Amarillo 1983, pet. ref’d) (holding that the term “act clearly dangerous to hu-
378 man life” is not a special or technical term which a jury is incapable of understanding
379 absent court instruction, so the court did not err in refusing to instruct the jury on that
380 term). In addition, the court of criminal appeals has distinguished *acts*, for which a
381 person can be liable for felony murder, from *omissions*, for which one cannot, and
382 practitioners are cautioned to be mindful of the distinction. *See Rodriguez v. State*, 454
383 S.W.3d 503 (Tex. Crim. App. 2014, on reh’g, Feb. 25, 2015).

384 CPJC 19.9 **Instruction—Capital Murder—Murder of Peace**
385 **Officer or Fireman**

386 **LAW SPECIFIC TO THIS CASE**

387 The state accuses the defendant of having committed the offense of capital
388 murder.

389 **Relevant Statutes**

390 A person commits the offense of capital murder if the person intentionally or
391 knowingly causes the death of an individual who is a [peace officer/fireman]
392 acting in the lawful discharge of an official duty and who the person knows is a
393 [peace officer/fireman].

394 *[Include the following if an instruction on causation is appropriate*

395 *but no issue of concurrent causation is raised by the facts.]*

397 A person causes the death of another if, but for the person’s conduct, the death
398 of the other would not have occurred.

399 *[Include the following if the facts raise an issue*

400 *concerning concurrent causation.]*

402 A person causes the death of another if, but for the person’s conduct operating
403 either alone or concurrently with another cause, the death of the other would not
404 have occurred, unless the concurrent cause was clearly sufficient to produce the
405 result and the conduct of the person was clearly insufficient.

406 **Definitions**

407 *Intentionally Causing the Death of an Individual*

408 A person intentionally causes the death of an individual if the person has the
409 conscious objective or desire to cause that death.

410 *Knowingly Causing the Death of an Individual*

411 A person knowingly causes the death of an individual if the person is aware
412 that his conduct is reasonably certain to cause that death.

413 *Peace Officer*

414 “Peace officer” includes [*specify, e.g., police officers of an incorporated city,*
415 *town, or village and reserve municipal police officers who hold a permanent*
416 *peace officer license*].

417 *Knows an Individual is a [Peace Officer/Fireman]*

418 A person knows an individual is a [peace officer/fireman] if the person is
419 aware that the person is a [peace officer/fireman].

420 **Application of Law to Facts**

421 You must determine whether the state has proved, beyond a reasonable doubt,
422 four elements. The elements are that—

423 1. the defendant, in [*county*] County, Texas, on
424 or about [*date*], intentionally or knowingly caused the death of [*name*] [*insert*
425 *specific allegations, e.g., by shooting [name] with a gun*];

426 2. [*name*] was a [peace officer/fireman];

427 3. [*name*] was acting in the lawful discharge of
428 an official duty; and

429 4. the defendant knew [*name*] was a [peace of-
430 ficer/fireman].

431 You must all agree on elements 1, 2, 3, and 4 listed above.

432 If you all agree the state has failed to prove, beyond a reasonable doubt, one
433 or more of elements 1, 2, 3, and 4 listed above, you must find the defendant “not
434 guilty.”

435 If you all agree the state has proved, beyond a reasonable doubt, all of the
436 four elements listed above, you must find the defendant “guilty.”

437 [*Insert any other instructions raised by the evidence. Then continue with the*
438 *verdict form found in CPJC 2.1, the general charge.*]

COMMENT

439

440 Murder of a peace officer or fireman is prohibited by and defined in Tex. Penal Code
441 § 19.03(a)(1). The definition of “peace officer” is from Tex. Penal Code § 1.07(a)(36).
442 The definitions of culpable mental states are derived from Tex. Penal Code § 6.03.

443 **Definition of “In the Lawful Discharge of an Official Duty.”** The court of crim-
444 inal appeals has noted that—

445 the case law from this Court plainly holds that, for purposes of Section
446 19.03(a)(1) of the Penal Code, an officer acts in the lawful discharge of his
447 official duties so long as he is on duty and in uniform; the fact that he may
448 be effectuating an unconstitutional arrest, or a lawful arrest in an improper
449 or unlawful manner, does not mean he is not acting in the lawful discharge
450 of an official duty.

451 *Ruiz v. State*, No. AP-75,968, 2011 WL 1168414, at *2 (Tex. Crim. App. Mar. 2, 2011)
452 (unpublished) (citing *Montoya v. State*, 744 S.W.2d 15, 29–30 (Tex. Crim. App. 1987);
453 *Guerra v. State*, 771 S.W.2d 453, 460–61 (Tex. Crim. App. 1988); *Hughes v. State*, 897
454 S.W.2d 285, 297–98 (Tex. Crim. App. 1994)).

455 The court of criminal appeals has concluded that the statutory phrase is not uncon-
456 constitutionally vague and appears to have held that a trial court did not err in failing to
457 define it. *Mays v. State*, 318 S.W.3d 368, 389 (Tex. Crim. App. 2010) (“[T]he phrase
458 ‘lawful discharge of an official duty’ is not statutorily defined, but it does have an ordi-
459 nary meaning that jurors can apply using their own common sense.”).

460 The court’s definition of the phrase is perhaps counterintuitive, given that under this
461 definition an officer can be acting “in the lawful discharge of an official duty” even if
462 the officer is conducting an unlawful arrest or search. Some members of the Committee
463 believed an instruction simply providing the statutory language would sometimes fail
464 to convey to jurors the true state of the applicable law.

465 Nevertheless, the Committee concluded that the *Mays* discussion indicated the
466 court’s view that an instruction attempting to embody that definition would not be ap-
467 propriate. Consequently, the instruction contains no such definition.

468 **Specification of Lawful Duty.** The charging instrument probably need not spec-
469 ify the lawful duty the victim was discharging at the time the victim was killed. *See*
470 *Moreno v. State*, 721 S.W.2d 295, 299 (Tex. Crim. App. 1986); *Aranda v. State*, 640
471 S.W.2d 766, 770 (Tex. App.—San Antonio 1982). Nevertheless, capital murder indict-
472 ments sometimes do so. If in a specific case this is done, the application of law to facts
473 unit of the instruction should incorporate that specification. *Cf. Nethery v. State*, 692
474 S.W.2d 686, 704 (Tex. Crim. App. 1985) (instruction required prosecution to prove
475 deceased was “acting in the lawful discharge of an official duty, namely: investigation
476 of a parked vehicle while the said J.T. McCarthy was on radio patrol”).

477 CPJC 19.10 **Instruction—Capital Murder—Murder in the**
478 **Course of Committing a Specified Offense**

479 **LAW SPECIFIC TO THIS CASE**

480 The state accuses the defendant of having committed the offense of capital
481 murder.

482 **Relevant Statutes**

483 A person commits the offense of capital murder if the person intentionally
484 causes the death of an individual in the course of committing or attempting to
485 commit [kidnapping/burglary/robbery/aggravated sexual assault/arson/obstruc-
486 tion or retaliation/terroristic threat].

487 *[Include the following if an instruction on causation is appropriate*

488 *but no issue of concurrent causation is raised by the facts.]*

490 A person causes the death of another if, but for the person’s conduct, the death
491 of the other would not have occurred.

492 *[Include the following if the facts raise an issue*

493 *concerning concurrent causation.]*

495 A person causes the death of another if, but for the person’s conduct operating
496 either alone or concurrently with another cause, the death of the other would not
497 have occurred, unless the concurrent cause was clearly sufficient to produce the
498 result and the conduct of the person was clearly insufficient.

499 **Definitions**

500 *Intentionally Causing the Death of an Individual*

501 A person intentionally causes the death of an individual if the person has the
502 conscious objective or desire to cause that death.

503 *[Include definition(s) related to the*
504 *offense(s) defendant was committing or attempting to commit, such as the fol-*
505 *lowing.]*

506 *Robbery*

507 A person commits of offense of robbery if, in the course of committing or
508 attempting to commit theft and with intent to obtain or maintain control of the
509 property, the person either—

- 510 1. intentionally, knowingly, or recklessly
511 causes bodily injury to another; or
- 512 2. intentionally or knowingly threatens or
513 places another in fear of imminent bodily injury or death.

514 *In the Course of Committing or Attempting to Commit Theft*

515 “In the course of committing or attempting to commit theft” means conduct
516 that occurs in an attempt to commit, during the commission of, or in immediate
517 flight after the attempt or commission of theft.

518 *Theft*

519 A person commits the offense of theft if—

- 520 1. the person appropriates property;
- 521 2. this appropriation was unlawful, in that it
522 was without the property owner’s effective consent, and
- 523 3. the person did this with intent to deprive the
524 owner of the property.

525 *Attempt to Commit Theft*

526 A person attempts to commit theft if the person, with the specific intent to
527 commit theft, does an act amounting to more than mere preparation that tends
528 but fails to effect a theft.

529 **Application of Law to Facts**

530 You must determine whether the state has proved, beyond a reasonable doubt,
531 two elements. The elements are that—

532 1. the defendant, in [*county*] County, Texas, on
533 or about [*date*], intentionally caused the death of [*name*] [*insert specific alle-*
534 *gations, e.g., by shooting [name] with a gun*]; and

535 2. this was done in the course of committing or
536 attempting to commit [*kidnapping/burglary/robbery/aggravated sexual as-*
537 *sault/arson/obstruction or retaliation/terroristic threat*].

538 You must all agree on elements 1 and 2 listed above.

539 If you all agree the state has failed to prove, beyond a reasonable doubt, one
540 or both of elements 1 and 2 listed above, you must find the defendant “not
541 guilty.”

542 If you all agree the state has proved, beyond a reasonable doubt, both of the
543 two elements listed above, you must find the defendant “guilty.”

544 *[Insert any other instructions raised by the evidence. Then continue with the*
545 *verdict form found in CPJC 2.1, the general charge.]*

546 **COMMENT**

547 Murder in the course of committing a specified offense is prohibited by and defined
548 in Tex. Penal Code § 19.03(a)(2). The definition of “intentionally causing the death of
549 an individual” is based on Tex. Penal Code § 6.03(a).

550 **Defining “In the Course of Committing or Attempting to Commit [*Listed Of-***
551 ***fense*].”** The Committee’s instruction includes no definition of “in the course of com-
552 mitting or attempting to commit [*listed offense*].” This is despite the inclusion of a def-
553 inition of the term “in the course of committing theft” as that term is used in robbery.
554 “In the course of committing theft” is statutorily defined (in Tex. Penal Code
555 § 29.01(1)), while the Penal Code contains no definition of “in the course of commit-
556 ting or attempting to commit [*one of the offenses listed in Texas Penal Code section*
557 *19.03(a)(2)*].” The Committee does not believe the courts have authority to develop
558 and provide juries with a definition of the term used in section 19.02(a)(2) along the
559 lines of the somewhat similar term used and defined in the robbery statutes.

560 **Unanimity as to Specified Offense.** If the charging instrument alleges in the al-
561 ternative more than one of the specified offenses, the instructions should inform the
562 jury they do not have to be unanimous as to the specified offense. *See, e.g., Gardner v.*

563 *State*, 306 S.W.3d 274, 302 (Tex. Crim. App. 2009) (“The jury charge properly set out
564 the underlying felonies of burglary and retaliation in the disjunctive, and the jury did
565 not need to be unanimous concerning which felony appellant was in the course of com-
566 mitting.”) (citing *Kitchens v. State*, 823 S.W.2d 256, 257–58 (Tex. Crim. App. 1991)
567 (en banc)).

568 CPJC 19.11 **Instruction—Capital Murder—Murder for**
569 **Remuneration**

570 **LAW SPECIFIC TO THIS CASE**

571 The state accuses the defendant of having committed the offense of capital
572 murder.

573 **Relevant Statutes**

574 A person commits the offense of capital murder if the person intentionally or
575 knowingly causes the death of an individual for [remuneration/the promise of
576 remuneration].

577 *[Include the following if an instruction on causation is appropriate*

578 *but no issue of concurrent causation is raised by the facts.]*

580 A person causes the death of another if, but for the person’s conduct, the death
581 of the other would not have occurred.

582 *[Include the following if the facts raise an issue*

583 *concerning concurrent causation.]*

585 A person causes the death of another if, but for the person’s conduct operating
586 either alone or concurrently with another cause, the death of the other would not
587 have occurred, unless the concurrent cause was clearly sufficient to produce the
588 result and the conduct of the person was clearly insufficient.

589 **Definitions**

590 *Intentionally Causing the Death of an Individual*

591 A person intentionally causes the death of an individual if the person has the
592 conscious objective or desire to cause that death.

593 *Knowingly Causing the Death of an Individual*

594 A person knowingly causes the death of an individual if the person is aware
595 that his conduct is reasonably certain to cause that death.

596 **Application of Law to Facts**

597 You must determine whether the state has proved, beyond a reasonable doubt,
598 two elements. The elements are that—

599 1. the defendant, in [county] County, Texas, on
600 or about [date], intentionally or knowingly caused the death of [name] [insert
601 specific allegations, e.g., by shooting [name] with a gun]; and

602 2. this was done for [remuneration/the promise
603 of remuneration] from [name].

604 You must all agree on elements 1 and 2 listed above.

605 If you all agree the state has failed to prove, beyond a reasonable doubt, one
606 or both of elements 1 and 2 listed above, you must find the defendant “not
607 guilty.”

608 If you all agree the state has proved, beyond a reasonable doubt, both of the
609 two elements listed above, you must find the defendant “guilty.”

610 *[Insert any other instructions raised by the evidence. Then continue with the*
611 *verdict form found in CPJC 2.1, the general charge.]*

612 **COMMENT**

613 Murder for remuneration is prohibited by and defined in Tex. Penal Code
614 § 19.03(a)(3). The definitions of culpable mental states are derived from Tex. Penal
615 Code § 6.03.

616 **Defining Remuneration.** The court of criminal appeals addressed the meaning of
617 remuneration for purposes of reviewing the sufficiency of the evidence in two leading
618 cases, *Beets v. State*, 767 S.W.2d 711 (Tex. Crim. App. 1987) (opinion on rehearing),
619 and *Rice v. State*, 805 S.W.2d 432, 434–35 (Tex. Crim. App. 1991).

620 Together, *Beets* and *Rice* establish that although proof of a “promise of remunera-
621 tion” may be sufficient, it is not necessary. Evidence failing to show a promise may
622 nevertheless prove that the defendant acted “for remuneration” within the meaning of
623 the statute.

624 Whether a murder is committed “for remuneration” depends on the defendant’s
625 mental state. The issue is whether the defendant acted “in the expectation of receiving
626 some benefit or compensation.” *Rice*, 805 S.W.2d at 434 (quoting *Beets*, 767 S.W.2d at
627 735).

628 On rehearing in *Beets*, contrary to the majority’s position on initial submission, the
629 court held that—

630 [T]he definition of “remuneration” does not mandate the narrow construc-
631 tion requiring salary, payment, or reward paid to an agent by his principal
632 as in a strict murder for hire situation. Remunerate encompasses a broad
633 range of situations, including compensation for loss or suffering and the idea
634 of a reward given or received because of some act.

635 *Beets*, 767 S.W.2d at 734.

636 *Rice* established that the expected benefit cannot be too intangible. Thus proof that
637 the defendant killed the victim primarily because the victim was a “snitch” but second-
638 arily because killing the victim would assure the defendant’s continuing receipt of the
639 benefits of membership in a prison gang was insufficient. More specifically, proof that
640 the defendant expected an increase in status within the gang would not have been suf-
641 ficient because such an increase in status “is too intangible to satisfy the remuneration
642 element.” *Rice*, 805 S.W.2d at 435.

643 Jury instructions have sometimes included definitions of remunerations. In *Speer v.*
644 *State*, 890 S.W.2d 87, 91 (Tex. App.—Houston [1st Dist.] 1994, pet. ref’d), for exam-
645 ple, the jury was told:

646 Remuneration means a pecuniary reward given or received because of some
647 act. The act must be done for the purpose of receiving some benefit. The
648 focus is on the defendant’s state of mind and the State is obligated to offer
649 evidence which establishes beyond a reasonable doubt the defendant’s in-
650 tent or state of mind as related to an expectation of remuneration.

651 At least one court of appeals has, however, held that it is unnecessary to define re-
652 muneration in the charge. *Neumuller v. State*, 953 S.W.2d 502, 511 (Tex. App.—El
653 Paso 1997, pet. ref’d); *see also Reister v. State*, No. 08-01-00373-CR, 2003 WL
654 21291035, at *17 (Tex. App.—El Paso June 5, 2003, pet. ref’d) (not designated for
655 publication).

656 Arguably, a definition of remuneration or “for remuneration” might include one or
657 both of two aspects of the case law. First, it might make clear that the state need not
658 prove the defendant acted pursuant to an agreement by someone to compensate the
659 defendant if the defendant killed the victim. Rather, the state’s case can be based on
660 proof the defendant expected to reap a benefit from the victim’s death, as by collecting
661 life insurance proceeds. The disagreement among the judges in *Beets* suggests this is
662 not necessarily clear from the statutory language.

663 Second, the definition might make clear that under *Rice* some anticipated benefits
664 are too “intangible” to satisfy the statutory requirement. But *Rice*’s discussion does not
665 provide a clear standard for determining how “tangible” an anticipated benefit or ad-
666 vantage must be. More specifically, it is not clear *Rice* justified the instruction given in
667 *Speer* that the benefit or advantage be “pecuniary.”

668 Given the absence of a statutory definition of remuneration, the lack of case law
669 authorization for providing juries a definition, and the difficulty of articulating the ap-
670 parent requirements of the case law, however, the Committee included no definition in
671 the instruction.

672 CPJC 19.12 **Instruction—Capital Murder—Murder by**
673 **Employing Another to Kill for Remuneration**

674 **LAW SPECIFIC TO THIS CASE**

675 The state accuses the defendant of having committed the offense of capital
676 murder.

677 **Relevant Statutes**

678 A person commits the offense of capital murder if the person intentionally or
679 knowingly causes the death of an individual by employing another to cause the
680 death for [remuneration/the promise of remuneration].

681 *[Include the following if an instruction on causation is appropriate*

682 *but no issue of concurrent causation is raised by the facts.]*

684 A person causes the death of another if, but for the person’s conduct, the death
685 of the other would not have occurred.

686 *[Include the following if the facts raise an issue*

687 *concerning concurrent causation.]*

689 A person causes the death of another if, but for the person’s conduct operating
690 either alone or concurrently with another cause, the death of the other would not
691 have occurred, unless the concurrent cause was clearly sufficient to produce the
692 result and the conduct of the person was clearly insufficient.

693 **Definitions**

694 *Intentionally Causing the Death of an Individual*

695 A person intentionally causes the death of an individual if the person has the
696 conscious objective or desire to cause that death.

697 *Knowingly Causing the Death of an Individual*

698 A person knowingly causes the death of an individual if the person is aware
699 that his conduct is reasonably certain to cause that death.

700 **Application of Law to Facts**

701 You must determine whether the state has proved, beyond a reasonable doubt,
702 two elements. The elements are that—

703 1. the defendant, in [county] County, Texas, on
704 or about [date], intentionally or knowingly caused the death of [name]; and

705 2. the defendant caused the death of [name] by
706 employing [name] for [remuneration/the promise of remuneration] to cause
707 the death of [name] [insert specific allegations, e.g., by shooting [name] with
708 a gun].

709 You must all agree on elements 1 and 2 listed above.

710 If you all agree the state has failed to prove, beyond a reasonable doubt, one
711 or both of elements 1 and 2 listed above, you must find the defendant “not
712 guilty.”

713 If you all agree the state has proved, beyond a reasonable doubt, both of the
714 two elements listed above, you must find the defendant “guilty.”

715 *[Insert any other instructions raised by the evidence. Then continue with the*
716 *verdict form found in CPJC 2.1, the general charge.]*

717 **COMMENT**

718 Murder by employing another to kill for remuneration is prohibited by and defined
719 in Tex. Penal Code § 19.03(a)(3). The definitions of culpable mental states are derived
720 from Tex. Penal Code § 6.03.

721 CPJC 19.13 **Instruction—Capital Murder—Murder of More**
722 **than One Person**

723 **LAW SPECIFIC TO THIS CASE**

724 The state accuses the defendant of having committed the offense of capital
725 murder.

726 **Relevant Statutes**

727 A person commits the offense of capital murder if the person intentionally or
728 knowingly causes the death of an individual and murders more than one person
729 [during the same criminal transaction/during different criminal transactions but
730 pursuant to the same scheme or course of conduct].

731 *[Include the following if an instruction on causation is appropriate*

732 *but no issue of concurrent causation is raised by the facts.]*

734 A person causes the death of another if, but for the person’s conduct, the death
735 of the other would not have occurred.

736 *[Include the following if the facts raise an issue*

737 *concerning concurrent causation.]*

739 A person causes the death of another if, but for the person’s conduct operating
740 either alone or concurrently with another cause, the death of the other would not
741 have occurred, unless the concurrent cause was clearly sufficient to produce the
742 result and the conduct of the person was clearly insufficient.

743 **Definitions**

744 *Intentionally Causing the Death of an Individual*

745 A person intentionally causes the death of an individual if the person has the
746 conscious objective or desire to cause that death.

747 *Knowingly Causing the Death of an Individual*

748 A person knowingly causes the death of an individual if the person is aware
749 that his conduct is reasonably certain to cause that death.

750 **Application of Law to Facts**

751 You must determine whether the state has proved, beyond a reasonable doubt,
752 three elements. The elements are that—

753 1. the defendant, in [county] County, Texas, on
754 or about [date], intentionally or knowingly caused the death of [name] [insert
755 specific allegations, e.g., by shooting [name] with a gun];

756 2. the defendant, in [county] County, Texas, on
757 or about [date], intentionally or knowingly caused the death of [name(s)] [in-
758 sert specific allegations, e.g., by stabbing [name(s)] with a knife]; and

759 3. [both/all] murders were committed [during
760 the same criminal transaction/during different criminal transactions but pur-
761 suant to the same scheme or course of conduct].

762 You must all agree on elements 1, 2, and 3 listed above.

763 If you all agree the state has failed to prove, beyond a reasonable doubt, one
764 or more of elements 1, 2, and 3 listed above, you must find the defendant “not
765 guilty.”

766 If you all agree the state has proved, beyond a reasonable doubt, all three
767 elements listed above, you must find the defendant “guilty.”

768 *[Insert any other instructions raised by the evidence. Then continue with the*
769 *verdict form found in CPJC 2.1, the general charge.]*

770 **COMMENT**

771 Murder of more than one person is prohibited by and defined in Tex. Penal Code
772 § 19.03(a)(7). The definitions of culpable mental states are derived from Tex. Penal
773 Code § 6.03.

774 Under the statute, one murder must be committed intentionally or knowingly as de-
775 manded by Tex. Penal Code § 19.02(b)(1). The additional killing or killings do not
776 appear to have to be murder under section 19.02(b)(1) but can be murder under sections
777 19.02(b)(2) or (3). The practice is to allege that both or all killings were intentional or
778 knowing, so the instruction is so drafted. If the indictment alleges the additional killings

779 are murder for a reason other than being intentional or knowing, the instruction must
780 be modified to accommodate this.

781 **Transferred Intent in Texas Penal Code Section 19.03(a)(7) Situations.** Ap-
782 plying transferred intent to section 19.03(a)(7) situations may require modification of
783 the instructions to comply with the holding of *Ex parte Norris*, 390 S.W.3d 338 (Tex.
784 Crim. App. 2012). A person is criminally responsible for causing a result if the only
785 difference between what occurred and what he desired, contemplated, or risked is that
786 a different offense was committed or a different person or property was injured,
787 harmed, or otherwise affected. Tex. Penal Code § 6.04(b); *Norris*, 390 S.W.3d at 339–
788 40 (discussing transferred intent). To meet section 19.03(a)(7) requirements, the state
789 must prove one of two things. First, it may prove the defendant had the intent to kill at
790 least two other persons. Second, it may prove the defendant engaged in two or more
791 “discrete instances of conduct,” each committed with the intent to kill another person.
792 In the second situation, the state’s evidence can be sufficient even if the defendant dur-
793 ing each of the instances of conduct intended to kill the same person. This would be
794 the case, for example, if during the first instance of conduct the defendant intended to
795 kill a particular person but did not succeed in killing that person, unintentionally killing
796 another individual instead, and then during the second instance of conduct intended to
797 kill the same particular person targeted during the first instance of conduct and suc-
798 ceeded in doing so.

799 **Need for Unanimity on Predicate Murder Victim.** The commission of at least
800 one murder *in addition to the predicate* murder, is the aggravating circumstance re-
801 quired by section 19.03(a)(7). Ordinarily, the indictment for section 19.03(a)(7) murder
802 will identify one victim as the predicate victim, that is, the victim who must be proved
803 to have been killed in a murder as provided for in section 19.02(b)(1). This predicate
804 victim will be distinguished from the additional victim who must have been murdered
805 by the defendant during the same transaction, scheme, or course of conduct. If the in-
806 dictment alleges more than one additional victim, the jury must find that at least one
807 person in addition to the predicate victim was murdered, but it need not unanimously
808 agree on which additional person. In *Saenz v. State*, 451 S.W.3d 388 (Tex. Crim. App.
809 2015), the jury charge made it possible for the jurors to convict without agreeing that
810 any one particular person was murdered by the defendant. *Saenz* holds that the jury
811 instructions must require the jury to unanimously agree on one victim as the predicate
812 victim, even though the jurors need not agree on which of the other victims named in
813 the indictment is the additional victim triggering section 19.03(a)(7). *Saenz*, 451
814 S.W.3d at 391–92. Thus, for example, even if the indictment alleges that the defendant
815 killed two or more persons during the same transaction, scheme, or course of conduct,
816 the jury charge must require that the jury be unanimous as to the predicate victim.

817 CPJC 19.14 **Instruction—Capital Murder—Murder of**
818 **Individual**
819 **under Ten Years of Age**

820 **LAW SPECIFIC TO THIS CASE**

821 The state accuses the defendant of having committed the offense of capital
822 murder.

823 **Relevant Statutes**

824 A person commits the offense of capital murder if the person intentionally or
825 knowingly causes the death of an individual under ten years of age.

826 *[Include the following if an instruction on causation is appropriate*
827 *but no issue of concurrent causation is raised by the facts.]*

828 A person causes the death of another if, but for the person's conduct, the death
829 of the other would not have occurred.

830 *[Include the following if the facts raise an issue*

831 *concerning concurrent causation.]*

833 A person causes the death of another if, but for the person's conduct operating
834 either alone or concurrently with another cause, the death of the other would not
835 have occurred, unless the concurrent cause was clearly sufficient to produce the
836 result and the conduct of the person was clearly insufficient.

837 **Definitions**

838 *Intentionally Causing the Death of an Individual*

839 A person intentionally causes the death of an individual if the person has the
840 conscious objective or desire to cause that death.

841 *Knowingly Causing the Death of an Individual*

842 A person knowingly causes the death of an individual if the person is aware
843 that his conduct is reasonably certain to cause that death.

844 **Application of Law to Facts**

845 You must determine whether the state has proved, beyond a reasonable doubt,
846 two elements. The elements are that—

- 847 1. the defendant, in [county] County, Texas, on
848 or about [date], intentionally or knowingly caused the death of [name] [insert
849 specific allegations, e.g., by shooting [name] with a gun]; and
850 2. [name] was under ten years of age.

851 You must all agree on elements 1 and 2 listed above.

852 If you all agree the state has failed to prove, beyond a reasonable doubt, one
853 or both of elements 1 and 2 listed above, you must find the defendant “not
854 guilty.”

855 If you all agree the state has proved, beyond a reasonable doubt, both of the
856 two elements listed above, you must find the defendant “guilty.”

857 *[Insert any other instructions raised by the evidence. Then continue with the*
858 *verdict form found in CPJC 2.1, the general charge.]*

859 **COMMENT**

860 Murder of an individual under ten years of age is prohibited by and defined in Tex.
861 Penal Code § 19.03(a)(8). The definitions of culpable mental states are derived from
862 Tex. Penal Code § 6.03.

863 The instruction does not require the state prove any awareness by the defendant of
864 the age of the victim. Section 19.03(a)’s incorporation of section 19.02(b)(1) means the
865 killing must be intentional or knowing. Does this apply not only to the causing of death
866 but also to the required circumstance that the victim be under ten years of age?

867 Most likely it does not. *See Johnson v. State*, 967 S.W.2d 848, 849–50 (Tex. Crim.
868 App. 1998) (en banc) (rejecting appellant’s argument that he should not be guilty of
869 indecency with a child unless he knew the victim was under the age of seventeen).
870 “Given [the] case law and legislative tradition running squarely against appellant’s no-
871 tion that the State must prove his knowledge of the victim’s age, and given the failure
872 of the legislature to specifically require such knowledge when it required knowledge

873 of the victim’s presence, appellant’s position must fail.” *Roof v. State*, 665 S.W.2d 490,
874 492 (Tex. Crim. App. 1984) (en banc). Thus, even though some of section 19.03(a)’s
875 subdivisions require a culpable mental state in addition to the requirement that the pred-
876 icate killing be intentional or knowing; the lack of any such demand in section
877 19.03(a)(8) suggests the legislature intended no such culpable mental state.

878 Finally, Texas courts have been generally reluctant to read crimes designed to pro-
879 tect children as requiring awareness of the victim’s status as a child or age. *See Fleming*
880 *v. State*, 455 S.W.3d 577, 582 (Tex. Crim. App. 2014). They will almost certainly fol-
881 low this approach with regard to section 19.03(a)(8). *See also White v. State*, 509
882 S.W.3d 307, 313 (Tex. Crim. App. 2017) (“[W]hen it comes to the protection of chil-
883 dren, we have frequently declined to impose a culpable mental state upon a circum-
884 stance-surrounding-conduct element of the offense in the absence of an express assign-
885 ment of such a mental state—even when it was a circumstance that elevated the level
886 of the offense.”)

887 CPJC 19.15 **Instruction—Capital Murder—Murder of**
888 **Individual**
889 **Ten or Older but Younger than Fifteen Years of Age**

890 **LAW SPECIFIC TO THIS CASE**

891 The state accuses the defendant of having committed the offense of capital
892 murder.

893 **Relevant Statutes**

894 A person commits the offense of capital murder if the person intentionally or
895 knowingly causes the death of an individual ten years of age or older but
896 younger than fifteen years of age.

897 *[Include the following if an instruction on causation is appropriate*
898 *but no issue of concurrent causation is raised by the facts.]*

899 A person causes the death of another if, but for the person’s conduct, the death
900 of the other would not have occurred.

901 *[Include the following if the facts raise an issue*

902 *concerning concurrent causation.]*

904 A person causes the death of another if, but for the person’s conduct operating
905 either alone or concurrently with another cause, the death of the other would not
906 have occurred, unless the concurrent cause was clearly sufficient to produce the
907 result and the conduct of the person was clearly insufficient.

908 **Definitions**

909 *Intentionally Causing the Death of an Individual*

910 A person intentionally causes the death of an individual if the person has the
911 conscious objective or desire to cause that death.

912 *Knowingly Causing the Death of an Individual*

913 A person knowingly causes the death of an individual if the person is aware
914 that his conduct is reasonably certain to cause that death.

915 **Application of Law to Facts**

916 You must determine whether the state has proved, beyond a reasonable doubt,
917 two elements. The elements are that—

918 1. the defendant, in [county] County, Texas, on
919 or about [date], intentionally or knowingly caused the death of [name] [insert
920 specific allegations, e.g., by shooting [name] with a gun]; and

921 2. [name] was at least ten but younger than fif-
922 teen years of age.

923 You must all agree on elements 1 and 2 listed above.

924 If you all agree the state has failed to prove, beyond a reasonable doubt, one
925 or both of elements 1 and 2 listed above, you must find the defendant “not
926 guilty.”

927 If you all agree the state has proved, beyond a reasonable doubt, both of the
928 two elements listed above, you must find the defendant “guilty.”

929 *[Insert any other instructions raised by the evidence. Then continue with the*
930 *verdict form found in CPJC 2.1, the general charge.]*

931 **COMMENT**

932 Murder of an individual older than ten but younger than fifteen years of age is pro-
933 hibited by and defined in Tex. Penal Code § 19.03(a)(9). The definitions of culpable
934 mental states are derived from Tex. Penal Code § 6.03.

935 Regarding the defendant’s knowledge of the age of the victim, see the comment to
936 CPJC 19.14.

937 CPJC 19.16 **Instruction—Manslaughter**

938 **LAW SPECIFIC TO THIS CASE**

939 The state accuses the defendant of having committed the offense of man-
940 slaughter.

941 **Relevant Statutes**

942 A person commits the offense of manslaughter if the person recklessly causes
943 the death of an individual.

944 *[Include the following if an instruction on causation is appropriate*
945 *but no issue of concurrent causation is raised by the facts.]*

946 A person causes the death of another if, but for the person's conduct, the death
947 of the other would not have occurred.

948 *[Include the following if the facts raise an issue*
949 *concerning concurrent causation.]*

950 A person causes the death of another if, but for the person's conduct operating
951 either alone or concurrently with another cause, the death of the other would not
952 have occurred, unless the concurrent cause was clearly sufficient to produce the
953 result and the conduct of the person was clearly insufficient.

954 **Definitions**

955 *Recklessly Causing the Death of an Individual*

956 A person recklessly causes the death of an individual if—

957 1. there is a substantial and unjustifiable risk
958 that his conduct will cause that death;

959 2. this risk is of such a nature and degree that
960 its disregard constitutes a gross deviation from the standard of care that an
961 ordinary person would exercise under all the circumstances as viewed from
962 the person's standpoint; and

963 3. the person is aware of but consciously disre-
964 gards that risk.

965 **Application of Law to Facts**

966 You must determine whether the state has proved, beyond a reasonable doubt,
967 two elements. The elements are that—

968 1. the defendant, in [*county*] County, Texas, on
969 or about [*date*], caused the death of [*name*] [*insert specific allegations, e.g.,*
970 by operating his motor vehicle at an unreasonable speed]; and

971 2. the defendant did this recklessly.

972 You must all agree on elements 1 and 2 listed above.

973 If you all agree the state has failed to prove, beyond a reasonable doubt, one
974 or both of elements 1 and 2 listed above, you must find the defendant “not
975 guilty.”

976 If you all agree the state has proved, beyond a reasonable doubt, both of the
977 two elements listed above, you must find the defendant “guilty.”

978 *[Insert any other instructions raised by the evidence. Then continue with the*
979 *verdict form found in CPJC 2.1, the general charge.]*

980 **COMMENT**

981 Manslaughter is prohibited by and defined in Tex. Penal Code § 19.04.

982 CPJC 19.17 **Instruction—Criminally Negligent Homicide**

983 **LAW SPECIFIC TO THIS CASE**

984 The state accuses the defendant of having committed the offense of crimi-
985 nally negligent homicide.

986 **Relevant Statutes**

987 A person commits the offense of criminally negligent homicide if the person
988 causes the death of an individual by criminal negligence.

989 *[Include the following if an instruction on causation is appropriate*
990 *but no issue of concurrent causation is raised by the facts.]*

991 A person causes the death of another if, but for the person’s conduct, the death
992 of the other would not have occurred.

993 *[Include the following if the facts raise an issue*
994 *concerning concurrent causation.]*

995 A person causes the death of another if, but for the person’s conduct operating
996 either alone or concurrently with another cause, the death of the other would not
997 have occurred, unless the concurrent cause was clearly sufficient to produce the
998 result and the conduct of the person was clearly insufficient.

999 **Definitions**

1000 *Causing the Death of an Individual by Criminal Negligence*

1001 A person causes the death of an individual by criminal negligence if—

1002 1. there is a substantial and unjustifiable risk
1003 that his conduct will cause that death;

1004 2. this risk is of such a nature and degree that
1005 the failure to perceive it constitutes a gross deviation from the standard of
1006 care that an ordinary person would exercise under all the circumstances as
1007 viewed from the person’s standpoint; and

1008 3. the person ought to be aware of that risk.

1009 Application of Law to Facts

1010 You must determine whether the state has proved, beyond a reasonable doubt,
1011 two elements. The elements are that—

1012 1. the defendant, in [*county*] County, Texas, on
1013 or about [*date*], caused the death of [*name*] [*insert specific allegations, e.g.,*
1014 by operating his motor vehicle at an unreasonable speed]; and

1015 2. the defendant did this by criminal negli-
1016 gence.

1017 You must all agree on elements 1 and 2 listed above.

1018 If you all agree the state has failed to prove, beyond a reasonable doubt, one
1019 or both of elements 1 and 2 listed above, you must find the defendant “not
1020 guilty.”

1021 If you all agree the state has proved, beyond a reasonable doubt, both of the
1022 two elements listed above, you must find the defendant “guilty.”

1023 *[Insert any other instructions raised by the evidence. Then continue with the*
1024 *verdict form found in CPJC 2.1, the general charge.]*

1025 COMMENT

1026 Criminally negligent homicide is prohibited by Tex. Penal Code § 19.05. The defi-
1027 nition of “causing the death of an individual by criminal negligence” is based on Tex.
1028 Penal Code § 6.03(d).

1029