**INSTRUCTIONS AND VERDICT FORMS**

 Instructions fall within the following categories and should be used as indicated:

 **A. Instructions read, but not given, to the jury.**

 1. MAI-CR 4th 400.02 must be read to the jury panel prior to voir dire.

 2. MAI-CR 4th 400.04 must be read at the first recess, either during the voir dire examination or at its conclusion.

 3. MAI-CR 4th 400.06 must be read to the jury after the jury is sworn and before any other instruction.

**B. Instructions read and given to the jury in every case.**

 1. MAI-CR 4th 402.01 and 402.02 must be read before opening statements. They will be given to the jury along with the other instructions for use during its deliberations. They will be numbered as instructions 1 and 2.

 2. MAI-CR 4th 402.03 shall be read to the jury as the first instruction given at the close of the case and before argument of counsel. It will be numbered as instruction 3.

 3. MAI-CR 4th 402.04 shall be read to the jury as the second instruction given at the close of the case. This will be numbered as instruction 4.

 4. MAI-CR 4th 402.05 shall be read to the jury as the next to the last instruction at the close of the case.

 5. MAI-CR 4th 402.06 shall be read to the jury as the last instruction at the close of the case.

 **C. Verdict directing instructions.**

 One or more verdict directing instructions for the state following the form of MAI-CR 4th 404.02 will be used in each case. In most instances, a verdict directing instruction for use with reference to particular offenses will be found in the Series beginning with the 414.00 Series.

 Where necessary, the verdict directing instruction must be modified to instruct on the general responsibility of one person for the conduct of others. See MAI-CR 4th 404.04.

 Verdict directing instructions submitting lesser graded or included offenses will be included where supported by the evidence and requested by one of the parties or on the court's own motion. See section G to MAI-CR 4th 404.11 and Notes on Use 3b to MAI-CR 4th 404.02.

 Punishment will not be submitted to the jury in the verdict directing instructions. See MAI-CR 4th 405 Series.

 **D. Instructions that must be given, if supported by the evidence, whether requested or not.**

 Instructions that fall in this category involve either justification or mental disease or defect. See MAI-CR 4th 406.02 through 406.30.

 **E. Instructions that must be given, when appropriate, if requested by the defendant.**

 The 408.00 Series sets forth instructions that must be given if requested by the defendant. See also Defenses, MAI-CR 4th 404.11.

 **F. Instructions that must be given, when appropriate, if requested by the state or by the defendant.**

 The 410.00 Series sets forth instructions that must be given if requested by either the state or the defendant.

 **G. Definitions.**

 Some instructions include all definitions required or permitted by that instruction and its Notes on Use. Other instructions do not include all the definitions permitted and have Notes on Use that permit terms to be defined. See the appropriate verdict director and its Notes on Use concerning the definition of terms. See also MAI-CR 4th 433.00.

 **H. Verdict mechanics and forms.**

 Where necessary, one or more instructions on verdict possibilities will be given. See the 404.00 Series.

 Appropriate verdict forms will be presented to the jury but will not be read to the jury by the court. See the 404.00 Series. See also the Notes on Use to the appropriate verdict directing instructions to determine what modifications, if any, are required to the verdict forms.

 **I. Instructions after deliberations.**

 See MAI-CR 4th 404.40(e), and the 412.00 Series for instructions that the court may give, when appropriate, after deliberations have commenced. Also see the 433.00 Series, Definitions - General Form, Notes on Use 2F.

 **J. Homicide instructions.**

 If you are trying a homicide case, see MAI-CR 3d 313.00 Series for homicides that occurred prior to August 28, 2001, and MAI-CR 4th 414.00 Series for homicides that occurred after August 28, 2001.

**CHECK-LIST OF MAI-CR 4th FORMS**

 The following checklist will assist you in assembling a complete set of instructions.

*First. How many counts are being submitted?*

 Some cases will be submitted under multiple counts. Most, but not all, of the instructions contain parenthetical phrases intended to alert the user of MAI-CR 4th to the necessity of limiting the instructions and verdict forms to specific charges in a multiple count submission. In some few cases, multiple counts will submit alternative theories requiring only one verdict.

 A complete set of verdict forms must be supplied for each count, whether or not submitted in the alternative. See the 404.00 Series. For instructions on verdict possibilities, see the 404.00 Series.

 If a homicide case is being tried with multiple counts, see Notes on Use 5 and Committee Comment to MAI-CR 3d 314.30.

*Second. How many defendants are being tried?*

 Where one or more defendants are being tried under single or multiple counts, the instructions given must be limited to the defendant to whom it is applicable, and, in addition, to the count or counts to which they apply. The name of the particular defendant to which the instruction is directed should be inserted wherever there is a reference to "the defendant." No one verdict directing instruction for the state should direct a verdict against more than one defendant. When multiple defendants are being tried, a verdict possibilities instruction should be given. A complete set of verdict forms must be supplied for each defendant and, where necessary, each count submitted.

*Third. Did the defendant or defendants act together with others in committing the offense?*

 If so, the court should consider whether the verdict director should be modified pursuant to MAI-CR 4th 404.04.

*Fourth. Is an attempt of an offense being submitted?*

 If so, use MAI-CR 4th 404.06 for an attempt punished under Section 562.012, RSMo, or an attempt punished under the specific criminal statute creating the offense. See also, MACH-CR 2d 18.02 and 18.03 to charge an attempt.

*Fifth. Are lesser graded or included offenses being submitted in addition to higher grades or degrees of offenses?*

 If so, Notes on Use 3b to MAI-CR 4th 404.02 should be consulted in formulating the lesser graded or included offenses. A complete set of verdict forms must be supplied for each offense submitted against each defendant, but only one form for a "Not Guilty" finding should be included for each count submitted against any one defendant.

*Sixth. Is a separate instruction being given on any defense?*

 If yes, then the verdict director may make reference to that separate instruction. However, whether the verdict director is so modified depends on the particular defense. See MAI-CR 4th 404.11 on Defenses, as well as the Notes on Use to the particular defense.

*Seventh. Are any other instructions required to be given upon request?*

 Instructions required if requested by defendant are set forth in the 408.00 Series. Instructions required if requested by the state or by the defendant are in the 410.00 Series.

*Eighth. Should the jury be asked to assess the punishment?*

 If so, then the verdict director will not contain the appropriate range of punishment, and the 405 Series will be used. If not, the range of punishment will be omitted.

*Ninth. Is the set of verdict forms complete as to all defendants and all counts? There should be one separate guilty verdict form for each verdict directing instruction but only one not guilty form for each count.*

*Tenth. Are all definitions required or requested to be given included in the "definition instruction" or elsewhere in the instructions?*

*Eleventh. Is a homicide case being tried?*

 If so, the forms and Notes on Use in MAI-CR 4th 414.00 will override any conflicting directions in Notes on Use elsewhere in MAI-CR 4th.