**ICJI 700B Punishment a Concern, Capital Case**

The State is seeking the death penalty in this case. If the defendant is convicted of murder in the first degree, there will then be a separate sentencing phase of the trial. At that sentencing phase, additional evidence may be presented and the jury will be given additional instructions. If the jury finds [a] statutory aggravating circumstance[s], but finds that death would be unjust, the judge will sentence the defendant to a term of fixed life imprisonment. If the jury does not find a statutory aggravating circumstance, the judge must then sentence the defendant to life in prison, and the judge must set a fixed period of imprisonment of anywhere from ten years up to life, during which the defendant will not be eligible for parole.

Comment

I.C. § 19-2515(7).

This instruction should only be given if the defendant is charged with murder in the first degree and a valid death notice has been filed. This instruction should be given in the guilt phase of a Capital case.