

## **Introduction**

(current through December 31, 2007)

The 2005 edition of the Sixth Circuit Pattern Criminal Jury Instructions supersedes the 1991 edition. The changes in the 2005 edition, which are described in detail below, include a new section on the standard of appellate review for instructions, some changes to the general instructions, new elements instructions, and some new features to make the instructions easier to use. The Committee made changes only when it considered them necessary.

The Pattern Criminal Jury Instruction Committee of the Sixth Circuit District Judges Association includes district judges, prosecutors, defense attorneys and academics from around the circuit. The members are listed above. The Committee became a standing Committee on April 10, 2003. The Committee was assisted by a separate group of attorneys, serving as reactors, who reviewed each instruction that was new or amended in the 2005 edition.

The 2005 instructions are designed for use at the end of trial. However, this should not be interpreted as a recommendation against using preliminary instructions before the trial begins. To the contrary, the Committee believes that preliminary instructions are helpful. With modifications, these instructions can be used as preliminary instructions. A full set of preliminary instructions appears in § 2.07 of the Benchbook for United States District Judges.

The research includes cases released through December 31, 2007.

The Committee continues to use simple language, or plain English, whenever possible.

In the text of the instructions, as in the 1991 edition, the Committee uses brackets to indicate language that is only appropriate in limited circumstances, and to indicate alternatives. Use Notes following the instructions briefly explain when bracketed language should be used. The Use Notes also highlight other issues relating to the instructions.

As in the 1991 edition, the 2005 edition includes a committee commentary with each instruction. The commentaries cite the authority for the instruction and explain the Committee's rationale. For the general instructions in chapters 1-9 that are continued from the 1991 edition, we include both the original 1991 commentary and a new 2005 commentary. The 2005 commentaries update and supplement the original commentaries as necessary.

In the 2005 commentaries, the Committee occasionally cites unpublished cases. These are widely available now in the electronic databases, Lexis and Westlaw, and in West's publication, the Federal Appendix. The Committee uses unpublished cases only when there is no published case on point or where the unpublished case is helpful. Sixth Circuit Rule 28(g) governs the citation of unpublished decisions by counsel in briefs and oral arguments in the Sixth Circuit and in the district courts. See also Fed.R.App.P. 32.1. Unpublished decisions are not precedentially binding under the doctrine of stare decisis, but they may be of persuasive value. *United States v. Villareal*, 491 F.3d 605, 610 (6th Cir. 2007); *United States v. Sanford*, 476 F.3d 391, 396 (6th Cir. 2007).

In the 2005 edition, the Committee made the following changes. First, we included a brief review of the law on the standard for appellate review of jury instructions generally. We chose to include this review rather than address the standard of review instruction-by-instruction. This review appears before Chapter 1.

Second, the Committee amended the 1991 general instructions in chapters 1-9 as necessary to be current and accurate. A chart summarizing changes in these instructions appears in the appendix. Two instructions from the 1991 edition were withdrawn, Instructions 7.15 and 8.03A. Some general instructions were added, including 2.10A, 4.01A, 6.07, 7.02C, 7.12, 8.03C and 8.10. These changes are explained in the 2005 Committee Commentary accompanying each instruction.

A third change is that the 2005 edition includes elements instructions for certain fraud, money laundering and firearms crimes. In 1997, the Committee sent a questionnaire to lawyers practicing criminal law in the Sixth Circuit, soliciting opinions on the 1991 instructions generally and asking which elements instructions should be drafted. In addition, the Committee collected data on the frequency of prosecution of various crimes, both nationally and in the Sixth Circuit. Based on these two sources, the Committee identified crimes for which elements instructions would be most helpful.

Finally, the 2005 edition includes some features which make the instructions easier to use: an index, a table of cases, and a table of statutes cited. Also, this edition contains an appendix, which provides some charts the Committee found helpful, one summarizing the changes from the 1991 edition to the 2005 edition and others diagraming a money laundering crime.

As the Judicial Council indicates in its resolution authorizing the distribution of these instructions, approval of the content of the instructions must await a case-by-case review by the Court of Appeals. Each case is different, and no set of pattern instructions can cover all the variables which may arise. These are suggested instructions only, and should be tailored to fit the facts of each individual case. As the Sixth Circuit has cautioned, although pattern instructions “have their place, they should not be used without careful consideration being given to their applicability to the facts and theories of the specific case being tried.” *United States v. Wolak*, 923 F.2d 1193, 1198 (6th Cir. 1991).

The 2005 instructions continue to use singular pronouns and verbs and to use masculine pronouns only where the use of gender-neutral language was awkward or lacked specificity. The instructions should be modified to fit the case, including using female pronouns where appropriate. Some courts give a preliminary instruction on this issue, for example:

Any reference to he, his and him within these jury instructions should be construed by you as having equal applicability to any female participant in this trial. The use of the masculine pronouns is only for convenience in reading the instructions and not for the purpose of giving emphasis to, or providing focus upon, any witness or particular aspect of this case.