

SUBSTANTIVE OFFENSES OF SPECIAL NOTE/CONCERN

13.7. Murder with Included Offense of Voluntary Manslaughter

The crime of murder is defined by law as follows:

A person who knowingly or intentionally kills another human being, commits murder, a felony.

Included in the charge in this case is the crime of voluntary manslaughter, which is defined by law as follows:

A person who knowingly or intentionally kills [another human being] [a fetus that has attained viability] while acting under sudden heat commits voluntary manslaughter, a Level 2 felony.

Sudden heat is a mitigating factor that reduces what otherwise would be murder to voluntary manslaughter. The State has the burden of proving beyond a reasonable doubt that the Accused was not acting under sudden heat.

Before you may convict the Accused, the State must have proved each of the following beyond a reasonable doubt:

- 1.The Accused
- 2.knowingly or intentionally
- 3.killed
- 4.[name human being] [a fetus that had attained viability, which is defined as the ability of a fetus to live outside the mother's womb.]
- 5.and the Accused was not acting under sudden heat.

If the State failed to prove each of elements 1 through 4 beyond a reasonable doubt, you must find the Accused not guilty of murder as charged in Count ____ .

If the State did prove each of elements 1 through 4 beyond a reasonable doubt, but the State failed to prove beyond a reasonable doubt element 5, you may find the Accused guilty of voluntary manslaughter, a Level 2 felony, a lesser included offense of Count ____ .

If the State did prove each of elements 1 through 5 beyond a reasonable doubt, you may find the Accused guilty of murder, a felony as charged in Count ____.

Comments of Pattern Instructions Committee

For the definition of “fetus” see Instruction No. 14.1680. *See also* Ind. Code § 35-42-1-3(a)(2).

The term “sudden heat” is defined in a separate instruction: “sudden heat” (Instruction No. 14.3960)

The following term is defined by law: “human being” (I.C. 35-31.5-2-160; Instruction No. 14.2140).

Under Ind. Code § 35-42-1-6.5, this offense does not apply to an abortion performed in compliance with Ind. Code § 16-34 or Ind. Code § 35-1-58.5 (before its repeal).

Authority: Ind. Pattern Instruction - 3.0500; *see Eichelberger v. State*, 852 N.E.2d 631 (Ind.Ct.App. 2006) (finding IAC for tendering flawed instruction on voluntary manslaughter, which improperly included sudden heat as an element of the offense rather than stating the State bears burden of disproving its existence beyond a reasonable doubt).