

In the Supreme Court of the State of Idaho

IN RE: CRIMINAL JURY
INSTRUCTIONS

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ORDER

The Idaho Supreme Court, having reviewed recommendations of the Idaho Criminal Jury Instructions Committee, and having reviewed revisions of the Idaho Criminal Jury Instructions based upon those recommendations,

NOW, THEREFORE, IT IS ORDERED the Court approves the adoption of new Idaho Criminal Jury Instructions designated as follows, copies of which are attached hereto: Murder in Perpetration of Certain Offenses, to be designated as ICJI 1726; Murder in Perpetration of Certain Sex Offenses, to be designated at ICJI 1727; Murder Against a Witness or Potential Witness, to be designated at ICJI 1728; and Threatening Violence on School Grounds – Possession of Weapon, to be designated as ICJI 1411A. The Court orders that ICJI 305 and ICJI 1402 be deleted. The Court also accepts revisions to Idaho Criminal Jury Instructions, redline copies of which are attached hereto: 1411 (Threatening Violence on School Grounds), 1515 (Justifiable Homicide Defense by Officer), 1516 (Excusable Homicide Defense); 1520 (Self-Defense – Victim’s Reputation), 1521 (Self-Defense – Participants in Mutual Combat), and 1522 (Defense of Property – Reasonable Force).

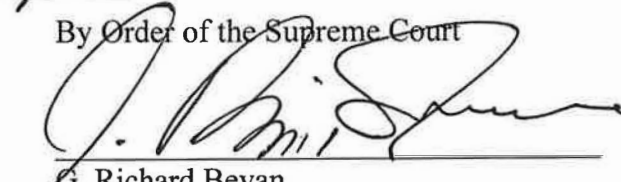
The revised and new Idaho Criminal Jury Instructions shall be disseminated for general use by the trial bench and bar in Idaho, to be effective immediately. It is recommended that whenever these revised Idaho Criminal Jury Instructions contain an instruction applicable to a case and the trial judge determines that the jury should be instructed on that subject, the judge should use the instruction contained in the revised Idaho Criminal Jury Instructions, unless the judge finds that a different instruction would more adequately, accurately or clearly state the law.

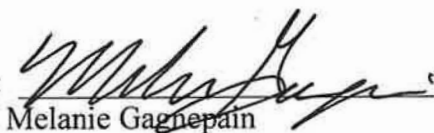
IT IS FURTHER ORDERED that notice of this Order shall be published for three

consecutive weeks on the Idaho State Bar's website and in its weekly e-Bulletin, and that, as soon as practicable, a summary of the amendments effected by this Order shall be published in one issue of *The Advocate*.

DATED this 24th day of August, 2026.

By Order of the Supreme Court


G. Richard Bevan
Chief Justice

ATTEST: 
Melanie Gagnepain

I, Melanie Gagnepain, Clerk of the Supreme Court/
Court of Appeals of the State of Idaho, do hereby
Certify that the above is a true and correct copy of the
order entered in the above entitled
cause and now on record in my office. WITNESS my
hand and the Seal of this Court 8-24-2026
Melanie Gagnepain, Clerk

By  Deputy

ICJI 1726

MURDER IN PERPETRATION OF CERTAIN OFFENSES - I.C. § 19-2515(9)(g)

OPTION 1 – Conviction on the “certain offense” in the guilt phase

If the jury convicted the defendant of the enumerated offense charged for this aggravator in the guilt phase, the court should instruct the jury as follows:

INSTRUCTION NO.

During the guilt phase of trial, you returned a verdict that included a finding that the defendant is guilty of [arson] [rape] [robbery] [burglary] [kidnapping] [mayhem] and the defendant [killed] [intended a killing] [acted with reckless indifference to human life]. In order to find the defendant guilty of this statutory aggravating circumstance, you must unanimously find, beyond a reasonable doubt, that the defendant committed the murder in the perpetration of, or attempt to perpetrate [arson] [rape] [robbery] [burglary] [kidnapping] [mayhem] and the defendant [killed] [intended a killing] [acted with reckless indifference to human life].

OR

OPTION 2 – “Certain offense” not charged in guilt phase

If the defendant was not charged with the enumerated offense for this aggravator in the guilt phase, the court should instruct the jury as follows:

INSTRUCTION NO.

You have been instructed that the State has alleged the statutory aggravating circumstance that the defendant committed the murder for which you have now found the defendant guilty, in the perpetration of, or attempt to perpetrate [arson] [rape] [robbery] [burglary] [kidnapping] [mayhem] and the defendant [killed] [intended a killing] [acted with reckless indifference to human life]. In order to find this statutory aggravating circumstance, you must unanimously find, beyond a reasonable doubt, the following elements: [insert elements for applicable enumerated offense].

Comment

This instruction should be given if the State alleges the prior murder statutory aggravator set forth in I.C. § 19-2515(9)(g).

If the jury acquitted the defendant of the enumerated offense charged pursuant to I.C. § 19-2515(9)(g), no version of this instruction should be given.

ICJI 1727

MURDER IN PERPETRATION OF CERTAIN SEX OFFENSES - I.C. § 19-2515(9)(h)

OPTION 1 – Conviction on the “certain sex offense” in the guilt phase

If the jury convicted the defendant of the enumerated offense charged for this aggravator in the guilt phase, the court should instruct the jury as follows:

INSTRUCTION NO.

During the guilt phase of trial, you returned a verdict that included a finding that the defendant is guilty of [lewd and lascivious conduct with a minor] [sexual abuse of a child under sixteen (16) years of age] [ritualized abuse of a child] [sexual exploitation of a child] [sexual battery of a minor child sixteen (16) or seventeen (17) years of age] [forcible sexual penetration by use of a foreign object] and [intended a killing] [acted with reckless indifference to human life]. In order to find the defendant guilty of this statutory aggravating circumstance, you must unanimously find, beyond a reasonable doubt, that the defendant committed the murder while committing, or attempting to commit the [lewd and lascivious conduct with a minor] [sexual abuse of a child under sixteen (16) years of age] [ritualized abuse of a child] [sexual exploitation of a child] [sexual battery of a minor child sixteen (16) or seventeen (17) years of age] [forcible sexual penetration by use of a foreign object] and [intended a killing] [acted with reckless indifference to human life].

OR

OPTION 2 – “Certain sex offense” not charged in guilt phase

If the defendant was not charged with the enumerated offense for this aggravator in the guilt phase, the court should instruct the jury as follows:

INSTRUCTION NO.

You have been instructed that the State has alleged the statutory aggravating circumstance that, the defendant committed the murder for which you have now found the defendant guilty, in the perpetration of, or attempt to perpetrate [lewd and lascivious conduct with a minor] [sexual abuse of a child under sixteen (16) years of age] [ritualized abuse of a child] [sexual exploitation of a child] [sexual battery of a minor child sixteen (16) or seventeen (17) years of age] [forcible sexual penetration by use of a foreign object] and [intended a killing] [acted with reckless indifference to human life].. In order to find this statutory aggravating circumstance, you must unanimously find, beyond a reasonable doubt, the following elements: [insert elements for applicable enumerated offense].

Comment

This instruction should be given if the State alleges the prior murder statutory aggravator set forth in I.C. § 19-2515(9)(h). If the jury acquitted the defendant of the enumerated offense charged pursuant to I.C. § 19-2515(9)(h), no version of this instruction should be given.

ICJI 1728

MURDER AGAINST A WITNESS OR POTENTIAL WITNESS - I.C. § 19-2515(9)(k)

INSTRUCTION NO.

You have been instructed that the State has alleged the statutory aggravating circumstance that the defendant committed the murder against a [witness] [potential witness] in a [criminal][civil] proceeding because of such proceeding. In order to find the defendant guilty of this statutory aggravating circumstance, you must unanimously find, beyond a reasonable doubt, that:

1. The victim was a [witness] [person who might be called as a witness];
2. In any [civil proceeding] [criminal proceeding]; and
3. The defendant committed the murder because the victim was a [witness] [person who might be called as a witness] in such a proceeding.

Comment

This instruction should be given if the State alleges the prior murder statutory aggravator set forth in I.C. § 19-2515(9)(k).

ICJI 1441A

THREATENING VIOLENCE ON SCHOOL GROUNDS – POSSESSION OF WEAPON

INSTRUCTION NO.

In order for the defendant to be guilty of Threatening Violence on School Grounds - Possession of Weapon, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] knowingly
4. [possesses a firearm or other deadly or dangerous weapon] [makes, alters or repairs any firearm or other deadly or dangerous weapon]
5. in furtherance of carrying out a threat made by word, electronic means, or act
6. [to do violence to any person who is on school grounds] [to disrupt the normal operations of an educational institution]

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

"Deadly or dangerous weapon" means a weapon, device, instrument, material or substance that is used for, or is readily capable of, causing death or serious bodily injury.

"On school grounds" means in, or on property owned or operated by a school district, public charter school or private school.

Comment

I.C. § 18-3302I(1)(b); I.C. § 18-3302I(2) (definitions).

ICJI 1411

THREATENING VIOLENCE ON SCHOOL GROUNDS

INSTRUCTION NO.

In order for the defendant to be guilty of Threatening Violence on School Grounds, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] willfully
4. ~~while on school grounds~~
5. ~~willfully~~
6. threatened by word, electronic means, or act
7. to use a firearm or other deadly or dangerous weapon
8. ~~to do violence~~
9. ~~to any other person who is on school grounds.~~

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

"Deadly or dangerous weapon" means a weapon, device, instrument, material or substance that is used for, or is readily capable of, causing death or serious bodily injury.

~~"Firearm" means any weapon, whether loaded or unloaded, from which a shot, projectile or other object may be discharged by force of combustion, explosive, gas and/or mechanical means; regardless of whether such weapon is operable.~~

"On school grounds" means in, or on the property of, owned or operated by a school district, public charter school or private school ~~a public or private elementary or secondary school.~~

~~The threats prohibited by this section encompass only those statements or acts where the speaker or actor intends to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. The state is not required to prove that the defendant actually intended to carry out the threat.~~

Comment

I.C. § 18-3302I(1)(a); I.C. § 18-3302I(2) (definitions).

ICJI 1515

JUSTIFIABLE HOMICIDE DEFENSE BY OFFICER

INSTRUCTION NO.

The defendant contends as a defense in this case that the killing was justifiable because of the
~~decedent was a justifiable homicide; the defendant was [a public officer]~~

~~—Homicide is justifiable when committed by public officers and those [acting by their at~~
~~the command in their the aid and assistance of a public officer], either; and committed the killing~~

[In obedience to any judgment of a competent court; or]

[Because doing so was ~~When reasonably necessary~~ [in overcoming actual resistance to
the execution of some legal process], ~~or [in the discharge of any other legal duty including~~
~~suppression of riot or keeping and preserving the peace].~~ [Use of deadly force shall not be
justified in overcoming actual resistance unless the officer has probable cause to believe that the
resistance poses a threat of death or serious physical injury to the officer or to other persons;].]

~~[When~~ Because doing so was reasonably necessary in preventing rescue or escape or in
retaking inmates who have been rescued or have escaped from any jail, or when reasonably
necessary in order to prevent the escape of any person charged with or suspected of having
committed a felony, provided the officer has probable cause to believe that the inmate, or
persons assisting his escape, or the person suspected of or charged with commission of a felony
poses a threat of death or serious physical injury to the officer or other persons.]

The burden is on the prosecution to prove beyond a reasonable doubt that the homicide
was not justifiable. If there is a reasonable doubt whether the homicide was justifiable, you must
find the defendant not guilty.

Comment

The legal duty referred to in this instruction includes suppression of a riot and keeping and
preserving the peace. Where appropriate, such language describing the legal duty should be
included in the instruction.

I.C. ss ~~§§18-18-4011 & 18-18-4013.~~

~~The committee recommends that rather than instruct in the specific language of I.C. s 18-4011,~~
~~the court should instruct the jury in include language in the instruction tailored to the facts of the~~
~~case, assuming this defense applies to the case.~~

~~Idaho statutory and case law previously cast the burden upon a homicide defendant to prove that~~
~~the defendant's actions were excusable, as in self defense. However, in that particular~~
~~circumstance, the underlying statute, I.C. s 19-2112, was repealed in 1977 (1977 Session Law~~
~~Chapter 154 Section 6). Martin v. Ohio, 480 U.S. 228, 94 L.Ed. 2d 267, 108 S.Ct. 1098 (1987),~~
~~suggests that Idaho is among 48 states which no longer place such a burden on the defendant,~~
~~although they would be constitutionally permitted to do so.~~

ICJI 1516

EXCUSABLE HOMICIDE DEFENSE

INSTRUCTION NO.

The defendant contends as a defense in this case that the killing of the decedent was an excusable homicide.

Homicide is excusable when committed by accident and misfortune [in doing any lawful act by lawful means, with usual and ordinary caution, and without any unlawful intent] [in the heat of passion][upon any sudden and sufficient provocation] [upon a sudden combat when no undue advantage is taken nor any dangerous weapon used]

~~[insert description of conduct and/or event, appropriately worded consistent with the applicable provisions of I.C. s 18-4012, based upon the facts in evidence].~~

A homicide is not excusable when done in a cruel or unusual manner.

The burden is on the prosecution to prove beyond a reasonable doubt that the homicide was not excusable. If there is a reasonable doubt whether the homicide was excusable, you must find the defendant not guilty.

Comment

I.C. ss ~~§§~~18-4012 & 18-4013.

~~The committee recommends that rather than instruct in the specific language of I.C. s 18-4012, the court should instruct the jury in language tailored to the facts of the case, assuming this defense applies to the case.~~

~~Idaho statutory and case law previously cast the burden upon a homicide defendant to prove that the defendant's actions were excusable, as in self defense. However, in that particular circumstance, the underlying statute, I.C. s 19-2112, was repealed in 1977 (1977 Session Law Chapter 154 Section 6). *Martin v. Ohio*, 480 U.S. 228, 94 L.Ed.2d 267, 108 S.Ct. 1098 (1987), suggests that Idaho is among 48 states which no longer place such a burden on the defendant, although they would be constitutionally permitted to do so.~~

ICJI 1520

SELF-DEFENSE – VICTIM’S REPUTATION

INSTRUCTION NO.

Evidence has been admitted concerning the reputation of the victim for being quarrelsome, violent, ~~and~~or dangerous. You may consider this evidence only for the limited purpose of making your determination as to [the reasonableness of the defendant's beliefs under the circumstances then apparent to the defendant, but only if the defendant was aware of such reputation] [whether the victim was the aggressor].

Comment

State v. Godwin, 164 Idaho 903, 921-22, 436 P.3d 1252, 1270-71 (2019)
I.R.E. 404(a)(2)(B) & I.R.E. 405

Use either bracketed portion, or both, as may be appropriate under the facts presented.