



Administrative Office of the Courts

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MICHELLE J. LONG
Director

MEMORANDUM

(2/7/2022)

This memorandum lists the instructions the Tennessee Pattern Jury Instruction Committee (Criminal) changed or created after the 25th edition of the book was published in 2021. The Administrative Office of the Courts' website includes Word "without comments and footnotes" versions of the instructions at issue. The "with comments and footnotes" version of newly-created and/or substantially revised instructions, are attached to the memorandum which appears on the AOC's website. If the committee changed a comment and/or footnote but did not change the text of an instruction, the instruction will be listed below but it will not be posted on the AOC's website.

3.04 – Corporate Liability

- a) Change the word "and" between Part B, elements 4 and 5 to "or".
- b) Relabel Part B, element 4 as 4(a) and element 5 as 4(b).

7.04(a) – First Degree Murder (fixing punishment of death or LWOP) (for offenses committed on our after July 1, 1995)

- a) Amend the paragraph directly before the heading "Verdict- Life imprisonment or life imprisonment without possibility of parole" that begins "The defendant does not have the burden..." by adding the following language at the end of the paragraph:

[If, after the defendant has elected not to testify at the sentencing hearing after the trial judge has conducted a second *Momon* hearing, the trial judge may also wish to charge T.P.I. – 43.03(b), Defendant: Not testifying during the sentencing hearing].

- b) Add the following to the end of Statutory Aggravating Factor (3) inside the closing bracket:

“Knowingly” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result. The requirement of “knowingly” is also established if it is shown that the defendant acted intentionally. “Intentionally” means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person’s conscious objective or desire to engage in the conduct or cause the result.

- c) Add a footnote after the second sentence in the new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- d) Add a footnote after the third sentence in the new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-301(a)(2).

- e) Add a footnote after the fourth sentence in the new definition above and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- f) Add the following to the end of Statutory Aggravating Factor (9) before the last two sentences in bold:

“Knew” or “known” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result.

- g) Add a footnote at the end of the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- h) Add the following to the end of Statutory Aggravating Factor (10) inside the closing bracket:

“Knew” or “known” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result.

- i) Add a footnote at the end of the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- j) Add the following to the end of Statutory Aggravating Factor (11) inside the closing bracket:

“Knew” or “known” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result.

- k) Add a footnote at the end of the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- l) Add the following to the end of Statutory Aggravating Factor (13) inside the closing bracket:

“Knowingly” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result. The requirement of “knowingly” is also established if it is shown that the defendant acted intentionally. “Intentionally” means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person’s conscious objective or desire to engage in the conduct or cause the result.

- m) Add a footnote after the second sentence in the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- n) Add a footnote after the third sentence in the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-301(a)(2).

- o) Add a footnote after the fourth sentence in the above new definition above and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- p) Add the following to the end of each part of Statutory Aggravating Factor (14) inside the closing bracket before the phrases in bold:

“Knew” or “known” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result.

- q) Add a footnote at the end of the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- r) Add the following at the end of Statutory Aggravating Factor (16) inside the closing bracket:

“Knowing” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result.

- s) Add a footnote at the end of the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- t) Add the following to the end of Statute Aggravating Factor (18) inside the closing bracket, before the phrase in bold:

“Knowingly” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result. The requirement of “knowingly” is also established if it is shown that the defendant acted intentionally. “Intentionally” means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person’s conscious objective or desire to engage in the conduct or cause the result.

- u) Add a footnote after the second sentence in the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- v) Add a footnote after the third sentence in the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-301(a)(2).

- w) Add a footnote after the fourth sentence in the above new definition above and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- x) Add the following to the end of Statutory Aggravating Factor (19) inside the closing bracket, before the phrase in bold:

“Knew” or “known” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result.\

- y) Add a footnote at the end of the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

7.04(b) – First degree murder (fixing punishment of life imprisonment or LWOP) (for offenses committed on or after July 1, 1985)

- a) Amend the paragraph directly before the heading “Verdict- Life imprisonment or life imprisonment without possibility of parole” that begins “The defendant does not have the burden...” by adding the following language at the end of the paragraph:

[If, after the defendant has elected not to testify at the sentencing hearing after the trial judge has conducted a second *Momon* hearing, the trial judge may also wish to charge T.P.I. – 43.03(b), Defendant: Not testifying during the sentencing hearing].

- b) Add the following to the end of Statutory Aggravating Factor (3) inside the closing bracket:

“Knowingly” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result. The requirement of “knowingly” is also established if it is shown that the defendant acted intentionally. “Intentionally” means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when

it is the person's conscious objective or desire to engage in the conduct or cause the result.

- c) Add a footnote after the second sentence in the new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- d) Add a footnote after the third sentence in the new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-301(a)(2).

- e) Add a footnote after the fourth sentence in the new definition above and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- f) Add the following to the end of Statutory Aggravating Factor (9) before the last two sentences in bold:

“Knew” or “known” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.

- g) Add a footnote at the end of the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- h) Add the following to the end of Statutory Aggravating Factor (10) inside the closing bracket:

“Knew” or “known” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.

- i) Add a footnote at the end of the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- j) Add the following to the end of Statutory Aggravating Factor (11) inside the closing bracket:

“Knew” or “known” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result.

- k) Add a footnote at the end of the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- l) Add the following to the end of Statutory Aggravating Factor (13) inside the closing bracket:

“Knowingly” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result. The requirement of “knowingly” is also established if it is shown that the defendant acted intentionally. “Intentionally” means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person’s conscious objective or desire to engage in the conduct or cause the result.

- m) Add a footnote after the second sentence in the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- n) Add a footnote after the third sentence in the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-301(a)(2).

- o) Add a footnote after the fourth sentence in the above new definition above and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- p) Add the following to the end of each part of Statutory Aggravating Factor (14) inside the closing bracket before the phrases in bold:

“Knew” or “known” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result.

- q) Add a footnote at the end of the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- r) Add the following at the end of Statutory Aggravating Factor (16) inside the closing bracket:

“Knowing” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.

- s) Add a footnote at the end of the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- t) Add the following to the end of Statute Aggravating Factor (18) inside the closing bracket, before the phrase in bold:

“Knowingly” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result. The requirement of “knowingly” is also established if it is shown that the defendant acted intentionally. “Intentionally” means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person’s conscious objective or desire to engage in the conduct or cause the result.

- u) Add a footnote after the second sentence in the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- v) Add a footnote after the third sentence in the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-301(a)(2).

- w) Add a footnote after the fourth sentence in the above new definition above and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- x) Add the following to the end of Statutory Aggravating Factor (19) inside the closing bracket, before the phrase in bold:

“Knew” or “known” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result.\

- y) Add a footnote at the end of the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

7.04(c) – First degree murder in the perpetration or attempt to perpetrate an act of terrorism (fixing punishment of death or LWOP)

- a) Amend the paragraph directly before the heading “Verdict- Life imprisonment or life imprisonment without possibility of parole” that begins “The defendant does not have the burden...” by adding the following language at the end of the paragraph:

[If, after the defendant has elected not to testify at the sentencing hearing after the trial judge has conducted a second *Momon* hearing, the trial judge may also wish to charge T.P.I. – 43.03(b) Defendant: Not testifying during the sentencing hearing].

- b) Add the following to the end of Statutory Aggravating Factor (3) inside the closing bracket:

“Knowingly” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result. The requirement of “knowingly” is also established if it is shown that the defendant acted intentionally. “Intentionally” means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person’s conscious objective or desire to engage in the conduct or cause the result.

- c) Add a footnote after the second sentence in the new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- d) Add a footnote after the third sentence in the new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-301(a)(2).

- e) Add a footnote after the fourth sentence in the new definition above and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- f) Add the following to the end of Statutory Aggravating Factor (9) before the last two sentences in bold:

“Knew” or “known” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result.

- g) Add a footnote at the end of the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- h) Add the following to the end of Statutory Aggravating Factor (10) inside the closing bracket:

“Knew” or “known” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result.

- i) Add a footnote at the end of the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- j) Add the following to the end of Statutory Aggravating Factor (11) inside the closing bracket:

“Knew” or “known” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result.

- k) Add a footnote at the end of the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- l) Add the following to the end of Statutory Aggravating Factor (13) inside the closing bracket:

“Knowingly” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result. The requirement of “knowingly” is also established if it is shown that the defendant acted intentionally. “Intentionally” means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person’s conscious objective or desire to engage in the conduct or cause the result.

- m) Add a footnote after the second sentence in the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- n) Add a footnote after the third sentence in the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-301(a)(2).

- o) Add a footnote after the fourth sentence in the above new definition above and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- p) Add the following to the end of Statutory Aggravating Factor (14) inside the closing bracket:

“Knew” or “known” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result.

- q) Add a footnote at the end of the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- r) Add the following at the end of Statutory Aggravating Factor (16) inside the closing bracket:

“Knowing” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.

- s) Add a footnote at the end of the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- t) Add the following to the end of Statute Aggravating Factor (18) inside the closing bracket, before the phrase in bold:

“Knowingly” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result. The requirement of “knowingly” is also established if it is shown that the defendant acted intentionally. “Intentionally” means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person’s conscious objective or desire to engage in the conduct or cause the result.

- u) Add a footnote after the second sentence in the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- v) Add a footnote after the third sentence in the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-301(a)(2).

- w) Add a footnote after the fourth sentence in the above new definition above and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

- x) Add the following to the end of Statutory Aggravating Factor (19) inside the closing bracket, before the phrase in bold:

“Knew” or “known” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or the circumstances exist. A person acts knowingly with respect to a result of

the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.\

- y) Add a footnote at the end of the above new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

7.06 – Voluntary manslaughter

- a) Add the following new definition after the definition of “motor vehicle”:

“Passion” means any of the human emotions known as anger, rage, sudden resentment, terror, or similar emotions, which renders the mind incapable of cool reflection.

- b) Add a footnote at the end of the new definition of “Passion” and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

State v. Bullington, 532 S.W.2d 556, 559-60 (Tenn. 1976), as modified by the Committee. However, State v. Mann, 959 S.W.2d 503, 522 (Tenn. 1997)(appendix) holds that the word “passion” is in “common use and can be understood by people of ordinary intelligence” and that “in the absence of anything in the charge to obscure the meaning” of that term, it is not necessary for the trial judge to define it.”

10.12 – [Aggravated] rape of a child

- a) Replace the language in Comment One beginning at the sentence that begins “If committed by a juvenile on or after 7/1/21...” to the end with the following language:

If committed by a juvenile on or after 7/1/21, the juvenile's “sentence must be from within Range III.” T.C.A. § 39-13-531(b)(1) and T.C.A. § 40-35-501(i)(2). There shall be no release eligibility for a person committing aggravated rape of a child, if the defendant was a juvenile at the time of commission of the offense, or facilitation of rape of a child or facilitation of aggravated rape of a child for offenses committed on or after July 1, 2021, until the person has served one hundred percent (100%) of the sentence imposed by the court less sentence credits earned and retained. However, no sentence reduction credits authorized by § 41-21-236 or any other law shall operate to reduce the mandatory minimum sentence imposed by the court by more than fifteen percent (15%). T.C.A. § 40-35-501.

40.06 – Defense: Self-defense

- a) Replace the language of exception #3 of the list of when presumptions do not apply (currently at the top of page 1314) with the following:

- (3) **Only for offenses committed prior to 7/1/21:** the defendant was engaged in an unlawful activity, or was using the *[residence] [business] [dwelling] [occupied vehicle]* to further an unlawful activity;

OR

Only for offenses committed on or after 7/1/21: the defendant was engaged in *[a felony or Class A misdemeanor]*, or was using the *[residence] [business] [dwelling] [occupied vehicle]* to further *[a felony or Class A misdemeanor]*.

[**See Comment 5:** The defendant is not engaged in *[conduct that would constitute [the felony or Class A misdemeanor] [using a [dwelling] [business] [residence] [occupied vehicle] to further [a felony or Class A misdemeanor]]* if the defendant was engaged in *[the felony or Class A misdemeanor] [using the [dwelling] [business] [residence] [occupied vehicle] to further [a felony or Class A misdemeanor]]* due to the defendant’s status as a victim of human trafficking. The defendant has the burden of proving *[his] [her]* status as a victim of human trafficking by clear and convincing evidence. “Clear and convincing evidence” means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence, which may be provided to you through testimony.]; or

- b) Add a footnote to the term “clear and convincing evidence” in the above new paragraph. The text of the footnote should read as follows:

State v. Flake, 88 S.W.3d 540, 554 (Tenn. 2002).

- c) Put brackets around the following definition paragraphs:

“Business”
“Grave sexual abuse”
“Vehicle”

- d) Amend Comment 5 to read as follows:

For offenses committed on or after 7/1/21, if the defendant proves by clear and convincing evidence to the jury that the conduct that would constitute a felony or Class A misdemeanor or the use of the residence, business, dwelling or occupied vehicle was due to the defendant’s status as a victim of human trafficking, the presumption of the defendant’s reasonable belief of death, serious bodily injury or grave sexual abuse would still apply. T.C.A. § 39-11-611(b)(3) and (d)(3)(B).

43.03 – Defendant: Not testifying

- a) Renumber this instruction as 43.03(a).

43.03(b)- Defendant: Not testifying during the sentencing hearing

- a) Add attachment one to this memo as new instruction 43.03(b) – Defendant: Not testifying during the sentencing hearing.

T.P.I. -- CRIM. 43.03(b)

DEFENDANT: NOT TESTIFYING DURING THE SENTENCING HEARING

The defendant has not taken the stand to testify as a witness during the sentencing hearing but you shall place no significance on this fact. The burden is on the state to prove any aggravating circumstance or circumstances beyond a reasonable doubt **[only if the jury is considering a sentence of death:** and that said circumstance or circumstances have been proven by the state to outweigh any mitigating circumstance or circumstances beyond a reasonable doubt]. *[He] [She]* is not required to take the stand in *[his] [her]* own behalf and *[his] [her]* election not to do so cannot be considered for any purpose against *[him] [her]*, nor can any inference be drawn from such fact.

COMMENTS

1. The Committee is of the opinion that this instruction should be given if a defendant, convicted of Murder First Degree, elects not to testify at a *Momon* hearing given after the State's proof in the sentencing hearing. See the cases cited in the comment and footnotes to T.P.I.–Crim. 43.03(a).