

Introduction

(current through October 1, 2021)

The Sixth Circuit Pattern Criminal Jury Instruction Committee includes district judges, prosecutors, defense attorneys and academics from around the circuit. The members are listed above.

The 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.

The Committee uses simple language, or plain English, whenever possible.

In the text of the instructions, brackets indicate alternatives or language that is only appropriate in limited circumstances. Brackets with italicized type are notes to the court. Use Notes following the instructions briefly explain when bracketed language should be used and other issues relating to the instructions.

A committee commentary is provided with each instruction. The commentaries cite the authority for the instruction and explain the Committee's rationale.

In the commentaries, the Committee occasionally cites unpublished cases.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 The Committee uses unpublished cases only when there is no published case on point or where the unpublished case is helpful. Sixth Circuit Rule 28(g) governs the citation of unpublished decisions by counsel in briefs and oral arguments in the Sixth Circuit and in the district courts.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 Unpublished decisions are not precedentially binding under the doctrine of stare decisis, but they may be of persuasive value.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).

The instructions include an appendix, which provides some charts diagramming a money laundering crime.

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). More recently, the court stated that it "regularly looks to whether jury instructions mirror or track the pattern jury instructions as one factor in determining whether any particular instruction is misleading or erroneous," and that it "has noted the potential problems that can arise when trial courts stray from the Pattern Jury Instructions." *United States*

v. Frei, 995 F.3d 561, 565 (6th Cir. 2021) (cleaned up). The court described the pattern instructions as “presumptively straightforward.” *Id.* at 566.

The 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.