Model Criminal Jury Instructions

Michigan Supreme Court

We are pleased to provide an electronic copy of the criminal jury instructions developed by the Michigan State Bar Criminal Jury Instruction Committee and presently in use for criminal trials. On December 22, 2014, by Administrative Order 2013–13, the Michigan Supreme Court appointed a new committee—the Committee on Model Criminal Jury Instructions. That committee is composed of attorneys and judges whose duty it will be to ensure that the criminal jury instructions accurately and understandably inform jurors about the legal process in which they will participate and the law that they are to apply.

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M Crim JI 1.1 Preliminary Instructions to Prospective Jurors

(1)Ladies and gentlemen, I am Judge _____ , and it is my pleasure and privilege to welcome you to the _____ Court of _____.

(2)I know that jury duty may be a new experience for some of you. Jury duty is one of the most serious duties that members of a free society are asked to perform. Our system of self-government could not exist without it.

(3)The jury is an important part of this court. The right to a jury trial is an ancient tradition and part of our heritage. The law says that both a person who is accused of a crime and the prosecution have the right to a trial, not by one person, but by a jury of twelve impartial persons.

(4)Jurors must be as free as humanly possible from bias, prejudice, or sympathy for either side. Each side in a trial is entitled to jurors who keep open minds until the time comes to decide the case.

Use Note

MCR 6.412(B) states that the court should give the prospective jurors appropriate preliminary instructions before beginning the jury selection process.

History

M Crim JI 1.1 (formerly CJI2d 1.1) was CJI 1:1:01.

M Crim JI 1.2 Selection of Fair and Impartial Jury

(1)A trial begins with jury selection. The purpose of this process is to obtain information about you that will help us choose a fair and impartial jury to hear this case.

(2)During jury selection [the lawyers and] I will ask you questions. This is called the voir dire. The questions are meant to find out if you know anything about the case. Also, we need to find out if you have any opinions or personal experiences that might influence you for or against the prosecution, the defendant, or any witnesses. One or more of these things could cause you to be excused in this particular case, even though you may otherwise be qualified to be a juror.

(3)The questions may probe deeply into your attitudes, beliefs, and experiences. They are not meant to be an unreasonable prying into your private life. The law requires that we get this information so that an impartial jury can be chosen.

(4)If you do not hear or understand a question you should say so. If you do understand it, you should answer it truthfully and completely. Please do not hesitate to speak freely about anything you believe we should know.

Use Note

Omit bracketed material when voir dire is being conducted by judge only.

History

M Crim JI 1.2 (formerly CJI2d 1.2) was CJI 1:1:02.

Reference Guide

Court Rules

MCR 6.412(C).

Case Law

People v Jendrzejewski, 455 Mich 495, 566 NW2d 530 (1997); *People v Tyburski,* 445 Mich *606*, 518 NW2d 441 (1994); *People v Sawyer,* 215 Mich App *183*, 545 NW2d 6 (1996); *People v Taylor, 195 Mich App 57*, 489 NW2d 99 (1992).

M Crim JI 1.3 Challenges

During jury selection you may be excused from serving on the jury in one of two ways. First, I may excuse you for cause; that is, I may decide that there is a valid reason why you cannot or should not serve in this case. Or, a lawyer from one side or the other may excuse you without giving any reason for doing so. This is called a peremptory challenge. The law gives each side the right to excuse a certain number of jurors in this way. If you are excused, you should not feel bad or take it personally. As I explained before, there simply may be something that causes you to be excused from this particular case.

History

M Crim JI 1.3 (formerly CJI2d 1.3) was CJI 1:1:03.

M Crim JI 1.4 Juror Oath before *Voir Dire*

(1)I will now ask you to stand and swear to answer truthfully, fully, and honestly all the questions that you will be asked about your qualifications to serve as a juror in this case. If you have religious beliefs against taking an oath, you may affirm that you will answer all the questions truthfully, fully, and honestly.

(2)Here is your oath: "Do you solemnly swear (or affirm) that you will truthfully and completely answer all questions about your qualifications to serve as jurors in this case?"

Use Note

This oath *must* be administered to all prospective jurors before voir dire. MCR 6.412(B).

History

M Crim JI 1.4 (formerly CJI2d 1.4) was CJI 1:1:04.

M Crim JI 1.5 Introduction of Judge, Parties, Counsel, and Witnesses

(1)I'd like to introduce to you the members of my staff. [*Introduce court personnel and explain what they do.*]

(2)This is a criminal case involving the charge of _____

_____, which I will explain more fully later. This charge has been made against the defendant, who is _____. The defendant's lawyer is _____. [*Introduce any other persons at counsel table.*]

(3)The lawyer for the State of Michigan is [Assistant] Prosecuting Attorney _____. [*Introduce any other persons at counsel table.*][1]

(4)The witnesses who may be called in this case are: [*Read list of witnesses.*][2]

(5)Does anyone in the jury box [or waiting to be chosen] know the defendant or any of the lawyers or witnesses?

Use Note

[1] The court can, if it prefers, read M Crim JI 1.8, Reading of Information, at this point.

[2] The witnesses should not be designated as defense or prosecution witnesses but should simply be read.

History

M Crim JI 1.5 (formerly CJI2d 1.5) was CJI 1:1:05.

M Crim JI 1.6 Length of Trial

(1)We think that this trial will last for [days / weeks].

(2)If you believe that the length of the trial will be a real hardship for you, please let me know right now.

History

M Crim JI 1.6 (formerly CJI2d 1.6) was CJI 1:1:06.

M Crim JI 1.7 Health Questions

Some of you may have health problems that would prevent you from serving on a jury. For example, does anyone have a medical problem that makes you unable to sit for two or three hours at a time? Does anyone have a sight or hearing problem?

History

M Crim JI 1.7 (formerly CJI2d 1.7) was CJI 1:1:07.

M Crim JI 1.8 Reading of Information

(1)This is a criminal case. The paper used to charge the defendant with a crime is called an information*. The information in this case charges the defendant, _____, with the crime of _____, and reads as follows:

[*Read information.*]

(2)The defendant has pled not guilty to this charge. You should clearly understand that the information I have just read is not evidence. An information is read in every criminal trial so that the defendant and jury can hear the charges. You must not think it is evidence of [his / her] guilt or that [he / she] must be guilty because [he / she] has been charged.

Use Note

*The judge should say "indictment" or "complaint" where appropriate.

History

M Crim JI 1.8 (formerly CJI2d 1.8) was CJI 1:2:19-1:2:20; amended January, 1991.

Reference Guide

Case Law

Tot v United States, 319 US 463 *(1943).*

M Crim JI 1.9 Presumption of Innocence, Burden of Proof, and Reasonable Doubt

(1)A person accused of a crime is presumed to be innocent. This means that you must start with the presumption that the defendant is innocent. This presumption continues throughout the trial and entitles the defendant to a verdict of not guilty unless you are satisfied beyond a reasonable doubt that [he / she] is guilty.

(2)Every crime is made up of parts called elements. The prosecutor must prove each element of the crime beyond a reasonable doubt. The defendant is not required to prove [his / her] innocence or to do anything.* If you find that the prosecutor has not proven every element beyond a reasonable doubt, then you must find the defendant not guilty.

(3)A reasonable doubt is a fair, honest doubt growing out of the evidence or lack of evidence. It is not merely an imaginary or possible doubt, but a doubt based on reason and common sense. A reasonable doubt is just that a doubt that is reasonable, after a careful and considered examination of the facts and circumstances of this case.

Use Note

This instruction must be given in every case.

*For some affirmative defenses, a defendant must produce evidence. The court should instruct the jury on the defendant's burden of production of evidence where it is most appropriate to do so. The committee recommends that this be done when the court instructs on the nature and requirements of the affirmative defense itself.

History

M Crim JI 1.9 (formerly CJI2d 1.9) was CJI 1:2:21 and 1:2:24. Amended November, 1990; January, 1992.

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M Crim JI 2.1 Juror Oath Following Selection

(1)Ladies and gentlemen of the jury, you have been chosen to decide a criminal charge made by the State of Michigan against one of your fellow citizens.

(2)I will now ask you to stand and swear to perform your duty to try the case justly and to reach a true verdict. If your religious beliefs do not permit you to take an oath, you may instead affirm to try the case justly and reach a true verdict.

(3)Here is your oath: "Each of you do solemnly swear (or affirm) that, in this action now before the court, you will justly decide the questions submitted to you, that, unless you are discharged by the court from further deliberation, you will render a true verdict, and that you will render your verdict only on the evidence introduced and in accordance with the instructions of the court, so help you God."

Use Note

Because jeopardy attaches as soon as the jury is sworn, *Crist v Bretz*, 437 *US* 28, 32-36 (1978), the oath should not be administered until the trial is ready to begin.

After the jury is selected and before the trial begins, the court must have the jurors sworn. MCR 6.412(F). Before trial begins, the court should give them appropriate pretrial instructions. MCR 2.513(A).

History

M Crim JI 2.1 (formerly CJI2d 2.1) was CJI 1:2:01.

Reference Guide

Statutes

MCL 768.14-.15.

Court Rules

MCR 2.511(H).

Case Law

People v Allan, 299 Mich App 205, 829 NW2d 319 (2013).

M Crim JI 2.2 Legal Principles

Now I will explain some of the legal principles you will need to know and the procedure we will follow in this trial.

History

M Crim JI 2.2 (formerly CJI2d 2.2) was CJI 1:2:08.

M Crim JI 2.3 Trial Procedure

(1)A trial follows this procedure:

(2)First, the prosecutor makes an opening statement, where [he / she] gives [his / her] theories about the case. The defendant's lawyer does not have to make an opening statement, but [he / she] may make an opening statement after the prosecutor makes [his / hers], or [he / she] may wait until later. These statements are not evidence. They are only meant to help you understand how each side views the case.

(3)To prove the charge(s) the prosecutor must prove the following beyond a reasonable doubt:

[*Read elements of the offense(s). Since the elements of the offense(s) may contain legal terms, definitions of those terms should also be given.*]

(4)Next, the prosecutor presents [his / her] evidence. The prosecutor may call witnesses to testify and may show you exhibits like documents or objects. The defendant's lawyer has the right to cross-examine the prosecutor's witnesses.

(5)After the prosecutor has presented all [his / her] evidence, the defendant's attorney may also offer evidence, but does not have to. By law, the defendant does not have to prove [his / her] innocence or produce any evidence. If the defense does call any witnesses, the prosecutor has the right to cross-examine them. The prosecutor may also call witnesses to contradict the testimony of the defense witnesses.

(6)After all the evidence has been presented, the prosecutor and the defendant's lawyer will make their closing arguments. Like the opening statements, these are not evidence. They are only meant to help you understand the evidence and the way each side sees the case. You must base your verdict only on the evidence.

(7)You have been given a written copy of the instructions I have just read to you. You may refer to them during the trial. Since no one can predict the course of a trial, these instructions may change at the end of the trial. At the close of the trial, I will provide you with a copy of my final instructions for your use during deliberations.

History

M Crim JI 2.3 (formerly CJI2d 2.3) was CJI 1:2:14; amended January, 1991; September, 2011.

Reference Guide

Court Rules

MCR 2.513(A).

M Crim JI 2.4 Function of Court and Jury

(1)My responsibilities as the judge in this trial are to make sure that the trial is run fairly and efficiently, to make decisions about evidence, and to instruct you about the law that applies to this case. You must take the law as I give it to you. Nothing I say is meant to reflect my own opinions about the facts of the case. As jurors, you are the ones who will decide this case.

(2)Your responsibility as jurors is to decide what the facts of the case are. This is your job, and no one else's. You must think about all the evidence and all the testimony and then decide what each piece of evidence means and how important you think it is. This includes how much you believe what each of the witnesses said.

(3)What you decide about any fact in this case is final.

History

M Crim JI 2.4 (formerly CJI2d 2.4) was CJI 1:2:09.

Reference Guide

Case Law

People v Mosden, 381 Mich 506, 164 NW2d 26 (1969); *Spalding v Lowe*, 56 Mich 366, 371, 23 NW 46 (1885*); Knowles v People*, 15 Mich 408, 412 (1867); *People v Derry*, 23 Mich App 572, 179 NW2d 182 (1970).

M Crim JI 2.5 Considering Only Evidence / What Evidence Is

When it is time for you to decide the case, you are only allowed to consider the evidence that was admitted in the case. Evidence includes only the sworn testimony of witnesses, the exhibits admitted into evidence, and anything else I tell you to consider as evidence.

History

M Crim JI 2.5 (formerly CJI2d 2.5) was CJI 1:2:15.

M Crim JI 2.5a Interim Commentary by Attorneys

The court will now allow each party to provide interim commentary. The lawyers' commentaries are not evidence. They are only meant to help you understand the evidence and each side's legal theories. You should only accept things that the lawyers say that are supported by the evidence or by your own common sense and general knowledge. All of my earlier instructions about basing your decision on the evidence and law continue to apply.

Use Note

The court is not required to allow interim commentary. An instruction of this nature should be given if the court, in its discretion, allows interim commentaries.

History

M Crim JI 2.5a (formerly CJI2d 2.5a) was adopted by the committee in September, 2011.

Reference Guide

Court Rules

MCR 2.513(D).

M Crim JI 2.6 Judging Credibility and Weight of Evidence

(1)It is your job to decide what the facts of this case are. You must decide which witnesses you believe and how important you think their testimony is. You do not have to accept or reject everything a witness says. You are free to believe all, none, or part of any person's testimony.

(2)In deciding which testimony you believe, you should rely on your own common sense and everyday experience. However, in deciding whether you believe a witness's testimony, you must set aside any bias or prejudice you have based on the race, gender, or national origin of the witness.*

(3)There is no fixed set of rules for judging whether you believe a witness, but it may help you to think about these questions:

(a)Was the witness able to see or hear clearly? How long was the witness watching or listening? Was anything else going on that might have distracted the witness?

(b)Does the witness seem to have a good memory?

(c)How does the witness look and act while testifying? Does the witness seem to be making an honest effort to tell the truth, or does the witness seem to evade the questions or argue with the lawyers?

(d)Does the witness's age or maturity affect how you judge his or her testimony?

(e)Does the witness have any bias or prejudice or any personal interest in how this case is decided?

(f)Have there been any promises, threats, suggestions, or other influences that affect how the witness testifies?

(g)In general, does the witness have any special reason to tell the truth, or any special reason to lie?

(h)All in all, how reasonable does the witness's testimony seem when you think about all the other evidence in the case?

Use Note

*The court should substitute other improper considerations, such as religion or sexual orientation, where appropriate.

History

M Crim JI 2.6 (formerly CJI2d 2.6) was CJI 1:2:16; amended March, 1991.

Reference Guide

Case Law

Knowles v People, 15 Mich 408, 412 (1867).

M Crim JI 2.7 Questions Not Evidence

The questions the lawyers ask the witnesses are not evidence. Only the answers are evidence. You should not think that something is true just because one of the lawyers asks questions that assume or suggest that it is.

History

M Crim JI 2.7 (formerly CJI2d 2.7) was CJI 1:2:12.

M Crim JI 2.8 Court's Questioning Not a Reflection of Opinion

I may ask some of the witnesses questions myself. These questions are not meant to reflect my opinion about the evidence. If I ask questions, my only reason would be to ask about things that may not have been fully explored.

History

M Crim JI 2.8 (formerly CJI2d 2.8) was CJI 1:2:11.

M Crim JI 2.9 Questions by Jurors Allowed

(1)During the trial you may think of an important question that would help you understand the facts in this case. You are allowed to ask such questions.

(2)You should wait to ask questions until after a witness has finished testifying and both sides have finished their questioning. If you still have an important question after this, do not ask it yourself. Raise your hand, write the question down, and pass it to the bailiff, who will give it to me. Do not show your question to other jurors.

(3)If your question is not asked, it is because I determined under the law that the question should not be asked. Do not speculate about why the question was not asked. In other words, you should draw no conclusions or inferences about the facts of the case, nor should you speculate about what the answer might have been. Also, in considering the evidence you should not give greater weight to testimony merely because it was given in answer to questions submitted by members of the jury.

(4)On the other hand, if you cannot hear what a witness or lawyer says, please raise your hand immediately and ask to have the question or answer repeated.

History

M Crim JI 2.9 (formerly CJI2d 2.9) was CJI 2:1:06. Amended September, 2000; September, 2011.

Reference Guide

Court Rules

MCR 2.513(I).

Case Law

People v Heard, 388 Mich 182, 200 NW2d 73 (1972); *People v Wesley*, 148 Mich App 758, 384 NW2d 783 (1985), aff'd, 428 Mich 708, 411 NW2d 159 (1987).

M Crim JI 2.10 Objections

During the trial the lawyers may object to certain questions or statements made by the other lawyers or witnesses. I will rule on these objections according to the law. My rulings for or against one side or the other are not meant to reflect my opinions about the facts of the case.

History

M Crim JI 2.10 (formerly CJI2d 2.10) was CJI 1:2:10.

M Crim JI 2.11 Disregard Out-of-Presence Hearings

Sometimes the lawyers and I will have discussions out of your hearing. Also, while you are in the jury room I may have to take care of other matters that have nothing to do with this case. Pay no attention to these interruptions.

History

M Crim JI 2.11 (formerly CJI2d 2.11) was CJI 1:2:07.

M Crim JI 2.12 Jurors Not To Discuss Case

You must not discuss the case with anyone, including your family or friends. You must not even discuss it with the other jurors until the time comes for you to decide the case. When it is time for you to decide the case, I will send you to the jury room for that purpose. Then you should discuss the case among yourselves, but only in the jury room and only when all the jurors are there. When the trial is over, you may, if you wish, discuss the case with anyone.

Use Note

The no-discussion instruction *must be given* to the jury, but it may be given when most appropriate. In any case that appears likely to be of significant public interest, an admonition should be given before the end of the first day if the jury is not sequestered. At the end of each subsequent day of the trial, and at other recess periods if the court deems it necessary, an admonition should be given. See M Crim JI 2.14.

History

M Crim JI 2.12 (formerly CJI2d 2.12) was CJI 1:2:03. This instruction was modified by the committee in September, 1996, to clarify that the jury should not discuss the case until sent to the jury room "for that purpose" by the court.

Reference Guide

Case Law

People v Hunter, 370 Mich 262, 121 NW2d 442 (1963); *People v Blondia*, 69 Mich App 554, 245 NW2d 130 (1976).

M Crim JI 2.13 Recesses

(1)If I call for a recess during the trial, I will either send you back to the jury room or allow you to leave the courtroom on your own and go about your business. But you must not discuss the case with anyone or let anyone discuss it with you or in your presence. If someone tries to do that, tell him or her to stop, and explain that as a juror you are not allowed to discuss the case. If he or she continues, leave and report the incident to me as soon as you return to court.

(2)You must not talk to the defendant, the lawyers, or the witnesses about anything at all, even if it has nothing to do with the case.

(3)It is very important that you only get information about the case in court, when you are acting as the jury and when the defendant, the lawyers, and I are all here.

Use Note

This instruction should be given in every case.

History

M Crim JI 2.13 (formerly CJI2d 2.13) was CJI 1:2:04.

Reference Guide

Court Rules

MCR 2.513(B).

Case Law

People v Budzyn and *People v Nevers*, 456 Mich 77, 566 NW2d 229 (1997); *People v France*, 436 Mich 138, 461 NW2d 621 (1990).

M Crim JI 2.14 Caution about Publicity in Cases of Public Interest

(1)During the trial, do not read, listen to, or watch any news reports about the case. Under the law, the evidence you consider to decide the case must meet certain standards. For example, witnesses must swear to tell the truth, and the lawyers must be able to cross-examine them. Because news reports do not have to meet these standards, they could give you incorrect or misleading information that might unfairly favor one side. So, to be fair to both sides, you must follow this instruction.

[*Give the instruction below when recessing:*]

(2)Remember, for the reasons I explained to you earlier, you must not read, listen to, or watch any news reports about this case while you are serving on this jury.

Use Note

In any case that appears likely to be of significant public interest, an admonition should be given before the end of the first day if the jury is not sequestered. If the process of selecting a jury is a lengthy one, such an admonition may also be given to each juror when selected. At the end of each subsequent day of the trial, and at other recess periods if the court deems it necessary, an admonition should be given. See generally American Bar Association Standards Relating to the Administration of Criminal Justice (Approved Draft, 1978), *Fair Trial and Free Press*, 8-3.6(c) and Commentary, pp 8-49 et seq. (2d ed 1978).

History

M Crim JI 2.14 (formerly CJI2d 2.14) was CJI 1:2:05, 1:2:25, 2:1:07.

Reference Guide

Case Law

People v Hicks, 185 Mich App 107, 114-117, 460 NW2d 569 (1990).

M Crim JI 2.15 Sequestration of Jurors

(1)Because this case has gotten so much public attention, I have reluctantly decided that you will not be allowed to go home at the end of the day. Instead, you will stay together. I know this will be difficult for all of you, and you should tell me if this causes you any special hardship.

(2)You may wonder why this is necessary. In fairness to both sides, it is necessary for you to stay together away from any outside information. Please do not communicate in any way with anyone except the other jurors without telling one of the bailiffs. Also, you must not read any newspapers or magazines except for the ones the bailiffs give you. I have told the bailiffs to remove all articles about the trial from the reading material.

(3)We will do everything we can to make you as comfortable as possible. The bailiff will help you with anything you need.

Use Note

Sequestration of the jury is within the discretion of the trial court. *See* MCL 768.16. Sequestration may be constitutionally required in extreme cases. *See Sheppard v Maxwell*, 384 US 333 (1966).

History

M Crim JI 2.15 (formerly CJI2d 2.15) was CJI 2:1:08.

M Crim JI 2.16 Jurors Not to Consider Information from Outside the Courtroom

The restrictions I'm about to describe are meant to ensure that the parties get a fair trial. In our judicial system, it is crucial that jurors are not influenced by anything or anyone outside the courtroom. Now that many jurors have easy access to information through handheld devices and other technology, jurors may be tempted to use these devices to learn more about some aspect of the case. But if a juror were to do this, it would harm the parties. The parties' attorneys would have no way of knowing that a juror has gotten outside information and would have no chance to object if that information was false, untrustworthy, or irrelevant. Remember, no matter how careful and conscientious news reporters, family members, friends, and other people outside the courtroom may be, information about the case from television, radio, the Internet, and social media will inevitably be incomplete—and could be incorrect. Please bear these things in mind as I read the following instructions. These restrictions apply from this moment until I discharge you from jury service:

(1)You must decide this case based solely on the evidence you see and hear in this courtroom. You must not consider information that comes from anywhere else.

(2)This means that during the trial, you must not read, watch, or listen to news reports about the case, whether in newspapers, on television, on the radio, or on the Internet.

(3)You also must not research any aspect of the case during the trial. This means research using a cellular phone, computer, or other electronic device to search the Internet, as well as research with traditional sources like dictionaries, reference manuals, newspapers, or magazines.

(4)You must not investigate the case on your own or conduct any experiments concerning the case, including investigation or experiments using the Internet, computers, cellular phones, or other electronic devices.

(5)You must not visit the scene of any event at issue in this trial. If it is necessary for you to view or visit the scene, court staff will take you there as a group, under court supervision. You must not consider as evidence any personal knowledge you have of the scene.

(6)Before your deliberations, you must not discuss this case with anyone, even your fellow jurors. After you begin deliberations, you should discuss the case with your fellow jurors, but you still must not discuss the case with anyone else until I discharge you from jury service. Until I have discharged you from your jury service, you must not share any information about the case by any means, including cellular phones or social media.

(7)If you discover that a juror has violated my instructions, report it to my bailiff.

History

M Crim JI 2.16 (formerly CJI2d 2.16) was CJI 1:2:06. Amended May, 2009; July, 2009; May, 2013. The committee amended this instruction in July, 2009, to comply with the amendment to MCR 2.511 effective September 1, 2009.

Reference Guide

Court Rules

MCR 2.511.

Case Law

People v Messenger, 221 Mich App 171, 561 NW2d 463 (1997), habeas corpus denied, 2010 US Dist LEXIS 69864 (July 13, 2010); *People v Maliszewski*, No 308879, 2013 Mich App LEXIS 644 (April 9, 2013) (unpublished).

M Crim JI 2.17 Notetaking Allowed

You may take notes during the trial if you wish, but of course you don't have to. If you do take notes, you should be careful that it does not distract you from paying attention to all the evidence. When you go to the jury room to decide your verdict, you may use your notes to help you remember what happened in the courtroom. If you take notes, do not let anyone except the other jurors see them during deliberations. [You must turn them over to the bailiff during recesses.]Your notes will not be examined by anyone, and when your jury service concludes, your notes will be collected and destroyed.

Use Note

If the court decides to allow notetaking, this instruction must be given. *MCR* 2.513*(H)*. The bracketed portion is a possible procedure the court may follow to ensure that notes are seen only by the jurors.

History

M Crim JI 2.17 (formerly CJI2d 2.17) was CJI 2:1:04. Amended September, 2011.

Reference Guide

Court Rules

MCR 2.513(H).

M Crim JI 2.18 Notetaking Not Allowed

I don't believe that it is desirable or helpful for you to take notes during this trial. If you take notes, you might not be able to give your full attention to the evidence. So please do not take any notes while you are in the courtroom.

Use Note

This instruction should be given only when a juror requests to take notes, and the court decides not to allow notetaking.

History

M Crim JI 2.18 (formerly CJI2d 2.18) was CJI 2:1:05.

Reference Guide

Court Rules

MCR 2.513(H).

M Crim JI 2.19 Multiple Defendants Consider Evidence and Law As It Applies to Each Defendant

(1)There is more than one defendant in this case. The fact that they are on trial together is not evidence that they were associated with each other or that either one is guilty.

(2)You should consider each defendant separately. Each is entitled to have [his / her] case decided on the evidence and the law that applies to [him / her].

[(3)If any evidence was limited to (one defendant / some defendants) you should not consider it as to any other defendants.]

Use Note

This instruction must be given when there are two or more defendants. Omit paragraph (3) to avoid confusion in conspiracy cases.

History

M Crim JI 2.19 (formerly CJI2d 2.19) was CJI 2:1:01; amended January, 1991.

Reference Guide

Case Law

People v Liggett, 378 Mich 706, 148 NW2d 784 (1967).

M Crim JI 2.20 Defendant Represents Himself or Herself

In this case, the defendant, _____, is representing [himself / herself]. This fact should not affect your decision in any way. The defendant has the right to represent [himself / herself], and [he / she] has chosen to exercise that right. [A lawyer, _____, is present if the defendant wishes to consult (him / her).]

History

M Crim JI 2.20 (formerly CJI2d 2.20) was CJI 2:1:02; amended January, 1991.

Reference Guide

Court Rules

MCR 6.005(D), (E).

Case Law

Faretta v California, 422 US 806 (1975); *People v Adkins* and *People v Suggs*, 452 Mich 702, 726-727, 551 NW2d 108 (1996); *People v Dennany*, 445 Mich 412, 438, 519 NW2d 128 (1995); *People v Bladel*, 421 Mich 39, 63 n20, 365 NW2d 56 (1985), aff'd sub nom *People v Jackson*, 475 US 625 (1986), overruled on other grounds by *Montejo v Louisiana*, 556 US 778 (2009); *People v Anderson*, 398 Mich 361, 247 NW2d 857 (1976).

M Crim JI 2.21 Second Trial

This case has been tried before, and during this trial you may hear some references to the first trial. Sometimes a case must be retried before a new jury, and you should not pay any attention to the fact that this is the second trial. Your verdict must be based only on the evidence in this trial. You must decide the facts only from what you yourself hear and see.

History

M Crim JI 2.21 (formerly CJI2d 2.21) was CJI 2:1:03.

M Crim JI 2.22 Number of Jurors

You can see that we have chosen a jury of [thirteen / fourteen]. After you have heard all of the evidence and my instructions, we will draw lots to decide which [one / two] of you will be dismissed in order to form a jury of twelve.

History

M Crim JI 2.22 (formerly CJI2d 2.22) was CJI 1:2:02.

Reference Guide

Court Rules

MCR 6.411.

M Crim JI 2.23 Penalty

Possible penalty should not influence your decision. It is the duty of the judge to fix the penalty within the limits provided by law.

History

M Crim JI 2.23 (formerly CJI2d 2.23) was CJI 3:1:19.

Reference Guide

Case Law

People v Goad, 421 Mich 20, 364 NW2d 584 (1984); *People v Szczytko*, 390 Mich 278, 285, 212 NW2d 211 (1973).

M Crim JI 2.24 Instructions to Be Taken As a Whole

I may give you more instructions during the trial, and at the end of the trial I will give you detailed instructions about the law in this case. You should consider all of my instructions as a connected series. Taken all together, they are the law you must follow.

Use Note

MCR 2.513(N) permits the court at its discretion and on notice to the parties to instruct the jury before closing arguments.

History

M Crim JI 2.24 (formerly CJI2d 2.24) was CJI 1:2:13.

Reference Guide

Case Law

People v Dye, 356 Mich 271, 96 NW2d 788 (1959), cert denied, 361 US 935 (1960); *People v Finley*, 38 Mich 482 (1878); *People v McKinley*, 168 Mich App 496, 425 NW2d 460 (1988).

M Crim JI 2.25 Deliberations and Verdict

After all of the evidence has been presented and the lawyers have given their arguments, I will give you detailed instructions about the rules of law that apply to this case. Then you will go to the jury room to decide on your verdict. A verdict must be unanimous. That means that every juror must agree on it, and it must reflect the individual decision of each juror.

History

M Crim JI 2.25 (formerly CJI2d 2.25) was CJI 1:2:18.

Reference Guide

Court Rules

MCR 6.410.

Case Law

People v Sanford, 402 Mich 460, 265 NW2d 1 (1978); *People v Burden*, 395 Mich 462, 236 NW2d 505 (1975); *People v Johnson*, 101 Mich App 748, 300 NW2d 511 (1980).

M Crim JI 2.26 Maintaining an Open Mind

It is important for you to keep an open mind and not make a decision about anything in the case until you go to the jury room to decide the case.

History

M Crim JI 2.26 (formerly CJI2d 2.26) was CJI 1:2:1.

CHAPTER 3

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M Crim JI 3.1 Duties of Judge and Jury

(1)Members of the jury, the evidence and arguments in this case are finished, and I will now instruct you on the law. That is, I will explain the law that applies to this case.

(2)Remember that you have taken an oath to return a true and just verdict, based only on the evidence and my instructions on the law. You must not let sympathy or prejudice influence your decision.

(3)As jurors, you must decide what the facts of this case are. This is your job, and nobody else's. You must think about all the evidence and then decide what each piece of evidence means and how important you think it is. This includes whether you believe what each of the witnesses said. What you decide about any fact in this case is final.

(4)It is my duty to instruct you on the law. You must take the law as I give it to you. If a lawyer says something different about the law, follow what I say. At various times, I have already given you some instructions about the law. You must take all my instructions together as the law you are to follow. You should not pay attention to some instructions and ignore others.

(5)To sum up, it is your job to decide what the facts of the case are, to apply the law as I give it to you, and, in that way, to decide the case.

Use Note

This instruction should be given in every case. On notice to the parties, the court, in its discretion, may give the final jury instructions to the jury before the parties make closing arguments.

History

M Crim JI 3.1 (formerly CJI2d 3.1) was CJI 3:1:01. This instruction was last amended by the committee in May, 2004.

Reference Guide

Court Rules

MCR 2.513(N).

M Crim JI 3.2 Presumption of Innocence, Burden of Proof, and Reasonable Doubt

(1)A person accused of a crime is presumed to be innocent. This means that you must start with the presumption that the defendant is innocent. This presumption continues throughout the trial and entitles the defendant to a verdict of not guilty unless you are satisfied beyond a reasonable doubt that [he / she] is guilty.

(2)Every crime is made up of parts called elements. The prosecutor must prove each element of the crime beyond a reasonable doubt. The defendant is not required to prove [his / her] innocence or to do anything.* If you find that the prosecutor has not proven every element beyond a reasonable doubt, then you must find the defendant not guilty.

(3)A reasonable doubt is a fair, honest doubt growing out of the evidence or lack of evidence. It is not merely an imaginary or possible doubt, but a doubt based on reason and common sense. A reasonable doubt is just that: a doubt that is reasonable, after a careful and considered examination of the facts and circumstances of this case.

Use Note

This instruction must be given in every case.

*For some affirmative defenses, a defendant must produce evidence. The court should instruct the jury on the defendant's burden of production of evidence where it is most appropriate to do so. The committee recommends this be done when the court instructs on the nature and requirements of the affirmative defense itself.

History

M Crim JI 3.2 (formerly CJI2d 3.2) was CJI 3:1:02-3:1:05. Amended November, 1990; January, 1992.

Reference Guide

Case Law

Victor v Nebraska, 511 US 1, 5 (1994); *Martin v Ohio*, 480 US 228 (1987); *Sandstrom v Montana*, 442 US 510, 517-524 (1979); *County Court of Ulster County v Allen*, 442 US 140, 156-157 (1979); *Kentucky v Whorton*, 441 US 786, 789 (1979); *Taylor v Kentucky*, 436 US 478, 487-488 (1978); *In re Winship*, 397 US 358, 364 (1970); *Davis v United States*, 160 US 469, 486-487 (1895); *People v Allen*, 466 Mich 86, 643 NW2d 227 (2002); *People v Nowack*, 462 Mich 392, 400, 614 NW2d 78 (2000); *People v Konrad*, 449 Mich 263, 273, 536 NW2d 517 (1995); *People v Murphy*, 416 Mich 453, 463-464, 331 NW2d 152 (1982); *People v Wright*, 408 Mich 1, 19-26, 289 NW2d 1 (1980); *People v Gallagher*, 404 Mich 429, 437-439, 273 NW2d 440 (1979); *People v D'Angelo*, 401 Mich 167, 182-183, 257 NW2d 655 (1977); *People v Bagwell*, 295 Mich 412, 419, 295 NW 207 (1940); *People v Williams*, 208 Mich 586, 594-595, 175 NW 187 (1919); *People v Ezzo*, 104 Mich 341, 342-343, 62 NW 407 (1895); *People v Potter*, 89 Mich 353, 355, 50 NW 994 (1891); *People v Macard*, 73 Mich 15, 26, 40 NW 784 (1888); *People v DeFore*, 64 Mich 693, 701, 31 NW 585 (1887); *People v Steubenvoll*, 62 Mich 329, 334, 28 NW 883 (1886); *People v Finley*, 38 Mich 482, 483 (1878); *Hamilton v People*, 29 Mich 173 (1874); *People v Hill*, 257 Mich App 126, 667 NW2d 78 (2003); *People v Snider*, 239 Mich App 393, 420-421, 608 NW2d 502 (2000); *People v Cooper*, 236 Mich App 643, 656, 601 NW2d 409 (1999); *People v Hubbard (After Remand)*, 217 Mich App 459, 487, 552 NW2d 493 (1996), overruled in part on other grounds by *People v Harris*, 495 Mich 120, ___ NW2d ___ (2014) and *People*

v Bryant, 491 Mich 575, 822 NW2d 124, *cert denied*, 133 S Ct 664 (2012); *People v Sammons*, 191 Mich App 351, 372, 478 NW2d 901 (1991), cert denied, 505 US 1213 (1992); *People v Jackson*, 167 Mich App 388, 390-391; 421 NW2d 697 (1988).

M Crim JI 3.3 Defendant Not Testifying

Every defendant has the absolute right not to testify. When you decide the case, you must not consider the fact that [he / she] did not testify. It must not affect your verdict in any way.

Use Note

When the defendant does not take the stand, the trial court should ascertain before giving instructions whether the defense wishes this instruction to be given.

If the defendant or counsel requests that no instruction be given, no instruction shall be given.

If the defendant or counsel requests an instruction, an instruction shall be given. (In cases involving more than one defendant, the court shall give the instruction upon the request of any defendant.)

When used, this instruction should be given in conjunction with the instruction on presumption of innocence and burden of proof.

History

M Crim JI 3.3 (formerly CJI2d 3.3) was CJI 3:1:06*;* amended January, 1991.

Reference Guide

Case Law

Griffin v State of California, 380 US 609 (1965); *People v Hampton*, 394 Mich 437, 438, 231 NW2d 654 (1975); *People v Roberson*, 167 Mich App 501, 423 NW2d 245 (1988).

M Crim JI 3.4 Defendant—Impeachment by Prior Conviction

(1)There is evidence that the defendant has been convicted of a crime* in the past.

(2)You may consider this evidence only in deciding whether you believe the defendant is a truthful witness. You may not use it for any other purpose. A past conviction is not evidence that the defendant committed the alleged crime in this case.

Use Note

This instruction should be given when a prior criminal conviction has been admitted into evidence for impeachment.

*The defendant may request that the specific crime or crimes be named.

History

M Crim JI 3.4 (formerly CJI2d 3.4) was CJI 3:1:08.

Reference Guide

Case Law

*People v Jac*ks, 76 Mich 218, 222, 42 NW 1134 (1889).

M Crim JI 3.5 Evidence

(1)When you discuss the case and decide on your verdict, you may only consider the evidence that has been properly admitted in this case. Therefore, it is important for you to understand what is evidence and what is not evidence.

(2)Evidence includes only the sworn testimony of witnesses [, the exhibits admitted into evidence, and anything else I told you to consider as evidence][1].

(3)Many things are not evidence, and you must be careful not to consider them as such. I will now describe some of the things that are not evidence.

(4)The fact that the defendant is charged with a crime and is on trial is not evidence. [Likewise, the fact that (he / she) is charged with more than one crime is not evidence.]

(5)The lawyers' statements and arguments [and any commentary] are not evidence. They are only meant to help you understand the evidence and each side's legal theories. You should only accept things the lawyers say that are supported by the evidence or by your own common sense and general knowledge. The lawyers' questions to the witnesses [, your questions to the witnesses,] and my questions to the witnesses are also not evidence. You should consider these questions only as they give meaning to the witnesses' answers.

(6)My comments, rulings, questions, [summary of the evidence,] and instructions are also not evidence. It is my duty to see that the trial is conducted according to the law, and to tell you the law that applies to this case. However, when I make a comment or give an instruction, I am not trying to influence your vote or express a personal opinion about the case. If you believe that I have an opinion about how you should decide this case, you must pay no attention to that opinion. You are the only judges of the facts, and you should decide this case from the evidence.

(7)At times during the trial, I have excluded evidence that was offered or stricken testimony that was heard. Do not consider those things in deciding the case. Make your decision only on the evidence that I let in, and nothing else.

[(8)Your decision should be based on all the evidence, regardless of which party produced it.][2]

(9)You should use your own common sense and general knowledge in weighing and judging the evidence, but you should not use any personal knowledge you may have about a place, person, or event. To repeat once more, you must decide this case based only on the evidence admitted during this trial.

Use Note

This instruction should be given in every case. Bracketed portions of the instruction should be given only when appropriate to the case.

[1] If helpful, describe the exhibits admitted into evidence.

[2] For use when requested by counsel.

In a case with a self-represented defendant, this instruction may need to be modified.

History

M Crim JI 3.5 (formerly CJI2d 3.5) was CJI 3:1:09. Amended January, 1991; September, 2011.

M Crim JI 3.5a Summary of Evidence

I will now summarize the evidence for you. It is intended only as a summary and you should consider all of the evidence when deciding this case, even if I do not mention all of the evidence in this summary. Remember that it is your job to decide what the facts of this case are. This is your job and nobody else's. It is for you to determine the weight of the evidence and the credit to be given to the witnesses, and you are free to decide that something I have not mentioned, but which has been admitted into evidence, is significant to your decision. You are not bound by my summary of the evidence.

[Summarize the evidence.]

Again, it is for you to determine for yourself the weight of the evidence and the credit to be given to the witnesses. You are not bound by my summation.

Use Note

In the rare instance the court gives a summary of the evidence, an instruction of this nature must be given. Also, "the court shall not comment on the credibility of witnesses or state a conclusion on the ultimate issue of fact before the jury."? MCR 2.513(M).

History

M Crim JI 3.5a (formerly CJI2d 3.5a) was adopted by the committee in September, 2011.

Reference Guide

Court Rules

MCR 2.513(M).

M Crim JI 3.6 Witnesses—Credibility

(1)As I said before, it is your job to decide what the facts of this case are. You must decide which witnesses you believe and how important you think their testimony is. You do not have to accept or reject everything a witness said. You are free to believe all, none, or part of any person's testimony.

(2)In deciding which testimony you believe, you should rely on your own common sense and everyday experience. However, in deciding whether you believe a witness's testimony, you must set aside any bias or prejudice you may have based on the race, gender, or national origin of the witness.*

(3)There is no fixed set of rules for judging whether you believe a witness, but it may help you to think about these questions:

(a)Was the witness able to see or hear clearly? How long was the witness watching or listening? Was anything else going on that might have distracted the witness?

(b)Did the witness seem to have a good memory?

(c)How did the witness look and act while testifying? Did the witness seem to be making an honest effort to tell the truth, or did the witness seem to evade the questions or argue with the lawyers?

(d)Does the witness's age and maturity affect how you judge his or her testimony?

(e)Does the witness have any bias, prejudice, or personal interest in how this case is decided?

[(f)Have there been any promises, threats, suggestions, or other influences that affected how the witness testified?]

(g)In general, does the witness have any special reason to tell the truth, or any special reason to lie?

(h)All in all, how reasonable does the witness's testimony seem when you think about all the other evidence in the case?

(4)Sometimes the testimony of different witnesses will not agree, and you must decide which testimony you accept. You should think about whether the disagreement involves something important or not, and whether you think someone is lying or is simply mistaken. People see and hear things differently, and witnesses may testify honestly but simply be wrong about what they thought they saw or remembered. It is also a good idea to think about which testimony agrees best with the other evidence in the case.

(5)However, you may conclude that a witness deliberately lied about something that is important to how you decide the case. If so, you may choose not to accept anything that witness said. On the other hand, if you think the witness lied about some things but told the truth about others, you may simply accept the part you think is true and ignore the rest.

Use Note

*The court should substitute other improper considerations, such as religion or sexual orientation, where appropriate. This instruction should be given in every case. Bracketed portions should be given only on request, where there is evidence or argument that a witness's testimony may have been affected by promises, threats, suggestions, or other influences.

History

M Crim JI 3.6 (formerly CJI2d 3.6) was CJI 3:1:11-3:1:13; amended March, 1991.

Reference Guide

Case Law

Spalding v Lowe, 56 Mich 366, 371, 23 NW 46 (1885); *Knowles v People*, 15 Mich 408, 412 (1867).

M Crim JI 3.7 Multiple Defendants

(1)_____ and _____ are both on trial in this case. The fact that they are on trial together is not evidence that they were associated with each other or that either one is guilty.

(2)You should consider each defendant separately. Each is entitled to have [his / her] case decided on the evidence and the law that applies to [him / her].

[(3)If any evidence was limited to (one defendant / some defendants) you should not consider it as to any other defendants.]

Use Note

This instruction must be given when there are two or more defendants. Omit bracketed material to avoid confusion in conspiracy cases.

History

M Crim JI 3.7 (formerly CJI2d 3.7) was CJI 3:1:14; amended January, 1991.

Reference Guide

Case Law

People v Liggett, 378 Mich 706, 148 NW2d 784 (1967).

M Crim JI 3.8 Less Serious Crimes

You may also consider whether [the defendant is / either or both of the defendants are] guilty of the less serious crime known as _____.

History

M Crim JI 3.8 (formerly CJI2d 3.8) was CJI 3:1:15.

Reference Guide

Case Law

People v Smith, 478 Mich 64, 66, 731 NW2d 411 (2007); *People v Mendoza*, 468 Mich 527, 664 NW2d 685 (2003); *People v Reese*, 466 Mich 440, 647 NW2d 498 (2002); *People v Cornell*, 466 Mich 335, 646 NW2d 127 (2002); *People v Silver*, 466 Mich 386, 646 NW2d 150 (2002); *People v Hall (On Remand)*, 256 Mich App 674, 671 NW2d 545 (2003).

M Crim JI 3.9 Specific Intent *[deleted]*

Note: This instruction was deleted by the committee in May, 2005. The decision to delete the instruction was premised upon the supreme court's opinion in *People v Maynor*, 470 Mich 289, 683 NW2d 565 (2004). Discussing the first-degree child abuse statute, MCL 750.136*b(2)*, the *Maynor* majority noted that, in light of the state of mind requirement expressed in M Crim JI 17.18:

> [I]t is unnecessary for the jury to be given further instruction on "specific intent," such as that found in CJI2*d* 3.9. The need to draw the common-law distinction between "specific" and "general" intent is not required under the plain language of the statute, as long as the jury is instructed that it must find that defendant either knowingly or intentionally caused the harm. Moreover, the enactment of MCL 768.37, which abolished the defense of voluntary intoxication except in one narrow circumstance, has significantly diminished the need to categorize crimes as being either "specific" or "general" intent crimes.

Maynor, 470 Mich at 296-297. Since the offense instructions each contain any required *mens rea* element, the committee was of the view that M Crim JI 3.9 is redundant at best and potentially confusing at worst. For that reason, it was deleted and the final paragraph concerning proof of intent moved to M Crim JI 4.16.

M Crim JI 3.10 Time and Place (Venue)

The prosecutor must also prove beyond a reasonable doubt that the crime occurred on or about [*state date alleged*] within _____ County.

Use Note

The date should be stated with as much certainty as is reflected in the testimony; for example, "On or about June, 2004." If evidence of similar acts is given, if there is an alibi defense, or if there is any need for further instructions, the alternate clarifying instruction on time, M Crim JI 4.12, should be consulted.

History

M Crim JI 3.10 (formerly CJI2d 3.10) was CJI 3:1:17 and was last amended by the committee in October, 2004.

Reference Guide

Statutes

MCL 762.3.

Case Law

People v Houthoofd, 487 Mich 568, 790 NW2d 315 (2010); *People v Lee*, 334 Mich 217, 226, 54 NW2d 305 (1952); *People v Webbs*, 263 Mich App 531, 533, 689 NW2d 163 (2004).

M Crim JI 3.10a Time and Place (Venue)—Criminal Sexual Conduct Cases

The prosecutor must also prove beyond a reasonable doubt that the crime occurred within _____ County.

Time, however, is not an element of the crime of criminal sexual conduct. The prosecutor does not have to prove the date or time of the offense beyond a reasonable doubt.

History

M Crim JI 3.10a (formerly CJI2d 3.10a) was adopted by the committee in September, 2010.

Reference Guide

Case Law

People v Dobek, 274 Mich App 58, 82-84, 732 NW2d 546 (2007); *People v Miller*, 165 Mich App 32, 47, 418 NW2d 668 (1987), aff'd on remand, 186 Mich App 660, 465 NW2d 47 (1991); *People v Naugle*, 152 Mich App 227, 235, 393 NW2d 592 (1986).

M Crim JI 3.11 Deliberations and Verdict

(1)When you go to the jury room, you will be provided with a written copy [copies] of the final jury instructions. [A copy of electronically recorded instructions will also be provided to you.] You should first choose a foreperson. The foreperson should see to it that your discussions are carried on in a businesslike way and that everyone has a fair chance to be heard.

(2)During your deliberations please turn off your cell phones or other communications equipment until we recess.

(3)A verdict in a criminal case must be unanimous. In order to return a verdict, it is necessary that each of you agrees on that verdict. In the jury room you will discuss the case among yourselves, but ultimately each of you will have to make up your own mind. Any verdict must represent the individual, considered judgment of each juror.

(4)It is your duty as jurors to talk to each other and make every reasonable effort to reach agreement. Express your opinions and the reasons for them, but keep an open mind as you listen to your fellow jurors. Rethink your opinions and do not hesitate to change your mind if you decide you were wrong. Try your best to work out your differences.

(5)However, although you should try to reach agreement, none of you should give up your honest opinion about the case just because other jurors disagree with you or just for the sake of reaching a verdict. In the end, your vote must be your own, and you must vote honestly and in good conscience.

[*Use the next paragraph when there are less serious included crimes:*]

(6)In this case, there are several different crimes that you may consider. When you discuss the case, you must consider the crime of [*name principal charge*] first. [If you all agree that the defendant is guilty of that crime, you may stop your discussions and return your verdict.] If you believe that the defendant is not guilty of [*name principal charge*] or if you cannot agree about that crime, you should consider the less serious crime of [*name less serious charge*]. [You decide how long to spend on (*name principal charge*) before discussing (*name less serious charge*). You can go back to (*name principal charge*) after discussing (*name less serious charge*) if you want to.]

(7)If you have any questions about the jury instructions before you begin deliberations, or questions about the instructions that arise during deliberations, you may submit them in writing in a sealed envelope to the bailiff.

Use Note

This instruction should be given after the attorney's closing arguments regardless of whether the jury instructions are given before or after closing argument.

Paragraph (6) of this instruction is the approved form when the jury is instructed on less serious crimes. *See People v Handley*, 415 Mich 356, 329 NW2d 710 (1982). The remainder of the instruction should be given in every case.

History

M Crim JI 3.11 (formerly CJI2d 3.11) was CJI 3:1:15A, 3:1:18. Amended May, 2005; September, 2011.

Reference Guide

Court Rule

MCR 2.513(N)(2).

Case Law

People v Pollick, 448 Mich 376, 531 NW2d 159 (1995); *People v Hardin*, 421 Mich 296, 365 NW2d 101 (1984).

M Crim JI 3.11a Replacement Juror

Members of the jury, one of your fellow jurors is unable to continue the deliberations with you. Do not consider the reasons for the juror's discontinued service. Alternate juror [*name alternate juror*] will now participate. You are now a new jury and must start over with your deliberations.

History

M Crim JI 3.11a (formerly CJI2d 3.11a) was adopted by the committee in February, 2012.

Reference Guide

Court Rules

MCR 6.411.

M Crim JI 3.12 Deadlocked Jury

(1)You have returned from deliberations, indicating that you believe you cannot reach a verdict. I am going to ask you to please return to the jury room and resume your deliberations in the hope that after further discussion you will be able to reach a verdict. As you deliberate, please keep in mind the guidelines I gave you earlier.

(2)Remember, it is your duty to consult with your fellow jurors and try to reach agreement, if you can do so without violating your own judgment. To return a verdict, you must all agree, and the verdict must represent the judgment of each of you.

(3)As you deliberate, you should carefully and seriously consider the views of your fellow jurors. Talk things over in a spirit of fairness and frankness.

(4)Naturally, there will be differences of opinion. You should each not only express your opinion but also give the facts and the reasons on which you base it. By reasoning the matter out, jurors can often reach agreement.

(5)If you think it would be helpful, you may submit to the bailiff a written list of the issues that are dividing or confusing you. It will then be submitted to me. I will attempt to clarify or amplify the instructions in order to assist you in your further deliberations.

(6)When you continue your deliberations, do not hesitate to rethink your own views and change your opinion if you decide it was wrong.

(7)However, none of you should give up your honest beliefs about the weight or effect of the evidence only because of what your fellow jurors think or only for the sake of reaching agreement.

Use Note

This instruction, which follows the language of M Crim JI 3.11, is to be given when a jury returns from deliberation unable to reach a verdict. See *People v Larry*, 162 Mich App 142, 149, 412 NW2d 674 (1987).

History

M Crim JI 3.12 (formerly CJI2d 3.12) was CJI 3:1:18A. Amended September, 2011.

Reference Guide

Court Rules

MCR 2.513(N)(4).

Case Law

People v Larry, 162 Mich App 142, 149, 412 NW2d 674 (1987).

M Crim JI 3.13 Penalty

Possible penalty should not influence your decision. It is the duty of the judge to fix the penalty within the limits provided by law.

History

M Crim JI 3.13 (formerly CJI2d 3.13) was CJI 3:1:19.

Reference Guide

Case Law

People v Goad, 421 Mich 20, 364 NW2d 584 (1984); *People v Szczytko*, 390 Mich 278, 285, 212 NW2d 211 (1973).

M Crim JI 3.14 Communications with the Court

(1)If you want to communicate with me while you are in the jury room, please have your foreperson write a note and give it to the bailiff. It is not proper for you to talk directly with the judge, lawyers, court officers, or other people involved in the case.

(2)As you discuss the case, you must not let anyone, even me, know how your voting stands. Therefore, until you return with a unanimous verdict, do not reveal this to anyone outside the jury room.

Use Note

MCR 2.513(B) states in part: The court may not communicate with the jury or any juror pertaining to the case without notifying the parties and permitting them to be present. The court must ensure that all communications pertaining to the case between the court and the jury or any juror are made a part of the record.

History

M Crim JI 3.14 (formerly CJI2d 3.14) was CJI 3:1:20.

Reference Guide

Case Law

People v Bufkin, 168 Mich App 615, 425 NW2d 201 (1988).

M Crim JI 3.15 Exhibits

When you go to the jury room to deliberate, you may take [your notes and] full instructions. If you want to look at any or all of the reference documents or exhibits that have been admitted, just ask for them.

History

M Crim JI 3.15 (formerly CJI2d 3.15) was CJI 3:1:21. Amended September, 2011.

Reference Guide

Court Rules

MCR 2.513(O).

M Crim JI 3.16 Written or Electronically Recorded Instructions in the Jury Room

When you go to the jury room, you will be given a written copy of the instructions you have just heard. As you discuss the case, you should think about all my instructions together as the law you are to follow.

[Use when an electronically recorded instruction is provided:]

[You will also be given an electronically recorded copy of the instructions you have just heard.]

Use Note

The court shall provide a written copy of the instructions to the jury. The court may provide additional copies as needed. MCR 2.513(N)(3). Providing each juror with a copy of the instructions to view as the instructions are being recited by the court enables the jurors to have dual perception, which could enhance comprehension.

History

M Crim JI 3.16 (formerly CJI2d 3.16) was CJI 3:1:21A. Amended September, 2011.

Reference Guide

Court Rules

MCR 2.513(N)(3).

M Crim JI 3.17 Single Defendant—Single Count

You may return a verdict of guilty of the alleged crime [, guilty of a less serious crime,] or not guilty.

History

M Crim JI 3.17 (formerly CJI2d 3.17) was CJI 3:1:22.

M Crim JI 3.18 Multiple Defendants—Single Count

You must return a separate verdict for each defendant. This means that, for each individual defendant, you may return a verdict of guilty of the alleged crime [, guilty of a less serious crime,] or not guilty.

History

M Crim JI 3.18 (formerly CJI2d 3.18) was CJI 3:1:23.

M Crim JI 3.19 Single Defendant—Multiple Counts—Single Wrongful Act

(1)The defendant is charged with one wrongful act in alternative counts, that is, that [he / she] is guilty of _____ or _____, but not both.

(2)You should consider these alternatives separately in light of all the evidence.

(3)You may find the defendant not guilty, guilty of _____, or guilty of _____.

History

M Crim JI 3.19 (formerly CJI2d 3.19) was CJI 3:1:24*;* amended January, 1991.

M Crim JI 3.20 Single Defendant—Multiple Counts—More Than One Wrongful Act

(1)The defendant is charged with counts, that is, with the crimes of _____ and _____. These are separate crimes, and the prosecutor is charging that the defendant committed both of them. You must consider each crime separately in light of all the evidence in the case.

(2)You may find the defendant guilty of all or [any one / any combination] of these crimes [, guilty of a less serious crime,] or not guilty.

History

M Crim JI 3.20 (formerly CJI2d 3.20) was CJI 3:1:25.

M Crim JI 3.21 Multiple Defendants—Multiple Counts—Single Wrongful Act

(1) Each defendant is charged with one wrongful act in alternative counts, that is, that [he / she] is guilty of _____ or _____, but not both.

(2) For each defendant, you should consider these alternatives separately in light of all the evidence.

(3) You must return a separate verdict for each defendant. You may find each defendant not guilty, guilty of _____, or guilty of _____.

History

M Crim JI 3.21 (formerly CJI2d 3.21) was CJI 3:1:26; amended January, 1991.

M Crim JI 3.22 Multiple Defendants—Multiple Counts—More Than One Wrongful Act

(1)The defendants are each charged with _____ counts, that is, with the crimes of _____ and _____. These are separate crimes, and the prosecutor is charging that each defendant committed [both / all] of them. You must consider each crime separately in light of all the evidence.

(2)You must return a separate verdict for each defendant. For each defendant, you may return a verdict of guilty of one or more of the alleged crimes [, guilty of a less serious crime,] or not guilty. Remember that you must consider each defendant separately.

History

M Crim JI 3.22 (formerly CJI2d 3.22) was CJI 3:1:27.

M Crim JI 3.23 Verdict Form

I have prepared a verdict form listing the possible verdicts.

Use Note

The use of verdict forms is optional, in the discretion of the trial judge. However, if a form is used, the judge should explain the form and the possible choices. See M Crim JI 3.24-3.31.

History

M Crim JI 3.23 (formerly CJI2d 3.23) was CJI 3:1:28.

M Crim JI 3.24 Verdict Form

Defendant: _____

[Count No. : _____]

POSSIBLE VERDICTS:

You may return only one verdict on this charge. Mark only one box on this sheet.

____ Not Guilty

____ Guilty of _____

History

M Crim JI 3.24 (formerly CJI2d 3.24) was CJI 3:1:29.

M Crim JI 3.25 Verdict Form

Defendant: _____

[Count No. _____]

POSSIBLE VERDICTS:

You may return only one verdict on this charge. Mark only one verdict on this sheet.

____ Not Guilty

____ Not Guilty by Reason of Insanity

____ Guilty but Mentally Ill of _____

____ Guilty of _____

History

M Crim JI 3.25 (formerly CJI2d 3.25) was CJI 3:1:30. Amended by the committee in September, 2000, to reflect the possible verdict of guilty but mentally ill as required by MCL 768.29a(2).

M Crim JI 3.26 Verdict Form

Defendant: _____

[Count No. _____]

POSSIBLE VERDICTS:

You may return only one verdict on this charge. Mark only one verdict on this sheet.

____ Not Guilty

____ Guilty of _____

Guilty of the Lesser Offense of:

____ _____

____ _____

____ _____

____ _____

____ _____

____ _____

____ _____

History

M Crim JI 3.26 (formerly CJI2d 3.26) was CJI 3:1:31.

Reference Guide

Case Law

People v Wade, 283 Mich App 462, 771 NW2d 447 (2009).

M Crim JI 3.27 Verdict Form

Defendant: _____

[Count No. _____]

POSSIBLE VERDICTS:

You may return only one verdict on this charge. Mark only one verdict on this sheet.

____ Not Guilty

____ Not Guilty by Reason of Insanity

____ Guilty but Mentally Ill of _____

____ Guilty but Mentally Ill of the Lesser Offense of _____

____ Guilty of _____

____ Guilty of the Lesser Offense of _____

History

M Crim JI 3.27 (formerly CJI2d 3.27) was CJI 3:1:32. Amended by the committee in September, 2000, to reflect the possible verdict of guilty but mentally ill as required by MCL 768.29a(2).

Reference Guide

Case Law

People v Wade, 283 Mich App 462, 771 NW2d 447 (2009).

M Crim JI 3.28 Verdict Form

Defendant: _____

POSSIBLE VERDICTS:

You may return only one verdict on this charge. Mark only one verdict on this sheet.

____ Not Guilty

Count 1

____ Guilty of _____

Count 2

____ Guilty of _____

History

M Crim JI 3.28 (formerly CJI2d 3.28) was CJI 3:1:33.

M Crim JI 3.29 Verdict Form

Defendant: _____

POSSIBLE VERDICTS:

You may return only one verdict on this charge. Mark only one verdict on this sheet.

____ Not Guilty

____ Not Guilty by Reason of Insanity

Count 1

____ Guilty but Mentally Ill of _____

____ Guilty of _____

Count 2

____ Guilty but Mentally Ill of _____

____ Guilty of _____

History

M Crim JI 3.29 (formerly CJI2d 3.29) was CJI 3:1:34. Amended by the committee in September, 2000, to reflect the possible verdict of guilty but mentally ill as required by MCL 768.29a(2).

M Crim JI 3.30 Verdict Form

Defendant: _____

POSSIBLE VERDICTS:

You may return only one verdict on this charge. Mark only one box on this sheet.

____ Not Guilty

Count 1

____ Guilty of _____

Count 2

____ Guilty of _____

Guilty of the Lesser Offense of:

____ _____

____ _____

____ _____

____ _____

____ _____

____ _____

____ _____

History

M Crim JI 3.30 (formerly CJI2d 3.30) was CJI 3:1:35.

Reference Guide

Case Law

People v Wade, 283 Mich App 462, 771 NW2d 447 (2009).

M Crim JI 3.31 Verdict Form

Defendant: _____

POSSIBLE VERDICTS:

You may return only one verdict on this charge. Mark only one verdict on this sheet.

____ Not Guilty

____ Not Guilty by Reason of Insanity

Count 1

____ Guilty but Mentally Ill of _____

____ Guilty of _____

Count 2

____ Guilty but Mentally Ill of _____

____ Guilty of _____

____ Guilty but Mentally Ill of the Lesser Offense of _____

____ Guilty of the Lesser Offense of _____

History

M Crim JI 3.31 (formerly CJI2d 3.31) was CJI 3:1:36. Amended by the committee in September, 2000, to reflect the possible verdict of guilty but mentally ill as required by MCL 768.29a(2).

Reference Guide

Case Law

People v Wade, 283 Mich App 462, 771 NW2d 447 (2009).

M Crim JI 3.32 Verdict Form (Single Count)

Defendant: _____

[First-degree Criminal Sexual Conduct]

POSSIBLE VERDICTS:

You may return only one verdict on this charge. Mark only one verdict in this section.

____ Not Guilty

____ Guilty of First-degree Criminal Sexual Conduct

If you find that the defendant was not guilty of first-degree criminal sexual conduct, do not consider the following section. Only proceed to the special findings if you have reached a verdict of guilty above.

ADDITIONAL SPECIAL FINDINGS:

If you found the defendant guilty of first-degree criminal sexual conduct, you must also decide whether or not the prosecutor proved beyond a reasonable doubt that [*name complainant*] was less than thirteen years old at the time of the offense, and that the defendant was seventeen years of age or older at the time of the offense. Consider each of these findings separately. Mark only one box for each numbered finding in this section. Your findings must be unanimous.

1.[*Name complainant*] was less than thirteen years old at the time of the offense.

___ Not Proved beyond a reasonable doubt

___ Proved beyond a reasonable doubt

2.The defendant was seventeen years of age or older at the time of the offense.

___ Not Proved beyond a reasonable doubt

___ Proved beyond a reasonable doubt

History

M Crim JI 3.32 was adopted in April 2015.

Reference Guide

Statutes

MCL 750.520b(2)(b)

Case Law

In *Alleyne v United States*, 570 US __; 133 S Ct 2151; 186 L Ed 2d 314 (2013), the United States Supreme Court held that facts that would trigger a mandatory minimum sentence must be admitted by the defendant or proved beyond a reasonable doubt to the trier of fact.

CHAPTER 4 *Evidence*

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M Crim JI 4.1 Defendant's Statements As Evidence Against the Defendant

(1)The prosecution has introduced evidence of a statement[1] that it claims the defendant made.

(2)Before you may consider such an out-of-court statement against the defendant, you must first find that the defendant actually made the statement as given to you.

(3)If you find that the defendant did make the statement, you may give the statement whatever weight you think it deserves. In deciding this, you should think about how and when the statement was made, and about all the other evidence in the case. You may consider the statement in deciding the facts of the case [and in deciding if you believe the defendant's testimony in court].[2]

Use Note

[1] Although "statement" is preferable to "confession" or "admission," if the latter descriptions have been used throughout the trial, they should be used in the instructions.

[2] Use the bracketed phrase only if the defendant testifies at trial and the prior statement is used to impeach his or her testimony.

History

M Crim JI 4.1 (formerly CJI2d 4.1) was CJI 4:1:01 and was last amended by the committee in October, 2002.

Reference Guide

Court Rules

MRE 801(d)(2)(A).

Case Law

Crane v Kentucky, 476 US 683 (1986); *Jackson v Denno*, 378 US 368 (1964); *People v Lundy*, 467 Mich 254, 257, 650 NW2d 332 (2002); *People v Walker*, 374 Mich 331, 132 NW2d 87 (1965); *People v Hamilton*, 163 Mich App 661, 415 NW2d 653 (1987); *People v Williams*, 46 Mich App 165, 169-170, 207 NW2d 480 (1973).

M Crim JI 4.2 Confession Not Admissible Against Codefendant

Defendant _____'s [statement / confession / admission] has been admitted as evidence only against [him / her]. It cannot be used against defendant _____, and you must not do so. You must not consider that statement in any way when you decide whether defendant _____ is guilty or not guilty.

Use Note

The extrajudicial confession of a codefendant that implicates another defendant can usually be introduced into evidence against the defendant only if the declarant testifies and is available for cross-examination by the defendant.

Under the Michigan Rules of Evidence (MRE 801(d)(2)(E)), statements by a coconspirator during the course of and in furtherance of a conspiracy are admissible against all conspirators upon prima facie showing of conspiracy. Under these circumstances, this instruction should not be used. See chapter 10 for instructions on conspiracy.

History

M Crim JI 4.2 (formerly CJI2d 4.2) was CJI 4:1:02; amended January, 1991.

Reference Guide

Case Law

Richardson v Marsh, 481 US 200 (1987); *Cruz v New York*, 481 US 186 (1987); *Parker v Randolph*, 442 US 62 (1979); *Bruton v US*, 391 US 123 (1968); *People v Frazier*, 446 Mich 539, 521 NW2d 291 (1994); *People v Poole*, 444 Mich 151, 506 NW2d 505 (1993); *People v Banks*, 438 Mich 408, 475 NW2d 769 (1991), cert den, 502 US 1065 (1992); *People v Richardson*, 204 Mich App 71, 514 NW2d 503 (1994); *People v Etheridge*, 196 Mich App 43, 492 NW2d 490 (1992), leave to appeal held in abeyance, 503 NW2d 906, 908 (1993); *People v Butler*, 193 Mich App 63, 66, 483 NW2d 430 (1992).

M Crim JI 4.3 Circumstantial Evidence

(1)Facts can be proved by direct evidence from a witness or an exhibit. Direct evidence is evidence about what we actually see or hear. For example, if you look outside and see rain falling, that is direct evidence that it is raining.

(2)Facts can also be proved by indirect, or circumstantial, evidence. Circumstantial evidence is evidence that normally or reasonably leads to other facts. So, for example, if you see a person come in from outside wearing a raincoat covered with small drops of water that would be circumstantial evidence that it is raining.

(3)You may consider circumstantial evidence. Circumstantial evidence by itself, or a combination of circumstantial evidence and direct evidence, can be used to prove the elements of a crime. In other words, you should consider all the evidence that you believe.

History

M Crim JI 4.3 (formerly CJI2d 4.3) was CJI 4:2:01-4:2:02.

Reference Guide

Case Law

Holland v United States, 348 US 121, 139 (1954); *People v Dellabonda*, 265 Mich 486, 513, 251 NW 594 (1933); *People v Stewart*, 75 Mich 21, 28, 42 NW 662 (1889); *People v Foley*, 64 Mich 148, 31 NW 94 (1887); *People v Moore*, 176 Mich App 555, 563, 440 NW2d 67 (1989); *People v Kent*, 157 Mich App 780, 794, 404 NW2d 668 (1987).

M Crim JI 4.4 Flight, Concealment, Escape or Attempted Escape

(1)There has been some evidence that the defendant [tried to run away / tried to hide / ran away / hid] after [the alleged crime / (he / she) was accused of the crime / the police arrested (him / her) / the police tried to arrest (him / her)].

(2)This evidence does not prove guilt. A person may run or hide for innocent reasons, such as panic, mistake, or fear. However, a person may also run or hide because of a consciousness of guilt.

(3)You must decide whether the evidence is true, and, if true, whether it shows that the defendant had a guilty state of mind.

History

M Crim JI 4.4 (formerly CJI2d 4.4) was CJI 4:4:01*; revised* January, 1991.

Reference Guide

Case Law

Wong Sun v United States, 371 US 471, 483-484 n10 (1963); *Cooper v United States*, 94 US App DC 343, 345, 218 F2d 39, 41 (1954); *Vick v United States*, 216 F2d 228, 233 (CA 5, 1954); *People v Smelley*, 485 Mich 1023, 776 NW2d 310 (2010); *People v Cammarata*, 257 Mich 60, 240 NW 14 (1932); *People v Cismadija*, 167 Mich 210, 132 NW 489 (1911); *People v Cutchall*, 200 Mich App 396, 504 NW2d 666 (1993); *People v Kraai*, 92 Mich App 398, 285 NW2d 309 (1979); *People v Kyles*, 40 Mich App 357, 360, 198 NW2d 732 (1972).

M Crim JI 4.5 Prior Inconsistent Statement Used to Impeach Witness

You have heard evidence that, before the trial, [a witness / witnesses] made [a statement / statements] that may be inconsistent with [his / her / their] testimony here in court.

(1)You may consider an inconsistent statement made before the trial [only][1] to help you decide how believable the [witness' / witnesses'] testimony was when testifying here in court.

(2)If the earlier statement was made under oath, then you can also consider the earlier statement as evidence of the truth of whatever the [witness / witnesses] said in the earlier [statement / statements] when determining the facts of this case.

Use Note

[1] If the statement is admissible only as impeachment, use [only], and do not read (2). If the statement is also admissible as substantive evidence under MRE 801(d)(1), do not use [only] and read both (1) and (2).

Other out-of-court statements that are exceptions to the hearsay rule under MRE 803 may also be admissible as substantive evidence. The court may modify the instruction under appropriate circumstances.

History

M Crim JI 4.5 (formerly CJI2d 4.5) was CJI 4:5:01; amended June, 1991; amended September, 2003.

Reference Guide

Court Rules

MRE 801(c)-(d), 803, 803A, 804.

Case Law

People v D'Angelo, 401 Mich 167, 257 NW2d 655 (1977); *People v Durkee*, 369 Mich 618, 120 NW2d 729 (1963); *People v Bonner*, 116 Mich App 41, 321 NW2d 835 (1982); *People v Kohler*, 113 Mich App 594, 599, 318 NW2d 481 (1981); *People v Adams*, 92 Mich App 619, 628, 285 NW2d 392 (1979); *People v Paul Mathis*, 55 Mich App 694, 223 NW2d 310 (1974); *People v Russell*, 27 Mich App 654, 183 NW2d 845 (1970).

M Crim JI 4.6 Judicial Notice

In this case, I took judicial notice that [*state fact*]. This means that you may accept this fact as true, but you are not required to do so.

History

M Crim JI 4.6 (formerly CJI2d 4.6) was CJI 4:6:01.

Reference Guide

Court Rules

MRE 201(f).

Case Law

People v Reed, 393 Mich 342, 224 NW2d 867 (1975).

M Crim JI 4.7 Stipulation

When the lawyers agree on a statement of facts, these are called stipulated facts. You may regard such stipulated facts as true, but you are not required to do so.

History

M Crim JI 4.7 (formerly CJI2d 4.7) was CJI 4:11:01.

Reference Guide

Case Law

People v Crawford, 458 Mich 376, 389, 582 NW2d 785 (1998).

M Crim JI 4.8 Jury View of Premises

I am letting you see [*name premises, scene, or object viewed*] only to help you understand the evidence that was presented in court. You must not consider anything you learn from seeing [*name premises, scene, or object viewed*] that was not covered by the evidence admitted in the trial.

Use Note

This instruction is to be used only when the court has permitted a view of something other than an exhibit. This instruction should be given even though the court convenes at the scene and takes testimony. The instruction may be given before or at the time of the view. MCR 2.513(J) provides that, in the interests of safety and security, the trial court may preclude a defendant from attending a jury view.

History

M Crim JI 4.8 (formerly CJI2d 4.8) was CJI 4:7:01.

Reference Guide

Statutes

MCL 768.28.

Court Rules

MCR 2.513(J).

Case Law

People v Auerbach, 176 Mich 23, 141 NW 869 (1913).

M Crim JI 4.9 Motive

(1)You may consider whether the defendant had a reason to commit the alleged crime, but a reason, by itself, is not enough to find a person guilty of a crime.

(2)The prosecutor does not have to prove that the defendant had a reason to commit the alleged crime. [He / she] only has to show that the defendant actually committed the crime [and that (he / she) meant to do so].

Use Note

This instruction is discretionary with the trial judge and may be given where the counsel have presented an unbalanced viewpoint of the value of motive evidence. Use the bracketed material in the second paragraph where the crime charged is a specific intent crime.

History

M Crim JI 4.9 (formerly CJI2d 4.9) was CJI 4:8:01; amended January, 1991.

Reference Guide

Case Law

People v Milhalko, 306 Mich 356, 10 NW2d 914 (1943); *People v Kuhn*, 232 Mich 310, 205 NW 188 (1925); *People v Noble*, 152 Mich App 319, 393 NW2d 619 (1986); *People v Stanton*, 97 Mich App 453, 460, 296 NW2d 70 (1980).

M Crim JI 4.10 Preliminary Examination Transcript

The testimony of _____ was read into this trial because [he / she] was not available. This testimony was taken under oath at an earlier hearing. You should consider this testimony in the same way you consider any other testimony you have heard in court.

Use Note

MRE 804*(a)* of the Michigan Rules of Evidence defines unavailability of a witness.

History

M Crim JI 4.10 (formerly CJI2d 4.10) was CJI 4:9:01; amended January, 1991.

Reference Guide

Statutes

MCL 768.26.

Court Rule

MRE 804(a).

Case Law

People v Dye, 431 Mich 58, 427 NW2d 501 (1988); *People v Karelse*, 428 Mich 872, 437 NW2d 255 (1987); *People v Gonzales*, 415 Mich 615, 627, 329 NW2d 743 (1982), remanded by 417 Mich 968, 336 NW2d 751 (1983), app den, 424 Mich 908, 385 NW2d 585 (1986); *People v Pickett*, 339 Mich 294, 63 NW2d 681 (1954), cert den, 349 US 937 (1955); *People v Schepps*, 217 Mich 406, 186 NW 508 (1922); *People v Pennington*, 113 Mich App 688, 318 NW2d 542 (1982).

M Crim JI 4.11 Evidence of Other Offenses—Relevance Limited to Particular Issue

(1)You have heard evidence that was introduced to show that the defendant committed [a crime / crimes / improper acts] for which [he / she] is not on trial.

(2)If you believe this evidence, you must be very careful only to consider it for certain purposes. You may only think about whether this evidence tends to show:

[Choose one or more from (a) through (g):]

(a)That the defendant had a reason to commit the crime;

(b)That the defendant specifically meant to _____;

(c)That the defendant knew what the things found in [his / her] possession were;

(d)That the defendant acted purposefully—that is, not by accident or mistake, or because [he / she] misjudged the situation;

(e)That the defendant used a plan, system, or characteristic scheme that [he / she] has used before or since;

(f)Who committed the crime that the defendant is charged with.

(g)*[State other proper purpose for which evidence is offered.]*

(3)You must not consider this evidence for any other purpose. For example, you must not decide that it shows that the defendant is a bad person or that [he / she] is likely to commit crimes. You must not convict the defendant here because you think [he / she] is guilty of other bad conduct. All the evidence must convince you beyond a reasonable doubt that the defendant committed the alleged crime, or you must find [him / her] not guilty.

Use Note

Do *not* use this instruction for uncharged acts of sexual intimacy in child sex cases. Instead, see M Crim JI 20.28, Uncharged Acts in Child Criminal Sexual Conduct Cases.

History

M Crim JI 4.11 (formerly CJI2d 4.11) was CJI 4:10:01. Amended June, 1990; January, 1991; October, 1993.

Reference Guide

Statutes

MCL 768.27, .27a, .27b.

Court Rules

MRE 404(b).

Case Law

People v Knox, 469 Mich 502, 674 NW2d 366 (2004*); People v Hine*, 467 Mich 242, 650 NW2d 659 (2002); *People v Sabin*, 463 Mich 43, 614 NW2d 888 (2000); *People v Vandervliet*, 444 Mich 52, 508 NW2d 114 (1993); *People v Engelman*, 434 Mich 204, 212, 453 NW2d 656 (1990); *People v Goddard*, 429 Mich 505, 418 NW2d 881 (1988); *People v Major*, 407 Mich 394, 285 NW2d 660 (1979); *People v Rustin*, 406 Mich 527, 280 NW2d 448 (1979); *People v Delgado*, 404 Mich 76, 83, 273 NW2d 395 (1978); *People v Duncan*, 402 Mich 1, 12, 260 NW2d 58 (1977); *People v Oliphant*, 399 Mich 472, 250 NW2d 443 (1976); *People v Renno*, 392 Mich 45, 219 NW2d 422 (1974); *People v DerMartzex*, 390 Mich 410, 417, 213 NW2d 97 (1973); *People v Kelly*, 386 Mich 330, 192 NW2d 494 (1971); *People v Davis*, 343 Mich 348, 72 NW2d 269 (1955); *People v Johnston*, 328 Mich 213, 43 NW2d 334 (1950); *People v Randall*, 294 Mich 478, 293 NW 725 (1940); *People v Kalder*, 284 Mich 235, 279 NW 493 (1938); *People v Savage*, 225 Mich 84, 86, 195 NW 669 (1923); *People v Crawford*, 218 Mich 125, 187 NW 522 (1922); *People v Di Pietro*, 214 Mich 507, 183 NW 22 (1921); *People v Rice*, 206 Mich 644, 173 NW 495 (1919); *People v Bullock*, 173 Mich 397, 410, 139 NW 43 (1912); *People v Pattison*, 276 Mich App 613, 741 NW2d 558 (2007); *People v Mitchell*, 223 Mich App 395, 398, 566 NW2d 312 (1997), on remand, 231 Mich App 335, 586 NW2d 119 (1999); *People v McMillan*, 213 Mich App 134, 539 NW2d 553 (1995); *People v Kvam*, 160 Mich App 189, 408 NW2d 71 (1987); *People v Burgess*, 153 Mich App 715, 396 NW2d 814 (1986); *People v Garland*, 152 Mich App 301, 393 NW2d 896 (1986), remanded, 431 Mich 855, 426 NW2d 184 (1988); *People v Robinson*, 128 Mich App 338, 340 NW2d 303 (1983); *People v Nabers*, 103 Mich App 354, 367-368, 303 NW2d 205, rev'd on other grounds, 411 Mich 1046, 309 NW2d 187 (1981); *People v Cramer*, 97 Mich App 148, 155, 293 NW2d 744 (1980); *People v Austin*, 95 Mich App 662, 291 NW2d 160 (1980); *People v Castillo*, 82 Mich App 476, 266 NW2d 460 (1978); *People v Fields*, 49 Mich App 652, 212 NW2d 612 (1973); *People v Chism*, 32 Mich App 610, 189 NW2d 435 (1971), aff'd, 390 Mich 104, 211 NW2d 193 (1973); *People v Heiss*, 30 Mich App 126, 186 NW2d 63 (1971).

M Crim JI 4.11a Evidence of Other Acts of Domestic Violence

(1)The prosecution has introduced evidence of claimed acts of domestic violence* by the defendant for which [he / she] is not on trial.

(2)Before you may consider such alleged acts as evidence against the defendant, you must first find that the defendant actually committed such acts.

(3)If you find that the defendant did commit those acts, you may consider them in deciding if the defendant committed the [offense / offenses] for which [he / she] is now on trial.

(4)You must not convict the defendant here solely because you think [he / she] is guilty of other bad conduct. The evidence must convince you beyond a reasonable doubt that the defendant committed the alleged crime, or you must find [him / her] not guilty.

Use Note

Domestic violence for purposes of this instruction is defined in MCL 768.27b(5).

History

This instruction was adopted by the committee in September, 2006, for use with MCL 768.27b. The instruction was renumbered from M Crim JI 5.8c in February, 2010, and amended to incorporate the cautionary component of M Crim JI 4.11.

Reference Guide

Statutes

MCL 768.27b.

Case Law

People v Pattison, 276 Mich App 613, 741 NW2d 558 (2007).

M Crim JI 4.12 Time—Optional Clarifying Instruction

(1)The defendant is charged with only one crime. [This criminal act is (*describe act with as much certainty as is reflected in the testimony*).][1]

(2)The prosecutor says that this crime took place at [*state place with as much certainty as is reflected in the testimony*]. The prosecutor also says that the crime took place on or about [*state date and time with as much certainty as is reflected in the testimony*].[2] [The prosecutor does not have to prove that the crime was committed on that exact date, but only that it was committed reasonably near that date.][3]

(3)[Some of the testimony in this case might show that the defendant committed other bad acts. Remember that the defendant is not on trial for any of those acts.][4] You must find that the defendant committed the alleged act or you must find the defendant not guilty.

Use Note

[1] The bracketed material should be used when there might be confusion because of the vagueness of the testimony about where and when the criminal act took place or if a description of the criminal act relied on would be clarifying.

[2] This instruction should reflect the testimony and sometimes may not allege a specific date. It will be sufficient if it reflects the testimony, such as: The prosecutor also alleges that the crime occurred on or about May or June, 1989.

[3] This instruction should not be given where the evidence clearly indicates a certain time and the defense is alibi.

[4] This paragraph is to be given when testimony about other bad acts has been introduced.

History

M Crim JI 4.12 (formerly CJI2d 4.12) was CJI 4:12:01.

Reference Guide

Statutes

MCL 767.45, .51.

Case Law

People v Whittemore, 230 Mich 435, 437, 203 NW 87 (1925); *People v Swift*, 172 Mich 473, 488, 138 NW 662 (1912); *People v Taylor*, 185 Mich App 1, 460 NW2d 582 (1990).

M Crim JI 4.13 Special Venue Instruction—Felony Consisting of More Than One Act

The alleged crime in this case is made up of several acts. The prosecutor only has to prove that one of these acts took place in _____ County; [he / she] does not have to prove that all of them took place there. When applicable, this instruction is to be given after the general time and place instruction, M Crim JI 3.10.

Use Note

When applicable, this instruction is to be given after the general time and place instruction, M Crim JI 3.10.

This is a cautionary instruction based on MCL 762.8:

Whenever a felony consists or is the culmination of 2 or more acts done in the perpetration of that felony, the felony may be prosecuted in any county where any of those acts were committed or in any county that the defendant intended the felony or acts done in perpetration of the felony to have an effect.

History

M Crim JI 4.13 (formerly CJI2d 4.13) was CJI 4:13:01; amended January, 1991; December, 2013.

Reference Guide

Statutes

MCL 762.8.

M Crim JI 4.14 Tracking-Dog Evidence

You have heard testimony about the use of a tracking-dog. You must consider tracking-dog evidence with great care and remember that it has little value as proof. Even if you decide that it is reliable, you must not convict the defendant based only on tracking-dog evidence. There must be other evidence that the defendant is guilty.

Use Note

This instruction must be given when testimony about the use of tracking-dog evidence is introduced.

History

M Crim JI 4.14 (formerly CJI2d 4.14) was CJI 4:14:01.

Reference Guide

Case Law

People v Warinner, 461 Mich 885, 891, 601 NW2d 378 (1999); *People v Laidlaw*, 169 Mich App 84, 93, 425 NW2d 738 (1988); *People v McMillen*, 126 Mich App 211, 336 NW2d 895 (1983); *People v McRaft*, 102 Mich App 204, 301 NW2d 852 (1980); *People v Perryman*, 89 Mich App 516, 280 NW2d 579 (1979); *People v McPherson*, 85 Mich App 341, 271 NW2d 228 (1978); *People v Harper*, 43 Mich App 500, 508, 204 NW2d 263 (1972).

M Crim JI 4.15 Fingerprint Evidence

The prosecutor has introduced evidence about fingerprints. You may consider this evidence when you decide whether the prosecutor has proved beyond a reasonable doubt that the defendant was the person who committed the alleged crime. However, fingerprints matching the defendant's must have been found in the place the crime was committed under such circumstances that they could only have been put there when the crime was committed.

Use Note

This instruction should be given only where the sole evidence of identity comes from fingerprints.

History

M Crim JI 4.15 (formerly CJI2d 4.15) was CJI 4:15:01.

Reference Guide

Case Law

People v Willis, 60 Mich App 154, 230 NW2d 353 (1975); *People v Cullens*, 55 Mich App 272, 222 NW2d 315 (1974); *People v Ware*, 12 Mich App 512, 163 NW2d 250 (1968).

M Crim JI 4.16 Intent

The defendant's intent may be proved by what [he / she] said, what [he / she] did, how [he / she] did it, or by any other facts and circumstances in evidence.

Use Note

This instruction may be used when requested or deemed helpful by the court.

History

M Crim JI 4.16 (formerly CJI2d 3.9(3)). Adopted May, 2005.

Reference Guide

Case Law

People v Maynor, 470 Mich 289, 296-297, 683 NW2d 565 (2004).

M Crim JI 4.17 Drug Profile Evidence

You have heard testimony from [*name witness(es)*] about [his / her / their] training or experience concerning other drug cases. This testimony is not to be used to determine whether the defendant committed the crime charged in this case. This testimony may be considered by you only for the purpose of *[state purpose for which evidence was offered and admitted]*.

History

M Crim JI 4.17 (formerly CJI2d 4.17) adopted by the committee in May, 2008.

Reference Guide

Case Law

People v Murray, 234 Mich App 46 (1999); *People v Hubbard*, 209 Mich App 234, 241-242, 530 NW2d 130 (1995).

CHAPTER 5 *Witnesses*

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M Crim JI 5.13 Agreement for Testimony / Possible Penalty 5-18

M Crim JI 5.1 Witnesses—Impeachment by Prior Conviction

(1)You have heard that one witness, _____, has been convicted of a crime in the past.

(2)You should judge this witness's testimony the same way you judge the testimony of any other witness. You may consider [his / her] past criminal convictions, along with all the other evidence, when you decide whether you believe [his / her] testimony and how important you think it is.

History

M Crim JI 5.1 (formerly CJI2d 5.1) was CJI 5:1:01; amended January, 1991.

Reference Guide

Court Rules

MRE 609.

Case Law

Luce v United States, 469 US 38 (1984); *People v Finley*, 431 Mich 506, 431 NW2d 19 (1988); *People v Allen*, 429 Mich 558, 420 NW2d 499 (1988).

M Crim JI 5.2 Weighing Conflicting Evidence—Number of Witnesses

You should not decide this case based on which side presented more witnesses. Instead, you should think about each witness and each piece of evidence and whether you believe them. Then you must decide whether the testimony and evidence you believe proves beyond a reasonable doubt that the defendant is guilty.

Use Note

This instruction may be given where the number of witnesses is raised in argument, or on request. This charge should not be given unless the defendant has introduced evidence, and it should be given only if there is a disparity between the number of witnesses or volume of evidence presented by the state and the defendant.

History

M Crim JI 5.2 (formerly CJI2d 5.2) was CJI 5:1:02.

Reference Guide

Case Law

People v Phillips, 112 Mich App 98, 109-110, 315 NW2d 868 (1982); *People v Hagle*, 67 Mich App 608, 617, 242 NW2d 27 (1976).

M Crim JI 5.3 Witness Who Has Been Interviewed by a Lawyer

You have heard that a lawyer [or lawyer's representative] talked to one of the witnesses. There is nothing wrong with this. A lawyer [or lawyer's representative] may talk to a witness to find out what the witness knows about the case and what the witness's testimony will be.

History

M Crim JI 5.3 (formerly CJI2d 5.3) was CJI 5:1:03; amended January, 1991.

M Crim JI 5.4 Witness as Undisputed Accomplice

(1)[*Name witness*] says [he / she] took part in the crime that the defendant is charged with committing.

[Choose as many of the following as apply:]

[(a)(*Name witness*) has already been convicted of charges arising out of the commission of that crime.]

[(b)The evidence clearly shows that (*name witness*) is guilty of the same crime the defendant is charged with.]

[(c)(*Name witness*) has been promised that (he / she) will not be prosecuted for the crime the defendant is charged with committing based upon any information derived directly or indirectly from the witness's truthful testimony. The witness may be prosecuted if the prosecution obtains additional, independent evidence against the witness.]

[(d)(*Name witness*) has been promised that (he / she) will not be prosecuted for the crime the defendant is charged with committing.]

(2)Such a witness is called an accomplice.

Use Note

This instruction is to be followed by the instruction on weighing testimony of an accomplice, M Crim JI 5.6. This charge should be given automatically where the witness has admitted his guilt or has been convicted of the crime, or where the evidence clearly indicates his complicity. Strike out whichever of the bracketed statements is inapplicable. Of course, more than one may apply. In certain classes of cases (e.g., consensual statutory rape), the victim as a matter of law is not considered to be an accomplice. In those cases, the defendant is not entitled to the charge on accomplice testimony. MCL 767.6 provides for use immunity (see paragraph 1(c) above). However, the prosecution can offer a witness/accomplice transactional immunity (see paragraph 1(d) above).

History

M Crim JI 5.4 (formerly CJI2d 5.4) was CJI 5:3:01*;* amended January, 1991; September, 2010.

Reference Guide

Statutes

MCL 767.6.

Case Law

People v Pettiford, No 288552, 2010 Mich App Lexis 813 (May 6, 2010) (unpublished).

M Crim JI 5.5 Witness a Disputed Accomplice

(1)Before you may consider what [*name witness*] said in court, you must decide whether [he / she] took part in the crime the defendant is charged with committing. [*Name witness*] has not admitted taking part in the crime, but there is evidence that could lead you to think that [he / she] did.

(2)A person who knowingly and willingly helps or cooperates with someone else in committing a crime is called an accomplice.

(3)When you think about [*name witness*]'s testimony, first decide if [he / she] was an accomplice. If, after thinking about all the evidence, you decide that [he / she] did not take part in this crime, judge [his / her] testimony as you judge that of any other witness. But, if you decide that [*name witness*] was an accomplice, then you must consider [his / her] testimony in the following way:

Use Note

This instruction is to be followed by the instruction on weighing testimony of an accomplice, M Crim JI 5.6. If there is a dispute as to the status of the witness as an accomplice, this fact should be submitted to the jury as a separate question for its determination.

History

M Crim JI 5.5 (formerly CJI2d 5.5) was CJI 5:2:02; amended January, 1991.

Reference Guide

Case Law

People v Young, 472 Mich 130, 693 NW2d 801 (2005); *People v Dumas*, 161 Mich 45, 125 NW 766 (1910); *People v Walker*, 3 Mich App 230, 145 NW2d 25 (1966).

M Crim JI 5.6 Cautionary Instruction Regarding Accomplice Testimony

(1)You should examine an accomplice's testimony closely and be very careful about accepting it.

(2)You may think about whether the accomplice's testimony is supported by other evidence, because then it may be more reliable. However, there is nothing wrong with the prosecutor's using an accomplice as a witness. You may convict the defendant based only on an accomplice's testimony if you believe the testimony and it proves the defendant's guilt beyond a reasonable doubt.

(3)When you decide whether you believe an accomplice, consider the following:

(a)Was the accomplice's testimony falsely slanted to make the defendant seem guilty because of the accomplice's own interests, biases, or for some other reason?

(b)Has the accomplice been offered a reward or been promised anything that might lead [him / her] to give false testimony? [*State what the evidence has shown. Enumerate or define reward.*]

(c)Has the accomplice been promised that [he / she] will not be prosecuted, or promised a lighter sentence or allowed to plead guilty to a less serious charge? If so, could this have influenced [his / her] testimony?

[(d)Does the accomplice have a criminal record?]

(4)In general, you should consider an accomplice's testimony more cautiously than you would that of an ordinary witness. You should be sure you have examined it closely before you base a conviction on it.

Use Note

Use bracketed material as applicable. Where appropriate, list any other grounds or circumstances that have arisen in a particular case. This cautionary instruction may be used even when the defendant, rather than the prosecutor, calls an accomplice. Of course, the instruction should be modified appropriately if the defendant calls the witness. For an example of such a modification, see *People v Heikkinen*, 250 Mich App 322, 646 NW2d 190 (2002).

History

M Crim JI 5.6 (formerly CJI2d 5.6) was CJI 5:2:03; amended January, 1991.

Reference Guide

Case Law

People v Young, 472 Mich 130, 693 NW2d 801 (2005); *People v Dumas*, 161 Mich 45, 125 NW 766 (1910); *People v Walker*, 3 Mich App 230, 145 NW2d 25 (1966).

M Crim JI 5.7 Addict-Informer

(1)You have heard the testimony of _____, who has given information to the police in this case. The evidence shows that [he / she] is addicted to a drug, namely _____.

(2)You should examine the testimony of an addicted informer closely and be very careful about accepting it.

(3)You should think about whether the testimony is supported by other evidence, because then it may be more reliable. However, there is nothing wrong with the prosecutor using an addicted informer as a witness. You may convict the defendant based on such a witness's testimony alone if you believe the testimony and it proves the defendant's guilt beyond a reasonable doubt.

(4)When you decide whether to believe [*name witness*], consider the following:

(a)Did the fact that this witness is addicted to drugs affect [his / her] memory of events or ability to testify accurately?

(b)Does the witness's addiction give [him / her] some special reason to testify falsely?

[(c)Does the witness expect a reward or some special treatment or has (he / she) been offered a reward or been promised anything that might lead (him / her) to give false testimony?

(d)Has the witness been promised that (he / she) will not be prosecuted for any charge, or promised a lighter sentence or allowed to plead guilty to a less serious charge? If so, could this have influenced (his / her) testimony?

(e)Was the witness's testimony falsely slanted to make the defendant seem guilty because of the witness's own interests or to remove suspicion from others, or because (he / she) feared retaliation from others in drug trafficking?

(f)Was the witness affected by the fear of being jailed and denied access to drugs?

(g)Does the witness have a past criminal record?]

(5)In general, you should consider an addicted informer's testimony more cautiously than you would that of an ordinary witness. You should be sure you have examined it closely before you base a conviction on it.

Use Note

Both sides should have the opportunity to develop the record with respect to the fairness of addict-informant instructions. These instructions are based on similar instructions on accomplice testimony. Upon request the trial court and the prosecutor must disclose any leniency or immunity granted the witness or any reasonable expectations of leniency resulting from contact with the prosecutor. This is a cautionary instruction to be used where the uncorroborated testimony of an addict informant is the only evidence linking the accused with the alleged offense. *People v Griffin*, 235 Mich App 27,

40, 597 NW2d 176 (1999).

History

M Crim JI 5.7 (formerly CJI2d 5.7) was CJI 5:2:04; amended January, 1991.

Reference Guide

Case Law

People v Atkins, 397 Mich 163, 243 NW2d 292 (1976); *People v Mata (On Remand)*, 80 Mich App 204, 263 NW2d 332 (1977).

M Crim JI 5.8 Character Evidence Regarding Credibility of Witness

(1)You have heard evidence about the character of [*name witness*] for truthfulness. You may consider this evidence, together with all the other evidence in the case, in deciding whether you believe the testimony of [*name witness*] and in deciding how much weight to give that testimony.

[(2)The prosecutor has cross-examined (one / some) of the defendant's character witnesses as to whether they had heard anything bad about the defendant. You should consider such cross-examination only in deciding whether you believe the character witnesses and whether they described (him / her) fairly.][1]

[(3)The prosecutor also called witnesses who testified that the defendant does not have a good character for truthfulness. This evidence can only be considered by you in judging the believability of the defendant's testimony. It is not evidence that (he / she) committed the crime charged.][2]

Use Note

[1] Use paragraph (2) only where the prosecutor has cross-examined the defendant's character witnesses concerning reported conduct inconsistent with the claimed good character for truthfulness.

[2] Use paragraph (3) only where the prosecutor calls adverse character witnesses on rebuttal.

History

M Crim JI 5.8 (formerly CJI2d 5.8) was CJI 5:2:05-5:2:08; amended June, 1992.

Reference Guide

Court Rules

MRE 608(a).

Case Law

People v Matthews, 143 Mich App 45, 371 NW2d 887 (1985).

M Crim JI 5.8a Character Evidence Regarding Conduct of the Defendant

(1)You have heard evidence about the defendant's character for [peacefulness / honesty / good sexual morals / being law-abiding / (*describe other trait*)]. You may consider this evidence, together with all the other evidence in the case, in deciding whether the defendant committed the crime with which (he / she) is charged. Evidence of good character alone may sometimes create a reasonable doubt in your minds and lead you to find the defendant not guilty.

[(2)The prosecutor has cross-examined (one / some) of the defendant's character witnesses as to whether they had heard anything bad about the defendant. You should consider such cross-examination only in deciding whether you believe the character witnesses and whether they described the defendant fairly.][1]

[(3)The prosecutor also called witnesses who testified that the defendant does not have the good character described by the defendant's character witnesses. This evidence can only be considered by you in judging whether you believe the defendant's character witnesses and whether the defendant has a good character for (*describe trait*). It is not evidence that the defendant committed the crime charged.][2]

Use Note

[1] Use paragraph (2) only where the prosecutor has cross-examined the defendant's character witnesses concerning reported conduct inconsistent with the claimed good character.

[2] Use paragraph (3) only where the prosecutor has called adverse character witnesses on rebuttal.

History

M Crim JI 5.8a (formerly CJI2d 5.8a) new June, 1992.

Reference Guide

Court Rules

MRE 405(a).

Case Law

People v Whitfield, 425 Mich 116, 130-131, 388 NW2d 206 (1986); *People v Champion*, 411 Mich 468, 471, 307 NW2d 681 (1981); *People v Simard*, 314 Mich 624, 23 NW2d 106 (1946); *People v Lane*, 304 Mich 29, 7 NW2d 210 (1942); *People v Rosa*, 268 Mich 462, 465, 256 NW 483 (1934); *People v Trahos*, 251 Mich 592, 232 NW 357 (1930); *People v Powell*, 223 Mich 633, 640; 194 NW 502 (1923); *People v Van Dam*, 107 Mich 425, 65 NW 277 (1895); *People v Jassino*, 100 Mich 536, 59 NW 230 (1894); *People v Garbutt*, 17 Mich 9 (1868); *People v Taylor*, 159 Mich App 468, 488, 406 NW2d 859 (1987); *People v Thomas*, 126 Mich App 611, 337 NW2d 598 (1983).

M Crim JI 5.8b Evidence of Other Acts of Child Sexual Abuse [*renumbered M Crim JI 20.28a in May, 2008*]

[This instruction was adopted by the committee in September, 2006, for use with MCL 768.27a, effective January 1, 2006, and renumbered as M Crim JI 20.28a in May, 2008.]

M Crim JI 5.8c Evidence of Other Acts of Domestic Violence [*amended and renumbered M Crim JI 4.11a in February, 2010*]

Note: This instruction was renumbered to M Crim JI 4.11a in February, 2010, and amended to incorporate the cautionary component of M Crim JI 4.11.

M Crim JI 5.9 Child Witness

For a witness who is a [young] child, a promise to tell the truth takes the place of an oath to tell the truth.

Use Note

This instruction is based on former MCL 600.2163, repealed by 1998 PA 323, eff. Aug. 3, 1998.

History

M Crim JI 5.9 (formerly CJI2d 5.9) was CJI 5:2:09. Amended by the committee in September, 2000, to delete reference to children under 10 as provided in the former statute, MCL 600.2163.

Reference Guide

Case Law

People v Walker, 113 Mich 367, 369, 71 NW 641 (1897); *Mead v Harris*, 101 Mich 585, 588, 60 NW 284 (1894); *McGuire v People*, 44 Mich 286, 287-288, 6 NW 669 (1880); *People v McNeill*, 81 Mich App 368, 377-378, 265 NW2d 334 (1978); *People v Edwards*, 35 Mich App 233, 235, 192 NW2d 382 (1971); *People v Strunk*, 11 Mich App 99, 160 NW2d 602 (1968).

M Crim JI 5.10 Expert Witness

(1)You have heard testimony from a witness, _____, who has given you [his / her] opinion as an expert in the field of _____. Experts are allowed to give opinions in court about matters they are experts on.

(2)However, you do not have to believe an expert's opinion. Instead, you should decide whether you believe it and how important you think it is. When you decide whether you believe an expert's opinion, think carefully about the reasons and facts [he / she] gave for [his / her] opinion, and whether those facts are true. You should also think about the expert's qualifications, and whether [his / her] opinion makes sense when you think about the other evidence in the case.

Use Note

Do *not* use this instruction where the expert testifies regarding the characteristics of sexually abused children and about whether the complainant's behavior is consistent with those characteristics. Instead, see M Crim JI 20.29, Limiting Instruction on Expert Testimony (Child Criminal Sexual Conduct Cases).

History

M Crim JI 5.10 (formerly CJI2d 5.10) was CJI 5:2:11-5:2:12; amended January, 1991.

Reference Guide

Court Rules

MRE 702-703.

Case Law

Daubert v Merrell Dow Pharms, 509 US 579 (2004); *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 685 NW2d 391 (2004); *People v Peterson* and *People v Smith*, 450 Mich 349, 537 NW2d 857 (1995); *People v Beckley*, 434 Mich 691, 456 NW2d 391 (1990); *People v Steele*, 283 Mich App 472, 769 NW2d 256 (2009); *People v Dobek*, 274 Mich App 58, 732 NW2d 546 (2007).

M Crim JI 5.11 Police Witness

You have heard testimony from [a witness who is a police officer / witnesses who are police officers]. That testimony is to be judged by the same standards you use to evaluate the testimony of any other witness.

Use Note

This instruction is discretionary and may be given upon request.

History

M Crim JI 5.11 (formerly CJI2d 5.11) was CJI 5:2:13. Amended January, 1991; March, 1995.

Reference Guide

Case Law

People v Lalonde, 171 Mich 286, 137 NW 74 (1912); *People v Seabrooks*, 135 Mich App 442, 354 NW2d 374 (1984).

M Crim JI 5.12 Prosecutor's Failure to Produce Witness

[*State name of witness*] is a missing witness whose appearance was the responsibility of the prosecution. You may infer that this witness's testimony would have been unfavorable to the prosecution's case.

History

M Crim JI 5.12 (formerly CJI2d 5.12) was CJI 5:2:14. Deleted May, 2003; readopted October, 2004.

Reference Guide

Statutes

MCL 767.40a.

Case Law

People v Perez, 469 Mich 415, 420, 670 NW2d 655 (2003).

M Crim JI 5.13 Agreement for Testimony / Possible Penalty

(1)You have heard testimony that a witness, [*name witness*], made an agreement with the prosecutor about charges against [him / her] in exchange for [his / her] testimony in this trial. You have also heard evidence that [*name witness*] faced a possible penalty of [*state maximum possible penalty*] as a result of those charges.

(2)You are to consider this evidence only as it relates to [*name witness*]'s credibility and as it may tend to show [*name witness*]'s bias or self-interest.

Use Note

This instruction should be used only where evidence has been elicited concerning the sentencing advantages of a plea or dismissal agreement offered in exchange for a witness's testimony. If that evidence relates to the same offense with which the defendant is charged, the court should reinstruct in accord with M Crim JI 2.23 that the penalty facing the defendant is not to be considered in deciding the case.

History

M Crim JI 5.13 (formerly CJI2d 5.13) new June, 1991.

Reference Guide

Case Law

People v Mumford, 183 Mich App 149, 455 NW2d 51 (1990).

CHAPTER 6 *State of Mind*

M Crim JI 6.1 General Intent—Intoxication Is Not a Defense 6-2

M Crim JI 6.2 Intoxication As a Defense to a Specific Intent Crime 6-3

M Crim JI 6.3 Diminished Capacity [deleted] 6-4

M Crim JI 6.4 Property Crimes: Mistake and Intent 6-5

M Crim JI 6.5 Intent to Injure or Defraud 6-6

M Crim JI 6.6 Restitution Is Not a Defense 6-7

M Crim JI 6.1 General Intent—Intoxication Is Not a Defense

There has been some evidence that the defendant was voluntarily intoxicated with alcohol or drugs when the alleged crime was committed. Voluntary intoxication is not a defense to [the crime charged here / the crime of _____]. So it does not excuse the defendant if [he / she] committed this crime.

History

M Crim JI 6.1 (formerly CJI2d 6.1) was CJI 6:1:01.

M Crim JI 6.2 Intoxication As a Defense to a Specific Intent Crime

(1)The defendant says that [he / she] could not have specifically intended to [*state specific intent of appropriate crime charged*] because [he / she] was intoxicated with alcohol or drugs.

(2)The defendant is not guilty of [*state charge*] if the defendant proves by a preponderance of the evidence that [he / she] lacked the intent to [*state required specific intent*] because [he / she] voluntarily consumed a legally obtained and properly used medication or other substance and did not know and reasonably should not have known that [he / she] would become intoxicated or impaired as a result.

(3)It is not a defense that the defendant was under the influence of or impaired by a voluntarily and knowingly consumed alcoholic liquor, drug, controlled substance, or a combination of them.

Use Note

Neither this instruction nor the statute on which it is based, MCL 768.37, addresses involuntary or unknowing consumption of an intoxicant as a defense to a crime.

History

M Crim JI 6.2 (formerly CJI2d 6.2) was CJI 6:1:02 and was last amended by the committee in October, 2002, to reflect the statutory changes found in 2002 PA 366, MCL 768.37, effective September 1, 2002.

Reference Guide

Case Law

People v Mills, 450 Mich 61, 82, 537 NW2d 909 (1995).

M Crim JI 6.3 Diminished Capacity [*deleted*]

Note. The committee deleted this instruction in September, 2001 in light of the supreme court's decision in *People v Carpenter*, 464 Mich 223, 627 NW2d 276 (2001). In *Carpenter* the court abolished the defense of diminished capacity, holding that "evidence of a defendant's lack of mental capacity short of legal insanity to avoid or reduce criminal responsibility by negating specific intent" is not admissible. Id. at 241.

M Crim JI 6.4 Property Crimes: Mistake and Intent

When you decide whether the defendant intended to _____, you must consider whether [he / she] acted as [he / she] did because of a mistake. If the defendant did not _____ [*e.g., pay (his / her) employer all the money (he / she) is required to account for*] because of an honest mistake, a bookkeeping error, or a misunderstanding about what [he / she] was supposed to do, then [he / she] did not take the [money / property] intentionally and is not guilty of the crime of _____.

History

M Crim JI 6.4 (formerly CJI2d 6.4) was CJI 6:1:03.

Reference Guide

Case Law

People v Holcomb, 395 Mich 326, 235 NW2d 343 (1975); *People v Hopper*, 274 Mich 418, 264 NW 849 (1936); *People v Goodchild*, 68 Mich App 226, 242 NW2d 465 (1976); *People v Karasek*, 63 Mich App 706, 234 NW2d 761 (1975).

M Crim JI 6.5 Intent to Injure or Defraud

When I say someone must "act with the intent to injure or defraud," I mean act to cheat or deceive, usually to get money, property, or something else valuable, or to make someone else suffer such a loss.

History

M Crim JI 6.5 (formerly CJI2d 6.5) was CJI 6:1:04.

M Crim JI 6.6 Restitution Is Not a Defense

Repaying the victim does not excuse the crime of _____. If you are satisfied beyond a reasonable doubt that the defendant [embezzled / converted / took] the property intending to cheat or deceive, then the defendant is guilty even if [he / she] paid the victim back later.

History

M Crim JI 6.6 (formerly CJI2d 6.6) was CJI 6:1:05.

Reference Guide

Case Law

People v Butts, 128 Mich 208, 87 NW 224 (1901).

CHAPTER 7 *Defenses*

M Crim JI 7.1 Murder: Defense of Accident (Involuntary Act) 7-2

M Crim JI 7.2 Murder: Defense of Accident (Not Knowing Consequences of Act) 7-3

M Crim JI 7.3 Lesser Offenses: Involuntary Manslaughter; Intentional Aiming of Firearm; Careless Discharge of a Firearm; Negligent Homicide 7-4

M Crim JI 7.3a Accident as Defense to Specific Intent Crime 7-5

M Crim JI 7.4 Lack of Presence (Alibi) 7-6

M Crim JI 7.5 Claim of Right 7-7

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M Crim JI 7.8 Identification 7-11

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M Crim JI 7.15 Use of Deadly Force in Self-Defense 7-21

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M Crim JI 7.16a Rebuttable Presumption Regarding Fear of Death, Great Bodily Harm, or Sexual Assault 7-24

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M Crim JI 7.22 Use of Nondeadly Force in Self-Defense or Defense of Others 7-32

M Crim JI 7.23 Past Violence by Complainant or Decedent 7-33

M Crim JI 7.24 Self-Defense Against Persons Acting in Concert 7-34

M Crim JI 7.1 Murder: Defense of Accident (Involuntary Act)

(1)The defendant says that [he / she] is not guilty of _____ because _____'s death was accidental. That is, the defendant says that _____ died because [*describe outside force; e.g., "the gun went off as it hit the wall"*].

(2)If the defendant did not mean to [pull the trigger / (*state other action*)] then [he / she] is not guilty of murder. The prosecutor must prove beyond a reasonable doubt that the defendant meant to _____.

Use Note

This instruction is designed for use where the defendant alleges that the act itself was entirely accidental. It is meant to be used as a defense to a murder charge only.

History

M Crim JI 7.1 (formerly CJI2d 7.1) was CJI 7:1:01; amended October, 1993.

Reference Guide

Case Law

People v Lester, 406 Mich 252, 277 NW2d 633 (1979); *People v Hawthorne*, 265 Mich App 47, 692 NW2d 879 (2005).

M Crim JI 7.2 Murder: Defense of Accident (Not Knowing Consequences of Act)

(1)The defendant says that [he / she] is not guilty of _____ because _____'s death was accidental. By this defendant means that [he / she] did not mean to kill or did not realize that what [he / she] did would probably cause a death or cause great bodily harm.

(2)If the defendant did not mean to kill, or did not realize that what [he / she] did would probably cause a death or cause great bodily harm, then [he / she] is not guilty of murder.

Use Note

This instruction is designed for use where the defendant acknowledges the act was voluntary but the consequences unintended. It is meant to be used as a defense to a murder charge only.

History

M Crim JI 7.2 (formerly CJI2d 7.2) was CJI 7:1:02; amended October, 1993; May, 2008.

M Crim JI 7.3 Lesser Offenses: Involuntary Manslaughter; Intentional Aiming of Firearm; Careless Discharge of a Firearm; Negligent Homicide

(1)However, even if the defendant is not guilty of murder, [he / she] may be guilty of a less serious offense. [If (he / she) willingly did something that was grossly negligent toward human life or if (he / she) intended to cause injury / If the gun went off as (he / she) purposely pointed or aimed it at someone], [he / she] may be guilty of involuntary manslaughter.

(2)Even if the defendant is not guilty of murder or involuntary manslaughter, you may decide that the defendant did something careless, reckless, or ordinarily negligent that caused the death. In that case, [he / she] may be guilty of [careless, reckless or negligent use of a firearm / negligent homicide].

(3)To sum up, when you consider the charge of murder, you should also consider whether the defendant is guilty of _____ or _____. In a few moments, I will describe these crimes in detail, and I will tell you what terms like "gross negligence" mean.

Use Note

Use (1) or (1) and (2) as applicable.

History

M Crim JI 7.3 (formerly CJI2d 7.3) was CJI 7:1:03-7:1:05. Amended October, 1993; September, 1995.

Reference Guide

Statutes

MCL 750.329.

Case Law

People v Jones, 419 Mich 577, 358 NW2d 837 (1984); *People v Ora Jones*, 395 Mich 379, 236 NW2d 461 (1975); People v St Cyr, 392 Mich 605, 221 NW2d 389 (1974); People v Pepper, 389 Mich 317, 206 NW2d 439 (1973); People v Hess, 214 Mich App 33, 37-38, 543 NW2d 332 (1995); People v Martin, 130 Mich App 609, 344 NW2d 17 (1983).

M Crim JI 7.3a Accident as Defense to Specific Intent Crime

The defendant says that [he / she] is not guilty of [*state crime*] because [he / she] did not intend to [*state specific intent required*]. The defendant says that [his / her] conduct was accidental. If the defendant did not intend to [*state specific intent required*], [he / she] is not guilty. The prosecutor must prove beyond a reasonable doubt that the defendant intended to [*state specific intent required*].

Use Note

Use this instruction where the defense of accident is claimed to negate specific intent.

History

M Crim JI 7.3a (formerly CJI2d 7.3a) new October, 1993.

Reference Guide

Case Law

People v Mills, 450 Mich 61, 537 NW2d 909 (1995); *People v Owens*, 108 Mich App 600, 310 NW2d 819 (1981).

M Crim JI 7.4 Lack of Presence (Alibi)

(1)You have heard evidence that the defendant could not have committed the alleged crime because [he / she] was somewhere else when the crime was committed.

(2)The prosecutor must prove beyond a reasonable doubt that the defendant was actually there when the alleged crime was committed. The defendant does not have to prove [he / she] was somewhere else.

(3)If, after carefully considering all the evidence, you have a reasonable doubt about whether the defendant was actually present when the alleged crime was committed, you must find [him / her] not guilty.

Use Note

This instruction is not to be used when the defendant is charged under circumstances where his presence is not required at the time and place of the commission of the crime. See 23A CJS, Criminal Law 1203 at 536. Thus, if the defendant is charged as an aider and abettor, this instruction should normally not be used. But *see People v Matthews*, 163 Mich App 244, 247-248, 413 NW2d 755 (1987): if the defendant is charged as an aider and abettor in such circumstances that his or her presence is required (as the getaway driver, for example), the alibi instruction should be given.

The instruction on identification, M Crim JI 7.8, should be given in many alibi cases, followed by this instruction or, where there is accomplice testimony, by a cautionary instruction on such testimony.

The committee feels that the term "alibi" has negative connotations and suggests the use of the term "lack of presence" as an alternative.

History

M Crim JI 7.4 (formerly CJI2d 7.4) was CJI 7:2:01-7:2:02.

Reference Guide

Case Law

People v Travis, 443 Mich 668, 505 NW2d 563 (1993); *People v McGinnis*, 402 Mich 343, 262 NW2d 669 (1978); *People v Burden*, 395 Mich 462, 236 NW2d 505 (1975); *People v Loudenslager*, 327 Mich 718, 42 NW2d 834 (1950); *People v Mullane*, 256 Mich 54, 239 NW 282 (1931); *People v Miller*, 250 Mich 72, 229 NW 475 (1930); *People v Mott*, 140 Mich App 289, 364 NW2d 696 (1985); *People v Heatwole*, 83 Mich App 732, 269 NW2d 283 (1978); *People v Bryant*, 80 Mich App 428, 264 NW2d 13 (1978); *People v Erb*, 48 Mich App 622, 211 NW2d 51 (1973).

M Crim JI 7.5 Claim of Right

(1)To be guilty of [larceny / robbery / (*state other crime*)], a person must intend to steal. In this case, there has been some evidence that the defendant took the property because [he / she] claimed the right to do so. If so, the defendant did not intend to steal.

(2)When does such a claimed right exist? It exists if the defendant took the property honestly believing that it was legally [his / hers] or that [he / she] had a legal right to have it. Two things are important: the defendant's belief must be honest, and [he / she] must claim a legal right to the property.

(3)You should notice that the test is whether the defendant honestly believed [he / she] had such a right. It does not matter if the defendant was mistaken or should have known otherwise. [It also does not matter if the defendant (used force / trespassed) to get the property or if [he / she] knew that someone else claimed the property.]

(4)The defendant does not have to prove [he / she] claimed the right to take the property. Instead, the prosecutor must prove beyond a reasonable doubt that the defendant took the property without a good-faith claimed right to do so.[1]

Use Note

The evidence must indicate the defendant thought the property to be legally his, and that he was operating under an honest conviction that he was acting under claim of right. If the evidence does not show this, no claim of right instruction should be given.

[1] There is some authority contradicting the statement in paragraph (4) of this instruction that the prosecution must prove beyond a reasonable doubt that the defendant took the property without a good-faith claimed right to do so. *See People v Cain*, 238 Mich App 95, 120 n10, 605 NW2d 28 (1999) ("It is important to note that this claim of right defense merely creates a question of fact for the jury and does not establish an affirmative defense, which would then require the prosecution to prove that [the defendant] was not acting under a good-faith belief in a claim of right").

History

M Crim JI 7.5 (formerly CJI2d 7.5) was CJI 7:3:01.

Reference Guide

Case Law

People v Shaunding, 268 Mich 218, 255 NW 770 (1934); *People v Henry*, 202 Mich 450, 168 NW 534 (1918); *People v Hillhouse*, 80 Mich 580, 45 NW 484 (1890); *People v Cain*, 238 Mich App 95, 119, 605 NW2d 28 (1999); *People v Pohl*, 202 Mich App 203, 507 NW2d 819 (1993), remanded, 445 Mich 918 (1994); *People v Karasek*, 63 Mich App 706, 234 NW2d 761 (1975); *People v McCann*, 42 Mich App 47, 201 NW2d 345 (1972).

M Crim JI 7.6 Duress

(1)The defendant says that [he / she] is not guilty because someone else's threatening behavior made [him / her] act as [he / she] did. This is called the defense of duress.

(2)The defendant is not guilty if [he / she] committed the crime under duress. Under the law, there was duress if [four / five] things were true:

(a)One, the threatening behavior would have made a reasonable person fear death or serious bodily harm;

(b)Two, the defendant actually was afraid of death or serious bodily harm;

(c)Three, the defendant had this fear at the time [he / she] acted;

(d)Four, the defendant committed the act to avoid the threatened harm.

[(e)Five, the situation did not arise because of the defendant's fault or negligence.][1]

(3)In deciding whether duress made the defendant act as [he / she] did, think carefully about all the circumstances as shown by the evidence.

(4)Think about the nature of any force or threats. Think about the background and character of the person who made the threats or used force. Think about the defendant's situation when [he / she] committed the alleged act. Could [he / she] have avoided the harm [he / she] feared in some other way than by committing the act? Think about how reasonable these other means would have seemed to a person in the defendant's situation at the time of the alleged act.[2]

(5)The prosecutor must prove beyond a reasonable doubt that the defendant was not acting under duress. If [he / she] fails to do so, then you must find the defendant not guilty.

Use Note

This instruction should be used only when there is some evidence of the essential elements of duress.

[1] Use (e) only where there is some evidence that the defendant found himself in the position of having to commit the crime through his own fault or negligence. Michigan law is unclear on whether a defendant can claim duress only where the defendant is completely free of fault.

[2] In escape cases, the special factors listed in M Crim JI 7.7 should also be given if they are supported by competent evidence.

History

M Crim JI 7.6 (formerly CJI2d 7.6) was CJI 7:5:01-7:5:03.

Reference Guide

Case Law

People v Lemons, 454 Mich 234, 248, 562 NW2d 447 (1997); *People v Luther*, 394 Mich 619, 232 NW2d 184 (1975), aff'g 53 Mich App 648, 219 NW2d 812 (1974); *People v Merhige*, 212 Mich 601, 180 NW 418 (1920); *People v Dittis*, 157 Mich App 38, 403 NW2d 94 (1987); *People v Hubbard*, 115 Mich App 73, 320 NW2d 294 (1982); *People v Mendoza*, 108 Mich App 733, 742, 310 NW2d 860 (1981); *People v Stephens*, 103 Mich App 640, 644, 303 NW2d 51 (1981); *People v Martin*, 100 Mich App 447, 452-453, 298 NW2d 900 (1980); *People v Hocquard*, 64 Mich App 331, 236 NW2d 72 (1975); *People v Richter*, 54 Mich App 598, 221 NW2d 429 (1974); *People v Kelly*, 51 Mich App 28, 214 NW2d 334 (1973); *People v Field*, 28 Mich App 476, 477-478, 184 NW2d 551 (1970); *People v Spalding*, 17 Mich App 73, 76, 169 NW2d 163 (1969).

M Crim JI 7.7 Special Factors in Escape Cases

You may also consider the following things:

(a)Was the defendant faced with a specific threat of death, forcible sexual attack, or substantial bodily injury in the immediate future?

(b)Was there time for [him / her] to complain to those in charge?

(c)Was there a *History* of complaints by the defendant that had been useless?

(d)Did the defendant have the time or the chance to take action in the courts?

(e)Did the defendant use force or violence against innocent people or prison employees during the escape?

(f)Did the defendant immediately report to the proper authorities after [he / she] was safe from the immediate threat?

Use Note

This instruction should be given only in escape cases. See MCL 768.21b(4) and *People v Luther*, 394 Mich 619, 622-624, 232 NW2d 184, 186-187 (1975). M Crim JI 7.6 should be given first, followed by any of the factors listed in this instruction that are supported by competent evidence. Only those factors that are supported by the evidence should be given.

History

M Crim JI 7.7 (formerly CJI2d 7.7) was CJI 7:5:04.

Reference Guide

Case Law

United States v Bailey, 444 US 394, 410-411 (1980); *People v Andrews*, 192 Mich App 706, 481 NW2d 831 (1992); *People v Rau*, 174 Mich App 339, 436 NW2d 409 (1989); *People v Sekoian*, 169 Mich App 609, 614, 426 NW2d 412 (1988); *People v Blair*, 157 Mich App 43, 403 NW2d 96 (1987); *People v Crooks*, 151 Mich App 389, 390 NW2d 250 (1986); *People v Luther*, 53 Mich App 648, 219 NW2d 812 (1974), aff'd, 394 Mich 619, 232 NW2d 184 (1975).

M Crim JI 7.8 Identification

(1)One of the issues in this case is the identification of the defendant as the person who committed the crime. The prosecutor must prove beyond a reasonable doubt that the crime was committed and that the defendant was the person who committed it.

(2)In deciding how dependable an identification is, think about such things as how good a chance the witness had to see the offender at the time, how long the witness was watching, whether the witness had seen or known the offender before, how far away the witness was, whether the area was well-lighted, and the witness's state of mind at that time.

(3)Also, think about the circumstances at the time of the identification, such as how much time had passed since the crime, how sure the witness was about the identification, and the witness's state of mind during the identification.

[(4)You may also consider any times that the witness failed to identify the defendant, or made an identification or gave a description that did not agree with (his / her) identification of the defendant during trial.]

(5)You should examine the witness's identification testimony carefully. You may consider whether other evidence supports the identification, because then it may be more reliable. However, you may use the identification testimony alone to convict the defendant, as long as you believe the testimony and you find that it proves beyond a reasonable doubt that the defendant was the person who committed the crime.

Use Note

This instruction should be given, upon request, in every case in which identity is in issue.

The bracketed portion should be given, upon request, when supported by the evidence.

History

M Crim JI 7.8 (formerly CJI2d 7.8) was CJI 7:7:01.

Reference Guide

Case Law

Manson v Brathwaite, 432 US 98, 114 (1977); *Neil v Biggers*, 409 US 188 (1972); *In re Winship*, 397 US 358 (1970); *People v Wright*, 408 Mich 1, 289 NW2d 1 (1980); *People v Kachar*, 400 Mich 78, 95-96, 252 NW2d 807 (1977); *People v Anderson*, 389 Mich 155, 180, 205 NW2d 461 (1973); *People v Storch*, 176 Mich App 414, 440 NW2d 14 (1989); *People v Young*, 146 Mich App 337, 379 NW2d 491 (1985).

M Crim JI 7.9 The Meanings of Mental Illness, Intellectual Disability and Legal Insanity

(1)One of the defenses that will be raised in this case is that the defendant was legally insane at the time of the crime. Under the law, mental illness and legal insanity are not the same. A person can be mentally ill and still not be legally insane. Because of this, and because the law treats people who commit crimes differently depending on their mental state at the time of the crime, it is important for you to understand the legal meanings of "mental illness," "intellectual disability," and "legal insanity."

(2)"Mental illness" is defined by law as a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or the ability to cope with the ordinary demands of life.

(3)"Intellectual disability" means significantly subaverage intellectual functioning that appeared before the defendant was 18 years old and impaired two or more of [his / her] adaptive skills.[1]

(4)To be legally insane, a person must first be either mentally ill or intellectually disabled, as I have defined those conditions. But that is not enough. To be legally insane, the person must, because of [his / her] mental illness or intellectual disability, lack substantial capacity either to appreciate the nature and quality or the wrongfulness of [his / her] conduct or to conform [his / her] conduct to the requirements of the law.

Use Note

If the defendant plans to assert an insanity defense, an instruction such as this one *must be given* before testimony is presented on the issue. MCL 768.29a(1). Filing a notice of intent to assert an insanity defense is *not* the same as actually asserting the defense at trial. Before trial, the court should ask if the defendant plans to raise the insanity defense. If he does not, the court should not give this instruction. The statute mandates that definitions of mental illness and intellectual disability be given. If defendant's counsel does not want the definition of intellectual disability (or mental illness) because it is inappropriate and confusing, the Criminal Jury Instruction Committee suggests that the defendant place a waiver on the record prior to trial.

When instructing prior to deliberations, use M Crim JI 7.11.

[1] The court may provide the jury with a definition of adaptive skills where appropriate. The phrase is defined in MCL 330.1100a(3), and means skills in 1 or more of the following areas:

(a)Communication

(b)Self-care

(c)Home living

(d)Social skills

(e)Community use

(f)Self-direction

(g)Health and safety

(h)Functional academics

(i)Leisure

(j)Work

History

M Crim JI 7.9 (formerly CJI2d 7.9) was CJI 7:8:01. This instruction was modified by the committee in June, 1994, to reflect the legislative change in the definition of legal insanity found in 1994 PA 56, amending MCL 768.21a.

The instruction was modified in January 2015 to reflect a statutory change from the phrase "mental retardation" to "intellectual disability," and to conform the definitional language to that used in the statute.

Reference Guide

Statutes

MCL 330.1100a(3), 768.29a(1)

Case Law

People v Grant, 445 Mich 535, 520 NW2d 123 (1994).

M Crim JI 7.10 Person Under the Influence of Alcohol or Controlled Substances

(1)A person is not legally insane just because [he / she] was voluntarily intoxicated by alcohol or drugs at the time of the crime.

[(2)Drug intoxication is not voluntary and may be a defense if the defendant was unexpectedly intoxicated by the use of a prescribed drug. Intoxication was not voluntary where,

(a)the defendant did not know or have reason to know that the prescribed drug was likely to be intoxicating,

(b)the prescribed drug, not another intoxicant, must have caused the defendant's intoxication, and

(c)as a result of the intoxication, the defendant was rendered temporarily insane or lacked the mental ability to form the intent necessary to commit the crime charged.][1]

[(3)A person can become legally insane by the voluntary, continued use of mind-altering substances like alcohol or drugs if their use results in a settled condition of insanity before, during, and after the alleged offense.][2]

(4)Of course, a mentally ill [or intellectually disabled] person can also be intoxicated, and both conditions may influence what [he / she] does. You should decide whether the defendant was mentally ill [or intellectually disabled] at the time of the crime. If [he / she] was, you should use the definitions I gave you to decide whether [he / she] was also legally insane.

Use Note

[1] Use this paragraph only if the defendant is claiming that he or she was unexpectedly intoxicated by the use of a prescribed drug as described in *People v Caulley*, 197 Mich App 177, 494 NW2d 853 (1992).

[2] Use this paragraph only if the defendant is claiming that a settled condition of legal insanity resulted from voluntary substance abuse as described in *People v Conrad*, 148 Mich App 433, 385 NW2d 277 (1986). If the defendant plans to assert an insanity defense, an instruction such as this one must be given before testimony is presented on the issue. MCL 768.29a(1). Presumably this is true only where intoxication is an issue in the case. *In People v Anderson*, 166 Mich App 455, 466-467, 421 NW2d 200 (1988), the court of appeals approved giving the statutory definition of MCL 768.21a, rather than CJI 7:8:02 (now M Crim JI 7.10). This instruction may also be given before jury deliberations (see M Crim JI 7.11).

History

M Crim JI 7.10 (formerly CJI2d 7.10) was CJI 7:8:02. Amended June, 1990; October, 1993; January 2016.

Reference Guide

Statutes

MCL 768.21a(2).

Case Law

People v Savoie, 419 Mich 118, 129 n4, 349 NW2d 139 (1984); People v Caulley, 197 Mich App 177, 494 NW2d 853 (1992); People v Conrad, 148 Mich App 433, 385 NW2d 277 (1986); People v Matulonis, 115 Mich App 263, 320 NW2d 238 (1982).

M Crim JI 7.11 Legal Insanity; Mental Illness; Intellectual Disability; Burden of Proof

(1)The defendant says that [he / she] is not guilty by reason of insanity. A person is legally insane if, as a result of mental illness or intellectual disability, [he / she] was incapable of understanding the wrongfulness of [his / her] conduct, or was unable to conform [his / her] conduct to the requirements of the law. The burden is on the defendant to show that [he / she] was legally insane.

(2)Before considering the insanity defense, you must be convinced beyond a reasonable doubt that the defendant committed the [crime / crimes] charged by the prosecutor. If you are not, your verdict should simply be not guilty of [that / those] offense[s]. If you are convinced that the defendant committed an offense, you should consider the defendant's claim that [he / she] was legally insane.

(3)In order to establish that [he / she] was legally insane, the defendant must prove two elements by a preponderance of the evidence. A preponderance of the evidence means that [he / she] must prove that it is more likely than not that each of the elements is true.

(4)First, the defendant must prove that [he / she] was mentally ill and/or intellectually disabled.[1]

(a)"Mental illness" means a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or the ability to cope with the ordinary demands of life.

(b)"Intellectual disability" means significantly subaverage intellectual functioning that appeared before the defendant was 18 years old and impaired two or more of [his / her] adaptive skills.[2]

(5)Second, the defendant must prove that, as a result of [his / her] mental illness and/or intellectual disability, [he / she] either lacked substantial capacity to appreciate the nature and wrongfulness of [his / her] act, or lacked substantial capacity to conform [his / her] conduct to the requirements of the law.

(6)You should consider these elements separately. If you find that the defendant has proved both of these elements by a preponderance of the evidence, then you must find [him / her] not guilty by reason of insanity. If the defendant has failed to prove either or both elements, [he / she] was not legally insane.

Use Note

An individual who was under the influence of voluntarily consumed or injected alcohol or controlled substances at the time of his or her alleged offense is not considered to have been legally insane solely because of being under the influence of the alcohol or controlled substances. MCL 768.21a(2).

[1] This paragraph may be modified if the defendant is claiming only one aspect of this element.

[2] The court may provide the jury with a definition of "adaptive skills" where appropriate. The phrase is defined in MCL 330.1100a(3) and means skills in 1 or more of the following areas:

(a)Communication.

(b)Self-care.

(c)Home living.

(d)Social skills.

(e)Community use.

(f)Self-direction.

(g)Health and safety.

(h)Functional academics.

(i)Leisure.

(j)Work.

History

M Crim JI 7.11 (formerly CJI2d 7.11) was CJI 7:8:02A-7:8:06, 7:8:13.

The instruction was modified in June, 1994 to reflect the effect of 1994 PA 56, amending MCL 768.21a, which changed the burden of proof and requires the defendant to establish legal insanity by a preponderance of the evidence.

The instruction was modified in January 2015 to reflect a statutory change from the phrase "mental retardation" to "intellectual disability," and to conform the definitional language to that used in the statute.

The instruction was modified in August 2016 to remove repetitive language and over-emphasis of a defendant's duty to prove the defense.

Reference Guide

Statutes

MCL 330.1100a(3), 330.1100b(15), .1400(g), 768.20a, .21, .21a

Case Law

People v McRunels, 237 Mich App 168, 603 NW2d 95 (1999); *People v Munn*, 25 Mich App 165, 181 NW2d 28 (1970); *People v Deneweth*, 14 Mich App 604, 165 NW2d 910 (1968).

M Crim JI 7.12 Definition of Guilty but Mentally Ill

(1)There is another verdict that is completely different from the verdict of not guilty because of insanity. This is called "guilty but mentally ill."?

(2)To find the defendant guilty but mentally ill, you must find each of the following:

(3)First, the prosecutor has proven beyond a reasonable doubt that the defendant is guilty of a crime.

(4)Second, that the defendant has proven by a preponderance of the evidence that [he / she] was mentally ill, as I have defined that term for you, at the time of the crime.

(5)Third, that the defendant has not proven by a preponderance of the evidence that [he / she] lacked the substantial capacity either to appreciate the nature and quality or the wrongfulness of [his / her] conduct or to conform [his / her] conduct to the requirements of the law.

Use Note

MCL 768.29a(2) requires an instruction on guilty but mentally ill whenever there is an instruction on insanity. *People v Mikulin*, 84 Mich App 705, 270 NW2d 500 (1978). A guilty but mentally ill instruction cannot be waived by the defendant. *People v Ritsema*, 105 Mich App 602, 307 NW2d 380 (1981).

History

M Crim JI 7.12 (formerly CJI2d 7.12) was CJI 7:8:09 and was amended in October, 2002, to set forth the statutory elements found at MCL 768.36(1) as amended by 2002 PA 245, effective May 1, 2002.

Reference Guide

Statutes

MCL 768.36(1).

Case Law

People v Ramsey, 422 Mich 500, 375 NW2d 297 (1985); *People v Goad*, 421 Mich 20, 364 NW2d 584 (1984).

M Crim JI 7.13 Insanity at the Time of the Crime

You must judge the defendant's mental state at the time of the alleged crime. You may consider evidence about [his / her] mental condition before and after the crime, but only to help you judge [his / her] mental state at the time of the alleged crime.

History

M Crim JI 7.13 (formerly CJI2d 7.13) was CJI 7:8:11.

Reference Guide

Statutes

MCL 768.21a.

Case Law

People v Murphy, 416 Mich 453, 461-462, 331 NW2d 152 (1982); *People v Woody*, 380 Mich 332, 335-338, 157 NW2d 201 (1968).

M Crim JI 7.14 Permanent or Temporary Insanity

Legal insanity may be permanent or temporary. You must decide whether the defendant was legally insane at the time of the alleged crime.

Use Note

The committee recommends that this instruction be given if requested.

History

M Crim JI 7.14 (formerly CJI2d 7.14) was CJI 7:8:12.

Reference Guide

Case Law

People v Finley, 38 Mich 482, 483 (1878); *People v Wright*, 58 Mich App 735, 739, 228 NW2d 807 (1975); *People v Jordan*, 51 Mich App 710, 713, 216 NW2d 71 (1974).

M Crim JI 7.15 Use of Deadly Force in Self-Defense

(1)The defendant claims that [he / she] acted in lawful self-defense. A person has the right to use force or even take a life to defend [himself / herself] under certain circumstances. If a person acts in lawful self-defense, that person's actions are justified and [he / she] is not guilty of [*state crime*].

(2)You should consider all the evidence and use the following rules to decide whether the defendant acted in lawful self-defense. Remember to judge the defendant's conduct according to how the circumstances appeared to [him / her] at the time [he / she] acted.

(3)First, at the time [he / she] acted, the defendant must have honestly and reasonably believed that [he / she] was in danger of being [killed / seriously injured / sexually assaulted]. If the defendant's belief was honest and reasonable, [he / she] could act immediately to defend [himself / herself] even if it turned out later that [he / she] was wrong about how much danger [he / she] was in. In deciding if the defendant's belief was honest and reasonable, you should consider all the circumstances as they appeared to the defendant at the time.

(4)Second, a person may not kill or seriously injure another person just to protect [himself / herself] against what seems like a threat of only minor injury. The defendant must have been afraid of [death / serious physical injury / sexual assault]. When you decide if the defendant was afraid of one or more of these, you should consider all the circumstances: [the condition of the people involved, including their relative strength / whether the other person was armed with a dangerous weapon or had some other means of injuring the defendant / the nature of the other person's attack or threat / whether the defendant knew about any previous violent acts or threats made by the other person].

(5)Third, at the time [he / she] acted, the defendant must have honestly and reasonably believed that what [he / she] did was immediately necessary. Under the law, a person may only use as much force as [he / she] thinks is necessary at the time to protect [himself / herself]. When you decide whether the amount of force used seemed to be necessary, you may consider whether the defendant knew about any other ways of protecting [himself / herself], but you may also consider how the excitement of the moment affected the choice the defendant made.

Use Note

Use when requested where some evidence of self-defense has been introduced or elicited.

History

M Crim JI 7.15 (formerly CJI2d 7.15) was CJI 7:9:01; amended June, 1990; June, 1991; September, 2005, September, 2007.

Reference Guide

Statutes

MCL 780.971 et seq.

Case Law

People v Goree, 296 Mich App 293, 819 NW2d 82 (2012); *People v Conyer*, 281 Mich App 526, 762 NW2d 198 (2008).

M Crim JI 7.16 Duty to Retreat to Avoid Using Deadly Force

(1)A person can use deadly force in self-defense only where it is necessary to do so. If the defendant could have safely retreated but did not do so, you may consider that fact in deciding whether the defendant honestly and reasonably believed [he / she] needed to use deadly force in self-defense.*

(2)However, a person is never required to retreat if attacked in [his / her] own home, nor if the person reasonably believes that an attacker is about to use a deadly weapon, nor if the person is subject to a sudden, fierce, and violent attack.

(3)Further, a person is not required to retreat if the person:

(a)has not or is not engaged in the commission of a crime at the time the deadly force is used, and

(b)has a legal right to be where the person is at that time, and

(c)has an honest and reasonable belief that the use of deadly force is necessary to prevent imminent [death / great bodily harm / sexual assault] of the person or another.

Use Note

*Paragraph (1) should not be given if the duty to retreat is not in dispute. *People v Richardson*, 490 Mich 115, 803 NW2d 302 (2011).

History

M Crim JI 7.16 (formerly CJI2d 7.16) was CJI 7:9:02; amended October, 2002, September, 2007.

Reference Guide

Statutes

MCL 780.971 et seq.

Case Law

People v Riddle, 467 Mich 116, 649 NW2d 30 (2002); *People v Conyer*, 281 Mich App 526, 762 NW2d 198 (2008).

M Crim JI 7.16a Rebuttable Presumption Regarding Fear of Death, Great Bodily Harm, or Sexual Assault

(1)If you find both that —

(a)the deceased was breaking and entering a dwelling or business, or committing home invasion, or had broke and entered or committed home invasion and was still present in the dwelling or business, or is unlawfully attempting to remove a person from a dwelling, business, or vehicle against the person's will,

and

(b)the defendant honestly and reasonably believed the deceased was engaged in any of the conduct just described

— you must presume that the defendant had an honest and reasonable belief that imminent [death / great bodily harm / sexual assault] would occur.

This presumption does not apply if—

[*Use the appropriate paragraph below based on the claims of the parties and the evidence admitted.*]

(a) the deceased has the legal right to be in the dwelling, business, or vehicle and there is not a "no contact" [court order / pretrial supervision order / probation order / parole order] against the deceased, or

(b) the individual being removed is a child or grandchild or otherwise in the lawful custody of the deceased victim, or

(c) the defendant was engaged in the commission of a crime or using the dwelling, business premises, or vehicle to further the commission of a crime, or

(d) the deceased was a peace officer who was entering or attempting to enter the premises or vehicle in the performance of his duties, or

(e) the deceased was the [spouse / former spouse / person with whom the defendant had or previously had a dating relationship / person with whom the defendant had a child in common / a resident or former resident of the defendant's household], and the defendant had a prior history of domestic violence* as the aggressor.

Use Note

*For the definition of "domestic violence," see MCL 400.1501(1)(d).

History

M Crim JI 7.16a (formerly CJI2d 7.16a) was adopted September, 2007; amended May, 2008; amended August, 2014

to correct and comply with statutory language.

Reference Guide

Statutes

MCL 780.951, et seq.

MCL 780.971, et seq.

Case Law

People v Conyer, 281 Mich App 526, 762 NW2d 198 (2008).

M Crim JI 7.17 No Duty to Retreat While in Own Dwelling [*deleted*]

Note. This instruction was deleted by the committee in September, 2008, because the current requirements regarding the duty to retreat before using deadly force are found at M Crim JI 7.16.

M Crim JI 7.18 Deadly Aggressor—Withdrawal

A person who started an assault on someone else [with deadly force / with a dangerous or deadly weapon] cannot claim that [he / she] acted in self-defense unless [he / she] genuinely stopped [fighting / (his / her) assault] and clearly let the other person know that [he / she] wanted to make peace. Then, if the other person kept on fighting or started fighting again later, the defendant had the same right to defend [himself / herself] as anyone else and could use force to save [himself / herself] from immediate physical harm.

Use Note

If supported by the facts, failure to give this instruction *sua sponte* is reversible error.

History

M Crim JI 7.18 (formerly CJI2d 7.18) was CJI 7:9:04.

Reference Guide

Case Law

People v Townes, 391 Mich 578, 218 NW2d 136 (1974); *People v Van Camp*, 356 Mich 593, 97 NW2d 726 (1959); *People v Terrell*, 106 Mich App 319, 321, 308 NW2d 183 (1981); *People v Kerley*, 95 Mich App 74, 83-84, 289 NW2d 883 (1980); *People v Peoples*, 75 Mich App 616, 255 NW2d 707 (1977); *People v Van Horn*, 64 Mich App 112, 235 NW2d 80 (1975); *People v Matthews*, 17 Mich App 48, 169 NW2d 138 (1969).

M Crim JI 7.19 Nondeadly Aggressor Assaulted with Deadly Force

A defendant who [assaults someone else with fists or a weapon that is not deadly / insults someone with words / trespasses on someone else's property / tries to take someone else's property in a nonviolent way] does not lose all right to self-defense. If someone else assaults [him / her] with deadly force, the defendant may act in self-defense, but only if [he / she] retreats if it is safe to do so.

History

M Crim JI 7.19 (formerly CJI2d 7.19) was CJI 7:9:05 and was last amended by the committee in October, 2002.

Reference Guide

Case Law

People v Riddle, 467 Mich 116, 649 NW2d 30 (2002); *People v Townes*, 391 Mich 578, 593, 218 NW2d 136 (1974); *People v Smith*, 67 Mich App 145, 155, 240 NW2d 475 (1976).

M Crim JI 7.20 Burden of Proof-Self—Defense

The defendant does not have to prove that [he / she] acted in self-defense. Instead, the prosecutor must prove beyond a reasonable doubt that the defendant did not act in self-defense.

Use Note

This instruction should be given where there is some evidence of self-defense. If there is no evidence of self-defense, no instructions on self-defense should be given.

History

M Crim JI 7.20 (formerly CJI2d 7.20) was CJI 7:9:06.

Reference Guide

Case Law

People v Hoskins, 403 Mich 95, 267 NW2d 417 (1978); *People v Jackson*, 390 Mich 621, 212 NW2d 918 (1973); *People v Hunley*, 313 Mich 688, 21 NW2d 923 (1946); *People v Watts*, 61 Mich App 309, 232 NW2d 396 (1975); *People v Brown*, 34 Mich App 45, 190 NW2d 701 (1971); *People v Johnson*, 13 Mich App 69, 163 NW2d 688 (1968), rev'd on other grounds, 382 Mich 632, 172 NW2d 369 (1969).

M Crim JI 7.21 Defense of Others—Deadly Force

(1)The defendant claims that [he / she] acted lawfully to defend _____. A person has the right to use force or even take a life to defend someone else under certain circumstances. If a person acts in lawful defense of another, [his / her] actions are justified and [he / she] is not guilty of [*state crime*].

(2)You should consider all the evidence and use the following rules to decide whether the defendant acted in lawful defense of another. Remember to judge the defendant's conduct according to how the circumstances appeared to [him / her] at the time [he / she] acted.

(3)First, at the time [he / she] acted, the defendant must not have been engaged in the commission of a crime.

(4)Second, when [he / she] acted, the defendant must have honestly and reasonably believed that _____ was in danger of being [killed / seriously injured / sexually assaulted]. If [his / her] belief was honest and reasonable, [he / she] could act at once to defend _____, even if it turns out later that the defendant was wrong about how much danger _____ was in.

(5)Third, if the defendant was only afraid that _____ would receive a minor injury, then [he / she] was not justified in killing or seriously injuring the attacker. The defendant must have been afraid that _____ would be [killed / seriously injured / sexually assaulted]. When you decide if [he / she] was so afraid, you should consider all the circumstances: [the conditions of the people involved, including their relative strength / whether the other person was armed with a dangerous weapon or had some other means of injuring _____ / the nature of the other person's attack or threat / whether the defendant knew about any previous violent acts or threats made by the attacker].

(6)Fourth, at the time [he / she] acted, the defendant must have honestly and reasonably believed that what [he / she] did was immediately necessary. Under the law, a person may only use as much force as [he / she] thinks is needed at the time to protect the other person. When you decide whether the force used appeared to be necessary, you may consider whether the defendant knew about any other ways of protecting _____, but you may also consider how the excitement of the moment affected the choice the defendant made.

(7)The defendant does not have to prove that [he / she] acted in defense of _____. Instead, the prosecutor must prove beyond a reasonable doubt that the defendant did not act in defense of _____.

History

M Crim JI 7.21 (formerly CJI2d 7.21) was CJI 7:9:07-7:9:08; amended September, 1990; June, 1991; September, 2005, September, 2007.

Reference Guide

Statutes

MCL 780.971 et seq.

Case Law

People v Burkard, 374 Mich 430, 132 NW2d 106 (1965); *Pond v People*, 8 Mich 150, 174 (1860); *People v Kurr*, 253 Mich App 317, 654 NW2d 651 (2002); *People v Wright*, 25 Mich App 499, 181 NW2d 649 (1970).

M Crim JI 7.22 Use of Nondeadly Force in Self-Defense or Defense of Others

(1)The defendant claims that [he / she] acted in lawful [self-defense / defense of _____]. A person has the right to use force to defend [himself / herself / another person] under certain circumstances. If a person acts in lawful [self-defense / defense of others], [his / her] actions are justified and [he / she] is not guilty of [*state crime*].

(2)You should consider all the evidence and use the following rules to decide whether the defendant acted in lawful [self-defense / defense of _____]. Remember to judge the defendant's conduct according to how the circumstances appeared to [him / her] at the time [he / she] acted.

(3)First, at the time [he / she] acted, the defendant must not have been engaged in the commission of a crime.

(4)Second, when [he / she] acted, the defendant must have honestly and reasonably believed that [he / she] had to use force to protect [himself / herself / _____] from the imminent unlawful use of force by another. If [his / her] belief was honest and reasonable, [he / she] could act at once to defend [himself / herself / _____], even if it turns out later that [he / she] was wrong about how much danger [he / she / _____] was in.

(5)Third, a person is only justified in using the degree of force that seems necessary at the time to protect [himself / herself / the other person] from danger. The defendant must have used the kind of force that was appropriate to the attack made and the circumstances as [he / she] saw them. When you decide whether the force used was what seemed necessary, you should consider whether the defendant knew about any other ways of protecting [himself / herself / _____], but you may also consider how the excitement of the moment affected the choice the defendant made.

(6)Fourth, the right to defend [oneself / another person] only lasts as long as it seems necessary for the purpose of protection.

(7)Fifth, the person claiming self-defense must not have acted wrongfully and brought on the assault. [However, if the defendant only used words, that does not prevent (him / her) from claiming self-defense if (he / she) was attacked.]

History

M Crim JI 7.22 (formerly CJI2d 7.22) was CJI 7:9:09; amended September 1990; September, 2005, September 2007.

Reference Guide

Statutes

MCL 780.971 et seq.

Case Law

People v Heflin, 434 Mich 482, 502-503, 456 NW2d 10 (1990); *Brownell v People*, 38 Mich 732, 738 (1878); *People v Hooper*, 152 Mich App 243, 246-247, 394 NW2d 27 (1986); *People v Deason*, 148 Mich App 27, 384 NW2d 72 (1985); *People v McGee*, 66 Mich App 164, 169-170, 238 NW2d 564 (1975).

M Crim JI 7.23 Past Violence by Complainant or Decedent

[*Specific Acts*]

(1)There has been evidence that the [complainant / decedent] may have committed violent acts in the past and that the defendant knew about these acts. You may consider this evidence when you decide whether the defendant honestly and reasonably feared for [his / her] safety.

[*General Reputation*]

(2)There has been evidence that the [complainant / decedent] may have had a reputation for cruelty or violence. You may consider this evidence when you decide whether it was likely that the [complainant / decedent] threatened to hurt the defendant physically, and whether the defendant honestly and reasonably feared for [his / her] safety.

History

M Crim JI 7.23 (formerly CJI2d 7.23) was CJI 7:9:10; amended September, 1990.

Reference Guide

Court Rules

MRE 404(a)(2).

Case Law

People v Harris, 458 Mich 310, 316, 583 NW2d 680 (1998); *People v Heflin*, 434 Mich 482, 502-503, 456 NW2d 10 (1990); *People v Wright*, 294 Mich 20, 292 NW 539 (1940); *People v Walters*, 223 Mich 676, 194 NW 538 (1923); *People v Taylor*, 195 Mich App 57, 489 NW2d 99 (1992); *People v Wilson*, 194 Mich App 599, 605, 487 NW2d 822 (1992); *People v Kerley*, 95 Mich App 74, 80, 289 NW2d 883 (1980).

M Crim JI 7.24 Self-Defense Against Persons Acting in Concert

A defendant who is attacked by more than one person [or by one person and others helping and encouraging the attacker] has the right to act in self-defense against all of them. [However, before using deadly force against one of the attackers, the defendant must honestly and reasonably believe that (he / she) is in imminent danger of (death / great bodily harm / sexual assault) by that particular person.]

Use Note

Use the second sentence only where the defendant used deadly force.

History

M Crim JI 7.24 (formerly CJI2d 7.24) was CJI 7:9:11; amended September, 1990; June, 1991, September, 2007.

Reference Guide

Statutes

MCL 780.971 *et seq*.

Case Law

People v Johnson, 112 Mich App 483, 316 NW2d 247 (1982).

CHAPTER 8

Aiding and Abetting and Accessory after the Fact

M Crim JI 8.1 Aiding and Abetting 8-2

M Crim JI 8.2 Crime Primarily Intended [deleted] 8-4

M Crim JI 8.3 Separate Crime Within the Scope of Common Unlawful Enterprise 8-5

M Crim JI 8.4 Inducement 8-6

M Crim JI 8.5 Mere Presence Insufficient 8-7

M Crim JI 8.6 Accessory After the Fact 8-8

M Crim JI 8.7 Difference Between Aider and Abettor and Accessory After the Fact 8-9

M Crim JI 8.1 Aiding and Abetting

(1)In this case, the defendant is charged with committing _____ or intentionally assisting someone else in committing it.

(2)Anyone who intentionally assists someone else in committing a crime is as guilty as the person who directly commits it and can be convicted of that crime as an aider and abettor.

(3)To prove this charge the prosecutor must prove each of the following elements beyond a reasonable doubt:

(a)First, that the alleged crime was actually committed, either by the defendant or someone else. [It does not matter whether anyone else has been convicted of the crime.]

(b)Second, that before or during the crime, the defendant did something to assist* in the commission of the crime.

(c)Third, at that time the defendant must have intended the commission of the crime alleged or must have known that the other person intended its commission or that the crime alleged was a natural and probable consequence of the commission of the crime intended.

Use Note

*The statute penalizes one who "procures, counsels, aids, or abets" the commission of a crime. The committee believes "assists" captures the essence of the prohibited conduct, but court or counsel may prefer to select, in appropriate cases, a more specific verb from the statutory list.

History

M Crim JI 8.1 combines former CJI2d 8.1 and 8.2, which were CJI 8:1:01–8:1:02 and CJI 8:1:03, respectively. This instruction was adopted in June, 1992, and paragraph (3)(c) was amended in April, 1996, to reflect the state of mind required by case law, and in September, 2013, to reflect case law holding that a defendant can be an aider or abettor as a natural consequence of the commission of the offense.

Reference Guide

Statutes

MCL 767.39.

Case Law

People v Robinson, 475 Mich 1, 15, 715 NW2d 44 (2006); *People v Moore*, 470 Mich 56, 679 NW2d 41, cert denied, 543 US 947 (2004); *People v Carines*, 460 Mich 750, 757–758, 597 NW2d 130 (1999); *People v Mann*, 395 Mich 472, 236 NW2d 509 (1975); *People v Smielewski*, 235 Mich App 196, 208–209, 596 NW2d 636 (1999); *People v Bartlett*, 231 Mich

App 139, 157, 585 NW2d 341 (1998); *People v Turner*, 213 Mich App 558, 569, 540 NW2d 728 (1995); *People v Crousore*, 159 Mich App 304, 317, 406 NW2d 280 (1987); *People v Brown*, 120 Mich App 765, 328 NW2d 380 (1982); *People v Champion*, 97 Mich App 25, 32, 293 NW2d 715 (1980), rev'd on other grounds, 411 Mich 468, 307 NW2d 681 (1981); *People v Derrick Smith*, 87 Mich App 584, 594, 274 NW2d 844 (1978); *People v Stephens*, 84 Mich App 250, 269 NW2d 552 (1978); *People v Parks*, 57 Mich App 738, 226 NW2d 710 (1975).

M Crim JI 8.2 Crime Primarily Intended *[deleted]*

[Instruction deleted by committee in June, 1992, because material combined with present M Crim JI 8.1.]

M Crim JI 8.3 Separate Crime Within the Scope of Common Unlawful Enterprise

(1)The defendant says that [he / she] is not guilty of [*state charged offense*] because [he / she] did not intend to help anyone commit that offense.

(2)It is not sufficient for the prosecutor just to prove that the defendant intended to help another in the common unlawful activity of [*state common criminal enterprise*]. It is necessary that the prosecutor prove beyond a reasonable doubt that the defendant intended to help someone else commit the charged offense of [*state charged offense*].

(3)In determining whether the defendant intended to help someone else commit the charged offense of [*state charged offense*], you may consider whether that offense was fairly within the common unlawful activity of [*state common criminal enterprise*], that is, whether the defendant might have expected the charged offense to happen as part of that activity. There can be no criminal liability for any crime not fairly within the common unlawful activity.

Use Note

This instruction is intended for use where it is claimed that the defendant is criminally liable as an aider and abettor for a crime committed during the course of a criminal enterprise. For example, in *People v Poplar*, 20 Mich App 132, 173 NW2d 732 (1969), the defendant, who acted as a lookout during a breaking and entering, was found liable as an aider and abettor for the nonfatal shooting of the building manager by codefendants.

CAUTION: DO NOT USE THIS INSTRUCTION IN FELONY-MURDER CASES. See *People v Kelly*, 423 Mich 261, 277-280, and 286-287, n3, 378 NW2d 365 (1985).

History

M Crim JI 8.3 (formerly CJI2d 8.3) was CJI 8:1:04, which was substantially revised by the committee in June, 1992.

Reference Guide

Statutes

MCL 767.39.

Case Law

People v Robinson, 475 Mich 1, 715 NW2d 44 (2006); *People v Koharski*, 177 Mich 194, 142 NW 1097 (1913); *People v Belton*, 160 Mich 416, 125 NW 386 (1910*); People v Foley*, 59 Mich 553, 26 NW 699 (1886); *Nye v People*, 35 Mich 16 (1876); *People v Knapp*, 26 Mich 112 (1872); *People v Wirth*, 87 Mich App 41, 273 NW2d 104 (1978); *People v Trudeau*, 51 Mich App 766, 216 NW2d 450 (1974); *People v Poplar*, 20 Mich App 132, 173 NW2d 732 (1969).

M Crim JI 8.4 Inducement

It does not matter how much help, advice, or encouragement the defendant gave. However, you must decide whether the defendant intended to help another commit the crime and whether [his / her] help, advice, or encouragement actually did help, advise, or encourage the crime.

History

M Crim JI 8.4 (formerly CJI2d 8.4) was CJI 8:1:05; amended June 1990.

Reference Guide

Statutes

MCL 767.39.

Case Law

People v Palmer, 392 Mich 370, 378, 220 NW2d 393 (1974); People v Washburn, 285 Mich 119, 126, 280 NW 132 (1938).

M Crim JI 8.5 Mere Presence Insufficient

Even if the defendant knew that the alleged crime was planned or was being committed, the mere fact that [he / she] was present when it was committed is not enough to prove that [he / she] assisted in committing it.

History

M Crim JI 8.5 (formerly CJI2d 8.5) was CJI 8:1:06.

Reference Guide

Statutes

MCL 767.39.

Case Law

People v Burrel, 253 Mich 321, 235 NW 170 (1931); *People v Turner*, 125 Mich App 8, 336 NW2d 217 (1983); *People v Davenport*, 122 Mich App 159, 332 NW2d 443 (1982); *People v Bryan*, 92 Mich App 208, 284 NW2d 765 (1979); *People v Killingsworth*, 80 Mich App 45, 263 NW2d 278 (1977).

M Crim JI 8.6 Accessory After the Fact

(1)The defendant is charged with being an accessory after the fact to [*state principal offense*]. An accessory after the fact is someone who knowingly helps a felon avoid discovery, arrest, trial, or punishment.

(2)To prove that the defendant is guilty, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(3)First, that someone else committed [*state principal offense*]. [*State principal offense*] is defined as [*summarize all the elements of the principal offense*]. [The prosecutor does not have to prove that the other person has been charged with or convicted of (*state principal offense*); (he / she) just has to prove that (*state principal offense*) was committed.][1]

(4)Second, that the defendant helped the other person in an effort to avoid discovery, arrest, trial, or punishment.

(5)Third, that when the defendant gave help, [he / she] knew the other person had committed a felony.

(6)Fourth, that the defendant intended to help the other person avoid discovery, arrest, trial, or punishment.[2]

Use Note

[1] Use bracketed sentences when the principal has not been charged or convicted. *See People v Williams*, 117 Mich App 506, 513-514, 324 NW2d 70 (1982).

[2] This is a specific intent crime.

History

M Crim JI 8.6 (formerly CJI2d 8.6) was CJI 8:2:01. Amended September, 2000.

Reference Guide

Statutes

MCL 750.67.

Case Law

People v Lucas, 402 Mich 302, 262 NW2d 662 (1978); *People v Lefkovitz*, 294 Mich 263, 268-271, 293 NW 642 (1940); *People v Cunningham*, 201 Mich App 720, 506 NW2d 624 (1993*); People v Williams*, 117 Mich App 506, 513-514, 324 NW2d 70 (1982).

M Crim JI 8.7 Difference Between Aider and Abettor and Accessory After the Fact

(1)You must decide if the defendant is guilty of [*state principal offense*] as an aider and abettor, or is guilty of being an accessory after the fact to the felony of [*state principal offense*], or if [he / she] is not guilty.

(2)If the prosecutor has proven beyond a reasonable doubt that before or during the [*state principal offense*] the defendant gave [his / her] encouragement or assistance intending to help another commit that crime, then you may find the defendant guilty of aiding and abetting the crime.

(3)If the prosecutor has proven beyond a reasonable doubt that the defendant knew about [*state principal offense*] and helped the person who committed it avoid discovery, arrest, trial, or punishment after the crime ended, then you may find the defendant guilty of being an accessory after the fact. The felony of [*state principal offense*] ends when _____ .

(4)If the prosecutor has not proven either of these charges beyond a reasonable doubt, your verdict must be not guilty.

Use Note

This instruction should be given in those cases in which there is a question whether the defendant was an aider and abettor or an accessory after the fact. It should be given after the instructions defining the elements of the felony, aiding and abetting, and accessory after the fact.

History

M Crim JI 8.7 (formerly CJI2d 8.7) was CJI 8:2:02. Amended June, 1990; October 1993.

Reference Guide

Statutes

MCL 750.505, 767.39.

Case Law

People v Lucas, 402 Mich 302, 262 NW2d 662 (1978); *People v Usher*, 196 Mich App 228, 233, 492 NW2d 786 (1992); *People v Hartford*, 159 Mich App 295, 406 NW2d 276 (1987); *People v Davenport*, 122 Mich App 159, 332 NW2d 443 (1982); *People v Karst*, 118 Mich App 34, 324 NW2d 526 (1982); *People v Williams (On Remand)*, 117 Mich App 505, 514, 324 NW2d 70 (1982); *People v Bargy*, 71 Mich App 609, 248 NW2d 636 (1976).

CHAPTER 9 *Attempt*

M Crim JI 9.1 Attempt 9-2
M Crim JI 9.2 Attempt As Lesser Offense 9-3
M Crim JI 9.3 Impossibility No Defense 9-4
M Crim JI 9.4 Abandonment As Defense to Attempt 9-5

M Crim JI 9.1 Attempt

(1)The defendant is charged with attempting to commit the crime of _____. To prove the defendant's guilt, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant intended to commit _____, which is defined as [*state elements from the appropriate instructions defining the crime*].

(3)Second, that the defendant took some action toward committing the alleged crime, but failed to complete the crime. It is not enough to prove that the defendant made preparations for committing the crime. Things like planning the crime or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the crime would have been completed if it had not been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the crime that the defendant is charged with attempting and not some other objective.

[(4)You may convict the defendant of attempting to commit _____ even if the evidence convinces you that the crime was actually completed.]

Use Note

Any attempt to commit an offense is a specific intent crime. See *People v Langworthy*, 416 Mich 630, 644-645, 331 NW2d 171 (1982); *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979) (opinions of Levin, J.).

Paragraph in brackets should be given when factually appropriate.

History

M Crim JI 9.1 (formerly CJI2d 9.1) was CJI 9:1:01, 9:1:04.

Reference Guide

Case Law

People v Bradovich, 305 Mich 329, 9 NW2d 560 (1943); *People v Bauer*, 216 Mich 659, 185 NW 694 (1921); *People v Davenport*, 165 Mich App 256, 418 NW2d 450 (1987); *People v Kimball*, 109 Mich App 273, 311 NW2d 343, remanded, 412 Mich 890, 313 NW2d 285 (1981); *People v Miller*, 28 Mich App 161, 184 NW2d 286 (1970).

M Crim JI 9.2 Attempt As Lesser Offense

(1)The defendant is also charged with the less serious crime of attempted _____. To prove that the defendant attempted to commit this crime, the prosecutor must prove the following elements beyond a reasonable doubt:

(2)First, that the defendant intended to commit _____, which is defined as [*state elements from the appropriate instructions defining the crime*].

(3)Second, that the defendant took some action toward committing the alleged crime, but failed to complete the crime. It is not enough to prove that the defendant made preparations for committing the crime. Things like planning the crime or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the crime would have been completed if it had not been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the crime that the defendant is charged with attempting and not some other objective.

Use Note

Any attempt to commit an offense is a specific intent crime. *See People v Langworthy*, 416 Mich 630, 644-645, 331 NW2d 171 (1982); *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979) (opinions of Levin, J.).

History

M Crim JI 9.2 (formerly CJI2d 9.2) was CJI 9:1:02.

Reference Guide

Case Law

People v Adams, 416 Mich 53, 330 NW2d 634 (1982).

M Crim JI 9.3 Impossibility No Defense

A person can be found guilty of attempting to commit a crime even if [he / she] could not finish the crime because circumstances turned out to be different than [he / she] expected or [he / she] was stopped before [he / she] could finish.

History

M Crim JI 9.3 (formerly CJI2d 9.3) was CJI 9:1:03.

Reference Guide

Statutes

MCL 750.92.

Case Law

People v Thousand, 465 Mich 149, 631 NW2d 694 (2001); *People v Jones*, 46 Mich 441, 9 NW 486 (1881).

M Crim JI 9.4 Abandonment As Defense to Attempt

(1)[The defense / One of the defenses] raised by the defendant is that [he / she] is not guilty of because [he / she] freely and completely gave up the idea of committing the crime. This defense is called abandonment.

(2)[Abandonment is (the only / an) issue in this case on which the defendant has the burden of proof.][1] To prove abandonment, the defendant must show that [he / she] gave up the idea of committing the crime. To decide whether the defendant has met the burden of proving [his / her] defense of abandonment, you must consider all the evidence that was admitted during the trial. If the evidence supporting the defense of abandonment outweighs the evidence against it, then you must find the defendant not guilty of _____.

(3)Abandonment must be a choice of free will. If the defendant gave up the idea of committing the crime because of unexpected problems or because something happened that made it more likely that [he / she] would be discovered or caught, [he / she] did not abandon the crime of [his / her] own free will.

(4)The abandonment of the attempted crime must be complete. If the defendant simply decided to commit the crime some other time or to commit it on a different victim or with a different criminal goal, [he / she] did not completely abandon the crime.

(5)An attempted crime may be abandoned at any time before it is actually completed [or before it becomes impossible to avoid completing it. If the defendant started something that could not be stopped, [he / she] cannot claim that [he / she] abandoned the crime. For example, a person who abandons an attempt to kill after firing a shot at an intended victim may not use abandonment as a defense to attempted murder.].[2]

(6)If you decide that the defendant freely and completely gave up the idea of committing the crime, then [he / she] is not guilty of _____, even if you believe beyond a reasonable doubt that the defendant committed the alleged attempt.

Use Note

[1] Use bracketed language particularly when additional defenses that must be disproved by the prosecutor are raised by the defendant.

[2] Use bracketed language when factually appropriate.

History

M Crim JI 9.4 (formerly CJI2d 9.4) was CJI 9:1:05-9:1:06.

Reference Guide

Case Law

People v Stapf, 155 Mich App 491, 400 NW2d 656 (1986); *People v McNeal*, 152 Mich App 404, 393 NW2d 907 (1986); *People v Kimball*, 109 Mich App 273, 311 NW2d 343, remanded, 412 Mich 890, 313 NW2d 285 (1981).

CHAPTER 10 *Conspiracy and Solicitation*

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M Crim JI 10.2 Agreement 10-3
M Crim JI 10.3 Membership 10-4
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M Crim JI 10.6 Solicitation to Commit a Felony 10-7
M Crim JI 10.7 Renunciation as a Defense to Solicitation 10-8

M Crim JI 10.1 Conspiracy

(1)The defendant is charged with the crime of conspiracy to commit _____. Anyone who knowingly agrees with someone else to commit _____ is guilty of conspiracy.

(2)To prove the defendant's guilt, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(3)First, that the defendant and someone else knowingly agreed to commit _____.

(4)Second, that the defendant specifically intended to commit or help commit that crime.[1]

(5)Third, that this agreement took place or continued during the period from _____ to _____.

[(6)Now let me define the crime of _____:][2]

Use Note

[1] Any conspiracy to commit an offense is a specific intent crime. *See People v Atley*, 392 Mich 298, 310, 220 NW2d 465 (1974).

[2] Use when the crime charged has not been previously defined.

History

M Crim JI 10.1 (formerly CJI2d 10.1) was CJI 10:1:01.

Reference Guide

Statutes

MCL 750.157a.

Case Law

People v Justice (After Remand), 454 Mich 334, 346-347, 562 NW2d 652 (1997); *People v Blume*, 443 Mich 476, 505 NW2d 843 (1993); *People v Anderson*, 418 Mich 31, 340 NW2d 634 (1983); *People v Carter*, 415 Mich 558, 330 NW2d 314 (1982); *People v Atley*, 392 Mich 298, 220 NW2d 465 (1974); *People v Hammond*, 187 Mich App 105, 466 NW2d 335 (1991); *People v Juarez*, 158 Mich App 66, 73, 404 NW2d 222 (1987); *People v Ayoub*, 150 Mich App 150, 387 NW2d 848 (1985); *People v White*, 147 Mich App 31, 383 NW2d 597 (1985); *People v Cyr*, 113 Mich App 213, 317 NW2d 857 (1982).

M Crim JI 10.2 Agreement

(1)An agreement is the coming together or meeting of the minds of two or more people, each person intending and expressing the same purpose.

(2)It is not necessary for the people involved to have made a formal agreement to commit the crime or to have written down how they were going to do it.

(3)In deciding whether there was an agreement to commit a crime, you should think about how the members of the alleged conspiracy acted and what they said as well as all the other evidence.

(4)To find the defendant guilty of conspiracy, you must be satisfied beyond a reasonable doubt that there was an agreement to commit _____. However, you may infer that there was an agreement from the circumstances, such as how the members of the alleged conspiracy acted.

Use Note

While the conspiracy statute includes the commission of a legal act in an illegal manner, this provision of the statute has not been commonly utilized in Michigan. Thus, conspiracy as prosecuted ordinarily involves an agreement to violate the law.

History

M Crim JI 10.2 (formerly CJI2d 10.2) includes portions of CJI 10:1:02-10:1:04 and 10:1:12 and was last amended by the committee in October, 2004.

Reference Guide

Case Law

People v Atley, 392 Mich 298, 311, 220 NW2d 465 (1974); *People v Gay*, 149 Mich App 468, 386 NW2d 556 (1986); *People v Boose*, 109 Mich App 455, 311 NW2d 390 (1981).

M Crim JI 10.3 Membership

If there was a conspiracy, you must decide whether the defendant was a member of it. You may only consider what the defendant did and said during the time the conspiracy took place. A finding that the defendant was merely with other people who were members of a conspiracy is not enough by itself to prove that the defendant was also a member. In addition, the fact that a person did an act that furthered the purpose of an alleged conspiracy is not enough by itself to prove that that person was a member of the conspiracy. It is not necessary for all the members to know each other or know all the details of how the crime will be committed, but it must be shown beyond a reasonable doubt that the defendant agreed to commit the crime and intended to commit or help commit it.

History

M Crim JI 10.3 (formerly CJI2d 10.3) includes portions of CJI 10:1:03, 10:1:04, and 10:1:06.

Reference Guide

Case Law

People v Huey, 345 Mich 120, 75 NW2d 893 (1956); *People v Sobczak*, 344 Mich 465, 73 NW2d 921 (1955); *People v Bartlett*, 312 Mich 648, 20 NW2d 758 (1945); *People v Heidt*, 312 Mich 629, 20 NW2d 751 (1945); *People v Arnold*, 46 Mich 268, 9 NW 406 (1881); *People v O'Connor*, 48 Mich App 524, 210 NW2d 805 (1973); *People v Rosen*, 18 Mich App 457, 171 NW2d 488 (1969).

M Crim JI 10.4 Scope

(1)The defendant is not responsible for the acts of other members of the conspiracy unless those acts are part of the agreement or further the purposes of the agreement.

(2)If the defendant agreed to commit a completely different crime, then [he / she] is not guilty of conspiracy to commit _____.

(3)A person who joins a conspiracy after it has already been formed is only responsible for what [he / she] agreed to when joining, not for any agreement made by the conspiracy before [he / she] joined. [You may consider evidence of what the other members of the alleged conspiracy did or said before the defendant became a member, but only in order to determine the nature and purpose of the conspiracy after the defendant joined.]

(4)Members of a conspiracy are not responsible for what other members do or say after the conspiracy ends.

Use Note

Use bracketed material where there is such evidence.

History

M Crim JI 10.4 (formerly CJI2d 10.4) was CJI 10:1:05, 10:1:07, 10:1:09, 10:1:10.

Reference Guide

Case Law

People v Blakes, 382 Mich 570, 170 NW2d 832 (1969); *People v Huey*, 345 Mich 120, 75 NW2d 893 (1956); *People v Cooper*, 326 Mich 514, 40 NW2d 708 (1950); *People v Heidt*, 312 Mich 629, 20 NW2d 751 (1945); *People v Ryan*, 307 Mich 610, 12 NW2d 474 (1943); *People v Roxborough*, 307 Mich 575, 12 NW2d 466 (1943); *People v Ranney*, 304 Mich 315, 8 NW2d 80 (1943); *People v Garska*, 303 Mich 313, 6 NW2d 527 (1942); *People v Beller*, 294 Mich 464, 293 NW 720 (1940); *People v Foley*, 59 Mich 553, 26 NW 699 (1886); *People v Knapp*, 26 Mich 112 (1872); *People v Iaconnelli*, 112 Mich App 725, 781, 317 NW2d 540, modified, 116 Mich App 176, 321 NW2d 684 (1982); *People v Missouri*, 100 Mich App 310, 299 NW2d 346 (1980).

M Crim JI 10.5 Case Must Be Considered as to Each Defendant

(1)Each defendant in this case is entitled to have his guilt or innocence decided individually. You must decide whether each defendant was a member of the alleged conspiracy as if he were being tried separately. To determine whether each defendant was a member of the alleged conspiracy, you must decide whether each individual defendant intentionally joined with anyone else to commit _____. In conspiracy cases it is often difficult to decide each defendant's case on its own because of the amount of evidence that is admitted against the other defendants. [If any evidence was limited to (one defendant / some defendants) you should not consider it as to any other defendants.]

(2)It is not enough to find that there was a criminal agreement to commit _____. Even if you do find that there was a conspiracy, you must still determine whether each defendant separately was a member of that conspiracy.

History

M Crim JI 10.5 (formerly CJI2d 10.5) was CJI 10:1:11.

Reference Guide

Case Law

People v Heidt, 312 Mich 629, 645, 20 NW2d 751 (1945); *People v Garska*, 303 Mich 313, 6 NW2d 527 (1942).

M Crim JI 10.6 Solicitation to Commit a Felony

(1)The defendant is charged with solicitation to commit _____. To prove the defendant's guilt, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant, through words or actions, offered, promised, or gave money, services, or anything of value [or forgave or promised to forgive a debt or obligation owed] to another person.[1]

(3)Second, that the defendant intended that what [he / she] said or did would cause _____ to be committed.[2] The crime of _____ is defined as [*summarize all the elements of the crime solicited*].

(4)The prosecutor does not have to prove that the person the defendant solicited actually committed, attempted to commit, or intended to commit _____.

Use Note

Under prior MCL 750.157b(1), the trial court was required to instruct *sua sponte* on inciting second-degree murder in every case where the defendant was charged with inciting first-degree murder. *People v Richendollar*, 85 Mich App 74, 270 NW2d 530 (1978). That requirement should apply under the amended statute as well.

[1] The language in this paragraph may be tailored to fit the facts of the case.

[2] This is a specific intent crime.

History

M Crim JI 10.6 (formerly CJI2d 10.6) was CJI 10:2:01.

Reference Guide

Statutes

MCL 750.157b(1).

Case Law

People v Thousand, 465 Mich 149, 631 NW2d 694 (2001); *People v Rehkopf*, 422 Mich 198, 205, 370 NW2d 296 (1985); *People v Vandelinder*, 192 Mich App 447, 481 NW2d 787 (1992); *People v Chapman*, 80 Mich App 583, 264 NW2d 69 (1978).

M Crim JI 10.7 Renunciation as a Defense to Solicitation

(1)The defendant has raised the defense that [he / she] is not guilty of solicitation because [he / she] freely and completely renounced, or gave up, [his / her] criminal purpose. To prove this defense, the defendant must prove each of the following by a greater weight of the evidence:

(2)First, that [he / she] gave up [his / her] criminal purpose voluntarily. Voluntarily means a true change of heart not influenced by outside circumstances. If the defendant gave up criminal purpose because of unexpected problems or resistance or because something happened that made it more likely that [he / she] would be discovered or caught, [he / she] did not renounce [his / her] criminal purpose voluntarily.

(3)Second, that [he / she] gave up [his / her] criminal purpose completely. Completely means permanently and unconditionally. If the defendant simply decided to commit the crime some other time or to commit it on a different victim or with a different criminal goal, [he / she] did not renounce [his / her] criminal purpose completely.

(4)Third, that [he / she] let the person [he / she] solicited know that [he / she] was renouncing [his / her] criminal purpose.

(5)Fourth, that [he / she] either warned the police in time and cooperated with them, or that [he / she] made a real effort in some other way to prevent _____ from happening.

(6)Fifth, that _____ did not in fact happen.

(7)If the defendant fails to prove any of these things, then [he / she] has not proved [his / her] defense that [he / she] renounced [his / her] criminal purpose.

(8)In deciding whether the defendant has proved this defense, you should think about all of the evidence that was admitted during the trial. If you are satisfied that the evidence supporting renunciation outweighs the evidence against it, then the defendant has met [his / her] burden of proof and you must find [him / her] not guilty.

[(9)Renunciation is the only issue in this case that the defendant has the burden of proving. If you decide that [he / she] has failed to prove this defense, you must still consider whether the prosecutor has met (his / her) burden of proving each of the elements of solicitation beyond a reasonable doubt.]

History

M Crim JI 10.7 (formerly CJI2d 10.7) was CJI 10:2:02-10:2:03.

Reference Guide

Statutes

MCL 750.157b(4).

Case Law

Martin v Ohio, 480 US 228 (1987); *Patterson v New York*, 432 US 197 (1977).

CHAPTER 11

Weapons

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M Crim JI 11.1 Carrying Concealed Weapon-Pistol

(1)The defendant is charged with the crime of carrying a concealed pistol. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

[*Use the following if defendant is charged with carrying a pistol concealed on person:*]

(2)First, that the defendant knowingly carried a pistol. It does not matter why the defendant was carrying the pistol, but to be guilty of this crime the defendant must have known that [he / she] was carrying a pistol.*

(3)Second, that this pistol was concealed on or about the person of the defendant. Complete invisibility is not required. A pistol is concealed if it cannot easily be seen by those who come into ordinary contact with the defendant.

[*Use the following if defendant is charged with carrying a pistol carried in vehicle:*]

(4)First, that a pistol was in a vehicle that the defendant was in.*

(5)Second, that the defendant knew the pistol was there.

(6)Third, that the defendant took part in carrying or keeping the pistol in the vehicle.

Use Note

*The definition of pistol, M Crim JI 11.3, should be included in the instructions only where there is some question of the article being a pistol. See M Crim JI 11.10-11.15 for exemptions.

History

M Crim JI 11.1 (formerly CJI2d 11.1) was CJI 11:1:01.

Reference Guide

Statutes

MCL 750.227, .231, .231a

Case Law

People v Sturgis, 427 Mich 392, 397 NW2d 783 (1986); *People v Butler*, 413 Mich 377, 384-385, 319 NW2d 540 (1982); *People v Henderson*, 391 Mich 612, 616-617, 218 NW2d 2 (1974); *People v Green*, 260 Mich App 392, 677 NW2d 677 NW2d 363 (2004), overruled on other grounds, *People v Anstey*, 476 Mich 436, 719 NW2d 579 (2006); *People v Nimeth*, 236 Mich App 616, 621, 601 NW2d 393 (1999); *People v Combs*, 160 Mich App 666, 408 NW2d 420 (1987); *People v Lane*, 102 Mich App 11, 300 NW2d 717 (1980); *People v Stone*, 100 Mich App 24, 28, 298 NW2d 607 (1980); *People v Jackson*, 43 Mich App 569, 204 NW2d 367 (1972); *People v Jones*, 12 Mich App 293, 296, 162 NW2d 847 (1968).

M Crim JI 11.2 Carrying Concealed Weapon-Dangerous Weapon

(1)The defendant is charged with the crime of carrying a concealed weapon. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

[*Use the following if defendant is charged with carrying a weapon concealed on person:*]

(2)First, that the defendant knowingly carried a [dagger / dirk / stiletto / double-edged, nonfolding stabbing instrument / dangerous stabbing weapon]. It does not matter why the defendant was carrying the weapon, but to be guilty of this crime the defendant must have known that it was a weapon.*

(3)Second, that this [dagger / dirk / stiletto / double-edged, nonfolding stabbing instrument / dangerous stabbing weapon] was concealed. Complete invisibility is not required. A weapon is concealed if it cannot easily be seen by those who come into ordinary contact with the defendant.

[*Use the following if defendant is charged with carrying a weapon carried in vehicle:*]

(4)First, that the instrument or item was a [dagger / dirk / stiletto / double-edged, nonfolding stabbing instrument / dangerous stabbing weapon].

(5)Second, that the instrument or item was in a vehicle that the defendant was in.

(6)Third, that the defendant knew the instrument or item was in the vehicle.

(7)Fourth, that the defendant took part in carrying or keeping the instrument or item in the vehicle.

Use Note

**Define term used:*

M Crim JI 11.4 Dangerous Stabbing Weapon

M Crim JI 11.5 Dirk, Dagger, and Stiletto

If the defendant is charged with carrying a double-edged, nonfolding stabbing instrument, no further definition of that term is necessary.

History

M Crim JI 11.2 (formerly CJI2d 11.2) was CJI 11:1:02; amended April, 1999.

Reference Guide

Statutes

MCL 750.227, .231, .231a.

Case Law

People v Lynn, 459 Mich 53, 586 NW2d 534 (1998); *People v Smith*, 393 Mich 432, 225 NW2d 165 (1975); *People v Vaines*, 310 Mich 500, 17 NW2d 729 (1945); *People v Goolsby*, 284 Mich 375, 378, 279 NW 867 (1938); *People v Johnson*, 175 Mich App 56, 59, 437 NW2d 302 (1989).

M Crim JI 11.3 Definition of Pistol

(1)A pistol is a firearm. A firearm includes any weapon which will, or is designed to, or may readily be converted to expel a projectile by action of an explosive.

(2)The shape of the pistol is not important as long as it is twenty-six inches or less in length.

(3)It does not matter whether or not the pistol was capable of firing a projectile or whether it was loaded.

History

M Crim JI 11.3 (formerly CJI2d 11.3) was CJI 11:1:03. Amended in May 2016 (pending public comment) and adopted with no further changes in January 2017.

Reference Guide

Statutes

MCL 8.3t, 750.222(a), .227, .231, .231a.

Case Law

People v Peals, 476 Mich 636 (2006); *People v Humphrey*, 312 Mich App 309 (2015).

M Crim JI 11.3a Definition of Pneumatic Gun

A pneumatic gun means any implement, designed as a gun, that will expel a BB or pellet by spring, gas, or air. Pneumatic gun includes a paintball gun that expels by pneumatic pressure plastic balls filled with paint for the purpose of marking the point of impact.

History

Added in May 2016 (pending public comment) and adopted with no further changes in January 2017.

Reference Guide

Statutes

MCL 750.222(g); 123.1101(d).

M Crim JI 11.4 Definition of Dangerous Stabbing Weapon

(1)A dangerous stabbing weapon is any object that is carried as a weapon for bodily assault or defense and that is likely to cause serious physical injury or death when used as a stabbing weapon.

(2)Some objects, such as guns or bombs, are dangerous because they are specifically designed to be dangerous. Other objects are designed for peaceful purposes but may be used as dangerous weapons. The way an object is carried determines whether or not it is a dangerous weapon. If an object is carried for use as a stabbing weapon, and is likely to cause serious physical injury or death when used as a stabbing weapon, it is a dangerous stabbing weapon.

(3)You must decide from all of the facts and circumstances whether the evidence shows that the _____ in question here was a dangerous stabbing weapon.

Use Note

In *People v Lynn*, 459 Mich 53, 60, 586 NW2d 534 (1998), the Michigan Supreme Court held that where the defendant is charged with carrying a "dangerous weapon" contrary to MCL 750.227, "the burden is on the prosecution to prove that the instrument … was used, or intended for use, as a weapon for bodily assault or defense. The fact that a pointed instrument, such as a machete, has great potential as a dangerous weapon does not render it a dangerous weapon per se."

History

M Crim JI 11.4 (formerly CJI2d 11.4) was CJI 11:1:04.

Reference Guide

Statutes

MCL 750.227, .231, .231a.

Case Law

People v Smith, 393 Mich 432, 225 NW2d 165 (1975); *People v Vaines*, 310 Mich 500, 17 NW2d 729 (1945); *People v Goolsby*, 284 Mich 375, 279 NW 867 (1938); *People v Morris*, 8 Mich App 688, 155 NW2d 270 (1967).

M Crim JI 11.5 Definition of Dirk, Dagger, and Stiletto

(1)A dirk is a straight knife with a pointed blade.

(2)A dagger is a knife with a short, pointed blade.

(3)A stiletto is a small dagger with a slender, tapering blade.

Use Note

Choose appropriate definition.

History

M Crim JI 11.5 (formerly CJI2d 11.5) was CJI 11:1:06-11:1:08.

M Crim JI 11.6 Defense-Firearm Inoperable [*deleted*]

This instruction was stricken as an incorrect statement of the law. *People v Humphrey*, 312 Mich App 309; 877 NW2d 770 (2015).

History

M Crim JI 11.6 (formerly CJI2d 11.6) was CJI 11:1:09. Deleted January 2017.

M Crim JI 11.7 Defense—Defendant Unaware of Weapon

(1)An essential element of the crime of carrying a concealed weapon is that the defendant must have knowingly carried the weapon.

(2)If you are not convinced beyond a reasonable doubt that the defendant knew that the weapon was [on (his / her) person / in the automobile], then you must find the defendant not guilty.

History

M Crim JI 11.7 (formerly CJI2d 11.7) was CJI 11:1:10.

Reference Guide

Statutes

MCL 750.227, .231, .231a.

Case Law

People v Williamson, 200 Mich 342, 346, 166 NW 917 (1918); *People v Emery*, 150 Mich App 657, 389 NW2d 472 (1986).

M Crim JI 11.8 Self-Defense Is Not a Defense to Carrying a Concealed Weapon

It does not matter if the defendant was carrying the weapon for [his / her] own protection. Self-defense is not a defense to this charge.

History

M Crim JI 11.8 (formerly CJI2d 11.8) was CJI 11:1:11.

Reference Guide

Case Law

P*eople v Hernandez-Garcia*, 477 Mich 1039, 728 NW2d 406 (2007); *People v Hernandez-Garcia*, 266 Mich App 416, 701 NW2d 191 (2005); *People v Townsel*, 13 Mich App 600, 164 NW2d 776 (1968).

M Crim JI 11.9 Exemption—Hunting Knife

(1)A hunting knife is a large, heavy, wide-bladed knife with a single cutting edge that curves up to a point. It is typically used to skin and cut up game.

(2)This law does not apply to hunting knives adapted and carried as hunting knives. The prosecutor has the burden of proving beyond a reasonable doubt that the knife involved was not a hunting knife.

Use Note

This instruction is to be given when the trial court determines that some evidence relating to the hunting knife exemption was admitted at trial. *See People v Henderson*, 391 Mich 612, 218 NW2d 2 (1974).

History

M Crim JI 11.9 (formerly CJI2d 11.9) was CJI 11:1:05, 11:1:12; amended September, 2007.

Reference Guide

Statutes

MCL 750.227(1).

Case Law

People v Payne, 180 Mich App 283, 285, 446 NW2d 629 (1989); *People v Zysk*, 149 Mich App 452, 386 NW2d 213 (1986).

M Crim JI 11.10 Exemption-Pistol Carried by Licensee

This law does not apply to anyone who has a valid license to carry a concealed pistol. [However, if there are any restrictions on the license, the person must follow those restrictions.][1] The prosecutor has the burden of proving beyond a reasonable doubt that the defendant [did not have a license / was carrying the pistol in violation of the restrictions on the license].[2]

Use Note

This instruction is to be given when the trial court determines that some evidence relating to the license exemption was admitted at trial. *See People v Henderson*, 391 Mich 612, 218 NW2d 2 (1974).

[1] Use bracketed material when restrictions are an issue.

[2] Use bracketed material after slash mark when restrictions are an issue.

History

M Crim JI 11.10 (formerly CJI2d 11.10) was CJI 11:1:13-11:1:14.

Reference Guide

Statutes

MCL 750.227(2), .231a.

M Crim JI 11.11 Exemption-Weapon Carried in Home, Place of Business, or on Land Possessed by Defendant

This law does not apply to a person who carries a [pistol / knife / dagger / dirk / stiletto / dangerous stabbing weapon] in [his / her] home, place of business, or on other land [he / she] possesses. The prosecutor has the burden of proving beyond a reasonable doubt that the defendant was carrying the _____ outside of [his / her] own home or place of business or off other land [he / she] possessed.

Use Note

This instruction is to be given when the trial court determines that some evidence relating to the exemption of carrying a weapon in one's own home, place of business, or other possessed land was admitted at trial. *See People v Henderson*, 391 Mich 612, 218 NW2d 2 (1974).

History

M Crim JI 11.11 (formerly CJI2d 11.11) was CJI 11:1:15.

Reference Guide

Statutes

MCL 750.227(1).

Case Law

People v Pasha, 466 Mich 378, 645 NW2d 275 (2002).

M Crim JI 11.12 Exemption-Pistol Carried by Agent of Manufacturer

This law does not apply to an authorized agent of a licensed manufacturer of firearms who is engaged in the ordinary transportation of pistols as merchandise. The prosecutor has the burden of proving beyond a reasonable doubt that the defendant was not doing so.

Use Note

This instruction is to be given when the trial court determines that some evidence that the defendant was an authorized agent of a licensed manufacturer of firearms who was engaged in the ordinary transportation of pistols as merchandise was admitted at trial.

History

M Crim JI 11.12 (formerly CJI2d 11.12) was CJI 11:1:16.

Reference Guide

Statutes

MCL 750.231a(1)(b).

M Crim JI 11.13 Exemption-Antique Firearm

(1)This law does not apply to a person who carries an antique gun. However, the antique gun must be completely unloaded and in a closed case or container designed for the storage of firearms [in the trunk of the vehicle / and it must not be easily accessible to the people in the vehicle].

[(2)An antique gun is any gun made in or before 1898 that is not designed or redesigned for using rimfire or conventional centerfire ignition with fixed ammunition.]

[(3)Antique guns also include any guns using a matchlock, flintlock, percussion cap, or similar type of ignition system or replicas of these systems, no matter what year the guns were made.]

[(4)An antique gun is also any gun made in or before 1898 that uses fixed ammunition of a kind that is no longer made in the United States and that is not readily available in commercial trade.]

(5)The prosecutor has the burden of proving beyond a reasonable doubt that the weapon was not an antique gun.

Use Note

This instruction is to be given when the trial court determines that evidence sufficient to satisfy MCL 776.20 relating to the antique gun exemption was introduced at trial.

Use bracketed portions as applicable.

History

M Crim JI 11.13 (formerly CJI2d 11.13) was CJI 11:1:17. Amended February 2016.

Reference Guide

Statutes

MCL 750.231a(1)(c), (2).

M Crim JI 11.14 Exemption-Licensed Pistol Carried for a Lawful Purpose

(1)This law does not apply to a person who carries a licensed pistol in a vehicle for a lawful purpose. However, the pistol must be licensed, completely unloaded, and in a closed case or container designed for the storage of firearms [in the trunk of the vehicle / and it must not be easily accessible to the people in the vehicle].

(2)The prosecutor has the burden of proving beyond a reasonable doubt that the defendant was not carrying the pistol for a lawful purpose.

Use Note

This instruction is to be given when the trial court determines that evidence sufficient to satisfy MCL 776.20, relating to the carrying of a licensed pistol for a lawful purpose, was introduced at trial.

History

M Crim JI 11.14 (formerly CJI2d 11.14) was CJI 11:1:18. Amended February 2016.

Reference Guide

Statutes

MCL 750.231a(1)(e).

M Crim JI 11.15 Exemption-Pistol Carried En Route to Hunting or Target Shooting Area [*Deleted*]

Note: This instruction was deleted by the Committee in February 2016 when it was fully included within M Crim JI 11.14.

M Crim JI 11.16 Exemption-Short-barreled Shotgun

(1)This law does not apply to a short-barreled shotgun or short-barreled rifle that is lawfully made, manufactured, transferred or possessed under federal law. The prosecutor has the burden of proving beyond a reasonable doubt that this exception does not apply.

Use Note

This instruction is to be given only when, as provided under MCL 776.20, the trial court determines that sufficient evidence was admitted at trial establishing that the firearm is exempt from the statutory prohibition. A short-barreled shotgun or rifle may be exempt if it is registered under the National Firearms Registration Act. 26 USC 5845. A defendant should be able to provide a Bureau of Alcohol, Tobacco, Firearms and Explosives registration form for making or transferring such weapons and/or tax or tax exempt registration forms to invoke this exception. 26 USC 5841; 27 CFR (Code of Federal Regulations) Part 478. Antique firearms or replicas of antique firearms, as defined under federal law in 18 USC 921(a)(16), are exempt. A "curio" or "relic" firearm listed by the United States Attorney General is also exempt; those are listed by the Bureau of Alcohol, Tobacco, Firearms and Explosives. See http://www.atf.gov/files/publications/firearms/curios-relics/p-5300-11-firearms-curios-or-relics-list. pdf. If it is claimed that the firearm is an antique, a replica of an antique, a curio, or a relic listed by the United States Attorney General, the court may wish to reference the applicable content of those materials when instructing the jury.

History

M Crim JI 11.16 (formerly CJI2d 11.16) was added in 1990. Amended February 2016.

Reference Guide

Statutes

MCL 28.422, 750.224b(3).

M Crim JI 11.17 Going Armed with Firearm or Dangerous Weapon with Unlawful Intent

(1)The defendant is charged with the crime of going armed with a dangerous weapon with unlawful intent. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant went armed with a _____.[1]

(3)Second, at that time the defendant intended to use this weapon unlawfully against someone else.[2]

Use Note

[1] Define term used:

M Crim JI 11.3 Pistol

M Crim JI 11.3a Pneumatic Gun

M Crim JI 11.5 Dirk, Dagger, and Stiletto

M Crim JI 11.18 Knife and Razor

M Crim JI 11.19 Dangerous Weapon

[2] This is a specific intent crime.

History

M Crim JI 11.17 (formerly CJI2d 11.17) was CJI 11:2:01; amended September, 2013.

Reference Guide

Statutes

MCL 750.226.

Case Law

People v Smith, 393 Mich 432, 437, 225 NW2d 165 (1975); *People v Davenport*, 89 Mich App 678, 682, 282 NW2d 179 (1979); *People v Flinnon*, 78 Mich App 380, 260 NW2d 106 (1977).

M Crim JI 11.18 Definition of Knife and Razor

(1)A knife is an instrument having a handle and at least one sharp-edged blade. The blade must be over three inches long. [It could also be a dangerous weapon without being over three inches long.]

(2)A razor is a sharp-edged cutting instrument for shaving off or cutting hair.

Use Note

Choose appropriate definition.

History

M Crim JI 11.18 (formerly CJI2d 11.18) was CJI 11:2:02-11:2:03.

Reference Guide

Statutes

MCL 750.226.

M Crim JI 11.19 Definition of Dangerous Weapon

(1)A dangerous weapon is any object that is used in a way that is likely to cause serious physical injury or death.

(2)Some objects, such as guns or bombs, are dangerous because they are specifically designed to be dangerous. Other objects are designed for peaceful purposes but may be used as dangerous weapons. The way an object is used or intended to be used in an assault determines whether or not it is a dangerous weapon. If an object is used in a way that is likely to cause serious physical injury or death, it is a dangerous weapon.

(3)You must decide from all of the facts and circumstances whether the evidence shows that the _____ in question here was a dangerous weapon.

Use Note

M Crim JI 11.19 should be used when the charge is carrying a dangerous weapon with unlawful intent under MCL 750.226.

History

M Crim JI 11.19 (formerly CJI2d 11.19) was CJI 11:2:04.

Reference Guide

Statutes

MCL 750.226.

Case Law

People v Vaines, 310 Mich 500, 17 NW2d 729 (1945); *People v Goolsby*, 284 Mich 375, 279 NW 867 (1938); *People v Morris*, 8 Mich App 688, 155 NW2d 270 (1967).

M Crim JI 11.20 Careless, Reckless, or Negligent Use of Firearm with Injury or Death Resulting

(1)[The defendant is charged with the crime of / You may also consider the lesser charge of[1]] negligent use of a firearm. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that someone was [injured / killed].

(3)Second, that the [injury / death] was caused by the discharge of a gun.

[*Choose (4) or (5):*]

[(4)Third, that the gun was discharged by the defendant.]

[(5)Third, that at the time of the discharge the gun was under the immediate control of the defendant and that the defendant caused or allowed the gun to be discharged.]

(6)Fourth, that the discharge was the result of the defendant's carelessness, recklessness, or negligence.[2]

[(7)Fifth, the shooting was not the result of the defendant's willfulness or wantonness.][3]

Use Note

[1] Use when instructing on the crime as a lesser offense.

[2] Give the definition of negligence, M Crim JI 11.21.

[3] Use when instructing on the crime as a lesser offense.

History

M Crim JI 11.20 (formerly CJI2d 11.20) was CJI 11:3:01.

Reference Guide

Statutes

MCL 752.861.

M Crim JI 11.21 Definition of Negligence

(1)The prosecutor must prove beyond a reasonable doubt that the defendant was guilty of at least ordinary negligence in the shooting of this gun. Ordinary negligence is more than slight negligence and slight negligence is not a crime. Because of that, I need to tell you the difference between ordinary and slight negligence.

(2)Slight negligence means doing something that is not usually dangerous, something that only an extremely careful person would have thought could cause injury. In this case, if you find that the defendant was only slightly negligent, then you must find [him / her] not guilty.

(3)Ordinary negligence means not taking reasonable care under the circumstances as they were at the time. If someone does something that is usually dangerous, something that a sensible person would know could hurt someone, that is ordinary negligence. If the defendant did not do what a sensible person would have done under the circumstances, then [he / she] is guilty of ordinary negligence.

(4)The fact that an accident occurred or that someone was injured does not, by itself, mean that the defendant was negligent.

History

M Crim JI 11.21 (formerly CJI2d 11.21) was CJI 11:3:02.

Reference Guide

Statutes

MCL 752.861.

Case Law

Felgner v Anderson, 375 Mich 23, 30, 133 NW2d 136 (1965); *Bahel v Manning*, 112 Mich 24, 70 NW 327 (1897); *People v Hollis*, 30 Mich App 218, 186 NW2d 8 (1971).

M Crim JI 11.22 Definition of Willfully and Wantonly

(1)Willfully means that the defendant knowingly created the danger and intended to cause injury.

(2)Wantonly means that the defendant knowingly created the danger and knew what would probably happen when [he / she] did it.

History

M Crim JI 11.22 (formerly CJI2d 11.22) was CJI 11:3:03-11:3:04.

Reference Guide

Case Law

People v McCarty, 303 Mich 629, 633, 6 NW2d 919 (1942); *People v Orr*, 243 Mich 300, 308, 220 NW 777 (1928); *People v Campbell*, 237 Mich 424, 428-429, 212 NW 97 (1927); *Detroit v Pillon*, 18 Mich App 373, 376, 171 NW2d 484 (1969).

M Crim JI 11.23 Intentionally Pointing a Firearm Without Malice

[The defendant is charged with the crime of / You may also consider the lesser charge of*] pointing a firearm at or toward another person. To prove this charge, the prosecutor must prove beyond a reasonable doubt that the defendant was intentionally pointing the gun at or toward another person [but without intending to threaten or harm anyone]*.

Use Note

*Use when instructing on the crime as a lesser offense.

This is a specific intent crime.

History

M Crim JI 11.23 (formerly CJI2d 11.23) was CJI 11:4:01.

Reference Guide

Statutes

MCL 750.233.

Case Law

People v Chamblis, 395 Mich 408, 424, 236 NW2d 473 (1975); *People v Heikkala*, 226 Mich 332, 333-334, 197 NW 366 (1924).

M Crim JI 11.24 Discharge of Firearm While Intentionally Aimed Without Malice

(1)[The defendant is charged with the crime of / You may also consider the lesser charge of[1]] discharging a firearm intentionally pointed at another person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant pointed a gun at or toward another person.

(3)Second, that the defendant intended to point the gun [but did not intend to threaten or harm anyone][2].

(4)Third, that while pointing the gun the defendant discharged it [but no one was injured][3].

Use Note

[1] Use when instructing on the crime as a lesser offense.

[2] This is a specific intent crime.

[3] Use parenthetical expression only if necessary to distinguish this offense from that described in M Crim JI 11.25.

History

M Crim JI 11.24 (formerly CJI2d 11.24) was CJI 11:4:02.

Reference Guide

Statutes

MCL 750.234.

Case Law

People v Chamblis, 395 Mich 408, 424, 236 NW2d 473 (1975); *People v Heikkala*, 226 Mich 332, 333-334, 197 NW 366 (1924).

M Crim JI 11.25 Discharge of Firearm Causing Injury While Intentionally Aimed Without Malice

(1)[The defendant is charged with the crime of / You may also consider the lesser charge of*] injuring another person by discharging a firearm that was intentionally aimed at that person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant pointed a gun at or toward another person.

(3)Second, that the defendant intended to point the gun [but did not intend to threaten or harm anyone]*.

(4)Third, that while pointing the gun the defendant discharged it and injured the other person.

Use Note

*Use when instructing on the crime as a lesser included offense.

This is a specific intent crime.

History

M Crim JI 11.25 (formerly CJI2d 11.25) was CJI 11:4:03.

Reference Guide

Statutes

MCL 750.235.

Case Law

People v Chamblis, 395 Mich 408, 424, 236 NW2d 473 (1975); *People v Heikkala*, 226 Mich 332, 333-334, 197 NW 366 (1924).

M Crim JI 11.26 Reckless or Wanton Use of a Firearm

[The defendant is charged with the crime of / You may also consider the lesser charge of*] reckless [use / handling] of a firearm. To prove this charge, the prosecutor must prove beyond a reasonable doubt that the defendant [recklessly / heedlessly / willfully / (or) wantonly] [used / carried / handled / (or) fired] a gun without reasonable caution for the rights, safety, or property of others.

Use Note

*Use when instructing on the crime as a lesser offense.

History

M Crim JI 11.26 (formerly CJI2d 11.26) was CJI 11:5:01.

Reference Guide

Statutes

MCL 752.863a.

Case Law

People v Pritchett, 62 Mich App 570, 233 NW2d 655 (1975).

M Crim JI 11.26a Discharge of Firearm at Occupied Building [*deleted*]

Note: This instruction was deleted by the committee in March, 2016, in the course of revising portions of this chapter. The offense previously covered by this instruction is now included within M Crim JI 11.37a.

M Crim JI 11.26b Discharge of Firearm in Occupied Structure [*deleted*]

Note: This instruction was deleted by the committee in March, 2016, in the course of revising portions of this chapter. The offense previously covered by this instruction is now included within M Crim JI 11.37b.

M Crim JI 11.27 Failure to Present Pistol for Safety Inspection

(1)[The defendant is charged with the crime of / You may also consider the lesser charge of[1]] failing to take a pistol to the appropriate police agency for a safety inspection. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant either owned or had come into possession of a pistol at the time alleged.

(3)Second, that the defendant failed to bring the pistol to the appropriate police agency for safety inspection.

[(4)If you find that the defendant was excused from taking the pistol in for a safety inspection, then (he / she) must be found not guilty. The prosecutor has the burden of proving beyond a reasonable doubt that the defendant was not excused.][2]

Use Note

[1] Use when instructing on the crime as a lesser offense.

[2] This paragraph should be given only when the trial court determines there is some evidence that the defendant was excused from securing a safety inspection.

History

M Crim JI 11.27 (formerly CJI2d 11.27) was CJI 11:6:01.

Reference Guide

Statutes

MCL 28.432, 750.231b.

Case Law

OAG 1945-1946, No 0-3954, pp 467-468 (September 26, 1945).

M Crim JI 11.28 Sale or Possession of a Pocket Knife Opened by a Mechanical Device

(1)The defendant is charged with the crime of [selling / offering for sale / (or) possessing] a knife that looks like a pocket knife, but has a blade that can be opened mechanically by the flick of a button, pressure on the handle, or other mechanical device. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant [sold / offered for sale / (or) possessed] a knife.

(3)Second, that the knife looked like a pocket knife, but had a blade that could be opened mechanically by the flick of a button, pressure on the handle, or other mechanical device.

(4)A pocket knife is a knife that is made so that the blade can be folded into the handle for carrying.

History

M Crim JI 11.28 (formerly CJI2d 11.28) was CJI 11:7:01, 11:7:03.

Reference Guide

Statutes

MCL 750.226a.

M Crim JI 11.29 Manufacture, Sale, or Possession of Prohibited Weapons

(1)The defendant is charged with the crime of [manufacturing / selling / offering for sale / (or) possessing]:

[*Choose appropriate section or sections:*]

(a)a machine gun. A machine gun is a weapon from which a number of shots or bullets may be rapidly or automatically fired with one continuous pull of the trigger.

(b)a muffler or silencer. A muffler or silencer is a device for deadening or muffling the sound of a firing gun.

(c)a bomb. A bomb is a hollow container filled with gunpowder or other explosive or combustible material and designed to be set off by a fuse or other device.[1]

(d)a blackjack. A blackjack is a weapon consisting of a lead slug attached to a narrow strap, usually of leather.

(e)a slingshot.

(f)a billy. A billy or billy club is a small bludgeon that may be carried in the pocket.

(g)a sand club or sand bag. A sand bag or sand club is a small narrow bag filled with sand and used as a bludgeon.

(h)a bludgeon. A bludgeon is a short club, usually weighted at one end or bigger at one end than the other, and designed for use as a weapon.

(i)metal knuckles. Metal knuckles are pieces of metal designed to be worn over the knuckles in order to protect them in striking a blow and to make the blow more effective.

(j)a weapon designed for the purpose of rendering a person either temporarily or permanently disabled by the ejection, release, or emission of a gas or other substance.

(2)To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(3)First, that the defendant knowingly [manufactured / sold / offered for sale / (or) possessed] a _____.[2]

(4)Second, that at the time [he / she] [manufactured / sold / offered for sale / (or) possessed] it, the defendant knew that the _____ was a weapon.

[(5)The defendant must be found not guilty if the (firearms / explosives / (or) munitions of war) were being manufactured under a contract with a department of the United States, or if the defendant was licensed by the Secretary of the Treasury of the United States or the secretary's delegate to manufacture, sell or possess _____.]

[(6)The defendant must be found not guilty if the device (he / she) is charged with possessing was a self-defense spray device, that is, a device that carries thirty-five grams or less of orthochlorobenzalmalononitrile and other

ingredients or a solution containing not more than 2 percent oleoresin capsicum, but that does not give off any other substance that will disable or injure a person.]

Use Note

Use bracketed material only when evidence as to those matters has been introduced.

[1] The statute lists bomb or bomb shell. Since bomb shell is an older term meaning bomb, it has not been used in the instructions.

[2] See M Crim JI 11.7 when knowledge is an issue.

Where necessary, define terms used:

M Crim JI 11.31Manufacture

M Crim JI 11.32Sell

M Crim JI 11.33Offer to Sell

History

M Crim JI 11.29 (formerly CJI2d 11.29) was CJI 11:8:01, 11:8:05. Amended October, 1991; September, 1992.

Reference Guide

Statutes

MCL 28.426a(1), 750.224, .224d, .227.

Case Law

People v Hill, 433 Mich 464, 446 NW2d 140 (1989); *People v Smith*, 393 Mich 432, 438 n2, 225 NW2d 165 (1975); *People v Brown*, 253 Mich 537, 235 NW 245 (1931); *People v Beasley*, 198 Mich App 40, 42, 497 NW2d 200 (1993); *People v Battles* #1, 109 Mich App 384, 387, 311 NW2d 793 (1981); *People v Malik*, 70 Mich App 133, 134, 245 NW2d 434 (1976); *People v Giacalone*, 23 Mich App 163, 178 NW2d 162 (1970).

M Crim JI 11.30 Manufacture, Sale, or Possession of Short-barreled Shotgun

(1)The defendant is charged with the crime of making, manufacturing, transferring, or possessing a short-barreled shotgun or rifle. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant knowingly [made / manufactured / transferred / possessed] a [shotgun / rifle].

(3)Second, that the [shotgun / rifle] was short-barreled, that is

[Choose *(a) or (b):*]

(a)the shotgun had one or more barrels less than 18 inches long or the shotgun was less than 26 inches long overall.

(b)the rifle had one or more barrels less than 16 inches long or the rifle was less than 26 inches long overall.[1]

Use Note

[1] The definition of a short-barreled rifle and shotgun is found in MCL 750.222(k) and (*l*), respectively.

History

M Crim JI 11.30 (formerly CJI2d 11.30) was added in 1990. Amended February 2016.

Reference Guide

Statutes

MCL 8.3t, 750.224b.

Case Law

People v Hill, 433 Mich 464, 446 NW2d 140 (1989); *People v Walker*, 167 Mich App 377, 422 NW2d 8 (1988); *People v Walker*, 166 Mich App 299, 420 NW2d 194 (1988).

M Crim JI 11.31 Definition of Manufacture

To manufacture is to produce articles from raw or prepared materials by giving those materials new forms, qualities, properties or combinations, whether by hand labor or by machinery.

Use Note

This definition is to be used only with the weapons statute.

The definition is taken from *Miller v Peck*, 158 O St 17, 20, 106 NE2d 776 (1952).

History

M Crim JI 11.31 (formerly CJI2d 11.31) was CJI 11:8:02.

M Crim JI 11.32 Definition of Sell

Under this law, to sell means to transfer possession, give, or loan to someone else. It does not matter whether what is sold has any value.

Use Note

This definition is to be used only with the weapons statute.

History

M Crim JI 11.32 (formerly CJI2d 11.32) was CJI 11:8:03.

Reference Guide

Statutes

MCL 28.421, 750.222.

Case Law

Schmitt v Wright, 317 Ill App 384, 46 NE2d 184 (1943).

M Crim JI 11.33 Definition of Offer to Sell

Under this law, to offer to sell means to offer to transfer possession, give, or loan to someone else. It does not matter whether what is offered has any value or whether anything is to be received in exchange.

Use Note

This definition is to be used only with the weapons statute.

History

M Crim JI 11.33 (formerly CJI2d 11.33) was CJI 11:8:04.

Reference Guide

Statutes

MCL 28.421, 750.222.

Case Law

Schmitt v Wright, 317 Ill App 384, 46 NE2d 184 (1943).

M Crim JI 11.34 Possession of Firearm at Time of Commission or Attempted Commission of Felony (Felony Firearm)

(1)The defendant is also charged with the separate crime of possessing a firearm at the time [he / she] committed [or attempted to commit][1] the crime of _____.

(2)To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(3)First, that the defendant committed [or attempted to commit] the crime of _____, which has been defined for you. It is not necessary, however, that the defendant be convicted of that crime.

(4)Second, that at the time the defendant committed [or attempted to commit] that crime [he / she] knowingly carried or possessed a firearm.

[*Use any of the following paragraphs when factually appropriate*:]

[(5)This charge includes possession of a firearm during either a completed crime or an attempted crime. An attempt has two elements. First, the defendant must have intended to commit the crime of _____. Second, the defendant must have taken some action toward committing the alleged crime, but failed to complete the crime. It is not enough to prove that the defendant made preparations for committing the crime. Things like planning the crime or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the crime would have been completed if it had not been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the crime the defendant is charged with attempting and not some other objective.][2]

[(6)It does not matter whether or not the firearm was capable of firing a projectile or whether it was loaded.]

[(7)A firearm includes any weapon which will, or is designed to, or may readily be converted to expel a projectile by action of an explosive.][3]

[(8)A pistol is a firearm.]

Use Note

Note that the statute states "felony" but explicitly excludes the felonies of carrying a concealed weapon, MCL 750.227, unlawful possession of a pistol by a licensee, MCL 750.227a, or altering firearms identification numbers, MCL 750.230. Do not use this instruction when these are the felonies charged.

[1] Attempt is part of the statutory definition of this offense, rather than a lesser included offense. When factually appropriate or requested, include attempt language in paragraphs (1), (3), and (4), and give (5) in its entirety.

[2] Any attempt to commit an offense is a specific intent crime. See *People v Langworthy*, 416 Mich 630, 644-645, 331 NW2d 171 (1982), and *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979) (opinion of Levin, J.).

[3] The prosecutor need not prove that the firearm was operable. *People v Peals*, 476 Mich 636, 720 NW2d 196 (2006).

History

M Crim JI 11.34 (formerly CJI2d 11.34) was CJI 11:9:01; amended November, 1990; May 2016 (pending public comment); January 2017.

Reference Guide

Statutes

MCL 8.3t, 750.227b.

Case Law

People v Peals, 476 Mich 636, 656, 720 NW2d 196 (2006); *People v Burgenmeyer*, 461 Mich 431, 606 NW2d 645 (2000); *People v Hill*, 433 Mich 464, 446 NW2d 140 (1989); *Wayne County Prosecutor v Recorder's Court Judge*, 406 Mich 374, 397-398, 280 NW2d 793 (1979); *People v Goree*, 296 Mich App 293, 819 NW2d 82 (2012); *People v Brooks*, 135 Mich App 193, 353 NW2d 118 (1984); *People v Prather*, 121 Mich App 324, 328 NW2d 556 (1982); *People v Perry*, 119 Mich App 98, 326 NW2d 437 (1982); *People v Gee*, 97 Mich App 422, 296 NW2d 52 (1980); *People v Elowe*, 85 Mich App 744, 272 NW2d 596 (1978); *People v Humphrey*, 312 Mich App 309 (2015).

M Crim JI 11.34a Using Pneumatic Gun in Furtherance of Commission or Attempted Commission of Felony (Felony Firearm)

(1)The defendant is also charged with the separate crime of using a pneumatic gun while committing [or attempting to commit][1] the crime of _____.

(2)To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(3)First, that the defendant committed [or attempted to commit] the crime of _____, which has been defined for you. It is not necessary, however, that the defendant be convicted of that crime.

(4)Second, that at the time the defendant committed [or attempted to commit] that crime [he / she] used a pneumatic gun to further the commission of [or attempt to commit] that crime. A pneumatic gun is any implement, designed as a gun, that will expel a BB or pellet by spring, gas, or air [such as a paintball gun that expels by gas or air pressure plastic balls filled with paint for the purpose of marking the point of impact].

[*Use any of the following paragraphs when factually appropriate*:]

[(5)This charge includes use of a pneumatic gun in furtherance of either a completed crime or an attempted crime. An attempt has two elements. First, the defendant must have intended to commit the crime of _____. Second, the defendant must have taken some action toward committing the alleged crime, but failed to complete the crime. It is not enough to prove that the defendant made preparations for committing the crime. Things like planning the crime or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the crime would have been completed if it had not been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the crime the defendant is charged with attempting and not some other objective.][2]

[(6)It does not matter whether or not the pneumatic gun was capable of firing a projectile or whether it was loaded.]

Use Note

Note that the statute states "felony" but explicitly excludes the felonies of selling firearms/ammunition illegally, MCL 750.223, carrying a concealed weapon, MCL 750.227, unlawful possession of a pistol by a licensee, MCL 750.227a, and altering firearms identification numbers, MCL 750.230. Do not use this instruction when these are the felonies charged.

[1] Attempt is part of the statutory definition of this offense, rather than a lesser included offense. When factually appropriate or requested, include attempt language in paragraphs (1), (3), and (4), and give (5) in its entirety.

[2] Any attempt to commit an offense is a specific intent crime. See *People v Langworthy*, 416 Mich 630, 644-645, 331 NW2d 171 (1982), and *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979) (opinion of Levin, J.).

History

M Crim JI 11.34a was added in May 2016 (pending public comment) and adopted with changes in January 2017.

M Crim JI 11.34b Felony Firearm—Possession

Possession does not necessarily mean ownership. Possession means that either:

(1)the person has actual physical control of the thing as I do with the pen I am now holding, or

(2)the person knows the location of the firearm and has reasonable access to it.

Possession may be sole where one person alone possesses the firearm. Possession may be joint where two or more people share possession.

History

M Crim JI 11.34b (formerly CJI2d 11.34a) was adopted in May, 2012.

Reference Guide

Case Law

People v Hill, 433 Mich 464, 446 NW2d 140 (1989); *People v Williams*, 212 Mich App 607, 538 NW2d 89 (1995).

M Crim JI 11.34c Felony Firearm—Self-Defense

(1) An individual who has not or is not engaged in the commission of a crime at the time he or she uses deadly force may use deadly force against another individual anywhere he or she has the legal right to be, with no duty to retreat, if either of the following applies:

(a)The individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent death of or imminent great bodily harm to himself or herself or to another individual.

(b)The individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent sexual assault of himself or herself or of another individual.

(2)An individual who has not or is not engaged in the commission of a crime at the time he or she used force other than deadly force may use force other than deadly force against another individual anywhere he or she has the legal right to be, with no duty to retreat, if he or she honestly and reasonably believes that the use of that force is necessary to defend himself or herself or another individual from the imminent unlawful use of force by another individual.

History

M Crim JI 11.34c (formerly CJI2d 11.34b) was adopted in May, 2012.

Reference Guide

Case Law

People v Goree, 296 Mich App 293, 819 NW2d 82 (2012).

M Crim JI 11.35 Aiding and Abetting Felony Firearm: Direct Participation [*deleted*]

Note: This instruction was deleted by the committee in October, 2004. In *People v Johnson*, 411 Mich 50, 303 NW2d 442 (1981), the supreme court held that to be guilty of aiding and abetting felony-firearm one must aid another *in obtaining or retaining possession* of a firearm. In *People v Moore*, 470 Mich 56, 679 NW2d 41 (2004), *cert denied*, 543 US 947 (2004), the supreme court overruled *Johnson* and held that the broader test of aiding and abetting found in MCL 767.39 controls in felony-firearm prosecutions. Under *Moore* and the statute, the question becomes "whether the defendant's words or deeds 'procure[d], counsel[ed], aid[ed], or abet[ted]' another to carry or have in his possession a firearm during the commission or attempted commission of a felony-firearm offense." 470 Mich 59 (footnote omitted). Since "aiding and abetting felony-firearm should be no different from aiding and abetting the commission of any other offense," 470 Mich 67, the standard aiding and abetting instruction should be used rather than this more restrictive instruction that was patterned after *Johnson's* now-discredited holding. 470 Mich 56, 73-74.

The standard aiding and abetting instruction is M Crim JI 8.1.

M Crim JI 11.36 Aiding and Abetting Felony Firearm: Indirect Participation [*deleted*]

Note: This instruction was deleted by the committee in October, 2004. In *People v Johnson*, 411 Mich 50, 303 NW2d 442 (1981), the supreme court held that to be guilty of aiding and abetting felony-firearm one must aid another in *obtaining or retaining possession* of a firearm. In *People v Moore*, 470 Mich 56, 679 NW2d 41, *cert denied*, 543 US 947 (2004), the supreme court overruled *Johnson* and held that the broader test of aiding and abetting found in MCL 767.39 controls in felony-firearm prosecutions. Under *Moore* and the statute, the question becomes "whether the defendant's words or deeds 'procure[d], counsel[ed], aid[ed], or abet[ted]' another to carry or have in his possession a firearm during the commission or attempted commission of a felony-firearm offense." 470 Mich 59 (footnote omitted). Since "aiding and abetting felony-firearm should be no different from aiding and abetting the commission of any other offense," 470 Mich 67, the standard aiding and abetting instruction should be used rather than this more restrictive instruction that was patterned after Johnson's now-discredited holding. 470 Mich 56, 73-74.

The standard aiding and abetting instruction is M Crim JI 8.1.

M Crim JI 11.37 Discharge of a Firearm from Motor Vehicle

(1)The defendant is charged with intentionally discharging a firearm from a motor vehicle. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant discharged a firearm.[1]

(3)Second, that [he / she] did so intentionally, that is, on purpose.

(4)Third, that [he / she] did so from a [motor vehicle / snowmobile / off-road vehicle].[2]

(5)Fourth, that [he / she] discharged the firearm in a way that [endangered someone else / caused physical injury to (*name complainant*) / caused serious impairment of a body function to (*name complainant*) / caused the death of (*name complainant*)].

[*Use (6) where it is alleged that the complainant suffered serious impairment of a body function:*][3]

(6)Serious impairment of a body function includes, but is not limited to, one or more of the following:

(a)Loss of a limb or loss of use of a limb.

(b)Loss of a foot, hand, finger, or thumb or loss of the use of a foot, hand, finger, or thumb.

(c)Loss of an eye or ear or loss of the use of an eye or ear.

(d)Loss or substantial impairment of a bodily function.

(e)Serious visible disfigurement.

(f)A comatose state that lasts for more than 3 days.

(g)Measurable brain or mental impairment.

(h)A skull fracture or other serious bone fracture.

(i)Subdural hemorrhage or subdural hematoma.

(j)Loss of an organ.

Use Note

[1] *Firearm* is defined in MCL 28.421(1)(c) and MCL 750.222(e).

[2] The definition of *motor vehicle* may be found at MCL 257.33.

[3] MCL 750.234a(5)(b) references MCL 257.58c for the definition of *serious impairment of a body function.*

This charge does not apply to a peace officer in the performance of the officer's duties, whether the officer was on or off his or her scheduled work shift. MCL 750.234a(2)(a).

Self-defense or defense of others is a defense to this charge. MCL 750.234a(2)(b). Appropriate instructions from M Crim JI 7.15 through 7.24 must be given where such a defense is raised.

History

M Crim JI 11.37 (formerly CJI2d 11.37) new June, 1991. Amended March 2016.

Reference Guide

Statutes

MCL 750.234a-.234c.

M Crim JI 11.37a Discharge of a Firearm at a Building

(1)The defendant is charged with intentionally discharging a firearm at a dwelling or potentially occupied structure. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant discharged a firearm.[1]

(3)Second, that [he / she] did so intentionally, that is, on purpose.

(4)Third, that [he / she] discharged the firearm at a building that [he / she] had reason to believe was either a dwelling or a potentially occupied structure.

A dwelling is a building where people usually live. It does not matter whether or not someone was actually in the building at the time.

A potentially occupied structure is a building that a reasonable person knows or should know was likely to be occupied by one or more persons due to its nature, function or location. It does not matter whether a person was actually present in the structure.

(5)Fourth, that when the defendant discharged the firearm [he / she] [caused physical injury to / caused serious body injury to / caused the death of] (*name complainant*).

[*Use (6) where it is alleged that the complainant suffered serious body injury:*][2]

(6)*Serious* impairment of a body function includes, but is not limited to, one or more of the following:

(a)Loss of a limb or loss of use of a limb.

(b)Loss of a foot, hand, finger, or thumb or loss of the use of a foot, hand, finger, or thumb.

(c)Loss of an eye or ear or loss of the use of an eye or ear.

(d)Loss or substantial impairment of a bodily function.

(e)Serious visible disfigurement.

(f)A comatose state that lasts for more than 3 days.

(g)Measurable brain or mental impairment.

(h)A skull fracture or other serious bone fracture.

(i)Subdural hemorrhage or subdural hematoma.

(j)Loss of an organ.

Use Note

[1] *Firearm* is defined in MCL 28.421(1)(c) and MCL 750.222(e).

[2] MCL 750.234a(10)(b) references MCL 257.58c for the definition of *serious impairment of a body function.*

This charge does not apply to a peace officer in the performance of his or her duties. MCL 750.234b(6).

Self-defense or defense of others is a defense to this charge. MCL 750.234b(7). Appropriate instructions from M Crim JI 7.15 through 7.24 must be given where such a defense is raised.

History

M Crim JI 11.37a new March 2016.

Reference Guide

Statutes

MCL 750.234a-.234c.

M Crim JI 11.37b Discharge of a Firearm in a Building

(1)The defendant is charged with intentionally discharging a firearm in a dwelling or potentially occupied structure. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant discharged a firearm.[1]

(3)Second, that [he / she] did so intentionally, that is, on purpose.

(4)Third, that [he / she] discharged the firearm in a building that [he / she] had reason to believe was either a dwelling or a potentially occupied structure.

A dwelling is a building where people usually live. It does not matter whether or not someone was actually in the building at the time.

A potentially occupied structure is a building that a reasonable person knows or should know was likely to be occupied by one or more persons due to its nature, function or location. It does not matter whether a person was actually present in the structure.

(5)Fourth, that the defendant acted with reckless disregard for the safety of other persons

(6)Fifth, that when the defendant discharged the firearm, [he / she] [caused physical injury to / caused serious body injury to / caused the death of] (*name complainant*)].

[Use *(7) where it is alleged that the complainant suffered serious body injury:*][2]

(7)Serious impairment of a body function includes, but is not limited to, one or more of the following:

(a)Loss of a limb or loss of use of a limb.

(b)Loss of a foot, hand, finger, or thumb or loss of the use of a foot, hand, finger, or thumb.

(c)Loss of an eye or ear or loss of the use of an eye or ear.

(d)Loss or substantial impairment of a bodily function.

(e)Serious visible disfigurement.

(f)A comatose state that lasts for more than 3 days.

(g)Measurable brain or mental impairment.

(h)A skull fracture or other serious bone fracture.

(i)Subdural hemorrhage or subdural hematoma.

(j)Loss of an organ.

Use Note

[1] *Firearm* is defined in MCL 28.421(1)(c) and MCL 750.222(e).

[2] MCL 750.234a(10)(b) references MCL 257.58c for the definition of *serious impairment of a body function.*

This charge does not apply to a peace officer in the performance of his or her duties. MCL 750.234b(6).

Self-defense or defense of others is a defense to this charge. MCL 750.234b(7). Appropriate instructions from M Crim JI 7.15 through 7.24 must be given where such a defense is raised.

History

M Crim JI 11.37b new March 2016.

Reference Guide

Statutes

MCL 750.234a-.234c.

M Crim JI 11.37c Discharge of a Firearm at a Police or Emergency Vehicle

(1)The defendant is charged with intentionally discharging a firearm at an emergency or law enforcement vehicle. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant discharged a firearm.[1]

(3)Second, that [he / she] did so intentionally, that is, on purpose.

(4) Third, that [he / she] discharged the firearm at a motor vehicle that [he / she] knew or had reason to believe was an emergency or law enforcement vehicle.[2]

Use Note

[1] *Firearm* is defined in MCL 28.421(1)(c) and MCL 750.222(e).

[2] The definition of *emergency or law enforcement vehicle* can be found in MCL 750.234c(2).

History

M Crim JI 11.37c new March 2016.

Reference Guide

Statutes

MCL 750.234a-.234c.

M Crim JI 11.38 Felon Possessing Firearm: Nonspecified Felony

The defendant is charged with possession of [a firearm / ammunition] after having been convicted of a felony. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(1)First, that the defendant [possessed / used / transported / sold / distributed / received / carried / shipped / purchased[1]] [a firearm / ammunition[2]] in this state.[3]

(2)Second, that the defendant was convicted of [*name felony*].[4]

[*Use the following paragraph only if the defendant offers some evidence that more than three years has passed since completion of the sentence on the underlying offense*.]

(3)Third, that less than three years had passed since [all fines were paid / all imprisonment was served / all terms of (probation / parole) were successfully completed].[5]

Use Note

[1] "Purchase" of ammunition is not barred under the statute.

[2] "Ammunition" is defined in MCL 750.224f(9)(a) as "any projectile that, in its current state, may be propelled from a firearm by an explosive."

[3] The prosecutor need not prove that the firearm was "operable." *People v Peals*, 476 Mich 636, 656, 720 NW2d 196 (2006).

[4] The judge, not the jury, determines whether the charged prior felony is a "felony" as defined in MCL 750.224f(9)(b), or a more serious "specified felony" as defined in MCL 750.224f(10). The jury determines whether the defendant has in fact been convicted of that charged prior felony. For prosecutions involving a "specified felony" use M Crim JI 11.38a.

[5] The judge's determination of the character of the felony as explained in Use Note 4 will determine whether the prohibition extends for three years or five years. Under subsection (1) of the statute, the three-year period applies to crimes defined in subsection (9)(b) as felonies; under subsection (2), the five-year ban applies to crimes defined as "specified" felonies in subsection (10).

History

M Crim JI 11.38 (formerly CJI2d 11.38) was added in October, 1993 when MCL 750.224f was enacted. The instruction was amended by the committee in September, 2001, in conjunction with the adoption of M Crim JI 11.38a, to separate the "felony" and "specified felony" versions of the offense. The possession of ammunition by felons was barred in a May 2014 statutory amendment. Amended September 2005, March 2014 and January 2016.

Reference Guide

Statutes

MCL 750.224f.

Case Law

Old Chief v United States, 519 US 172 (1997); *People v Dupree*, 486 Mich 693, 788 NW2d 399 (2010); *People v Peals*, 476 Mich 636, 656, 720 NW2d 196 (2006); *People v Perkins*, 473 Mich 626, 640, 703 NW2d 448 (2005) (affirming *People v Perkins*, 262 Mich App 267, 686 NW2d 237 (2004)); *People v Henderson*, 391 Mich 612, 218 NW2d 2 (1974); *People v Brown*, 249 Mich App 382, 642 NW2d 382 (2002); *People v Swint*, 225 Mich App 353, 379, 572 NW2d 666 (1997); *People v Tice*, 220 Mich App 47, 53-55, 558 NW2d 245 (1996).

M Crim JI 11.38a Felon Possessing Firearm: Specified Felony

The defendant is charged with possession of [a firearm / ammunition] after having been convicted of a specified felony. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(1)First, that the defendant [possessed / used / sold / distributed / received/ carried / shipped / transported / purchased[1]] [a firearm / ammunition[2]] in this state.[3]

(2)Second, that the defendant was convicted of [*name specified felony*].[4]

[*Use the following paragraphs only if the defendant offers some evidence that more than five years has passed since completion of the sentence on the underlying offense and that his or her firearm rights have been restored, MCL 28.424.*]

(3)Third, that less than five years had passed since [all fines were paid / all imprisonment was served / all terms of (probation / parole) were successfully completed].[5]

(4)Fourth, that the defendant's right to [possess / use / transport / sell / receive] [a firearm / ammunition] has not been restored pursuant to Michigan law.[6]

Use Note

[1] "Purchase" of ammunition is not barred under the statute.

[2] "Ammunition" is defined in MCL 750.224f(9)(a) as "any projectile that, in its current state, may be propelled from a firearm by an explosive."

[3] The prosecutor need not prove that the firearm was "operable." *People v Peals*, 476 Mich 636, 656, 720 NW2d 196 (2006).

[4] The judge, not the jury, determines whether the charged prior felony is a "felony" as defined in MCL 750.224f(9)(b), or a more serious "specified felony" as defined in MCL 750.224f(10). The jury determines whether the defendant has in fact been convicted of that charged prior felony. For prosecutions involving a "nonspecified felony" use M Crim JI 11.38.

[5] The judge's determination of the character of the felony as explained in Use Note 4 will determine whether the prohibition extends for three years or five years. Under subsection (1) of the statute, the three-year period applies to crimes defined in subsection (9)(b) as felonies; under subsection (2), the five-year ban applies to crimes defined as "specified" felonies in subsection (10).

[6] This paragraph is to be given when the court determines that some evidence relating to restoration was admitted at trial. See *People v Henderson*, 391 Mich 612, 218 NW2d 2 (1974), addressing the burden of going forward and the burden of proof where a defendant submits evidence that he or she was licensed to carry a concealed weapon.

History

This instruction was adopted by the committee in September, 2001 to separate the "specified felony" offense from the "felony" offense and to incorporate prosecutions under the former theory predicated upon the defendant's failure to secure restoration of his or her firearm rights. The possession of ammunition by felons was barred in a May 2014 statutory amendment. Amended September 2005, March 2014 and January 2016.

Reference Guide

Statutes

MCL 750.224f.

Case Law

People v Peals, 476 Mich 636, 656, 720 NW2d 196 (2006); *People v Henderson*, 391 Mich 612, 218 NW2d 2 (1974).

CHAPTER 12

Narcotics

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M Crim JI 12.1 Unlawful Manufacture of a Controlled Substance

(1)The defendant is charged with the crime of illegally manufacturing [(*state weight*) of a mixture containing][1] a controlled substance, _____. Manufacturing means producing or processing a controlled substance. It is alleged in this case that the defendant manufactured _____ by [*list specific acts*].[2] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant manufactured a controlled substance.

(3)Second, that the substance manufactured was _____.

(4)Third, that the defendant knew [he / she] was manufacturing _____.

[(5)Fourth, that the substance was in a mixture that weighed (*state weight*).][1]

[(6)Fifth, that the defendant was not legally authorized to manufacture this substance.][3]

[(7)Sixth, that the defendant was not (preparing / compounding) this substance for (his / her) own use.][4]

Use Note

[1] Use the bracketed portion when the controlled substance is a narcotic drug classified in Schedule 1 or 2, or a cocaine-related substance as found in MCL 333.7214(a)(iv).

[2] Such specific acts of manufacturing may include extraction from natural substances, chemical synthesis, packaging or repackaging the substance, or labeling or relabeling the container.

[3] This paragraph should be given only when the defense has presented some competent evidence beyond a mere assertion that the defendant was authorized to possess the substance. If the defense presents such evidence, the prosecution must prove lack of authorization beyond a reasonable doubt. *People v Pegenau*, 447 Mich 278, 523 NW2d 325 (1994).

[4] This paragraph should be given only if some evidence has been presented that the defendant prepared or compounded the substance for his or her own use.

History

M Crim JI 12.1 (formerly CJI2d 12.1) was CJI 12:2:00, 12:2:01, 12:2:02; amended June, 1991.

Reference Guide

Statutes

MCL 333.7106(2).

Case Law

People v Marion, 250 Mich App 446, 617 NW2d 521 (2002); *People v Hunter*, 201 Mich App 671, 506 NW2d 611 (1993); *People v Barajas*, 198 Mich App 551, 499 NW2d 396 (1993), aff'd, 444 Mich 556, 557, 513 NW2d 772 (1994); *People v Pearson*, 157 Mich App 68, 72, 403 NW2d 498 (1987); *People v Velasquez*, 125 Mich App 1, 335 NW2d 705 (1983); *People v Puertas*, 122 Mich App 626, 332 NW2d 399 (1983); *People v Stahl*, 110 Mich App 757, 313 NW2d 103 (1981).

M Crim JI 12.1a Owning, Possessing or Using Vehicles, Buildings, Structures or Areas Used for Manufacturing Controlled Substances

(1)The defendant is charged with the crime of owning, possessing, or using [a vehicle / a building / a structure / an area / a place] as a location for manufacturing [*identify controlled substance*]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant [owned / possessed / used] [*describe property*], [a vehicle / a building / a structure / an area / a place].

(3)Second, that the property was used to manufacture [*identify controlled substance*]. [1]

(4)Third, that the defendant knew or had reason to know that the [vehicle / building / structure / area / place] was used to manufacture [*identify controlled substance*].

[*Select that which has been charged:*][2]

(5)Fourth, that a person less than 18 years old was present at the time.[3]

(6)Fourth, that hazardous waste[4] was [generated / treated / stored / disposed].[5]

(7)Fourth, that the violation occurred within 500 feet of [a residence / a business / a church[6] / school property[7]].[8]

(8)Fourth, that the alleged violation involved the [possession / placement / use] of a [firearm / device designed or intended to injure a person].[9]

(9)Fourth, that the controlled substance was methamphetamine.[10]

Use Note

[1] The jury may be instructed on the definition of "manufacture," which can be found in MCL 333.7401c(7)(c).

[2] Knowingly owning, possessing, or using the described property is a 10-year offense. MCL 333.7401c(2)(a). Various aggravating factors increase the maximum term of imprisonment. *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), requires that factors that increase a maximum sentence be charged and proved beyond a reasonable doubt. If there are multiple aggravating factors, they will be charged in separate counts. Where applicable, provide the appropriate instruction for the charged offense in each count.

[3] MCL 333.7401c(2)(b).

[4] If appropriate, the jury should be instructed on the definition of "hazardous waste," as provided in MCL 333.7401c(7)(a), which incorporates the definition found in MCL 324.11103.

[5] MCL 333.7401c(2)(c).

[6] The statute references "or other house of worship" in MCL 333.7401c(2)(d); appropriate terminology may be substituted.

[7] MCL 333.7401c(7)(f) incorporates MCL 333.7410 for the definition of "school property."

[8] MCL 333.7401c(2)(d).

[9] MCL 333.7401c(2)(e).

[10] MCL 333.7401c(2)(f).

History

Adopted January 2016.

Reference

MCL 333.7401c.

M Crim JI 12.1b Owning or Possessing Chemicals or Laboratory Equipment for Manufacturing Controlled Substances

(1) The defendant is charged with the crime of owning or possessing [chemicals / laboratory equipment] for use in manufacturing a controlled substance. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [owned / possessed] [a chemical / laboratory equipment[1]].

[*Select (3) where methamphetamine is the controlled substance, and do not instruct from (4) or (5). Select (4) where some other controlled substance is involved, and (5) where appropriate.*]

(3) Second, that the defendant knew or had reason to know that the [chemical / laboratory equipment] was going to be used to manufacture[2] methamphetamine.[3]

or

(4) Second, that the defendant knew or had reason to know that the [chemical / laboratory equipment] was going to be used to manufacture a controlled substance.[2]

(5) Third, that [*Select that which has been charged:*][4]

(a) a person less than 18 years old was present at the time.[5]

(b) hazardous waste[6] was [generated / treated / stored / disposed].[7]

(c) the alleged violation occurred within 500 feet of [a residence / a business / a church[8] / school property[9]].[10]

(d) the alleged violation involved the [possession / placement / use] of a [firearm / device designed or intended to injure a person].[11]

Use Note

Where the charged offense involves methamphetamine and paragraph (3) is used, do not instruct on paragraphs (4) or (5).

[1] "Laboratory equipment" is defined in MCL 333.7401c(7)(b).

[2] The jury may be instructed on the definition of "manufacture," which may be found in MCL 333.7401c(7)(c).

[3] MCL 333.7401c(2)(f).

[4] Knowingly owning or possessing the described chemicals or equipment is a 10-year offense. MCL 333.7401c(2)(a). Various aggravating factors increase the maximum term of imprisonment. *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), requires that factors that increase a maximum sentence be charged and proved

beyond a reasonable doubt. If there are multiple aggravating factors, they will be charged in separate counts. Where applicable, provide the appropriate instruction for the charged offense in each count.

[5] MCL 333.7401c(2)(b).

[6] If appropriate, the jury should be instructed on the definition of "hazardous waste," as provided in MCL 333.7401c(7)(a), which incorporates the definition found in MCL 324.11103.

[7] MCL 333.7401c(2)(c).

[8] The statute references "or other house of worship" in MCL 333.7401c(2)(d); appropriate terminology may be substituted.

[9] MCL 333.7401c(7)(f) incorporates MCL 333.7410 for the definition of "school property."

[10] MCL 333.7401c(2)(d).

[11] MCL 333.7401c(2)(e).

History

Adopted January 2016; amended July 2017.

Reference

MCL 333.7401c.

M Crim JI 12.1c Providing Chemicals or Laboratory Equipment for Manufacturing Controlled Substances

(1)The defendant is charged with the crime of providing [chemicals / laboratory equipment] to another person for use in manufacturing [*identify controlled substance*]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant provided [a chemical / laboratory equipment[1]] to another person.

(3)Second, that the defendant knew or had reason to know that the [chemical / laboratory equipment] was going to be used to manufacture [*identify controlled substance*].[2]

[*Select that which has been charged:*][3]

(4)Third, that a person less than 18 years old was present at the time.[4]

(5)Third, that hazardous waste[5] was [generated / treated / stored / disposed].[6]

(6)Third, that the violation occurred within 500 feet of [a residence / a business / a church[7] / school property[8]].[9]

(7)Third, that the alleged violation involved the [possession / placement / use] of a [firearm / device designed or intended to injure a person].[10]

(8)Third, that the controlled substance was methamphetamine.[11]

Use Note

[1] "Laboratory equipment" is defined in MCL 333.7401c(7)(b).

[2] The jury may be instructed on the definition of "manufacture," which may be found in MCL 333.7401c(7)(c).

[3] Providing the described chemicals or equipment is a 10-year offense. MCL 333.7401c(2)(a). Various aggravating factors increase the maximum term of imprisonment. *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), requires that factors that increase a maximum sentence be charged and proved beyond a reasonable doubt. If there are multiple aggravating factors, they will be charged in separate counts. Where applicable, provide the appropriate instruction for the charged offense in each count.

[4] MCL 333.7401c(2)(b).

[5] If appropriate, the jury should be instructed on the definition of "hazardous waste," as provided in MCL 333.7401c(7)(a), which incorporates the definition found in MCL 324.11103.

[6] MCL 333.7401c(2)(c).

[7] The statute references "or other house of worship" in MCL 333.7401c(2)(d); appropriate terminology may be substituted.

[8] MCL 333.7401c(7)(f) incorporates MCL 333.7410 for the definition of "school property."

[9] MCL 333.7401c(2)(d).

[10] MCL 333.7401c(2)(e).

[11] MCL 333.7401c(2)(f).

History

Adopted January 2016.

Reference

MCL 333.7401c.

M Crim JI 12.2 Unlawful Delivery of a Controlled Substance

(1)The defendant is charged with the crime of illegally delivering [(*state weight*) of a mixture containing] a controlled substance. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant delivered [*identify controlled substance*].

(3)Second, that the defendant knew that [he / she] delivered a controlled substance.

[(4)Third, that the controlled substance that the defendant delivered [was in a mixture that] weighed (*state weight*).][1]

[(5)[Third / Fourth], that the defendant was not legally authorized to deliver this substance.][2]

[(6)"Delivery" means that the defendant transferred or attempted to transfer the substance to another person, knowing that it was a controlled substance and intending to transfer it to that person. [An attempt has two elements. First, the defendant must have intended to deliver the substance to someone else. Second, the defendant must have taken some action toward delivering the substance, but failed to complete the delivery. It is not enough to prove that the defendant made preparations for delivering the substance. Things like planning the crime or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the crime would have been completed if it had not been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the crime the defendant is charged with attempting and not some other goal.][3]

Use Note

Because the statutory definition of delivery includes actual, constructive, or attempted transfer of a substance, attempted delivery is not a lesser included offense. MCL 333.7105(1).

[1] This bracketed material should be given where the controlled substance is a narcotic drug classified in Schedule 1 or 2, or a cocaine-related substance as found in MCL 333.7214(a)(iv).

[2] This paragraph should be given only when the defense has presented some competent evidence beyond a mere assertion that the defendant was authorized to deliver the substance. If the defense presents such evidence, the prosecution must prove lack of authorization beyond a reasonable doubt. *People v Pegenau*, 447 Mich 278, 523 NW2d 325 (1994).

[3] Use bracketed material defining attempt only in cases involving act falling short of completed delivery. Any attempt is a specific intent crime. *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979) (opinion of Levin, J.).

McFadden v United States, 576 US ___; 135 S Ct 2298 (2015), held that a prosecutor need not prove that the defendant intended to deliver any particular controlled substance, only that he or she intended to deliver some controlled substance.

History

M Crim JI 12.2 (formerly CJI2d 12.2) was CJI 12:2:00, 12:2:01, 12:2:03; amended October, 1993; amended August, 2016.

Reference Guide

Statutes

MCL 333.7401, .7105(1), .7214(a)(iv).

Case Law

People v Mass, 464 Mich 615, 628 NW2d 540 (2001); *People v Pegenau*, 447 Mich 278, 523 NW2d 325 (1994); *People v Steele*, 429 Mich 13, 26 n10, 412 NW2d 206 (1987); *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979); *People v Delgado*, 404 Mich 76, 86, 273 NW2d 395 (1978); *People v Collins*, 298 Mich App 458, 828 NW2d 392 (2012); *People v Maleski*, 220 Mich App 518, 522, 560 NW2d 71 (1996); *People v Brown*, 163 Mich App 273, 413 NW2d 766 (1987); *People v Tate*, 134 Mich App 682, 352 NW2d 297 (1984); *People v Williams*, 54 Mich App 448, 450, 221 NW2d 204 (1974).

McFadden v United States, 576 US ___; 135 S Ct 2298 (2015).

M Crim JI 12.2a Delivery of a Controlled Substance Causing Death

(1)The defendant is charged with the crime of delivery of a controlled substance[1] causing death. To prove this charge, the prosecution must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant delivered a controlled substance to another person. "Delivery" means that the defendant transferred the substance to another person knowing that it was a controlled substance and intending to transfer it to that person.

(3)Second, that the substance delivered was a controlled substance.

(4)Third, that the defendant knew [he / she] was delivering a controlled substance.

(5)Fourth, that the controlled substance was consumed by [*state name of person who consumed*].

(6)Fifth, that consuming the controlled substance caused the death of [*state victim's name*].[2]

Use Note

[1] The controlled substance must be a schedule 1 or 2 controlled substance other than marijuana, MCL 750.317a.

[2] Concerning causation, see M Crim JI 16.15, Act of Defendant Must be Cause of Death.

History

M Crim JI 12.2a (formerly CJI2d 12.2a) was adopted by the committee in May, 2008, for the crime found at MCL 750.317a.

Reference Guide

Statutes

MCL 750.317a.

M Crim JI 12.2b Unlawful Delivery of Controlled Substances or Gamma-butyrolactone to Commit Criminal Sexual Conduct

(1)The defendant is charged with the crime of delivering [a controlled substance/gamma-butyrolactone] with intent to commit criminal sexual conduct. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant delivered or caused to be delivered [a controlled substance/gamma-butyrolactone] or a mixture or compound[1] containing [a controlled substance/gamma-butyrolactone] to [*name complainant*]. "Delivery" means that the defendant intentionally transferred or attempted to transfer the substance to another person, or caused that substance to be delivered to another person.[2]

(3)Second, that the defendant knew [he / she] was delivering [a controlled substance/gamma-butyrolactone] or a mixture or compound containing [a controlled substance/gamma-butyrolactone] to [*name complainant*] or causing the substance to be delivered to [him / her].

(4)Third, that [*name complainant*] did not consent to have [a controlled substance/gamma-butyrolactone] delivered to [him / her].

(5)Fourth, that when the defendant delivered the substance or caused it to be delivered to [*name complainant*], the defendant intended to commit an act of criminal sexual penetration or sexual contact against [*name complainant*] or intended to attempt an act of criminal sexual penetration or contact against [*name complainant*], or intended to assault [*name complainant*] with the intent to sexually penetrate or have sexual contact with [him/her], as I [have described / will describe] [that offense / those offenses] to you.[3]

Use Note

[1] Various statutes, including MCL 333.7401b pertaining to gamma-butyrolactone, provide that "any material, compound, mixture, or preparation containing" a controlled substance is included within the scope of the prohibition. The court may opt to use any or all of those terms where appropriate.

[2] *Delivery* is generally defined in MCL 333.7105(1), and includes "attempted" transfers of a controlled substance.

[3] Generally, the charge of delivering a controlled substance or gamma-butyrolactone under MCL 333.7401a will accompany a criminal sexual conduct charge or charges, so providing the elements of that charge or those charges will be sufficient to satisfy this element. However, the language of this element may have to be modified in instances where an independent count of criminal sexual conduct has not been charged, and the court may have to provide the elements of one or more criminal sexual conduct offenses.

M Crim JI 12.3 Unlawful Possession of a Controlled Substance with Intent to Deliver

(1)The defendant is charged with the crime of illegally possessing with intent to deliver [*state weight*] of a [mixture containing a] controlled substance. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant possessed[1] [*identify controlled substance*].

(3)Second, that the defendant knew that [he / she] possessed a controlled substance.

(4)Third, that the defendant intended to deliver the controlled substance to someone else.

(5)Fourth, that the controlled substance that the defendant intended to deliver [was in a mixture that] weighed (*state weight*).[2]

[(6)Fifth, that the defendant was not legally authorized to deliver the controlled substance.][3]

Use Note

[1] For a definition of possession, see M Crim JI 12.7.

[2] This bracketed material should be given where the controlled substance is a narcotic drug classified in Schedule 1 or 2, or a cocaine-related substance as found in MCL 333.7214(a)(iv).

[3] This paragraph should be given only when the defense has presented some competent evidence beyond a mere assertion that the defendant was authorized to deliver the substance. If the defense presents such evidence, the prosecution must prove lack of authorization beyond a reasonable doubt. *People v Pegenau*, 447 Mich 278, 523 NW2d 325 (1994).

McFadden v United States, 576 US ___; 135 S Ct 2298 (2015), held that a prosecutor need not prove that the defendant intended to deliver any particular controlled substance, only that he or she intended to deliver some controlled substance.

History

M Crim JI 12.3 (formerly CJI2d 12.3) was CJI 12:2:00, 12:2:01, 12:2:04; amended August, 2016.

Reference Guide

Statutes

MCL 333.7401,.7105(1), .7214(a)(iv).

Case Law

People v Konrad, 449 Mich 263, 273, 536 NW2d 517 (1995); *People v Pegenau*, 447 Mich 278, 523 NW2d 325 (1994); *People v Wolfe*, 440 Mich 508, 519-520, 489 NW2d 748 (1992); *People v Allen*, 390 Mich 383, 212 NW2d 21 (1973); *People v Harper*, 365 Mich 494, 506-507, 113 NW2d 808, 813-814 (1962); cert den, 371 US 930 (1962); *Peterson v Oceana Circuit Judge*, 243 Mich 215, 219 NW2d 934 (1928); *People v Germaine*, 234 Mich 623, 627, 208 NW 705, 706 (1926); *People v Johnson*, 68 Mich App 697, 243 NW2d 715 (1976). *McFadden v United States*, 576 US ___; 135 S Ct 2298 (2015).

M Crim JI 12.4 Defendant Is a Practitioner or an Agent

[*Choose (1) or (2):*]

[(1)The preparation of a controlled substance by a (*state practitioner*) in the course of his professional practice or employment is legal. If you find that the defendant was a (*state practitioner*) and that he was preparing (*list substance*), you must also be convinced beyond a reasonable doubt that he was not doing so in the course of his professional practice in order to convict him of manufacturing.]

[(2)The preparation of a controlled substance by a pharmacist or physician, or by an authorized agent under the supervision of a pharmacist or physician, for research, teaching, or chemical analysis and not for sale, is legal. If you find that the defendant was a pharmacist or physician, or an authorized agent under the supervision of a pharmacist or physician, and that he was preparing or compounding (*list substance*), you must also be convinced beyond a reasonable doubt that he was not doing so in the course of his professional practice in order to convict him of manufacturing.]

Use Note

This instruction should be given only if some evidence has been presented that the defendant was a practitioner or agent. *People v Wooster*, 143 Mich App 513, 515-518, 372 NW2d 353 (1985); *People v Bates*, 91 Mich App 506, 513-516, 283 NW2d 785 (1979).

History

M Crim JI 12.4 (formerly CJI2d 12.4) was CJI 12:2:05.

Reference Guide

Statutes

MCL 333.7106(2), .7109(3).

M Crim JI 12.5 Unlawful Possession of a Controlled Substance

(1)The defendant is charged with the crime of knowingly or intentionally possessing [(*state weight*) of a mixture containing] the controlled substance, [*identify controlled substance*]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant possessed[1] [*identify controlled substance*].

(3)Second, that the defendant knew that [he / she] possessed a controlled substance.

[(4)Third, that the substance that the defendant possessed [was in a mixture that] weighed (*state weight*).][2]

[(5)[Third / Fourth], that the substance was not obtained by a valid prescription given to the defendant.][3]

[(6) [Third / Fourth / Fifth], that the defendant was not otherwise authorized to possess this substance.][4]

Use Note

[1] For a definition of possession, see M Crim JI 12.7.

[2] This bracketed material should be given where the controlled substance is a narcotic drug classified in Schedule 1 or 2, or a cocaine-related substance as found in MCL 333.7214(a)(iv).

[3] This paragraph should be given only if some evidence has been presented that the defendant had a valid prescription for the substance. See *People v Little*, 87 Mich App 50, 54-55, 273 NW2d 583 (1978), and Use Note 4 below.

[4] This paragraph should be given only when the defense has presented some competent evidence beyond a mere assertion that the defendant was authorized to possess the substance. If the defense presents such evidence, the prosecution must prove lack of authorization beyond a reasonable doubt. *People v Pegenau*, 447 Mich 278, 523 NW2d 325 (1994).

McFadden v United States, 576 US ___; 135 S Ct 2298 (2015), held that a prosecutor need not prove that the defendant intended to deliver any particular controlled substance, only that he or she intended to deliver some controlled substance.

History

M Crim JI 12.5 (formerly CJI2d 12.5) was CJI 12:3:00-12:3:01; amended October, 1993; amended August, 2016.

Reference Guide

Statutes

MCL 333.7403, .7214(a)(iv), .26424, .26427, .26428.

Case Law

State v McQueen, 493 Mich 135, 828 NW2d 644 (2013); *People v Kolanek*, 491 Mich 382, 817 NW2d 528 (2012); *People v Pegenau*, 447 Mich 278, 523 NW2d 325 (1994); *People v Allen*, 390 Mich 383, 212 NW2d 21 (1973); *People v Harper*, 365 Mich 494, 506-507, 113 NW2d 808, 813-814 (1962); cert den, 371 US 930 (1962); *Peterson v Oceana Circuit Judge*, 243 Mich 215; 219 NW 934 (1928); *People v Germaine*, 234 Mich 623, 627, 208 NW 705, 706 (1926); *People v Redden*, 290 Mich App 65, 799 NW2d 184 (2010); *People v Binder (On Remand)*, 215 Mich App 30, 544 NW2d 714 (1996); *People v Puertas*, 122 Mich App 626, 332 NW2d 399 (1983); *People v Stahl*, 110 Mich App 757, 313 NW2d 103 (1981); *People v Delongchamps*, 103 Mich App 151, 302 NW2d 626 (1981); *People v Little*, 87 Mich App 50, 54-55, 273 NW2d 583 (1978); *People v Gould*, 61 Mich App 614, 233 NW2d 109 (1975*); People v Mumford*, 60 Mich App 279, 282-283, 230 NW2d 395 (1975); *People v Davenport*, 39 Mich App 252, 197 NW2d 521 (1972).

M Crim JI 12.6 Unlawful Use of a Controlled Substance

(1)The defendant is charged with the crime of illegally using a controlled substance, _____. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant used a controlled substance.

(3)Second, that the substance used was _____.

(4)Third, that at the time [he / she] used it, the defendant knew the substance was _____.

[(5)Fourth, that the substance was not obtained by a valid prescription given to the defendant.][1]

[(6)Fifth, that the defendant was not otherwise authorized by law to use this substance.][2]

Use Note

[1] This paragraph should be given only if some evidence has been presented that the defendant had a valid prescription. See *People v Little*, 87 Mich App 50, 54-55, 273 NW2d 583 (1978), and Use Note 2 below.

[2] This paragraph should be given only when the defense has presented some competent evidence beyond a mere assertion that the defendant was authorized to possess the substance. If the defense presents such evidence, the prosecution must prove lack of authorization beyond a reasonable doubt. *People v Pegenau*, 447 Mich 278, 523 NW2d 325 (1994).

History

M Crim JI 12.6 (formerly CJI2d 12.6) was CJI 12:4:01; amended October, 1993.

Reference Guide

Case Law

People v Pegenau, 447 Mich 278, 523 NW2d 325 (1994); *People v Little*, 87 Mich App 50, 54-55, 273 NW2d 583 (1978).

M Crim JI 12.7 Meaning of Possession

Possession does not necessarily mean ownership. Possession means that either:

(1)the person has actual physical control of the [substance / thing], as I do with the pen I'm now holding, or

(2)the person has the right to control the [substance / thing], even though it is in a different room or place.

Possession may be sole, where one person alone possesses the [substance / thing].

Possession may be joint, where two or more people each share possession.

It is not enough if the defendant merely knew about the [*state substance or thing*]; the defendant possessed the [*state substance or thing*] only if [he / she] had control of it or the right to control it, either alone or together with someone else.

Use Note

In felony firearm cases, see M Crim JI 11.34b for the applicable definition of *constructive possession*.

History

M Crim JI 12.7 (formerly CJI2d 12.7) was adopted in June, 1995.

Reference Guide

Case Law

People v Burgenmeyer, 461 Mich 431, 606 NW2d 645 (2000); *People v Williams*, 212 Mich App 607, 538 NW2d 89 (1995).

M Crim JI 12.8 Maintaining a Drug House

(1)The defendant is charged with the crime commonly known as knowingly maintaining or keeping a drug house. To prove this charge the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant knowingly kept or maintained a [building / dwelling / vehicle / vessel / (*describe other place*)].

(3)Second, that this [building / dwelling / vehicle / vessel / (*describe other place*)] was:

[*Select (a), (b), and/or (c) as appropriate.*]

(a)frequented by persons for the purpose of illegally using controlled substances.

(b)used for illegally keeping controlled substances.

(c)used for illegally selling controlled substances.

(4)Third, that the defendant knew that the [building / dwelling / vehicle / vessel / (*describe other place*)] was frequented or used for such illegal purposes.

History

M Crim JI 12.8 (formerly CJI2d 12.8) was adopted by the committee in October, 2002, to reflect the elements of this offense. MCL 333.7405(1)(d).

Reference Guide

Statutes

MCL 333.7405(1)(d).

Case Law

People v Thompson, 477 Mich 146, 156-157, 730 NW2d 708 (2007).

CHAPTER 13

Police and Prisons

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M Crim JI 13.1 Assaulting, Resisting, or Obstructing a Police Officer

(1)The defendant is charged with the crime of [assaulting / battering / wounding / resisting / obstructing / opposing / endangering] a [*state authorized person*] who was performing [his / her] duties.[1] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant [assaulted / battered / wounded / resisted / obstructed / opposed / endangered] a [*state authorized person*].[2] ["Obstruct" includes the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.] [The defendant must have actually resisted by what (he / she) said or did, but physical violence is not necessary.]

(3)Second, that the defendant knew or had reason to know that the person the defendant [assaulted / battered / wounded / resisted / obstructed / opposed / endangered] was a [*state authorized person*] performing [his / her] duties at the time.

[*Use the following paragraphs as warranted by the charge and proofs.*]

(4)Third, that such [assaulting / battering / wounding / resisting / obstructing / opposing / endangering] caused the death of the officer.

(5)Third, that such [assaulting / battering / wounding / resisting / obstructing / opposing / endangering] caused serious impairment of a body function to the officer.[3]

(6)Third, that such [assaulting / battering / wounding / resisting / obstructing / opposing / endangering] caused a bodily injury requiring medical attention or medical care to the officer.

Use Note

[1] This instruction is to be used when the defendant is charged with violating MCL 750.81d. A defendant could be charged with assaulting or obstructing an officer performing duties under MCL 750.479. In that case, see M Crim JI 13.2.

[2] "Person" for purposes of this statute is defined to include police officers, deputy sheriffs, firefighters, and emergency medical service personnel, among others. MCL 750.81d(7)(b).

[3] "Serious impairment of a body function" is as defined in the Michigan vehicle code, MCL 257.58c. See M Crim JI 15.12.

History

M Crim JI 13.1 (formerly CJI2d 13.1) was adopted in October, 2004, to reflect the elements of the offense created in 2002 by 2002 PA 266, MCL 750.81d. The prior instruction addressed the elements of a similar offense now encompassed by MCL 750.479 as amended by 2002 PA 270 and found at M Crim JI 13.2.

Reference Guide

Statutes

MCL 257.58c, 750.81d, .479.

Case Law

People v Moreno, 491 Mich 38, 814 NW2d 624 (2012).

M Crim JI 13.2 Assaulting or Obstructing Officer Performing Duties

(1)The defendant is charged with the crime of [assaulting / battering / wounding / obstructing / endangering] a [*state authorized person*] who was acting in the performance of [his / her] duties.[1] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant [assaulted / battered / wounded / obstructed / endangered] a [*state authorized person*][2] who was performing [his / her] duties. ["Obstruct" includes the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.][3]

(3)Second, that the defendant knew the person [assaulted / battered / wounded / obstructed / endangered] was then a [*state authorized person*] performing [his / her] duties.

(4)Third, that the defendant's actions were intended by the defendant, that is, not accidental.

[*Use the following paragraphs when warranted by the charge and proofs:*]

(5)Fourth, that such [assaulting / battering / wounding / obstructing / endangering] caused the death of [*state authorized person*].

(6)Fourth, that such [assaulting / battering / wounding / obstructing / endangering] caused serious impairment of a body function to the [*state authorized person*].[4]

(7)Fourth, that such [assaulting / battering / wounding / obstructing / endangering] caused a bodily injury requiring medical attention or medical care to [*state authorized person*].[5]

Use Note

[1] This instruction should be used when the defendant is charged with violating MCL 750.479. A defendant could be charged under MCL 750.81d with assaulting, resisting, or obstructing an officer. In that event, see M Crim JI 13.1.

[2] The statute lists authorized persons as medical examiner, township treasurer, judge, magistrate, probation officer, parole officer, prosecutor, city attorney, court employee, court officer, or other officer or duly authorized person. MCL 750.479(1)(a).

[3] "Obstruct" is defined in MCL 750.479(8)(a), as amended in 2002.

[4] "Serious impairment of a body function" is defined in MCL 750.479(8)(b), as amended in 2002, to be as defined in the Michigan vehicle code, MCL 257.58c. See M Crim JI 15.12.

[5] This aggravating circumstance could, of course, be the charged or a lesser offense if warranted by the evidence.

History

M Crim JI 13.2 (formerly CJI2d 13.2) was adopted in October, 2004, to reflect the statutory changes found in 2002 PA 270, MCL 750.479.

Reference Guide

Statutes

MCL 257.58c, 750.81d, .479.

Case Law

People v Moreno, 491 Mich 38, 814 NW2d 624 (2012); *People v Philabaun*, 461 Mich 255, 602 NW2d 371 (1999); *People v Little*, 434 Mich 752, 456 NW2d 237 (1990); *People v King*, 236 Mich 405, 210 NW 235 (1926); *People v Chapo*, 283 Mich App 360, 770 NW2d 68 (2009); *People v Delong*, 128 Mich App 1, 339 NW2d 659 (1983); *People v Van Wasshenova*, 121 Mich App 672, 329 NW2d 452 (1982); *People v Gleisner*, 115 Mich App 196, 320 NW2d 340 (1982); *People v Kelley*, 78 Mich App 769, 260 NW2d 923 (1977); *People v Weatherspoon*, 6 Mich App 229, 232, 148 NW2d 889 (1967).

M Crim JI 13.3 Interference with a Police Officer Serving Process [*deleted*]

Note. This instruction was deleted by the committee in October, 2004, in the course of revising portions of this chapter. The offense previously covered by this instruction is now included within M Crim JI 13.2.

M Crim JI 13.4 Assaulting a Police Officer [*deleted*]

Note. This instruction was deleted by the committee in October, 2004, in the course of revising portions of this chapter. The offense previously covered by this instruction is now included within M Crim JI 13.2.

M Crim JI 13.5 Legal Arrest

(1)An arrest is legal if it is:

[*Choose one of the following:*]

(2)Made by an officer relying on an arrest warrant for the defendant issued by a court.

(3)Made by an officer for a crime that [(he / she) reasonably believed] was committed in [his / her] presence, if it was made as soon as reasonably possible afterward.

(4)Made by an officer who had reasonable cause to believe that the crime of _____ was committed by the defendant. "Reasonable cause" means having enough information to lead an ordinarily careful person to believe that the defendant had committed the crime of _____.

(5)Made by an officer for [*state other basis*].

Use Note

This instruction should be used only when the legality of the arrest resisted is in dispute. The committee believes that the legality of the arrest is no longer an element of the offenses found at MCL 750.81d and MCL 750.479. However, the committee retained this instruction since it may prove useful in other circumstances. The trial court should select the appropriate paragraph and tailor paragraph (5), if used, for arrests in those special statutory circumstances not covered by the other paragraphs.

History

M Crim JI 13.5 (formerly CJI2d 13.5) was added in 1990.

Reference Guide

Statutes

MCL 750.81d, .479, 764.1 et seq., .15-.15b.

M Crim JI 13.6a Fleeing and Eluding in the First Degree

(1)The defendant is charged with the crime of fleeing and eluding in the first degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that a [police / conservation] officer was in uniform and was performing [his / her] lawful duties [and that any vehicle driven by the officer was adequately marked as a law enforcement vehicle].

(3)Second, that the defendant was driving a motor vehicle.

(4)Third, that the officer ordered that the defendant stop [his / her] vehicle.

(5)Fourth, that the defendant knew of the order.

(6)Fifth, that the defendant refused to obey the order by trying to flee or avoid being caught.

(7)Sixth, that the violation resulted in the death of another individual.

History

M Crim JI 13.6a (formerly CJI2d 13.6a) was added in September, 1997, to reflect the elements of fleeing and eluding in the first degree in accordance with subsection (1)(5) of 1996 PA 586, MCL 750.479a(5). This offense is a 15-year felony.

Reference Guide

Statutes

MCL 257.602a, 750.479a(5).

Case Law

People v Schaefer, 473 Mich 418, 438-439, 703 NW2d 774 (2005), modified in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d 822 (2006), overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010); *People v Wood*, 276 Mich App 669, 741 NW2d 574 (2007).

M Crim JI 13.6b Fleeing and Eluding in the Second Degree

(1)The defendant is charged with the crime of fleeing and eluding in the second degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that a [police / conservation] officer was in uniform and was performing [his / her] lawful duties [and that any vehicle driven by the officer was adequately marked as a law enforcement vehicle].

(3)Second, that the defendant was driving a motor vehicle.

(4)Third, that the officer ordered that the defendant stop [his / her] vehicle.

(5)Fourth, that the defendant knew of the order.

(6)Fifth, that the defendant refused to obey the order by trying to flee or avoid being caught.

[*Choose one or more of the following alternatives:*]

(7)Sixth, that the violation resulted in serious impairment of a body function* to an individual.

or

(8)Sixth, that the defendant has one or more prior convictions for first-, second-, or third-degree fleeing and eluding; attempted first-, second-, or third-degree fleeing and eluding; or fleeing and eluding under a current or former law of this state prohibiting substantially similar conduct.

or

(9)Sixth, that the defendant has any combination of two or more prior convictions for fourth-degree fleeing and eluding, attempted fourth-degree fleeing and eluding, or fleeing and eluding under a current or former law of this state prohibiting substantially similar conduct.

Use Note

*The statute, MCL 750.479a(9), incorporates the statutory definition of "serious impairment of body function" found at MCL 257.58c: "Serious impairment of a body function" includes, but is not limited to, 1 or more of the following:

(a)Loss of a limb or loss of use of a limb.
(b)Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
(c)Loss of an eye or ear or loss of use of an eye or ear.
(d)Loss or substantial impairment of a bodily function.
(e)Serious visible disfigurement.
(f)A comatose state that lasts for more than 3 days.
(g)Measurable brain or mental impairment.
(h)A skull fracture or other serious bone fracture.

(i)Subdural hemorrhage or subdural hematoma.
(j)Loss of an organ.

History

M Crim JI 13.6b (formerly CJI2d 13.6b) was added in September, 1997, to reflect the elements of fleeing and eluding in the second degree in accordance with subsection (1)(4) of 1996 PA 586, MCL 750.479a(4). This offense is a ten-year felony. Paragraph (7) of this instruction was modified in September, 2003, to indicate that rather than "serious injury" the conduct must cause "serious impairment of a body function" in accordance with 2002 PA 270, effective July 15, 2002.

Reference Guide

Statutes

MCL 750.479a(4).

M Crim JI 13.6c Fleeing and Eluding in the Third Degree

(1)The defendant is charged with the crime of fleeing and eluding in the third degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that a [police / conservation] officer was in uniform and was performing [his / her] lawful duties [and that any vehicle driven by the officer was adequately marked as a law enforcement vehicle].

(3)Second, that the defendant was driving a motor vehicle.

(4)Third, that the officer ordered that the defendant stop [his / her] vehicle.

(5)Fourth, that the defendant knew of the order.

(6)Fifth, that the defendant refused to obey the order by trying to flee or avoid being caught.

[*Choose one or more of the following alternatives:*]

(7)Sixth, that the violation resulted in a collision or accident.

or

(8)Sixth, some portion of the violation took place in an area where the speed limit was 35 miles per hour or less [whether as posted or as a matter of law].

or

(9)Sixth, that the defendant has a prior conviction for fleeing and eluding in the fourth-degree, attempted fleeing and eluding in the fourth-degree, or fleeing and eluding under a current or former law of this state prohibiting substantially similar conduct.

History

M Crim JI 13.6c (formerly CJI2d 13.6c) was added in September, 1997, to reflect the elements of fleeing and eluding in the third degree in accordance with subsection (1)(3) of 1996 PA 586, MCL 750.479a(3). This offense is a five-year felony.

Reference Guide

Statutes

MCL 750.479a(3).

Case Law

People v Abramski, 257 Mich App 71, 665 NW2d 501 (2003); *People v Grayer*, 235 Mich App 737, 741-742, 599 NW2d 527 (1999), appeal after remand, 252 Mich App 349, 651 NW2d 818 (2002).

M Crim JI 13.6d Fleeing and Eluding in the Fourth Degree

(1)The defendant is charged with the crime of fleeing and eluding in the fourth degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that a [police / conservation] officer was in uniform and was performing [his / her] lawful duties [and that any vehicle driven by the officer was adequately marked as a law enforcement vehicle].

(3)Second, that the defendant was driving a motor vehicle.

(4)Third, that the officer ordered that the defendant stop [his / her] vehicle.

(5)Fourth, that the defendant knew of the order.

(6)Fifth, that the defendant refused to obey the order by trying to flee or avoid being caught.

History

M Crim JI 13.6d (formerly CJI2d 13.6d) was added in September, 1997, to reflect the elements of fleeing and eluding in the fourth degree in accordance with subsection (1)(2) of 1996 PA 586, MCL 750.479a(2). This offense is a two-year felony.

Reference Guide

Statutes

MCL 750.479a(2).

Case Law

People v Green, 260 Mich App 710, 680 NW2d 477 (2004); *People v Landrie*, 124 Mich App 480, 335 NW2d 11 (1983); *People v Harrell*, 54 Mich App 554, 221 NW2d 411 (1974), aff'd, 398 Mich 384, 247 NW2d 829 (1976).

M Crim JI 13.7 Aiding the Escape of a Prisoner

(1)The defendant is charged with the crime of assisting the escape of a prisoner. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that _____ was a prisoner in [*state place of confinement*].

(3)Second, that _____ was legally committed to or held in this facility.

[*Choose one of the four alternatives that follow:*]

[*First Alternative:*]

(4)Third, that the defendant knowingly took or sent a [*state object*] into [*state place of confinement*], intending to help a prisoner escape.*

(5)Fourth, that this [*state object*] could be used to help the prisoner escape.

[*Second Alternative:*]

(6)Third, that the defendant intentionally assisted a prisoner who was trying to escape. It does not matter whether the escape itself was made or even attempted, but the defendant must have intended to assist the escape of the prisoner.*

[*Third Alternative:*]

(7)Third, that the defendant's act helped a prisoner escape.

(8)Fourth, that the defendant knew when [he / she] did this act that it created a substantial risk that a prisoner would escape.

[*Fourth Alternative:*]

(9)Third, that the defendant helped a prisoner escape by the use of force.

Use Note

*These alternatives are for use where the escape may not have been completed and where there might be some question of the sufficiency of the voluntary act of the defendant.

History

M Crim JI 13.7 (formerly CJI2d 13.7) was CJI 13:3:01.

Reference Guide

Statutes

MCL 750.183.

Case Law

People v Gardineer, 334 Mich 663, 55 NW2d 145 (1952); *People v Hamaker*, 92 Mich 11, 52 NW 82 (1892); *People v Potts*, 55 Mich App 622, 223 NW2d 96 (1974).

M Crim JI 13.8 Breaking, Escaping, or Attempting to Break or Escape from Prison

(1)The defendant is charged with the crime of escaping or attempting to escape from prison. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant had been sentenced to a term of imprisonment and was serving that term at the time of the alleged crime.

(3)Second, that the facility the defendant was held in was a prison. [The term "prison" includes a state prison, penitentiary, reformatory, state house of correction, community residential (corrections) center operated or leased by the department of corrections, and prison camp. It also includes the grounds, farm, shop, road camp, and any place of employment operated by the facility or under the control of the facility's officers, the corrections department, a police officer, or any other person authorized to care for, keep, or supervise an inmate for any reason.][1]

(4)Third, that the administrative offices of [*state penal facility*] are located in _____ County.

(5)Fourth, that the defendant:

[*Choose one of the following:*]

(a)escaped from prison.

(b)attempted to escape from prison. An attempt has two elements. First, the defendant must have intended to escape from prison. Second, the defendant must have taken some action toward escaping, but failed to complete the escape. It is not enough to prove that the defendant made preparations for escaping. Things like planning the escape or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the escape would have been completed if it hadn't been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the escape and not some other goal.[2]

(c)escaped from the custody of a [guard / prison official / employee of the prison] while outside of the prison.

(d)had been released from prison under a work pass program but [violated the terms of the release / failed to return to prison within the time ordered to return]. A work pass program allows a prisoner to leave prison in order to work, but [he / she] is under the supervision of the prison and must obey the rules of the prison and return within the time [he / she] is ordered to return.

(e)left the prison without being legally discharged from it.

(f)escaped from a mental health facility to which [he / she] had been admitted from prison.[3]

Use Note

[1] Use appropriate bracketed material if there is some question about whether or not the facility was a prison. The definition of prison is from MCL 750.193(2).

[2] Escape is a general intent crime. See *People v Spald*ing, 17 Mich App 73, 169 NW2d 163 (1969), construing the prison escape statute. But see *People v Benevides*, 204 Mich App 188, 192, 514 NW2d 208 (1994), holding that "prison escape requires proof that the defendant intended to escape from known confinement." However, any attempt to commit an offense is a specific intent crime. See *People v Langworthy*, 416 Mich 630, 644-645, 331 NW2d 171 (1982); *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979) (Opinion of Levin, J.).

[3] The admission to a mental health facility must have been pursuant to MCL 330.2000.

History

M Crim JI 13.8 (formerly CJI2d 13.8) was CJI 13:4:01.

Reference Guide

Statutes

MCL 750.193(2).

Case Law

People v Langworthy, 416 Mich 630, 644-645, 331 NW2d 171 (1982); *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979) (Opinion of Levin, J.); *People v Luther*, 394 Mich 619, 232 NW2d 184 (1975); *People v Sheets*, 223 Mich App 651, 567 NW2d 478 (1997); *People v Benevides*, 204 Mich App 188, 192, 514 NW2d 208 (1994); *People v Wyngaard*, 159 Mich App 304, 406 NW2d 280 (1987); *People v Stephens*, 103 Mich App 640, 303 NW2d 51 (1981); *People v Martin*, 100 Mich App 447, 298 NW2d 900 (1980); *People v Stubblefield*, 100 Mich App 354, 356, 299 NW2d 4 (1980); *People v Crawford*, 66 Mich App 581, 591, 239 NW2d 670 (1976); *People v Spalding*, 17 Mich App 73, 169 NW2d 163 (1969).

M Crim JI 13.9 Lawfulness of Confinement / Affirmative Defense

(1)There has been some evidence that the defendant was illegally imprisoned at the time of [his / her] [attempt to] escape. A person has the right to [attempt to] escape if [he / she] is illegally imprisoned or if [his / her] imprisonment has legally ended.

[(2)Just because a conviction has been reversed or the defendant is appealing a point of law that led to (his / her) imprisonment does not make the imprisonment illegal. In such a situation, a prisoner is not justified in escaping and must use proper methods to challenge (his / her) conviction.]

Use Note

This instruction should be given only where unlawfulness of confinement has been raised as an affirmative defense.

History

M Crim JI 13.9 (formerly CJI2d 13.9) was CJI 13:4:02.

Reference Guide

Case Law

People v Marsh, 156 Mich App 831, 402 NW2d 100 (1986).

M Crim JI 13.10 Jail Escape—Defendant Sentenced to Jail

(1)The defendant is charged with the crime of escaping or attempting to escape from jail. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant had been sentenced to jail for a [misdemeanor / felony].

(3)Second, that the defendant:

[*Choose one of the following:*]

(a)broke out of jail and escaped.

(b)broke out of jail, though [he / she] did not actually escape.

(c)left the jail without being legally discharged from it.

(d)attempted to escape from jail. An attempt has two elements. First, the defendant must have intended to escape from jail. Second, the defendant must have taken some action toward escaping, but failed to complete the escape. It is not enough to prove that the defendant made preparations for escaping. Things like planning the escape or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the escape would have been completed if it hadn't been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the escape and not some other goal.

Use Note

Escape is a general intent crime. See *People v Spalding*, 17 Mich App 73, 169 NW2d 163 (1969), construing the prison escape statute. However, any attempt to commit an offense is a specific intent crime. *See People v Langworthy*, 416 Mich 630, 644-645, 331 NW2d 171 (1982); *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979) (Opinion of Levin, J.).

History

M Crim JI 13.10 (formerly CJI2d 13.10) was CJI 13:6:01.

Reference Guide

Statutes

MCL 750.195.

Case Law

People v Langworthy, 416 Mich 630, 644-645, 331 NW2d 171 (1982); *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979) (Opinion of Levin, J.); *People v Spalding*, 17 Mich App 73, 169 NW2d 163 (1969).

M Crim JI 13.11 Jail Escape—Pending Trial or Transfer to Prison

(1)The defendant is charged with the crime of escaping or attempting to escape from jail. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant was in jail [or a legal place of confinement] awaiting examination, trial, arraignment, sentencing for a [misdemeanor / felony], or transfer to or from prison after conviction.

(3)Second, that the defendant:

[*Choose one of the following:*]

(a)broke out of jail and escaped.

(b)broke out of jail, though [he / she] did not actually escape.

(c)left the jail without being legally discharged from it.

(d)attempted to escape from jail. An attempt has two elements. First, the defendant must have intended to escape from jail. Second, the defendant must have taken some action toward escaping, but failed to complete the escape. It is not enough to prove that the defendant made preparations for escaping. Things like planning the escape or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the escape would have been completed if it hadn't been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the escape and not some other goal.

(e)broke out of jail or escaped while in or being transferred to or from a courtroom or courthouse, or a place where court is held.

Use Note

Escape is a general intent crime. See *People v Spalding*, 17 Mich App 73, 169 NW2d 163 (1969), construing the prison escape statute. However, any attempt to commit an offense is a specific intent crime. See *People v Langworthy*, 416 Mich 630, 644-645, 331 NW2d 171 (1982); *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979) (opinion of Levin, J.).

History

M Crim JI 13.11 (formerly CJI2d 13.11) was CJI 13:6:02.

Reference Guide

Statutes

MCL 750.197, .197a.

Case Law

People v Langworthy, 416 Mich 630, 644-645, 331 NW2d 171 (1982); *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979) (Opinion of Levin, J.); *People v Taylor*, 238 Mich App 259, 604 NW2d 783 (1999); *People v Jones*, 190 Mich App 509, 476 NW2d 646 (1991); *People v Spalding*, 17 Mich App 73, 169 NW2d 163 (1969).

M Crim JI 13.12 Jail—Definition

A jail includes any place operated by [_____ County / the City of _____] for detaining people charged with or convicted of a crime [or contempt of court].

Use Note

This instruction should be given on request of either party.

History

M Crim JI 13.12 (formerly CJI2d 13.12) was CJI 13:6:03.

Reference Guide

Statutes

MCL 750.195(4).

M Crim JI 13.13 Escape from Day Parole

A person released from jail in order to [work / look for work / conduct business / go to school / get medical treatment / get substance abuse treatment / get mental health counselling] is not guilty of jail escape simply because [he / she] is late returning to jail. The prosecutor must prove beyond a reasonable doubt that the defendant intended to escape when [he / she] failed to return to the jail on time.

Use Note

This instruction should be given only where the defendant is charged with escape after failing to return from day parole.

History

M Crim JI 13.13 (formerly CJI2d 13.13) was CJI 13:6:04.

Reference Guide

Statutes

MCL 801.251(1).

M Crim JI 13.14 Breaking Jail with Violence

(1)The defendant is charged with the crime of breaking out of [and escaping from / but not escaping from] [*state place of confinement*] by using violence. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant was confined at [*state place of confinement*].

(3)Second, that [he / she] was legally confined there.

(4)Third, that [he / she] broke out of [*state place of confinement*] [and escaped / but did not escape].

(5)Fourth, that [he / she] did this by using [violence / threats of violence / a dangerous weapon].

Use Note

When the use of a dangerous weapon is alleged, give the definition of dangerous weapon, M Crim JI 11.18. See *People v Macklin*, 46 Mich App 297, 208 NW2d 62 (1973).

History

M Crim JI 13.14 (formerly CJI2d 13.14) was CJI 13:8:01.

Reference Guide

Statutes

MCL 750.197c.

Case Law

People v Cousins, 139 Mich App 583, 596, 363 NW2d 285 (1984); *People v Anderson*, 83 Mich App 744, 747, 269 NW2d 288 (1978); *People v Macklin*, 46 Mich App 297, 208 NW2d 62 (1973).

M Crim JI 13.15 Assaulting Employee of Place of Confinement

(1)The defendant is charged with the crime of assaulting an employee of [*state place of confinement*]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant was confined at [*state place of confinement*].

(3)Second, that [he / she] was legally confined there.

(4)Third, that [he / she] assaulted an employee of [*state place of confinement*]. To prove that there was an assault, the prosecutor must prove each of the following elements beyond a reasonable doubt: [*state elements of assault*].*

(5)Fourth, that at the time of the assault, the defendant knew that [*name complainant*] was an employee of [*state place of confinement*].

Use Note

*Use M Crim JI 17.1. This is a specific intent crime. See *People v Norwood*, 123 Mich App 287, 333 NW2d 255, lv den, 417 Mich 1006 (1983).

When the use of a dangerous weapon is alleged, give the definition of dangerous weapon, M Crim JI 11.18. See *People v Macklin*, 46 Mich App 297, 208 NW2d 62 (1973).

Place of confinement in this context may include a prison. See *People v Wingo*, 95 Mich App 101, 290 NW2d 93 (1980).

History

M Crim JI 13.15 (formerly CJI2d 13.15) was CJI 13:8:02; amended October, 1993.

Reference Guide

Statutes

MCL 750.197c.

Case Law

People v Clay, 463 Mich 971, 623 NW2d 597 (2001), (*After Remand*) 468 Mich 261, 661 NW2d 572 (2003); *People v Neal*, 233 Mich App 649, 592 NW2d 95 (1999); *People v Ovalle*, 222 Mich App 463, 564 NW2d 147 (1997); *People v Terry*, 217 Mich App 660, 553 NW2d 23 (1996); *People v Hurse*, 152 Mich App 811, 394 NW2d 119 (1986); *People v Norwood*, 123 Mich App 287, 333 NW2d 255, lv den, 417 Mich 1006 (1983); *People v Johnson*, 115 Mich App 630, 321 NW2d 752 (1982); *People v Bellafant*, 105 Mich App 788, 307 NW2d 422 (1981); *People v Boyd*, 102 Mich App 112, 300 NW2d 760 (1980); *People v Wingo*, 95 Mich App 101, 290 NW2d 93 (1980); *People v Macklin*, 46 Mich App 297, 208 NW2d 62 (1973).

M Crim JI 13.16 Forfeiting a Bond

(1)The defendant is charged with the crime of forfeiting a bond that was posted in a criminal case. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant gave a bond in a criminal proceeding in which a felony was charged. [(*State offense*) is a felony.]

(3)Second, that the defendant forfeited that bond by intentionally or recklessly violating a condition of the bond. In this case, the prosecution claims the condition of the defendant's bond that was violated was [*state condition*].

(4)Third, that the defendant had notice of the condition of the bond that the prosecution claims was violated.

History

M Crim JI 13.16 (formerly CJI2d 13.16) was adopted by the committee in June, 1994.

Reference Guide

Statutes

MCL 750.199a.

Case Law

People v Demers, 195 Mich App 205, 208, 489 NW2d 173 (1992); *People v Rorke*, 80 Mich App 476, 478-479, 264 NW2d 30 (1978).

M Crim JI 13.17 Absconding on a Bond

The defendant is charged with the crime of absconding on a bond posted in a criminal case. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(1)First, that the defendant gave a bond in a criminal proceeding in which a felony was charged. [(*State charge*) is a felony.] [A bond is an agreement to do certain things, including to appear in court when required.]

(2)Second, that the defendant absconded on the bond. Absconding means to leave the jurisdiction of the court or to hide or conceal oneself in order to avoid legal process.

History

M Crim JI 13.17 (formerly CJI2d 13.17) was adopted by the committee in June, 1994.

Reference Guide

Statutes

MCL 750.199a.

Case Law

People v Perryman, 432 Mich 235, 439 NW2d 243 (1989); *People v Williams*, 243 Mich App 333, 620 NW2d 906 (2000); *People v McClain*, 218 Mich App 613, 554 NW2d 608 (1996); *People v Demers*, 195 Mich App 205, 208, 489 NW2d 173 (1992); *People v Litteral*, 75 Mich App 38, 41, 254 NW2d 643 (1977).

M Crim JI 13.18 Disarming a Peace Officer/Corrections Officer

(1)The defendant is charged with taking a [firearm / (*state type of weapon*)] from the lawful possession of a [*state title of (peace officer / corrections officer)*].* To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant knew or had reason to believe that the person from whom the [firearm / (*state type of weapon*)] was taken was a [*state title of (peace officer / corrections officer)*].

(3)Second, that at the time of the offense the [*state title of (peace officer / corrections officer)*] was performing [his / her] duties as a [*state title of (peace officer / corrections officer)*].

(4)Third, that the defendant took the [firearm / (*state type of weapon*)] without the consent of the [*state title of (peace officer / corrections officer)*].

(5)Fourth, that at the time of the offense the [*state title of (peace officer / corrections officer)*] was authorized by [his / her] employer to carry the [firearm / (*state type of weapon*)] in the line of duty.

Use Note

**Peace officer* is defined by statute, MCL 750.479b(5)(b), as is *corrections officer*, MCL 750.479b(5)(a).

History

M Crim JI 13.18 (formerly CJI2d 13.18) was adopted by the committee in March, 1995 to reflect the elements of the new offense of disarming an officer, added by 1994 PA 33, effective June 1, 1994, MCL 750.479b.

Reference Guide

Statutes

MCL 750.479b.

M Crim JI 13.19 False Report of a Felony

(1)The defendant is charged with making a false report in connection with a felony to the police. To prove this charge the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, the defendant reported to a [state trooper / deputy sheriff / police officer / (*state other peace officer*)] that a crime had been committed.

(3)Second, that this report was false as to either the fact or the detail[s] of the crime.

(4)Third, that when the defendant made the report, the defendant knew it was false.

(5)Fourth, that the defendant intended to make a false report concerning a crime.

(6)Fifth, that the crime reported was a felony, i.e., an offense [punishable by more than one year incarceration / declared by statute to be a felony].

Use Note

This instruction does not cover false report of bomb threats, which is addressed separately in the statute MCL 750.411a(2).

History

M Crim JI 13.19 (formerly CJI2d 13.19) was adopted by the committee in October, 2002; amended in May, 2003.

Reference Guide

Case Law

People v Chavis, 468 Mich 84, 94, 658 NW2d 469 (2003).

M Crim JI 13.20 Concealing Facts or Misleading the Police

(1)The defendant is charged with the crime of [concealing a material fact / making a false or misleading statement / providing a false or misleading document] to a peace officer in a criminal investigation. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that [*name complainant*] was a peace officer who was conducting an investigation of a criminal offense.[1]

(3)Second, that the crime being investigated by [*name complainant*] was [*identify criminal offense*].

(4)Third, that [*name complainant*] informed the defendant that [he / she] was conducting a criminal investigation.

(5)Fourth, that the defendant

[*Choose from the following:*]

(a)concealed information relating to that investigation from the officer by some trick, scheme, or device. Using a trick, scheme, or device means acting in a way intended to deceive others.

(b)provided false information regarding that investigation to the peace officer in a [statement / document] that the defendant knew was false or misleading.

(6)Fifth, that the defendant acted knowingly and willfully. That is, the defendant [concealed the information / provided the false information] voluntarily and intentionally with the intent to deceive, and not because of mistake or some other innocent reason.

(7)Sixth, that the [information allegedly concealed / allegedly false information provided] involved a material fact. A material fact is information that a reasonable person would use to decide whether to do or not do something. A fact is material if it has the capacity or natural tendency to influence an officer's decision how to proceed with an investigation.

[*Use (8) and/or (9) in appropriate cases:*]

(8)You may consider whether the officer relied on the information in deciding whether it was a material fact. However, it is not a defense to the charge that the officer did not rely on the information if you determine beyond a reasonable doubt that the defendant intended to [conceal the information from the officer by trick, scheme, or device / provide false information].

(9)It is not a defense to the charge that the officer was able to obtain the information from another source or by different means if you determine beyond a reasonable doubt that the defendant intended to [conceal the information from the officer by trick, scheme, or device / provide false information].

Use Note

[1] If there is a contest as to whether the investigating individual was a peace officer, an instruction on the appropriate

definition involved should be given. See MCL 750.479c(5)(b).

M Crim JI 13.20a should be given where the defendant claims to have been the victim of the crime being investigated, acted out of duress, or remained silent or otherwise exercised Fifth Amendment rights.

History

M Crim JI 13.20 was adopted in June 2015.

Reference Guide

Statutes

MCL 750.479c(1), (2), and (5); MCL 780.811(a)

Staff Comments

The baseline of the offense is a "serious" misdemeanor, MCL 780.811. The statute does not apply to investigations of other misdemeanors, and a violation is punishable by 93 days in jail and /or a fine of $500. The penalty is then aggravated depending on the offense under investigation, the greatest penalty being a four-year felony. Because the maximum possible penalty is enhanced depending on the offense that was under investigation, the offense for which the investigation was being conducted must be found by the jury beyond a reasonable doubt. *Blakely v Washington*, 542 US 296, 124 S Ct 2531, 159 L Ed 2d 403 (2004). On conviction, MCL 750.479c(2) must be consulted to ascertain into which group of offenses being investigated the conviction falls for sentencing purposes.

M Crim JI 13.20a Misleading the Police; Defenses

(1)The defendant says that [he / she] has a legal defense to the charge.

[*Choose (2) or (3):*]

(2)The defendant says that the statute does not apply because

[*Choose appropriate provision(s):*]

(a)the defendant was the alleged victim of the crime being investigated.

(b)the defendant's action was done under duress because the defendant had a reasonable fear that [he / she / (name other person)] was in danger of physical harm from

[*Select appropriate relationship:*]

(i)the defendant's [spouse / former spouse].

(ii)a person with whom the defendant had a dating relationship.[1]

(iii)a person with whom the defendant has a child in common.

(iv)a [resident / former resident] of a household with the defendant.

(3)The defendant says that, when [he / she] was informed by a peace officer that the officer was conducting a criminal investigation, the defendant

[*Choose appropriate provision(s):*]

(a)told the officer that [he / she] was exercising [his / her] Fifth Amendment rights.

(b)simply refused to answer.

(4)If you find that the evidence raises a reasonable doubt as to whether

[*Choose (a) or (b):*]

(a)the statute applies,

(b)the defendant exercised [Fifth Amendment rights / simply refused to answer], then you must find the defendant not guilty.

Use Note

[1] "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between two persons in a business or social context.

History

M Crim JI 13.20a was adopted in June 2015.

Reference Guide

Statutes

MCL 750.479c(3) and (4)

CHAPTER 14 *Perjury*

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M Crim JI 14.1 Perjury Committed in Courts

(1)The defendant is charged with the crime of perjury in a court proceeding. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant was legally required to take an oath in a proceeding in a court of justice. [An oath is a solemn promise to tell the truth.]*

(3)Second, that the defendant took that oath.

(4)Third, that while under that oath the defendant made a false statement. The statement that is alleged to have been made in this case is that [*give details of alleged false statement*].

(5)Fourth, that the defendant knew that the statement was false when [he / she] made it.

Use Note

*If appropriate, substitute "affirmation" for "oath."

History

M Crim JI 14.1 (formerly CJI2d 14.1) was CJI 14:1:01 and was last amended by the committee in October, 2004.

Reference Guide

Statutes

MCL 750.422.

Case Law

People v Lively, 470 Mich 248, 680 NW2d 878 (2004); *People v Cash*, 388 Mich 153, 162; 200 N.W.2d 83 (1972); *People v McIntire*, 232 Mich App 71, 116, 591 NW2d 231 (1998), rev'd on other grounds, 461 Mich 147, 599 NW2d 102 (1999); *People v Kozyra*, 219 Mich App 422, 428-429, 556 NW2d 512 (1996); *People v Honeyman*, 215 Mich App 687, 691, 546 NW2d 719 (1996); *People v Jeske*, 128 Mich App 596, 604, 341 NW2d 778 (1983); *People v Kasparis*, 107 Mich App 294, 309 NW2d 241 (1981*); People v Hoag*, 89 Mich App 611, 619, 281 NW2d 137 (1979); *People v Longuemire*, 87 Mich App 395, 275 NW2d 12 (1978).

M Crim JI 14.2 Perjury

(1)The defendant is charged with the crime of perjury. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant took an oath to tell the truth. [An oath is a solemn promise to tell the truth.]*

(3)Second, that the oath was [authorized / required] by a law of the state of Michigan. An oath is [authorized / required] by [*state law of requirement under which the oath was allegedly taken*].

(4)Third, that while under oath the defendant made a false statement. The statement that is alleged to have been false in this case is that [*give details of alleged false statement*].

(5)Fourth, that the defendant knew that the statement was false when [he / she] made it.

Use Note

*If appropriate, substitute "affirmation" for "oath."

History

M Crim JI 14.2 (formerly CJI2d 14.2) was CJI 14:2:01 and was last amended by the committee in October, 2004.

Reference Guide

Statutes

MCL 750.423.

Case Law

People v Lively, 470 Mich 248, 680 NW2d 878 (2004); *People v Ramos*, 430 Mich 544, 424 NW2d 509 (1988); *People v Mankin*, 225 Mich 246, 250, 196 NW 426 (1923); *Smith v Hubbell*, 142 Mich 637, 648-649, 106 NW2d 547 (1906); *People v Jeske*, 128 Mich App 596, 341 NW2d 778 (1983); *People v Kasparis*, 107 Mich App 294, 300, 309 NW2d 241 (1981).

M Crim JI 14.3 Subornation of Perjury

(1)The defendant is charged with the crime of persuading another person to commit perjury. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant tried to get another person to make a false statement under oath.*

(3)Second, that the defendant knew that the statement was false at that time.

(4)Third, that as a result the other person made a false statement under oath.

(5)Fourth, that the oath was [authorized / required] by a law of the state of Michigan. An oath is [authorized / required] by [*state law or requirement under which the oath was allegedly taken*].

Use Note

*If appropriate, substitute "affirmation" for "oath."?

History

M Crim JI 14.3 (formerly CJI2d 14.3) was CJI 14:3:01 and was last amended by the committee in October, 2004.

Reference Guide

Statutes

MCL 750.424.

Case Law

People v Lively, 470 Mich 248, 680 NW2d 878 (2004); *People v McCumby*, 130 Mich App 710, 344 NW2d 338 (1983); *People v Sesi*, 101 Mich App 256, 264, 300 NW2d 535 (1980).

M Crim JI 14.4 Attempted Subornation of Perjury

(1)The defendant is charged with the crime of attempting to persuade another person to commit perjury. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant did or said something in an effort to persuade another person to make a false statement under oath. It does not matter whether anyone actually made a false statement under oath. This crime is completed as soon as the defendant tried to persuade another person to make a false statement.*

(3)Second, that the defendant knew that the statement was false at that time.

(4)Third, that the oath was [authorized / required] by a law of the state of Michigan. An oath is [authorized / required] by [*state law or requirement under which the oath was allegedly taken*].

Use Note

*If appropriate, substitute "affirmation" for "oath."?

History

M Crim JI 14.4 (formerly CJI2d 14.4) was CJI 14:4:01 and was last amended by the committee in October, 2004.

Reference Guide

Statutes

MCL 750.425.

Case Law

People v Lively, 470 Mich 248, 680 NW2d 878 (2004); *People v Mosley*, 338 Mich 559, 567, 61 NW2d 785 (1953); *People v Clement*, 127 Mich 130, 132, 86 NW 535 (1901); *People v Sesi*, 101 Mich App 256, 300 NW2d 535 (1980).

CHAPTER 15

Traffic Offenses

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M Crim JI 15.1 Operating While Intoxicated [OWI]

[The defendant is charged with / You may also consider the less serious charge of] operating a motor vehicle [*Choose from the following*:]

(1)with an unlawful bodily alcohol level; [and/or]

(2)while under the influence of alcohol; [or]

(3)while under the influence of a controlled substance; [or]

(4)while under the influence of an intoxicating substance; [or]

(5)while under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance].[1]

Use Note

[1] Select the appropriate combination of alcohol/substances based on the evidence presented.

History

M Crim JI 15.1 (formerly CJI2d 15.1) was added in 1990. Amended October, 1993; amended June, 1995 to reflect statutory changes in 1994 PA 449 and 450; amended September, 2003, to reflect the statutory changes in 2003 PA 61, effective September 30, 2003; amended December 2014 to reflect changes under 2012 PA 543; amended December 2015 to reflect changes under 2008 PA 463.

Reference Guide

Statutes

MCL 257.625.

M Crim JI 15.1a Operating With High Bodily Alcohol Content [OWHBAC]

(1)The defendant is charged with operating a motor vehicle with a high bodily alcohol content. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt.

(2)First, that the defendant was operating a motor vehicle on or about [state date]. Operating means driving or having actual physical control of the vehicle.

(3)Second, that the defendant was operating a vehicle on a highway or other place open to the public or generally accessible to motor vehicles [, including an area designated for parking vehicles].

(4)Third, that the defendant operated the vehicle with a bodily alcohol content of 0.17 grams or more per [100 milliliters of blood / 210 liters of breath / 67 milliliters of urine].

Use Note

Lesser offense instructions for the offenses of operating while intoxicated and operating while visibly impaired involving the consumption of alcohol must be given. See appropriate provisions of M Crim JI 15.1, 15.2, 15.3 and 15.4.

History

M Crim JI 15.1a was added in December 2015 to reflect changes under 2008 PA 463.

Reference Guide

Statutes

MCL 257.625.

M Crim JI 15.2 Elements Common to Operating While Intoxicated [OWI] and Operating While Visibly Impaired [OWVI]

To prove that the defendant operated while intoxicated [or while visibly impaired], the prosecutor must prove each of the following elements beyond a reasonable doubt:

(1)First, that the defendant was operating a motor vehicle [on or about (*state date*)]. Operating means driving or having actual physical control of the vehicle.

(2)Second, that the defendant was operating a vehicle on a highway or other place open to the public or generally accessible to motor vehicles.

(3)Third, that the defendant was operating the vehicle in the [county / city] of _____.

History

M Crim JI 15.2 (formerly CJI2d 15.2) was amended October, 1993; amended June, 1995; amended September, 2003, to reflect the statutory changes in 2003 PA 61, effective September 30, 2003.

Reference Guide

Statutes

MCL 257.625.

M Crim JI 15.3 Specific Elements of Operating While Intoxicated [OWI]

(1)To prove that the defendant operated a motor vehicle while intoxicated, the prosecutor must also prove beyond a reasonable doubt that the defendant [*choose from the following*]:

(a)operated the vehicle with a bodily alcohol level of 0.08 grams or more [per 100 milliliters of blood / 210 liters of breath / 67 milliliters of urine];[1]

(b)was under the influence of alcohol while operating the vehicle;

(c)was under the influence of a controlled substance while operating the vehicle;

(d)was under the influence of an intoxicating substance while operating the vehicle;

(e)was under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance][2] while operating the vehicle.

[*Choose (i) or (ii) as appropriate:*]

(i)[*Name substance*] is a controlled substance.

(ii)An intoxicating substance is a substance in any form, including but not limited to vapors and fumes, other than food, that was taken into the defendant's body in any manner, that is used in a manner or for a purpose for which it was not intended, and that may result in a condition of intoxication.

(2)["Under the influence of alcohol" / "Under the influence of a controlled substance" / "Under the influence of an intoxicating substance"] means that because of [drinking alcohol / using or consuming a controlled substance / consuming or taking into [his / her] body an intoxicating substance], the defendant's ability to operate a motor vehicle in a normal manner was substantially lessened. To be under the influence, a person does not have to be falling down or hardly able to stand up. On the other hand, just because a person has [drunk alcohol or smells of alcohol / consumed or used a controlled substance / consumed or used an intoxicating substance] does not prove, by itself, that the person is under the influence of [alcohol / a controlled substance / an intoxicating substance]. The test is whether, because of [drinking alcohol / using or consuming a controlled substance / consuming or taking into [his / her] body an intoxicating substance], the defendant's mental or physical condition was significantly affected and the defendant was no longer able to operate a vehicle in a normal manner.

Use Note

[1]If the defendant is charged with OWI by virtue of bodily alcohol content only, use the appropriate bracketed material in this paragraph (1)(a) and do not use any of the following paragraphs (1)(b) through (4). If the defendant is charged with OWI by virtue of operating under the influence of alcohol, a controlled substance or an intoxicating substance only, do not use this paragraph (1)(a), but use the appropriate alternative paragraphs (1)(b)-(e) with the associated paragraph (2), (3) or (4). If the defendant is charged with OWI alternatively as having an unlawful bodily alcohol content or operating under the influence of alcohol or a substance, use the appropriate paragraphs based on the evidence presented.

[2] Select the appropriate combination of alcohol or substances based on the evidence presented.

History

M Crim JI 15.3 (formerly CJI2d 15.3) was amended October, 1993, and June, 1995 to reflect changes in 1994 PA 449 and 450; amended September, 2003, to reflect statutory changes in 2003 PA 61, effective September 30, 2003. Amended December 2014 to reflect changes under 2012 PA 543.

Reference Guide

Statutes

MCL 257.35a, .625.

Case Law

People v Yamat, 475 Mich 49, 714 NW2d 335 (2006); *People v Wood*, 450 Mich 399, 538 NW2d 351 (1995); *People v Pomeroy (On Rehearing)*, 419 Mich 441, 355 NW2d 98 (1984); *City of Plymouth v Longeway*, 296 Mich App 1, 818 NW2d 419, leave denied, 492 Mich 868, 819 NW2d 577 (2012); *People v Stephen*, 262 Mich App 213, 685 NW2d 309 (2004); *People v Solmonson*, 261 Mich App 657, 683 NW2d 761 (2004); *People v Nickerson*, 227 Mich App 434, 575 NW2d 804 (1998); *People v Hawkins (On Remand)*, 181 Mich App 393, 448 NW2d 858 (1989); *People v Smith*, 164 Mich App 767, 417 NW2d 261 (1987); *People v Walters*, 160 Mich App 396, 402, 407 NW2d 662 (1987); *People v Schinella*, 160 Mich App 213, 407 NW2d 621 (1987); *People v Raisanen*, 114 Mich App 840, 844, 319 NW2d 693 (1982); *People v Kelley*, 60 Mich App 162, 230 NW2d 357 (1975); *People v Tracy*, 18 Mich App 529, 171 NW2d 562 (1969).

M Crim JI 15.3a Operating with Any Amount of Schedule 1 or 2 Controlled Substance

(1)The defendant is charged with the crime of operating a motor vehicle with a controlled substance in [his / her] body. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant was operating a motor vehicle. "Operating" means driving or having actual physical control of the vehicle.

(3)Second, that the defendant was operating the vehicle on a highway or other place that was open to the public [or generally accessible to motor vehicles, including any designated parking area].

(4)Third, that while operating the vehicle, the defendant had any amount of [*state specific schedule 1 or 2 controlled substance alleged*] in [his / her] body.

(5)Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed or used a controlled substance.

History

M Crim JI 15.3a (formerly CJI2d 15.3a) was added in September, 2010, amended March, 2016.

After reviewing the unpublished per curiam decision in *People v Wilds*, No. 311644, 2013 Mich App LEXIS 599 (Apr 2, 2013), the committee determined in 2015 that this instruction should be amended to provide a scienter element.

Reference Guide

Statutes

MCL 257.625.

Case Law

People v Koon, 494 Mich 1, 832 NW2d 724 (2013).

M Crim JI 15.4 Specific Elements of Operating While Visibly Impaired [OWVI]

[The defendant is charged with / You may also consider the less serious charge of] operating a motor vehicle while visibly impaired. To prove that the defendant operated while visibly impaired, the prosecutor must prove beyond a reasonable doubt that, due to the [drinking of alcohol / use or consumption of a controlled substance / use or consumption of an intoxicating substance / use or consumption of a combination of (alcohol / a controlled substance / an intoxicating substance)[1]], the defendant drove with less ability than would an ordinary careful driver. The defendant's driving ability must have been lessened to the point that it would have been noticed by another person.

Use Note

[1] Select the appropriate combination of alcohol/substances based on the evidence presented.

History

M Crim JI 15.4 (formerly CJI2d 15.4) was amended October, 1993; amended September, 2003, to reflect statutory changes in 2003 PA 61, effective September 30, 2003. Amended December 2014 to reflect changes under 2012 PA 543.

Reference Guide

Statutes

MCL 257.625b.

Case Law

People v Lambert, 395 Mich 296, 305, 235 NW2d 338 (1975); *People v Walters*, 160 Mich App 396, 401, 407 NW2d 662 (1987).

M Crim JI 15.5 Factors in Considering Operating While Intoxicated [OWI] and Operating While Visibly Impaired [OWVI]

As you consider the possible verdicts, you should think about the following:

[*Choose appropriate paragraphs:*]

(1)What was the mental and physical condition of the defendant at the time that [he / she] was operating the motor vehicle? Were the defendant's reflexes, ability to see, way of walking and talking, manner of driving, and judgment normal? If there was evidence that any of these things seemed abnormal, was this caused by [drinking alcohol / using or consuming a controlled substance / using or consuming an intoxicating substance / using or consuming a combination of (alcohol / a controlled substance / an intoxicating substance)[1]]?

(2)You may also consider bodily alcohol content in reaching your verdict. In that regard, [was / were] the test(s) technically accurate? Was the equipment properly assembled and maintained and in good working order when the test(s) [was / were] given?

(3)Were the test results reliable? Was the test given correctly? Was the person who gave it properly trained? Did the circumstances under which the test was given affect the accuracy of the results?

(4)One way to determine whether a person is intoxicated is to measure how much alcohol is in [his / her] [blood / breath / urine]. There was evidence in this trial that a test was given to the defendant. The purpose of this test is to measure the amount of alcohol in a person's [blood / breath / urine].

[*Choose (5)(a) or (5)(b):*]

(5) If you find

(a)that there were 0.17 grams or more of alcohol [per 100 milliliters of blood / per 210 liters of breath / per 67 milliliters of urine] when [he / she] operated the vehicle, you may find that the defendant was operating a motor vehicle with a high bodily alcohol content, whether or not it affected the defendant's ability to operate a motor vehicle.

(b)that there were 0.08 grams or more of alcohol [per 100 milliliters of blood / per 210 liters of breath / per 67 milliliters of urine] when [he / she] operated the vehicle, you may find the defendant guilty of operating a motor vehicle with an unlawful bodily alcohol content, whether or not this alcohol content affected the defendant's ability to operate a motor vehicle.

(6)You may infer that the defendant's bodily alcohol content at the time of the test was the same as [his / her] bodily alcohol content at the time [he / she] operated the motor vehicle.[2]

(7)In considering the evidence and arriving at your verdict, you may give the test whatever weight you believe that it deserves. The results of a test are just one factor you may consider, along with all other evidence about the condition of the defendant at the time [he / she] was operating the motor vehicle.

Use Note

Read both (5)(a) and (5)(b) if operating with a high bodily alcohol content is charged. Otherwise, read only (5)(b).

[1] Where a combination of alcohol and other controlled or intoxicating substances is shown, select the appropriate combination of alcohol/substances based on the evidence presented.

[2] If the evidence warrants, the following can be added to this paragraph (6): "However, you have heard evidence that the defendant consumed alcohol after driving but before the [blood / breath / urine] test was administered. You may consider this evidence in determining whether to infer that the defendant's bodily alcohol content at the time of the test was the same as [his / her] bodily alcohol content at the time that [he / she] operated the motor vehicle."

History

M Crim JI 15.5 (formerly CJI2d 15.5) was amended October, 1993, and June, 1995, to reflect the changes in 1994 PA 449 and 450; amended September, 2003, to reflect the statutory changes in 2003 PA 61, effective September 30, 2003; and amended September, 2010, to reflect the statutory changes in 2008 PA 463, effective October 31, 2010. The Use Note to this instruction was added by the committee in May, 2008. Amended December 2014 to reflect changes under 2012 PA 543; amended December 2015 to reflect changes under 2008 PA 463.

Reference Guide

Statutes

MCL 257.625.

Case Law

People v Wager, 460 Mich 118, 594 NW2d 487 (1999); *People v Campbell*, 236 Mich App 490, 601 NW2d 114 (1999); *People v Smith*, 182 Mich App 436, 453 NW2d 257 (1990); *People v Nicolaides*, 148 Mich App 100, 383 NW2d 620 (1985); *People v Carter*, 78 Mich App 394, 259 NW2d 883 (1977), modified, 402 Mich 851, 261 NW2d 182 (1978); *People v Krulikowski*, 60 Mich App 28, 230 NW2d 290 (1975); *People v Kozar*, 54 Mich App 503, 221 NW2d 170 (1974).

M Crim JI 15.6 Possible Verdicts Where OWHBAC Is Not Charged

There are three possible verdicts:

(1) Not guilty, or

(2) Guilty of

[*Choose appropriate paragraphs:*]

(a) operating a motor vehicle with an unlawful bodily alcohol level; [or]

(b) operating a motor vehicle while under the influence of alcohol; [or]

(c) operating a motor vehicle while under the influence of a controlled substance; [or]

(d) operating a motor vehicle while under the influence of an intoxicating substance; [or]

(e) operating a motor vehicle while under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance].[1]

[(f) If you all agree that the defendant operated a motor vehicle either with an unlawful bodily alcohol level or while under the influence of [alcohol / a controlled substance / an intoxicating substance / a combination of (alcohol / a controlled substance / an intoxicating substance)[1]], it is not necessary that you agree on which of these violations occurred. However, in order to return a verdict of guilty, you must all agree that one of those violations did occur.][2]

[or]

(3) Guilty of operating a motor vehicle while visibly impaired.

Use Note

[1] Select the appropriate combination of alcohol/substances based on the evidence presented.

[2] Use bracketed paragraph (2)(f) only if the defendant is charged with both unlawful bodily alcohol level (UBAL) and operating while intoxicated (OWI). This paragraph specifically states that the jury need not be unanimous on which theory applies as long as all jurors agree that the defendant violated MCL 257.625 in at least one fashion. See *People v Nicolaides*, 148 Mich App 100; 383 NW2d 620 (1985).

History

M Crim JI 15.6 (formerly CJI2d 15.6) was CJI2d 15.7. Amended October, 1993; amended June, 1995, to reflect the changes in 1994 PA 449 and 450; amended September, 2010, to reflect the changes in 2008 PA 463, effective October 31,

2010; amended December 2014 to reflect changes under 2012 PA 543; amended December 2015 to reflect changes under 2008 PA 463.

Reference Guide

Statutes

MCL 257.625.

Case Law

People v Nicolaides, 148 Mich App 100, 383 NW2d 620 (1985).

M Crim JI 15.6a Possible Verdicts Where OWHBAC Is Charged

There are four possible verdicts:

(1)Not guilty, or

(2)Guilty of operating a vehicle with a high bodily alcohol content, or

(3)Guilty of

[*Choose appropriate paragraphs:*]

(a)operating a motor vehicle with an unlawful bodily alcohol level; [or]

(b)operating a motor vehicle while under the influence of alcohol; [or]

(c)operating a motor vehicle while under the influence of a controlled substance; [or]

(d)operating a motor vehicle while under the influence of an intoxicating substance; [or]

(e)operating a motor vehicle while under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance].[1]

[(f)If you all agree that the defendant operated a motor vehicle either with an unlawful bodily alcohol level or while under the influence of [alcohol / a controlled substance / an intoxicating substance / a combination of (alcohol / a controlled substance / an intoxicating substance)], it is not necessary that you agree on which of these violations occurred. However, in order to return a verdict of guilty, you must all agree that one of those violations did occur.][2]

[or]

(4)Guilty of operating a motor vehicle while visibly impaired.

Use Note

[1] Select the appropriate combination of alcohol/substances based on the evidence presented.

[2] Use bracketed paragraph (3)(f) only if the defendant is charged with both unlawful bodily alcohol level (UBAL) and operating while intoxicated (OWI). This paragraph specifically states that the jury need not be unanimous on which theory applies as long as all jurors agree that the defendant violated MCL 257.625 in at least one fashion. See *People v Nicolaides*, 148 Mich App 100; 383 NW2d 620 (1985).

History

M Crim JI 15.6a (formerly CJI2d 15.6a) was adopted February, 2010, to address the typical drunk driving case. It was re-identified as a substantive instruction in December 2015 to reflect changes under 2008 PA 463.

Reference Guide

Statutes

MCL 257.625.

Case Law

People v Nicolaides, 148 Mich App 100, 383 NW2d 620 (1985).

M Crim JI 15.7 Verdict Form Where OWHBAC Is Not Charged

Defendant: _____

POSSIBLE VERDICTS:

You may return only one verdict on this charge. Mark only (1), (2) or (3).

(1)□Not guilty

(2)□Guilty of Operating While Intoxicated

(3)□Guilty of the less serious offense of Operating While Visibly Impaired

History

M Crim JI 15.7 (formerly CJI2d 15.7) was CJI2d 15.8; amended October, 1993; amended September, 2003, to comply with the special verdict requirements of 2003 PA 61, MCL 257.625(18)-(19), effective September 30, 2003; amended December 2015 to be in accord with the holding in *People v Nicolaides*, 148 Mich App 100, 383 NW2d 620 (1985).

Reference Guide

Statutes

MCL 257.625

Case Law

People v Nicolaides, 148 Mich App 100, 383 NW2d 620 (1985)

M Crim JI 15.7a Verdict Form Where OWHBAC Is Charged

Defendant: _____

POSSIBLE VERDICTS:

You may return only one verdict on this charge. Mark only (1), (2), (3) or (4).

(1)□Not guilty

(2)□Guilty of Operating with a High Bodily Alcohol Content

(3)□Guilty of the less serious offense of Operating While Intoxicated

(4)□Guilty of the less serious offense of Operating While Visibly Impaired

History

M Crim JI 15.7a was added December 2015 to reflect changes under 2008 PA 463.

Reference Guide

Statutes

MCL 257.625

M Crim JI 15.8 Verdict Form *[modified and renumbered 15.7 in 1993]*

[This instruction was modified and renumbered M Crim JI 15.7 as part of the 1993 revision of chapter 15.]

M Crim JI 15.9 Defendant's Decision to Forgo Chemical Testing

Evidence has been admitted in this case that the defendant refused to take a chemical test. If you find that the defendant did refuse, that evidence was admitted solely for the purpose of showing that a test was offered to the defendant. That evidence is not evidence of guilt.

Use Note

MCL 257.625a(9) provides: A person's refusal to submit to a chemical test as provided in subsection (6) is admissible in a criminal prosecution for a crime described in section 625c(1) only to show that a test was offered to the defendant, but not as evidence in determining the defendant's innocence or guilt. The jury shall be instructed accordingly.

History

M Crim JI 15.9 (formerly CJI2d 15.9) was CJI 15:2:05; amended by the committee in September, 2003.

Reference Guide

Statutes

MCL 257.625a(9).

Case Law

South Dakota v Neville, 459 US 553 (1983).

M Crim JI 15.10 Felonious Driving [Use for Acts Occurring Before October 31, 2010] *[deleted]*

Note. This instruction was deleted May, 2010, due to the repeal of the felonious driving statute, MCL 257.626c, by 2008 PA 463, effective October 31, 2010. The offense previously covered by this instruction is dealt with in M Crim JI 15.17.

M Crim JI 15.11 Operating While Intoxicated [OWI] and Operating While Visibly Impaired [OWVI] Causing Death

(1)The defendant is charged with the crime of operating[1] a motor vehicle while intoxicated or while visibly impaired causing the death of another person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant was operating a motor vehicle on or about [*state date*] in the [county / city] of [*state jurisdiction*]. Operating means driving or having actual physical control of the vehicle.

(3)Second, that the defendant was operating the vehicle on a highway or other place that was open to the public [or generally accessible to motor vehicles, including any designated parking area].

(4)Third, that while operating the vehicle, the defendant was intoxicated or visibly impaired.

(5)Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed [alcohol / a controlled substance / an intoxicating substance / a combination of (alcohol / a controlled substance / an intoxicating substance)[2]] and might be intoxicated or visibly impaired.

(6)Fifth, that the defendant's operation of the vehicle caused the victim's death. To "cause" the victim's death, the defendant's operation of the vehicle must have been a factual cause of the death, that is, but for the defendant's operation of the vehicle the death would not have occurred. In addition, operation of the vehicle must have been a proximate cause of death, that is, death or serious injury must have been a direct and natural result of operating the vehicle.

Use Note

[1] The term "operating" has been defined by the Michigan Supreme Court in *People v Wood*, 450 Mich 399, 538 NW2d 351 (1995). The court held that "[o]nce a person using a motor vehicle as a motor vehicle has put the vehicle in motion, or in a position posing a significant risk of causing a collision, such a person continues to operate it until the vehicle is returned to a position posing no such risk." *Id*. at 404-405. The holding in *Wood* was applied in *People v Lechleitner*, 291 Mich App 56, 804 NW2d 345 (2010), which held that the defendant was properly convicted under the operating-while-intoxicated-causing-death statute where he was intoxicated, operated his vehicle, and crashed it, with the result that it sat in the middle of the freeway at night creating a risk of injury or death to others, and a following car swerved to miss his stopped truck and killed another motorist on the side of the road.

If it is claimed that the defendant's operation of the vehicle was not a proximate cause of death because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439, 703 NW2d 774 (2005). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010).

[2] Select the appropriate combination of alcohol/substances based on the evidence presented.

History

M Crim JI 15.11 (formerly CJI2d 15.11) was adopted in October, 1991. Amended September, 2005; September, 2006. Amended December 2014 to reflect changes under 2012 PA 543.

Reference Guide

Statutes

MCL 257.625.

Case Law

People v Schaefer, 473 Mich 418, 703 NW2d 774 (2005); *People v Lardie*, 452 Mich 231, 551 NW2d 656 (1996); *People v Tims*, 449 Mich 83, 95, 534 NW2d 675 (1995); *People v Kulpinski*, 243 Mich App 8, 620 NW2d 537 (2000).

M Crim JI 15.11a Operating with Any Amount of Schedule 1 or 2 Controlled Substance Causing Death

(1)The defendant is charged with the crime of operating a motor vehicle with a controlled substance in [his / her] body causing the death of another person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant was operating a motor vehicle on or about [*state date*] in the [county / city] of [*state jurisdiction*]. Operating means driving or having actual physical control of the vehicle.

(3)Second, that the defendant was operating the vehicle on a highway or other place that was open to the public [or generally accessible to motor vehicles, including any designated parking area].

(4)Third, that while operating the vehicle, the defendant had any amount of [*state specific schedule 1 or 2 controlled substance alleged*] in [his / her] body.

(5)Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed or used a controlled substance.

(6)Fifth, that the defendant's operation of the vehicle caused[1] the victim's death. To "cause" the victim's death, the defendant's operation of the vehicle must have been a factual cause of the death, that is, but for the defendant's operation of the vehicle the death would not have occurred. In addition, operation of the vehicle must have been a proximate cause of death, that is, death or serious injury must have been a direct and natural result of operating the vehicle.

Use Note

This instruction is intended to state the elements of the offense found at MCL 257.625(4), and (8).

[1] If it is claimed that the defendant's operation of the vehicle was not a proximate cause of death because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439, 703 NW2d 774 (2005). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010).

History

M Crim JI 15.11a (formerly CJI2d 15.11a) was adopted in September, 2006, amended March, 2016.

After reviewing the unpublished per curiam decision in *People v Wilds*, No. 311644, 2013 Mich App LEXIS 599 (Apr 2, 2013), the committee determined in 2015 that this instruction should be amended to comport with the statutory language.

Reference Guide

Statutes

MCL 257.625.

Case Law

People v Koon, 494 Mich 1, 832 NW2d 724 (2013).

M Crim JI 15.12 Operating While Intoxicated [OWI] and Operating While Visibly Impaired [OWVI] Causing Serious Impairment of a Body Function

(1)The defendant is charged with the crime of operating a motor vehicle while intoxicated or while visibly impaired causing serious impairment of a body function to another person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant was operating a motor vehicle on or about [*state date*] in the [county / city] of [*state jurisdiction*]. Operating means driving or having actual physical control of the vehicle.

(3)Second, that the defendant was operating the vehicle on a highway or other place that was open to the public [or generally accessible to motor vehicles, including any designated parking area].

(4)Third, that while operating the vehicle, the defendant was intoxicated or visibly impaired.

(5)Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed [alcohol / a controlled substance / an intoxicating substance / a combination of (alcohol / a controlled substance / an intoxicating substance)[1]] and might be intoxicated or visibly impaired.

(6)Fifth, that the defendant's operation of the vehicle caused[2] a serious impairment of a body function[3] to [*name victim*]. To "cause" such injury, the defendant's operation of the vehicle must have been a factual cause of the injury, that is, but for the defendant's operation of the vehicle the injury would not have occurred. In addition, operation of the vehicle must have been a proximate cause of the injury, that is, the injury must have been a direct and natural result of operating the vehicle.

Use Note

[1] Select the appropriate combination of alcohol/substances based on the evidence presented.

[2] If it is claimed that the defendant's operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause, review People v Schaefer, 473 Mich 418, 438-439, 703 NW2d 774 (2005) (a "causes death" case under MCL 257.625(4)). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010).

[3] The statute, MCL 257.58c, provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

(a)Loss of a limb or loss of use of a limb.

(b)Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.

(c)Loss of an eye or ear or loss of use of an eye or ear.

(d)Loss or substantial impairment of a bodily function.

(e)Serious visible disfigurement.

(f)A comatose state that lasts for more than 3 days.

(g)Measurable brain or mental impairment.

(h)A skull fracture or other serious bone fracture.

(i)Subdural hemorrhage or subdural hematoma.

(j)Loss of an organ.

History

M Crim JI 15.12 (formerly CJI2d 15.12) was adopted in October, 1991. Amended September, 2005; September, 2006. Amended December 2014 to reflect changes under 2012 PA 543.

Reference Guide

Statutes

MCL 257.58c, .625.

Case Law

People v Schaefer, 473 Mich 418, 703 NW2d 774 (2005); *People v Lardie*, 452 Mich 231, 551 NW2d 656 (1996); *People v Tims*, 449 Mich 83, 95, 534 NW2d 675 (1995); *People v Kulpinski*, 243 Mich App 8, 620 NW2d 537 (2000).

M Crim JI 15.12a Operating With Any Amount of Schedule 1 or 2 Controlled Substance Causing Serious Impairment of a Body Function

(1)The defendant is charged with the crime of operating a motor vehicle with any amount of a controlled substance causing serious impairment of a body function to another person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant was operating a motor vehicle on or about [*state date*] in the [county / city] of [*state jurisdiction*]. Operating means driving or having actual physical control of the vehicle.

(3)Second, that the defendant was operating the vehicle on a highway or other place that was open to the public [or generally accessible to motor vehicles, including any designated parking area].

(4)Third, that while operating the vehicle, the defendant had any amount of [*state specific schedule 1 or 2 controlled substance alleged*] in [his / her] body.

(5)Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed or used a controlled substance.

(6)Fifth, that the defendant's operation of the vehicle caused[1] a serious impairment of a body function[2] to [*name victim*]. To "cause" such injury, the defendant's operation of the vehicle must have been a factual cause of the injury, that is, but for the defendant's operation of the vehicle the injury would not have occurred. In addition, operation of the vehicle must have been a proximate cause of the injury, that is, the injury must have been a direct and natural result of operating the vehicle.

Use Note

[1] If it is claimed that the defendant's operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439, 703 NW2d 774 (2005) (a "causes death" case under MCL 257.625(4)). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010).

[2] The statute, MCL 257.58c, provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

(a)Loss of a limb or loss of use of a limb.

(b)Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.

(c)Loss of an eye or ear or loss of use of an eye or ear.

(d)Loss or substantial impairment of a bodily function.

(e)Serious visible disfigurement.

(f)A comatose state that lasts for more than 3 days.

(g)Measurable brain or mental impairment.

(h)A skull fracture or other serious bone fracture.

(i)Subdural hemorrhage or subdural hematoma.

(j)Loss of an organ.

History

M Crim JI 15.12a (formerly CJI2d 15.12a) was adopted in September, 2006, amended March, 2016.

After reviewing the unpublished per curiam decision in *People v Wilds*, No. 311644, 2013 Mich App LEXIS 599 (Apr 2, 2013), the committee determined in 2015 that this instruction should be amended to comport with the statutory language.

Reference Guide

Statutes

MCL 257.625, 257.58c.

Case Law

People v Koon, 494 Mich 1, 832 NW2d 724 (2013); *People v Schaefer*, 473 Mich 418, 438-439, 703 NW2d 774 (2005).

M Crim JI 15.13 Operating a Commercial Vehicle with an Unlawful Bodily Alcohol Content [UBAL]

(1)The defendant is charged with the crime of operating a commercial motor vehicle with an unlawful bodily alcohol level. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant was operating a commercial motor vehicle* on or about [*state date*] in the [county / city] of [*state jurisdiction*]. Operating means driving or having actual physical control of the vehicle.

(3)Second, that the defendant had a bodily alcohol content of 0.04 grams or more but less than 0.08 grams per 100 milliliters of blood [per 210 liters of breath or 67 milliliters of urine] when operating the commercial motor vehicle.

Use Note

*For the definition of *commercial motor vehicle*, see MCL 257.7a.

History

M Crim JI 15.13 (formerly CJI2d 15.13) was adopted in October, 1993; amended in June, 1995, to reflect statutory changes in 1994 PA 449 and 450. Amended September, 2003; September, 2005; February, 2010.

Reference Guide

Statutes

MCL 257.625m.

M Crim JI 15.14 Leaving the Scene of an Accident

The defendant is charged with failing to stop after an accident involving [serious impairment of a body function or death / personal injury / property damage].[1] To prove this charge the prosecutor must prove each of the following elements beyond a reasonable doubt:

(1)First, the defendant was the driver of a motor vehicle.

(2)Second, the motor vehicle driven by the defendant was involved in an accident.

(3)Third, the defendant knew or had reason to know that [he / she] had been involved in an accident on a public road or any property open to travel by the public.

(4)Fourth, that the accident resulted in

[*Select (a), (b), or (c) as appropriate.*][1]

(a)serious impairment of a body function or death.[2]

(b)personal injury to any individual.

(c)damage to a vehicle driven or attended by another.

(5)Fifth, that the defendant failed to immediately stop [his / her] motor vehicle at the scene of the accident in order to render assistance and give information required by law, or to immediately report the accident to the nearest or most convenient police agency or officer if there was a reasonable and honest belief that remaining at the scene would result in further harm.[3] The requirement that the driver "immediately stop" means that the driver must stop and park the car as soon as practicable and reasonable under the circumstances and without obstructing traffic more than is necessary.

Use Note

[1] Select the appropriate phrase to describe the violation alleged: serious impairment of a body function or death, MCL 257.617, a five-year felony; personal injury, MCL 257.617a, a one-year misdemeanor; or damage to an attended vehicle, MCL 257.618, a misdemeanor.

[2] The definition of "serious impairment of a body function" is at MCL 257.58c. See *Use Note* to M Crim JI 15.12.

[3] MCL 257.619 describes the information that must be provided and the assistance that must be rendered.

History

M Crim JI 15.14 (formerly CJI2d 15.14) was adopted in March, 1995. Amended October, 2002; September, 2003 (to reflect the changes in 2003 PA 61, effective September 30, 2003); April, 2006 (to reflect the changes in 2005 PA 3,

effective April 1, 2005); May, 2013.

Reference Guide

Statutes

MCL 257.58c, .617, .617a, .618, .619.

Case Law

People v Oliver, 242 Mich App 92, 617 NW2d 721 (2000).

M Crim JI 15.14a Leaving the Scene of an Accident Causing Death

The defendant is charged with failing to stop after causing an accident resulting in death. To prove this charge the prosecutor must prove each of the following elements beyond a reasonable doubt:

(1)First, the defendant was the driver of a motor vehicle.

(2)Second, the motor vehicle driven by the defendant was involved in an accident.

(3)Third, the defendant knew or had reason to know that [he / she] was involved in an accident on a public road or any property open to travel by the public.

(4)Fourth, that the accident resulted in death.

(5)Fifth, that the defendant caused the accident.

(6)Sixth, that the defendant failed to immediately stop [his / her] motor vehicle at the scene of the accident in order to render assistance and give information required by law.[1] The requirement that the driver "immediately stop" means that the driver must stop and park the car as soon as practicable and reasonable under the circumstances and without obstructing traffic more than is necessary.

Use Notes

[1] MCL 257.619 describes the information that must be provided and the assistance that must be rendered.

History

M Crim JI 15.14a (formerly CJI2d 15.14a) was adopted by the committee in April 2006.

Reference Guide

Statutes

MCL 257.619.

M Crim JI 15.15 Reckless Driving

(1)[The defendant is charged with the crime of / You may also consider the lesser charge of [1]] reckless driving. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant drove a motor vehicle on a highway[2] or other place open to the public [or generally accessible to motor vehicles, including a designated parking area].

(3)Second, that the defendant drove the motor vehicle in willful or wanton disregard for the safety of persons or property. "Willful or wanton disregard" means more than simple carelessness but does not require proof of an intent to cause harm. It means knowingly disregarding the possible risks to the safety of people or property.

Use Notes

[1] Use when instructing on this crime as a lesser included offense.

[2] A "highway" is the entire area between the boundary lines of a publicly maintained roadway, any part of which is open for automobile travel. *People v Bartel*, 213 Mich App 726, 728-729, 540 NW2d 491 (1995).

History

M Crim JI 15.15 (formerly CJI2d 15.15) was adopted by the committee in September, 2005.

Reference Guide

Statutes

MCL 257.626.

Case Law

People v Bartel, 213 Mich App 726, 728-729, 540 NW2d 491 (1995).

M Crim JI 15.16 Reckless Driving Causing Death [Use for Acts Committed on or After October 31, 2010]

(1)[The defendant is charged with the crime of / You may also consider the lesser charge of[1]] reckless driving causing death. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant drove a motor vehicle on a highway[2] or other place open to the public [or generally accessible to motor vehicles, including a designated parking area].

(3)Second, that the defendant drove the motor vehicle in willful or wanton disregard for the safety of persons or property. "Willful or wanton disregard" means more than simple carelessness but does not require proof of an intent to cause harm. It means knowingly disregarding the possible risks to the safety of people or property.

(4)Third, that the defendant's operation of the vehicle caused the victim's death. To "cause" the victim's death, the defendant's operation of the vehicle must have been a factual cause of the death, that is, but for the defendant's operation of the vehicle the death would not have occurred. In addition, operation of the vehicle must have been a proximate cause of death, that is, death or serious injury must have been a direct and natural result of operating the vehicle.

Use Note

[1] Use when instructing on this crime as a lesser included offense.

[2] A "highway" is the entire area between the boundary lines of a publicly maintained roadway, any part of which is open for automobile travel. *People v Bartel*, 213 Mich App 726, 728-729, 540 NW2d 491 (1995).

History

M Crim JI 15.16 (formerly CJI2d 15.16) was adopted by the committee in October, 2010, to reflect changes made to MCL 257.626, effective October 31, 2010.

Reference Guide

Statutes

MCL 257.626.

Case Law

People v Bartel, 213 Mich App 726, 728-729, 540 NW2d 491 (1995).

M Crim JI 15.17 Reckless Driving Causing Serious Impairment of a Body Function [Use for Acts Committed on or After October 31, 2010]

(1)[The defendant is charged with the crime of / You may also consider the lesser charge of[1]] reckless driving causing serious impairment of a body function to another person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant drove a motor vehicle on a highway[2] or other place open to the public [or generally accessible to motor vehicles, including a designated parking area].

(3)Second, that the defendant drove the motor vehicle in willful or wanton disregard for the safety of persons or property. "Willful or wanton disregard" means more than simple carelessness but does not require proof of an intent to cause harm. It means knowingly disregarding the possible risks to the safety of people or property.

(4)Third, that the defendant's operation of the vehicle caused[3] a serious impairment of a body function[4] to [*name victim*]. To "cause" such injury, the defendant's operation of the vehicle must have been a factual cause of the injury, that is, but for the defendant's operation of the vehicle the injury would not have occurred. In addition, operation of the vehicle must have been a proximate cause of the injury, that is, the injury must have been a direct and natural result of operating the vehicle.

Use Note

[1] Use when instructing on this crime as a lesser included offense.

[2] A "highway" is the entire area between the boundary lines of a publicly maintained roadway, any part of which is open for automobile travel. *People v Bartel*, 213 Mich App 726, 728-729, 540 NW2d 491 (1995).

[3] If it is claimed that the defendant's operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439, 703 NW2d 774 (2005) (a "causes death" case under MCL 257.625(4)). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010)).

[4] The statute, MCL 257.58c, provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

(a)Loss of a limb or loss of use of a limb.

(b)Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.

(c)Loss of an eye or ear or loss of use of an eye or ear.

(d)Loss or substantial impairment of a bodily function.

(e)Serious visible disfigurement.

(f)A comatose state that lasts for more than 3 days.

(g)Measurable brain or mental impairment.

(h)A skull fracture or other serious bone fracture.

(i)Subdural hemorrhage or subdural hematoma.

(j)Loss of an organ.

History

M Crim JI 15.17 (formerly CJI2d 15.17) was adopted by the committee in October, 2010, to reflect changes made to MCL 257.626, effective October 31, 2010.

Reference Guide

Statutes

MCL 257.58c, .626.

Case Law

People v Schaefer, 473 Mich 418, 438-439, 703 NW2d 774 (2005); *People v Bartel*, 213 Mich App 726, 728-729, 540 NW2d 491 (1995).

M Crim JI 15.18 Moving Violation Causing Death [Use for Acts Committed on or After October 31, 2010]

(1)[The defendant is charged with the crime of [*state charge*]. / You may consider the lesser charge of committing a moving traffic violation that causes the death of another person.] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant committed the following moving violation: [*describe the moving violation*].

(3)The moving violation of [*describe the moving violation*] was a cause of the death of [*name deceased*]. To "cause" the victim's death, the defendant's operation of the vehicle must have been a factual cause of the death, that is, but for the defendant's operation of the vehicle, the death would not have occurred. In addition, operation of the vehicle must have been a proximate cause of death, that is, death or serious injury must have been a direct and natural result of operating the vehicle.

History

M Crim JI 15.18 (formerly CJI2d 15.18) was adopted by the Committee in September, 2010, for use with MCL 257.601d(1), added by 2008 PA 463, effective October 31, 2010.

Reference Guide

Statutes

MCL 257.601d(1).

Case Law

People v Tims, 449 Mich 83, 534 NW2d 675 (1995).

M Crim JI 15.19 Moving Violation Causing Serious Impairment of a Body Function [Use for Acts Committed on or After October 31, 2010]

(1)[The defendant is charged with the crime of [*state charge*]. / You may consider the lesser charge of committing a moving traffic violation that causes the serious impairment of a body function.] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant committed the following moving violation: [*describe the moving violation*].

(3)Second, that the defendant's operation of the vehicle caused[1] a serious impairment of a body function[2] to [*name victim*]. To "cause" such injury, the defendant's operation of the vehicle must have been a factual cause of the injury, that is, but for the defendant's operation of the vehicle the injury would not have occurred. In addition, operation of the vehicle must have been a proximate cause of the injury, that is, the injury must have been a direct and natural result of operating the vehicle.

Use Note

[1] If it is claimed that the defendant's operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439, 703 NW2d 774 (2005). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010)).

[2] The statute, MCL 257.58c, provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

(a)Loss of a limb or loss of use of a limb.

(b)Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.

(c)Loss of an eye or ear or loss of use of an eye or ear.

(d)Loss or substantial impairment of a bodily function.

(e)Serious visible disfigurement.

(f)A comatose state that lasts for more than 3 days.

(g)Measurable brain or mental impairment.

(h)A skull fracture or other serious bone fracture.

(i)Subdural hemorrhage or subdural hematoma.

(j)Loss of an organ.

History

M Crim JI 15.19 (formerly CJI2d 15.19) was adopted by the Committee in September, 2010, for use with MCL 257.601d(2), added by 2008 PA 463, effective October 31, 2010.

Reference Guide

Statutes

MCL 257.58c, .601d(2).

Case Law

People v Schaefer, 473 Mich 418, 438-439, 703 NW2d 774 (2005).

M Crim JI 15.20 Driving While License Suspended or Revoked

The defendant is charged with driving while [his / her] operator's license is suspended or revoked. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(1)First, that the defendant was operating a motor vehicle. "Operating" means driving or having actual physical control of the vehicle.

(2)Second, that the defendant was operating that vehicle on a highway or other place open to the general public [*or generally accessible to motor vehicles, including any area designated for the parking of motor vehicles*].

(3)Third, that at the time the defendant's operator's license was suspended or revoked.

(4)Fourth, that the Secretary of State gave notice of the suspension or revocation by first-class, United States Postal Service mail addressed to the defendant at the address shown by the record of the Secretary of State at least five days before the date of the alleged offense.

History

M Crim JI 15.20 (formerly CJI2d 15.20) was adopted in September, 2012.

Reference Guide

Statutes

MCL 257.904.

Case Law

People v Nunley, 491 Mich 686, 690, 821 NW2d 642 (2012).

M Crim JI 15.21 Driving While License Suspended / Revoked Causing Death

(1)The defendant is charged with driving while [his / her] operator's license is suspended or revoked causing death. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant was operating a motor vehicle. "Operating" means driving or having actual physical control of the vehicle.[1]

(3)Second, that the defendant was operating that vehicle on a highway or other place open to the general public [or generally accessible to motor vehicles, including any area designated for the parking of motor vehicles].

(4)Third, that, at the time, the defendant's operator's license was suspended or revoked.[2]

(5)Fourth, that the defendant's operation of the vehicle caused the victim's death. To "cause" the victim's death, the defendant's operation of the vehicle must have been a factual cause of the death, that is, but for the defendant's operation of the vehicle, the death would not have occurred. In addition, operation of the vehicle must have been a proximate cause of death, that is, death must have been a direct and natural result of operating the vehicle.[3]

Use Note

[1] The term "operating" has been defined by the Michigan Supreme Court in *People v Wood*, 450 Mich 399, 538 NW2d 351 (1995). The court held that "[o]nce a person using a motor vehicle as a motor vehicle has put the vehicle in motion, or in a position posing a significant risk of causing a collision, such a person continues to operate it until the vehicle is returned to a position posing no such risk." *Id*. at 404-405. The holding in *Wood* was applied in *People v Lechleitner*, 291 Mich App 56, 804 NW2d 345 (2010), which held that the defendant was properly convicted under the operating-while-intoxicated-causing-death statute where he was intoxicated, operated his vehicle, and crashed it, with the result that it sat in the middle of the freeway at night creating a risk of injury or death to others, and a following car swerved to miss his stopped truck and killed another motorist on the side of the road.

[2] The court should alter this element where one of the alternatives found in MCL 257.904(1) applies: where the defendant had a suspended or revoked "chauffer's license," where the defendant's application for a license was denied, or where the defendant never applied for a license.

[3] If it is claimed that the defendant's operation of the vehicle was not a proximate cause of death because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439, 703 NW2d 774 (2005). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010).

M Crim JI 15.22 Driving While License Suspended / Revoked Causing Serious Impairment of Body Function

(1)The defendant is charged with driving while [his / her] operator's license is suspended or revoked causing serious impairment of body function. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant was operating a motor vehicle. "Operating" means driving or having actual physical control of the vehicle.[1]

(3)Second, that the defendant was operating that vehicle on a highway or other place open to the general public [or generally accessible to motor vehicles, including any area designated for the parking of motor vehicles].

(4)Third, that, at the time, the defendant's operator's license was suspended or revoked.

(5)Fourth, that the defendant's operation of the vehicle caused a serious impairment of a body function to [*name victim*].[3] To "cause" such injury, the defendant's operation of the vehicle must have been a factual cause of the injury, that is, but for the defendant's operation of the vehicle the injury would not have occurred. In addition, operation of the vehicle must have been a proximate cause of the injury, that is, the injury must have been a direct and natural result of operating the vehicle.[4]

Use Note

[1] The term "operating" has been defined by the Michigan Supreme Court in *People v Wood*, 450 Mich 399, 538 NW2d 351 (1995). The court held that "[o]nce a person using a motor vehicle as a motor vehicle has put the vehicle in motion, or in a position posing a significant risk of causing a collision, such a person continues to operate it until the vehicle is returned to a position posing no such risk." *Id*. at 404-405. The holding in *Wood* was applied in *People v Lechleitner*, 291 Mich App 56, 804 NW2d 345 (2010), which held that the defendant was properly convicted under the operating-while-intoxicated-causing-death statute where he was intoxicated, operated his vehicle, and crashed it, with the result that it sat in the middle of the freeway at night creating a risk of injury or death to others, and a following car swerved to miss his stopped truck and killed another motorist on the side of the road.

2 The court should alter this element where one of the alternatives found in MCL 257.904(1) applies: where the defendant had a suspended or revoked "chauffer's license," where the defendant's application for a license was denied, or where the defendant never applied for a license.

3 The statute, MCL 257.58c, provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

(a)Loss of a limb or loss of use of a limb.

(b)Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.

(c)Loss of an eye or ear or loss of use of an eye or ear.

(d)Loss or substantial impairment of a bodily function.

(e)Serious visible disfigurement.

(f)A comatose state that lasts for more than 3 days.

(g)Measurable brain or mental impairment.

(h)A skull fracture or other serious bone fracture.

(i)Subdural hemorrhage or subdural hematoma.

(j)Loss of an organ.

[4] If it is claimed that the defendant's operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause, review People v Schaefer, 473 Mich 418, 438-439, 703 NW2d 774 (2005) (a "causes death" case under MCL 257.625(4)). Schaefer was modified in part on other grounds by People v Derror, 475 Mich 316, 715 NW2d 822 (2006), which was overruled in part on other grounds by People v Feezel, 486 Mich 184, 783 NW2d 67 (2010).

CHAPTER 16 *Homicide*

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M Crim JI 16.1 First-degree Premeditated Murder

(1)The defendant is charged with the crime of first-degree premeditated murder.[1] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant caused the death of [*name deceased*], that is, that [*name deceased*] died as a result of [*state alleged act causing death*].[2]

(3)Second, that the defendant intended to kill [*name deceased*].[3]

(4)Third, that this intent to kill was premeditated, that is, thought out beforehand.

(5)Fourth, that the killing was deliberate, which means that the defendant considered the pros and cons of the killing and thought about and chose [his / her] actions before [he / she] did it. There must have been real and substantial reflection for long enough to give a reasonable person a chance to think twice about the intent to kill. The law does not say how much time is needed. It is for you to decide if enough time passed under the circumstances of this case. The killing cannot be the result of a sudden impulse without thought or reflection.

[(6)Fifth, that the killing was not justified, excused, or done under circumstances that reduce it to a lesser crime.][4]

Use Note

[1] Second-degree murder is a lesser included offense of first-degree murder and should be instructed upon if supported by the evidence. *People v Cornell*, 466 Mich 335, 358, n13, 646 NW2d 127 (2002). Use M Crim JI 16.5 for this purpose. Manslaughter is also a lesser included offense of murder and should be instructed upon if supported by the evidence. *People v Mendoza*, 468 Mich 527, 664 NW2d 685 (2003). See M Crim JI 16.9 and 16.10. In lying-in-wait or poisoning cases, use M Crim JI 16.2 or 16.3, respectively. The Time and Place (Venue) instruction can be found at M Crim JI 3.10.

[2] Where causation is an issue, see the special causation instructions, M Crim JI 16.15-16.23.

[3] This is a specific intent crime.

[4] Paragraph (6) may be omitted if there is no evidence of justification or excuse, and the jury is not being instructed on manslaughter or any offense less than manslaughter. Justification or excuse instructions may be inserted here, but they are more commonly given at a later time.

History

M Crim JI 16.1 (formerly CJI2d 16.1) was CJI 16:2:01; amended October, 1993.

Reference Guide

Statutes

MCL 750.316.

Case Law

People v Langworthy, 416 Mich 630, 650, 331 NW2d 171 (1982); *People v Woods*, 416 Mich 581, 331 NW2d 707 (1982), cert denied, 462 US 1134 (1983); *People v Doss*, 406 Mich 90, 276 NW2d 9 (1979); *People v Van Wyck*, 402 Mich 266, 269, 262 NW2d 638 (1978); *People v Vail*, 393 Mich 460, 468-469, 227 NW2d 535 (1975); *People v Hansen*, 368 Mich 344, 350-351, 118 NW2d 422 (1962); *People v Scott*, 6 Mich 287, 293 (1859); *People v Hopson*, 178 Mich App 406, 410, 444 NW2d 167 (1989); *People v Morrin*, 31 Mich App 301, 329-330, 187 NW2d 434 (1971).

M Crim JI 16.2 Lying in Wait

(1)It is alleged in this case that the killing was done willfully, with premeditation and deliberation, by lying in wait.

(2)Lying in wait means that the defendant hid [himself / herself], planning to take another person by surprise.

(3)While lying in wait, the defendant must have intended to kill [*name deceased* / another person].

(4)The lying in wait must have lasted only long enough to show beyond a reasonable doubt that the killing was done willfully, with premeditation and deliberation.

Use Note

This instruction may be used, where factually appropriate, in connection with M Crim JI 16.1, First-degree Premeditated Murder.

History

M Crim JI 16.2 (formerly CJI2d 16.2) was CJI 16:1:11, 16:1:12.

Reference Guide

Statutes

MCL 750.316.

Case Law

People v Repke, 103 Mich 459, 468, 61 NW 861 (1895); *People v Johnson*, 113 Mich App 650, 661, 318 NW2d 525 (1982).

M Crim JI 16.3 Poisoning

(1)It is alleged in this case that the killing was done willfully, with premeditation and deliberation, by poisoning.

(2)Poisoning means that a substance was deliberately introduced into [*name deceased*]'s body, causing death.

(3)When [he / she] administered the poison, the defendant must have intended to kill [*name deceased* / another person].

(4)The circumstances of the poisoning must convince you beyond a reasonable doubt that the killing was done willfully, with premeditation and deliberation.

Use Note

This instruction may be used, where factually appropriate, in connection with M Crim JI 16.1, First-degree Premeditated Murder.

History

M Crim JI 16.3 (formerly CJI2d 16.4) was CJI 16:1:11, 16:1:13.

Reference Guide

Statutes

MCL 750.316.

Case Law

People v Taylor, 418 Mich 904, 904, 341 NW2d 468 (1983); *People v Austin*, 221 Mich 635, 644-645, 192 NW 590 (1923); *People v Brown*, 37 Mich App 192, 194 NW2d 560 (1971).

M Crim JI 16.4 First-degree Felony Murder

(1)The defendant is charged with first-degree felony murder. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant caused the death of [*name deceased*], that is, that [*name deceased*] died as a result of [*state alleged act causing death*].

(3)Second, that the defendant had one of these three states of mind: [he / she] intended to kill, or [he / she] intended to do great bodily harm to [*name deceased*], or [he / she] knowingly created a very high risk of death or great bodily harm knowing that death or such harm would be the likely result of [his / her] actions.

(4)Third, that when [he / she] did the act that caused the death of [*name deceased*], the defendant was committing [(or) attempting to commit / (or) helping someone else commit] the crime of [*state felony*]. For the crime of [*state felony*], the prosecutor must prove each of the following elements beyond a reasonable doubt: [*state elements of felony*].

[(5)Fourth, that the killing was not justified, excused, or done under circumstances that reduce it to a lesser crime.]*

[*Use (6) or (7) where factually appropriate:*]

(6)To establish an attempt the prosecutor must prove beyond a reasonable doubt that the defendant intended to commit the crime of [*state felony*] and that [he / she] took some action toward committing that crime, but failed to complete it. It is not enough to prove that the defendant made preparations for committing the crime. Things like planning the crime or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the crime would have been completed if it had not been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the crime of [*state felony*] and not some other objective.

(7)The defendant must have been either committing or helping someone else commit the crime of [*state felony*]. To help means to perform acts or give encouragement, before or during the commission of the crime, that aids or assists in its commission. At the time of giving aid or encouragement, the defendant must have intended the commission of the [*state felony*].

Use Note

*Paragraph (5) may be omitted if there is no evidence of justification or excuse, and the jury is not being instructed on manslaughter or any offense less than manslaughter. Justification or excuse instructions may be inserted here, but they are more commonly given at a later time.

History

M Crim JI 16.4 (formerly CJI2d 16.5) was CJI 16:2:02.

Reference Guide

Statutes

MCL 750.316(1)(b).

Case Law

People v Gillis, 474 Mich 105, 712 NW2d 419 (2006); *People v Nowack*, 462 Mich 392, 401, 614 NW2d 78 (2000); *People v Dumas*, 454 Mich 390, 563 NW2d 31 (1997); *People v Reeves*, 448 Mich 1, 528 NW2d 160 (1995); *People v Dykhouse*, 418 Mich 488, 495, 345 NW2d 150 (1984); *People v Aaron*, 409 Mich 672, 299 NW2d 304 (1980); *People v Magyar*, 250 Mich App 408, 648 NW2d 215 (2002); *People v Bigelow*, 229 Mich App 218, 581 NW2d 744 (1998); *People v Gimotty*, 216 Mich App 254, 549 NW2d 39 (1996); *People v Malach*, 202 Mich App 266, 507 NW2d 834 (1993); *People v Thew*, 201 Mich App 78, 506 NW2d 547 (1993); *People v Brannon*, 194 Mich App 121, 124-125, 486 NW2d 83 (1992); *People v Sanders (On Remand),* 190 Mich App 389, 476 NW2d 157 (1991); *People v Bush*, 187 Mich App 316, 327, 466 NW2d 736 (1991), *disapproved in part on other grounds*, *People v Cronin*, 494 Mich 867, 832 NW2d 199 (2013); *In re Robinson*, 180 Mich App 454, 462, 447 NW2d 765 (1989); *People v Goddard*, 135 Mich App 128, 134, 352 NW2d 367 (1984), rev'd on other grounds, 429 Mich 505, 418 NW2d 881 (1988).

M Crim JI 16.4a First-degree Murder—Peace Officer

The defendant is charged with first-degree murder of a [peace / corrections] officer in the performance of [his / her] duties. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(1)First, that the defendant caused the death of [*name deceased*], that is, that [*name deceased*] died as a result of [*state alleged act causing death*].

(2)Second, that the defendant had one of these three states of mind: [he / she] intended to kill, or [he / she] intended to do great bodily harm to [*name deceased*], or [he / she] knowingly created a very high risk of death or great bodily harm knowing that death or such harm would be the likely result of [his / her] actions.

(3)Third, that [*name deceased*] was at the time a peace officer or a corrections officer.*

(4)Fourth, that [*name deceased*] was at the time lawfully engaged in the performance of [his / her] duties as a peace officer or a corrections officer.

(5)Fifth, that the defendant knew at the time that [*name deceased*] was so engaged.

Use Note

*MCL 750.316(2)(b) defines *corrections officer*. MCL 750.316(2)(d) defines *peace officer* as any police or conservation officer.

History

M Crim JI 16.4a (formerly CJI2d 16.4a) was adopted by the committee in March, 1995 to reflect the changes in the first-degree murder statute made by 1994 PA 267, effective October 1, 1994.

Reference Guide

Statutes

MCL 750.316.

Case Law

People v Herndon, 246 Mich App 371, 633 NW2d 276 (2001); *People v Clark*, 243 Mich App 424, 622 NW2d 344 (2000).

M Crim JI 16.4b Murder During Commission of Felony

In determining whether the act causing death occurred while the defendant was [committing / attempting to commit / helping someone else commit] the crime of [*state felony*], you should consider:

(1)the length of time between the commission of [*state felony*] and the murder,

(2)the distance between the scene of [*state felony*] and the scene of the murder,

(3)whether there is a causal connection between the murder and [*state felony*],

(4)whether there is continuity of action between [*state felony*] and the murder, and

(5)whether the murder was committed during an attempt to escape.

Use Note

Use this instruction where there is a dispute as to whether the murder was committed during the "perpetration of, or attempt to perpetrate" the predicate felony.

History

M Crim JI 16.4b (formerly CJI2d 16.4b) was adopted by the committee in September, 2006.

Reference Guide

Case Law

People v Gillis, 474 Mich 105, 140-141, 712 NW2d 419 (2006), cert denied, 550 US 920 (2007).

M Crim JI 16.5 Second-degree Murder

(1)[The defendant is charged with the crime of / You may also consider the lesser charge of] second-degree murder.[1] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant caused the death of [*name deceased*], that is, that [*name deceased*] died as a result of [*state alleged act causing death*].[2]

(3)Second, that the defendant had one of these three states of mind: [he / she] intended to kill, or [he / she] intended to do great bodily harm to [*name deceased*], or [he / she] knowingly created a very high risk of death or great bodily harm knowing that death or such harm would be the likely result of [his / her] actions.[3]

[(4)Third, that the killing was not justified, excused, or done under circumstances that reduce it to a lesser crime.][4]

Use Note

[1] Where there is a question as to venue, insert M Crim JI 3.10, Time and Place (Venue).

[2] Where causation is an issue, see the special causation instructions, M Crim JI 16.15-16.23.

[3] Second-degree murder is not a specific intent crime. *People v Langworthy*, 416 Mich 630, 331 NW2d 171 (1982).

[4] Paragraph (4) may be omitted if there is no evidence of justification or excuse, and the jury is not being instructed on manslaughter or any offense less than manslaughter. Justification or excuse instructions may be inserted here, but they are more commonly given at a later time.

History

M Crim JI 16.5 (formerly CJI2d 16.5) was CJI 16:3:01-16:3:02.

Reference Guide

Statutes

MCL 750.317.

Case Law

People v Goecke, *People v Baker* and *People v Hoskinson*, 457 Mich 442, 579 NW2d 868 (1998); *People v Dykhouse*, 418 Mich 488, 508-509, 345 NW2d 150 (1984); *People v Langworthy*, 416 Mich 630, 331 NW2d 171 (1982); *People v Woods*, 416 Mich 581, 627, 331 NW2d 707 (1982); *People v Aaron*, 409 Mich 672, 728, 299 NW2d 304 (1980); *People v Hansen*, 368 Mich 344, 350-351; 118 NW2d 422 (1962); *People v Djordjevic*, 230 Mich App 459, 584 NW2d 610 (1998); *People v Johnson*, 187 Mich App 621, 468 NW2d 307 (1991).

M Crim JI 16.6 Element Chart—First-degree Premeditated and Second-degree Murder

First-degree Premeditated Murder	Second-degree Murder
(1) victim's death	(1) same
(2) death caused by defendant	(2) same
[(3) death not justified or excused or mitigated to manslaughter]*	[(3) same]*
(4) defendant actually intended to kill victim, *and*	(4) defendant actually intended to kill victim, *or* defendant intended to do great bodily harm to victim, *or* defendant knowingly created a very high risk of death or great bodily harm knowing that death or such harm would be the likely result of [his / her] actions
(5) defendant premeditated victim's death, *and*	
(6) defendant deliberated victim's death	

Use Note

This chart may be distributed to jurors when first-degree premeditated and second-degree murder are the only potential verdicts, *or* when jurors request further clarification of the differences between the two offenses. To avoid undue reliance on the charts, the committee recommends that they only be distributed when written copies of all instructions are also distributed to jurors. This chart is intended for the supplemental guidance of the jury, rather than as a substitute for the comprehensive murder definitions contained in M Crim JI 16.1, 16.4, and 16.5.

*Paragraph (3) may be omitted if there is no evidence of justification or excuse, and the jury is not being instructed on manslaughter or any offense less than manslaughter.

History

M Crim JI 16.6 (formerly CJI2d 16.6) was CJI 16:3:02A; amended March, 1995.

M Crim JI 16.7 Element Chart—First-degree Felony and Second-degree Murder

First-degree Premeditated Murder	Second-degree Murder
(1) victim's death	(1) same
(2) death caused by defendant	(2) same
[(3) death not justified or excused]*	[(3) same]*
(4) defendant actually intended to kill victim, *or* defendant intended to do great bodily harm to victim, *or* defendant knowingly created a very high risk of death or great bodily harm knowing that death or such harm would be the likely result of [his / her] actions	(4) same
(5) defendant was committing or attempting to commit a specified felony at the time of the act causing victim's death	

Use Note

This chart may be distributed to jurors when first-degree felony and second-degree murder are the only potential verdicts, *or* when jurors request further clarification of the differences between the two offenses. To avoid undue reliance on the charts, the committee recommends that they only be distributed when written copies of all instructions are also distributed to jurors. This chart is intended for the supplemental guidance of the jury, rather than as a substitute for the comprehensive murder definitions contained in M Crim JI 16.1, 16.4, and 16.5.

*Paragraph (3) may be omitted if there is no evidence of justification or excuse, and the jury is not being instructed on manslaughter or any offense less than manslaughter.

History

M Crim JI 16.7 (formerly CJI2d 16.7) was CJI 16:3:02B; amended March, 1995.

M Crim JI 16.8 Voluntary Manslaughter

(1)[The defendant is charged with the crime of _____ / You may also consider the lesser charge of*] voluntary manslaughter. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant caused the death of [*name deceased*], that is, that [*name deceased*] died as a result of [*state alleged act causing death*].

(3)Second, that the defendant had one of these three states of mind: [he / she] intended to kill, or [he / she] intended to do great bodily harm to [*name deceased*], or [he / she] knowingly created a very high risk of death or great bodily harm knowing that death or such harm would be the likely result of [his / her] actions.

[(4)Third, that the defendant caused the death without lawful excuse or justification.]

Use Note

*If instructions on voluntary manslaughter are being given as a lesser offense to murder, use M Crim JI 16.9.

History

M Crim JI 16.8 (formerly CJI2d 16.8) was CJI 16:4:01; amended March, 1995.

Reference Guide

Statutes

MCL 750.321, .324, .329, 752.861.

Case Law

People v Reese, 491 Mich 127, 815 NW2d 85 (2012); *People v Pouncey*, 437 Mich 382, 388, 471 NW2d 346 (1991); *People v Doss*, 406 Mich 90, 96-99, 276 NW2d 9 (1979); *People v Townes*, 391 Mich 578, 588-589, 218 NW2d 136 (1974); *People v Carter*, 387 Mich 397, 418; 197 NW2d 57 (1972); *People v Younger*, 380 Mich 678, 681-682; 158 NW2d 493 (1968); *People v Bucsko*, 241 Mich 1, 3; 216 NW 372 (1927); *People v Onesto*, 203 Mich 490, 496; 170 NW 38 (1918); *People v Droste*, 160 Mich 66, 79; 125 NW 87 (1910); *People v Holmes*, 111 Mich 364, 69 NW 501 (1896); *People v Stubenvoll*, 62 Mich 329, 331; 28 NW 883 (1886); *Wellar v People*, 30 Mich 16, 19 (1874); *Maher v People*, 10 Mich 212, 218-219 (1862); *People v Scott*, 6 Mich 287, 294 (1859); *People v Elkhoja*, 251 Mich App 417, 651 NW2d 408 (2002), vacated in part on other grounds, 467 Mich 916, 658 NW2d 153 (2003); *People v Sullivan*, 231 Mich App 510, 519-520, 586 NW2d 578 (1998); *People v King*, 98 Mich App 146, 296 NW2d 211 (1980).

M Crim JI 16.9 Voluntary Manslaughter as a Lesser Included Offense of Murder

(1)The crime of murder may be reduced to voluntary manslaughter if the defendant acted out of passion or anger brought about by adequate cause and before the defendant had a reasonable time to calm down. For manslaughter, the following two things must be present:

(2)First, when the defendant acted, [his / her] thinking must be disturbed by emotional excitement to the point that a reasonable person might have acted on impulse, without thinking twice, from passion instead of judgment. This emotional excitement must have been the result of something that would cause a reasonable person to act rashly or on impulse. The law does not say what things are enough to do this. That is for you to decide.

(3)Second, the killing itself must result from this emotional excitement. The defendant must have acted before a reasonable time had passed to calm down and return to reason. The law does not say how much time is needed. That is for you to decide. The test is whether a reasonable time passed under the circumstances of this case.

Use Note

This instruction should be given after murder instructions, as part of the main charge to the jury. If jurors express confusion or return to request reinstruction on voluntary manslaughter, the trial court should combine M Crim JI 16.9 (which explains the difference between murder and voluntary manslaughter) with M Crim JI 16.8 (which explains the essential elements of voluntary manslaughter).

History

M Crim JI 16.9 (formerly CJI2d 16.9) was CJI 16:4:02; amended September, 1998.

Reference Guide

Statutes

MCL 750.321.

Case Law

People v Sullivan, 231 Mich App 510, 520, 586 NW2d 578 (1998).

M Crim JI 16.10 Involuntary Manslaughter

(1)[The defendant is charged with the crime of _____/ You may also consider the lesser charge of] involuntary manslaughter. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant caused the death of [*name deceased*], that is, that [*name deceased*] died as a result of [*state alleged act causing death*].

[*Use (3) when gross negligence is alleged:*]

(3)Second, in doing the act that caused [*name deceased*]'s death, the defendant acted in a grossly negligent manner.[1]

[*Use (4) when the act requires an intent to injure:*][2]

(4)Second, in doing the act that caused [*name deceased*]'s death, the defendant intended[3] to injure [*name deceased*]. The act charged in this case is assault and battery. The prosecution must prove the following beyond a reasonable doubt: First, that the defendant committed a battery on [*name deceased*]. A battery is a forceful or violent touching of the person or something closely connected with the person. The touching must have been intended by the defendant, that is, not accidental, and it must have been against [*name deceased*]'s will. Second, that the defendant intended to injure [*name deceased*].

[(5)Third, that the defendant caused the death without lawful excuse or justification.][4]

Use Notes

[1] For a definition of gross negligence, see M Crim JI 16.18.

[2] An unlawful act which is committed with the intent to injure is not limited to an assault and battery. The applicable elements of that offense are set forth in this instruction because assault and battery is the most common type of unlawful act needed to support a charge of involuntary manslaughter.

[3] This is a specific intent variant of the crime.

[4] Paragraph (5) may be omitted if there is no evidence of excuse or justification.

History

M Crim JI 16.10 (formerly CJI2d 16.10) was CJI 16:4:03-16:4:04 and was amended by the committee in September, 1995, to reflect the supreme court's decision in *People v Datema*, 448 Mich 585, 533 NW2d 272 (1995).

Reference Guide

Case Law

People v Holtschlag, 471 Mich 1, 684 NW2d 730, on reh'g, remanded on other grounds, 471 Mich 1202, 686 NW2d 746 (2004); *People v Lardie*, 452 Mich 231, 244, 551 NW2d 656 (1996); *People v Datema*, 448 Mich 585, 533 NW2d 272 (1995); *People v Heflin*, 434 Mich 482, 507-508, 518, 567, 456 NW2d 10 (1990); *People v Beach*, 429 Mich 450, 477, 418 NW2d 861 (1988); *People v Woods*, 416 Mich 581, 627, 331 NW2d 707 (1982); *People v Townes*, 391 Mich 578, 590-591, 218 NW2d 136 (1974); *People v Orr*, 243 Mich 300, 307, 220 NW 777 (1928); *People v Campbell*, 237 Mich 424, 429, 212 NW 97 (1927); *People v Ryczek*, 224 Mich 106, 110, 194 NW 609 (1923); *People v Barnes*, 182 Mich 179, 198, 148 NW 400 (1914); *People v Beardsley*, 150 Mich 206, 209, 113 NW 1128 (1907); *People v McMullan*, 284 Mich App 149, 771 NW2d 810 (2009); *People v McCoy*, 223 Mich App 500, 504, 566 NW2d 667 (1997); *People v Giddings*, 169 Mich App 631, 634-635, 426 NW2d 732 (1988); *Wayne County Prosecutor v Recorder's Court Judge*, 117 Mich App 442, 324 NW2d 43 (1982); *People v Ogg*, 26 Mich App 372, 182 NW2d 570 (1970).

M Crim JI 16.11 Involuntary Manslaughter—Firearm Intentionally Aimed

(1)[The defendant is charged with the crime of _____ / You may also consider the lesser charge of] involuntary manslaughter. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant caused the death of [*name deceased*], that is, [*name deceased*] died as a result of [*state alleged act causing death*].

(3)Second, that death resulted from the discharge of a firearm. [A firearm is an instrument from which (shot / a bullet) is propelled by the explosion of gunpowder.]

(4)Third, at the time the firearm went off, the defendant was pointing it at [*name deceased*].

(5)Fourth, at that time, the defendant intended to point the firearm at [*name deceased*].[1]

[(6)Fifth, that the defendant caused the death without lawful excuse or justification.][2]

Use Note

[1] This is a specific intent crime.

[2] Paragraph (6) should be given only if there is a claim by the defense that the killing was excused or justified.

History

M Crim JI 16.11 (formerly CJI2d 16.11) was CJI 16:4:06.

Reference Guide

Case Law

People v Heflin, 434 Mich 482, 497-498, 456 NW2d 10 (1990).

M Crim JI 16.12 Involuntary Manslaughter with Motor Vehicle [Use for Acts Occurring Before October 31, 2010] [*deleted*]

Note. This instruction was deleted in May, 2010, due to the repeal of the statute governing involuntary manslaughter with a motor vehicle, MCL 750.325, by 2008 PA 463, effective October 31, 2010. The offense previously covered by this instruction is dealt with in M Crim JI 15.16.

M Crim JI 16.13 Involuntary Manslaughter—Failure to Perform Legal Duty

(1)The defendant is charged with the crime of involuntary manslaughter resulting from a failure to perform a legal duty. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant had a legal duty to [*name deceased*]. The legal duty charged here is [*state legal duty*]. [A legal duty is one imposed by law or contract.]

(3)Second, that the defendant knew of the facts that gave rise to the duty.

(4)Third, that the defendant willfully neglected or refused to perform that duty and [his / her] failure to perform it was grossly negligent to human life.

(5)Fourth, that the death of [*name deceased*] was directly caused by defendant's failure to perform this duty, that is, that [*name deceased*] died as a result of [*state act or omission causing death*].

Use Note

See M Crim JI 16.18, Gross Negligence.

History

M Crim JI 16.13 (formerly CJI2d 16.13) was CJI 16:4:08.

M Crim JI 16.14 Negligent Homicide [Use for Acts Occurring Before October 31, 2010] [*deleted*]

Note. This instruction was deleted in May, 2010, due to the repeal of the negligent homicide statute, MCL 750.324, by 2008 PA 463, effective October 31, 2010. The offense previously covered by this instruction is dealt with in M Crim JI 15.16.

M Crim JI 16.15 Act of Defendant Must Be Cause of Death

[There may be more than one cause of death.] It is not enough that the defendant's act made it possible for the death to occur. In order to find that the death of [*name deceased*] was caused by the defendant, you must find beyond a reasonable doubt that the death was the natural or necessary result of the defendant's act.

Use Note

This instruction is designed for use where there is an issue as to whether the act of the defendant caused death, or whether death was caused by some intervening cause.

Where the conduct of the deceased may have caused or contributed to death, give M Crim JI 16.20, Contributory Negligence.

Where a physically susceptible victim or improper medical treatment is involved, see M Crim JI 16.16, Susceptible Victim/Improper Medical Treatment.

Do not use this instruction for cases involving aiding and abetting, concert of action, or conspiracy.

In *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010), the Michigan Supreme Court cautioned trial courts against providing inadequate jury instructions on the causation element for the crime of operating a motor vehicle while intoxicated, causing death.

History

M Crim JI 16.15 (formerly CJI2d 16.15) was CJI 16:1:01.

Reference Guide

Case Law

People v Bowles, 461 Mich 555, 560, 607 NW2d 715 (2000), affirming *People v Bowles*, 234 Mich App 345, 594 NW2d 100 (1999); *People v Barnes*, 182 Mich 179, 198, 148 NW 400 (1914); *People v Daniels*, 172 Mich App 374, 381, 431 NW2d 846 (1988); *People v Clark*, 171 Mich App 656, 659, 431 NW2d 88 (1988); *People v Jeglum*, 41 Mich App 247, 199 NW2d 854 (1972); *People v Scott*, 29 Mich App 549, 185 NW2d 576 (1971).

M Crim JI 16.16 Susceptible Victim / Improper Medical Treatment

(1)If the defendant unlawfully injured [*name deceased*] and started a series of events that naturally or necessarily resulted in [*name deceased*]'s death, it is no defense that:

[*Choose one or more of (2), (3), or (4):*]

(2)the injury was not the only cause of death.

(3)[*name deceased*] was already weak or ill and this contributed to [his / her] death.

(4)the immediate cause of death was medical treatment. It is a defense, however, if the medical treatment was grossly erroneous or grossly unskillful and the injury might not have caused death if [*name deceased*] had not received such treatment.

History

M Crim JI 16.16 (formerly CJI2d 16.16) was CJI 16:1:02-16:1:03.

Reference Guide

Case Law

People v Townsend, 214 Mich 267, 279, 183 NW 177 (1921); *People v Cook*, 39 Mich 236, 240 (1878); *People v Herndon*, 246 Mich App 371, 633 NW2d 376 (2001); *People v Webb*, 163 Mich App 462, 465, 415 NW2d 9 (1987); *People v Dolen*, 89 Mich App 277, 282, 279 NW2d 539 (1977); *People v Flenon*, 42 Mich App 457, 202 NW2d 471 (1972); *People v Jones*, 12 Mich App 677, 163 NW2d 266 (1968).

M Crim JI 16.17 Degrees of Negligence

(1)Gross negligence is an element of manslaughter with a motor vehicle; ordinary negligence is an element of negligent homicide; slight negligence is not a crime at all. Because of that, I need to tell you the differences between slight, ordinary, and gross negligence.

(2)Slight negligence means doing something that is not usually dangerous, something that only an extremely careful person would have thought could cause injury. In this case, if you find that the defendant was only slightly negligent, then you must find [him / her] not guilty.

(3)Ordinary negligence means not taking reasonable care under the circumstances as they were at the time. If someone does something that is usually dangerous, something that a sensible person would know could hurt someone, that is ordinary negligence. If the defendant did not do what a sensible person would have done under the circumstances, then that is ordinary negligence.

(4)[*Give M Crim JI 16.18, Gross Negligence.*]

(5)The degree of negligence separates negligent homicide from manslaughter. For manslaughter, there must be gross negligence; for negligent homicide, there must be ordinary negligence. If the defendant was not negligent at all, or if [he / she] was only slightly negligent, then [he / she] is not guilty of either manslaughter or negligent homicide.

(6)The fact that an accident occurred or that someone was killed does not, by itself, mean that the defendant was negligent.

History

M Crim JI 16.17 (formerly CJI2d 16.17) was CJI 16:5:02.

Reference Guide

Case Law

People v Campbell, 237 Mich 424, 429, 212 NW 97 (1927); *People v Jeglum*, 41 Mich App 247, 253, 199 NW2d 854 (1972).

M Crim JI 16.18 Gross Negligence

(1)Gross negligence means more than carelessness. It means willfully disregarding the results to others that might follow from an act or failure to act. In order to find that the defendant was grossly negligent, you must find each of the following three things beyond a reasonable doubt:

(2)First, that the defendant knew of the danger to another, that is, [he / she] knew there was a situation that required [him / her] to take ordinary care to avoid injuring another.

(3)Second, that the defendant could have avoided injuring another by using ordinary care.

(4)Third, that the defendant failed to use ordinary care to prevent injuring another when, to a reasonable person, it must have been apparent that the result was likely to be serious injury.

Use Note

Use where gross negligence is an element of the crime charged.

See M Crim JI 16.20, Contributory Negligence, where appropriate.

History

M Crim JI 16.18 (formerly CJI2d 16.18) was CJI 16:4:05.

Reference Guide

Case Law

People v Orr, 243 Mich 300, 307, 220 NW 777 (1928); *People v Rettelle*, 173 Mich App 196, 199, 433 NW2d 401 (1988).

M Crim JI 16.19 Unreasonable Rate of Speed

(1)The defendant is charged with driving at an unreasonable speed. Whether the defendant was driving at an unreasonable speed does not depend on the speed limit.

(2)The defendant may have driven faster than the speed limit and still have been travelling at a reasonable speed. On the other hand, [he / she] may have been driving under the speed limit but at a speed that was unreasonably fast under the circumstances.

(3)To decide if the defendant was driving too fast, you must consider all of the circumstances, including the weather, visibility, road conditions, time of day or night, and the other traffic.

History

M Crim JI 16.19 (formerly CJI2d 16.19) was CJI 16:5:03.

Reference Guide

Statutes

MCL 750.326.

M Crim JI 16.20 Contributory Negligence

If you find that [*name deceased*] was negligent, you may only consider that negligence in deciding whether the defendant's conduct was a substantial cause of the accident.

Use Note

This instruction is for use when involuntary manslaughter or negligent homicide is charged.

History

M Crim JI 16.20 (formerly CJI2d 16.20) was CJI 16:1:04 and was amended by the committee in 1995.

Reference Guide

Case Law

People v Tims, 449 Mich 83, 97-98, 534 NW2d 675 (1995); *People v Campbell*, 237 Mich 424, 212 NW 97 (1927); *People v Barnes*, 182 Mich 179, 148 NW 400 (1914); *People v Werner*, 254 Mich App 528, 659 NW2d 688 (2002); *People v Moore*, 246 Mich App 172; 631 NW2d 779 (2001); *People v Burt*, 173 Mich App 332, 433 NW2d 366 (1988); *People v Clark*, 171 Mich App 656, 431 NW2d 88 (1988); *People v Richardson*, 170 Mich App 470, 428 NW2d 698 (1988).

M Crim JI 16.21 Inferring State of Mind

(1)You must think about all the evidence in deciding what the defendant's state of mind was at the time of the alleged killing.

(2)The defendant's state of mind may be inferred from the kind of weapon used, the type of wounds inflicted, the acts and words of the defendant, and any other circumstances surrounding the alleged killing.

[*Use paragraphs (3), (4), and (5) for inferring intent from the use of a dangerous weapon, where appropriate:*]

(3)You may infer that the defendant intended to kill if [he / she] used a dangerous weapon in a way that was likely to cause death. Likewise, you may infer that the defendant intended the usual results that follow from the use of a dangerous weapon.

(4)A gun is a dangerous weapon.

(5)A dangerous weapon is any instrument that is used in a way that is likely to cause serious physical injury or death.

[*Use paragraph (6) for inferring premeditation and deliberation, where appropriate:*]

(6)Premeditation and deliberation may be inferred from any actions of the defendant which show planning or from any other circumstances surrounding the killing. The prosecutor need not prove a motive for the killing. But, you may consider evidence of motive in deciding if there was premeditation and deliberation. Motive by itself does not prove premeditation and deliberation.

History

M Crim JI 16.21 (formerly CJI2d 16.21) was CJI 16:1:08-16:1:10.

Reference Guide

Case Law

People v Woods, 416 Mich 581, 613, 331 NW2d 707 (1982); *People v Richardson*, 409 Mich 126, 144, 293 NW2d 332 (1980); *People v Wright*, 408 Mich 1, 18-19, 289 NW2d 1 (1980); *People v Martin*, 392 Mich 553, 561-562, 221 NW2d 336 (1974); *Wellar v People*, 30 Mich 16 (1874); *People v Lewis*, 168 Mich App 255, 270, 423 NW2d 637 (1988); *People v Youngblood*, 165 Mich App 381, 387, 418 NW2d 472 (1988); *People v Kvam*, 160 Mich App 189, 193, 408 NW2d 71 (1987); *People v Furman*, 158 Mich App 302, 308, 404 NW2d 246 (1987); *People v Lyles*, 67 Mich App 620, 242 NW2d 452 (1976); *People v Stinson*, 58 Mich App 243, 248, 227 NW2d 303 (1975); *People v Macklin*, 46 Mich App 297, 304, 208 NW2d 62 (1973); *People v Morrin*, 31 Mich App 301, 319, 187 NW2d 434 (1971); *People v Geiger*, 10 Mich App 339, 343, 159 NW2d 383 (1968).

M Crim JI 16.22 Transferred Intent

If the defendant intended to kill one person, but by mistake or accident killed another person, the crime is the same as if the first person had actually been killed.

Use Note

Use where factually appropriate.

History

M Crim JI 16.22 (formerly CJI2d 16.22) was CJI 16:1:05.

Reference Guide

Case Law

People v Hodge, 196 Mich 546, 162 NW 966 (1917); *People v Lovett*, 90 Mich App 169, 172, 283 NW2d 357 (1979).

M Crim JI 16.23 State of Mind

(1)You have heard evidence concerning the defendant's mental condition at the time of the alleged crime.

(2)It is not enough that the defendant did an act that caused death. In addition, the defendant must have had a certain state of mind when [he / she] did that act. In deciding whether the defendant had the required state of mind you may consider such things as [the defendant's history of mental problems and / the defendant's intellectual disability and] all of the circumstances surrounding the alleged crime.

(3)If you have a reasonable doubt about whether the defendant had the required state of mind at the time of the alleged crime, you must find the defendant not guilty of [*state crime(s) to which defense applies*].

Caution

In *People v Carpenter*, 464 Mich 223, 627 NW2d 276 (2001), the Supreme Court abolished the defense of diminished capacity. Accordingly, the third sentence of paragraph (2) should not be used.

Use Note

Do not use this instruction where the defense is insanity.

History

M Crim JI 16.23 (formerly CJI2d 16.23) was CJI 16:1:06-16:1:07. Amended January 2016.

Reference Guide

Case Law

People v Carpenter, 464 Mich 223, 627 NW2d 276 (2001).

M Crim JI 16.24 Degrees of Murder

If you find the defendant guilty of murder, you must state in your verdict whether it is murder in the first degree or murder in the second degree.

History

M Crim JI 16.24 (formerly CJI2d 16.24) was CJI 16:1:14.

Reference Guide

Statutes

MCL 750.318.

M Crim JI 16.25 Unanimity of Verdict on Premeditated and Felony Murder

(1)You have been instructed on the two types of first-degree murder. Those two types are premeditated murder and felony murder.

(2)A verdict in a criminal case must be unanimous. To be unanimous, each of you must agree upon which type of first-degree murder has been proved or that both types of first-degree murder have been proved.

(3)If you return a verdict of guilty of first-degree murder, your unanimous verdict must specify whether all of you have found the defendant guilty of:

(a)premeditated murder, or

(b)felony murder, or

(c)both.

History

M Crim JI 16.25 (formerly CJI2d 16.25) was CJI 16:2:05.

Reference Guide

Case Law

Schad v Arizona, 501 US 624 (1991); *People v Smielewski*, 235 Mich App 196, 206, 596 NW2d 636 (1999); *People v Densmore*, 87 Mich App 434, 274 NW2d 811 (1978); *People v Sparks*, 82 Mich App 44, 266 NW2d 661 (1978); *People v Olsson*, 56 Mich App 500, 506, 224 NW2d 691 (1974).

M Crim JI 16.26 Felony Murder—Codefendants

(1)You should consider each defendant separately. Each one is entitled to have [his / her] case decided on the evidence and the law that applies to [him / her].

(2)It is not enough merely to find that the defendants agreed to commit the crime of [*state underlying felony*].

(3)Instead, you must determine as to each defendant separately whether [he / she] intended to kill, whether [he / she] intended to do great bodily harm, or whether [he / she] created a very high risk of death or great bodily harm knowing that death or such harm was the probable result of what [he / she] did.

Use Note

This instruction should be given where two or more defendants are tried jointly for felony murder. It may be used in conjunction with M Crim JI 2.19, Multiple Defendants-Consider Evidence and Law As It Applies to Each Defendant.

History

M Crim JI 16.26 (formerly CJI2d 16.26) was CJI 16:2:03A.

CHAPTER 17 *Assault*

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M Crim JI 17.1 Definition of Assault [*For Use Where There Has Been No Battery*]

(1)The defendant is charged with the crime of assault. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant either attempted to commit a battery on [*name complainant*] or did an act that would cause a reasonable person to fear or apprehend an immediate battery. A battery is a forceful, violent, or offensive touching of the person or something closely connected with the person of another.*

(3)Second, that the defendant intended either to commit a battery upon [*name complainant*] or to make [*name complainant*] reasonably fear an immediate battery. [An assault cannot happen by accident.]

(4)Third, that at the time, the defendant had the ability to commit a battery, appeared to have the ability, or thought [he / she] had the ability.

Use Note

* If the victim's consent or the nature of the touching is at issue, use of M Crim JI 17.14, Definition of Force and Violence, or M Crim JI 17.15, Definition of Touching, is recommended.

History

M Crim JI 17.1 (formerly CJI2d 17.1) was CJI 17:6:01, 17:1:03; amended September, 1998, September, 2008.

Reference Guide

Statutes

MCL 750.81.

Case Law

People v Jones, 443 Mich 88, 504 NW2d 158 (1993); *People v Joeseype Johnson*, 407 Mich 196, 210, 284 NW2d 718 (1979); *People v Sanford*, 402 Mich 460, 479, 265 NW2d 1 (1978); *People v Davis* and *People v Perez*, 277 Mich App 676, 747 NW2d 555 (2008); *People v Terry*, 217 Mich App 660, 553 NW2d 23 (1996); *People v Laster*, 169 Mich App 768, 426 NW2d 806 (1988); *People v Ng*, 156 Mich App 779, 786, 402 NW2d 500 (1986); *People v Etchison*, 123 Mich App 448, 453, 333 NW2d 309 (1983); *People v LeBlanc*, 120 Mich App 343, 346, 327 NW2d 471 (1982); *People v Boyd*, 102 Mich App 112, 300 NW2d 760 (1980); *People v Smith (On Rehearing)*, 89 Mich App 478, 280 NW2d 862 (1979), cert den sub nom *Michigan v Smith*, 452 US 914 (1981); *People v Banks*, 51 Mich App 685, 216 NW2d 461 (1974); *People v Maxwell*, 36 Mich App 127, 128, 193 NW2d 176 (1971); *People v Patskan*, 29 Mich App 354, 357, 185 NW2d 398 (1971), rev'd on other grounds, 387 Mich 701, 199 NW2d 458 (1972).

M Crim JI 17.2 Definition of Assault and Battery [*For Use Where Battery Is Shown*]

(1)The defendant is charged with the crime of assault and battery. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant committed a battery on [*name complainant*]. A battery is a forceful, violent, or offensive touching of the person or something closely connected with the person of another.[1] The touching must have been intended by the defendant, that is, not accidental, and it must have been against [*name complainant*]'s will. It does not matter whether the touching caused an injury.

(3)Second, that the defendant intended either to commit a battery upon [*name complainant*] or to make [*name complainant*] reasonably fear an immediate battery.[2]

Use Note

[1] If the victim's consent or the nature of the touching is at issue, use of M Crim JI 17.14, Definition of Force and Violence, or M Crim JI 17.15, Definition of Touching, is recommended.

[2] All assaults are specific intent crimes. *People v Joeseype Johnson*, 407 Mich 196, 284 NW2d 718 (1979).

History

M Crim JI 17.2 (formerly CJI2d 17.2) was CJI 17:6:02; amended September, 1998.

Reference Guide

Case Law

People v Joeseype Johnson, 407 Mich 196, 284 NW2d 718 (1979); *Tinkler v Richter*, 295 Mich 396, 401, 295 NW 201 (1940); *People v Lakeman*, 135 Mich App 235, 353 NW2d 493 (1984).

M Crim JI 17.2a Domestic Assault

(1)The defendant is charged with the crime of domestic assault. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant [assaulted / assaulted and battered][1] [*name complainant*].

A battery is the forceful, violent, or offensive touching of a person or something closely connected with him or her.[2] The touching must have been intended by the defendant, that is, not accidental, and it must have been against [*name complainant*]'s will.

An assault is an attempt to commit a battery or an act that would cause a reasonable person to fear or apprehend an immediate battery. The defendant must have intended either to commit a battery or to make [*name complainant*] reasonably fear an immediate battery.[3] [An assault cannot happen by accident.] At the time of an assault, the defendant must have had the ability to commit a battery, or must have appeared to have the ability, or must have thought [he / she] had the ability.

(3)Second, that at the time [*name complainant*]: [*Select one or more of the following:*]

(a)was the defendant's spouse

(b)was the defendant's former spouse

(c)had a child in common with the defendant

(d)was a resident or former resident of the same household as the defendant

(e)was a person with whom the defendant had or previously had a dating relationship. A "dating relationship" means frequent, intimate association primarily characterized by the expectation of affectional involvement. It does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.

Use Note

[1] Use either or both as warranted by the evidence.

[2] If the victim's consent or nature of the touching is at issue, use of M Crim JI 17.14, Definition of Force and Violence, or M Crim JI 17.15, Definition of Touching, is recommended.

[3] All assaults are specific intent crimes. *People v Joeseype Johnson*, 407 Mich 196, 284 NW2d 718 (1979).

History

M Crim JI 17.2a (formerly CJI2d 17.2a) was adopted by the committee in September, 2001, to reflect the elements

of the offense found at MCL 750.81(2). Amended October, 2002; May, 2008; September, 2008.

Reference Guide

Statutes

MCL 750.81(2).

M Crim JI 17.3 Assault with Intent to Murder

(1)The defendant is charged with the crime of assault with intent to murder. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant tried to physically injure another person.

(3)Second, that when the defendant committed the assault, [he / she] had the ability to cause an injury, or at least believed that [he / she had the ability.

(4)Third, that the defendant intended to kill the person [he / she] assaulted [, and the circumstances did not legally excuse or reduce the crime].*

Use Note

*This is a specific intent crime.

Where appropriate, give special instructions on particular defenses (see chapter 7), on mitigation (M Crim JI 17.4), and transferred intent (M Crim JI 17.17).

History

M Crim JI 17.3 (formerly CJI2d 17.3) was CJI 17:2:01.

Reference Guide

Statutes

MCL 750.83.

Case Law

People v Taylor, 422 Mich 554, 375 NW2d 1 (1985); *People v Joeseype Johnson*, 407 Mich 196, 284 NW2d 718 (1979); *People v Beard*, 171 Mich App 538, 541, 431 NW2d 232 (1988); *People v Lipps*, 167 Mich App 99, 106, 421 NW2d 586 (1988); *People v Burnett*, 166 Mich App 741, 421 NW2d 278 (1988); *People v Hughes*, 160 Mich App 117, 119, 407 NW2d 638 (1987); *People v Cochran*, 155 Mich App 191, 399 NW2d 44 (1986); *People v Haggart*, 142 Mich App 330, 341, 370 NW2d 345 (1985).

M Crim JI 17.4 Mitigating Circumstances

(1)The defendant can only be guilty of the crime of assault with intent to commit murder if [he / she] would have been guilty of murder had the person [he / she] assaulted actually died. If the assault took place under circumstances that would have reduced the charge to manslaughter if the person had died, the defendant is not guilty of assault with intent to commit murder.

(2)Voluntary manslaughter is different from murder in that for manslaughter, the following things must be true:

(3)First, when the defendant acted, [his / her] thinking must have been disturbed by emotional excitement to the point that an ordinary person might have acted on impulse, without thinking twice, from passion instead of judgment. This emotional excitement must have been caused by something that would cause an ordinary person to act rashly or on impulse. The law does not say what things are enough to do this. That is for you to decide. [If the defendant is mentally or emotionally impaired in some way, you may consider that.]

(4)Second, the killing itself must have resulted from this emotional excitement. The defendant must have acted before a reasonable time had passed to calm down and before reason took over again. The law does not say how much time is needed. That is for you to decide. The test is whether a reasonable time passed under the circumstances of this case.

(5)If you find that the crime would have been manslaughter had the person died, then you must find the defendant not guilty of assault with intent to murder [and decide whether (he / she) is guilty of any lesser offense].*

Use Note

*Use this bracketed material when the court will instruct on lesser included offenses.

History

M Crim JI 17.4 (formerly CJI2d 17.4) was CJI 17:2:02.

Reference Guide

Case Law

People v Mortimer, 48 Mich 37, 40, 11 NW 776 (1882); *Maher v People*, 10 Mich 212, 218-219 (1862); *People v Lipps*, 167 Mich App 99, 106, 421 NW2d 586 (1988).

M Crim JI 17.5 Assault with Intent to Commit a Felony

(1)The defendant is charged with the crime of assault with intent to commit the crime of [*state felony charged*]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant either attempted to commit a battery on [*name complainant*] or did an act that would cause a reasonable person to fear or apprehend an immediate battery. A battery is a forceful or violent touching of the person or something closely connected with the person.*

(3)Second, that the defendant intended either to injure [*name complainant*] or intended to make [*name complainant*] reasonably fear an immediate battery.

(4)Third, that at the time, the defendant had the ability to commit a battery, appeared to have the ability, or thought [he / she] had the ability.

(5)Fourth, that when [he / she] assaulted [*name complainant*], the defendant intended to commit the crime of [*state felony charged*]. It does not matter whether the crime of [*state felony charged*] was actually committed.

(6)The crime of [*state felony charged*] is defined as follows: [*define crime—see instructions under felony charged*].

Use Note

* If the victim's consent or the nature of the touching is at issue, use of M Crim JI 17.14, Definition of Force and Violence, or M Crim JI 17.15, Definition of Touching, is recommended.

History

M Crim JI 17.5 (formerly CJI2d 17.5) was CJI 17:7:01. Amended September, 2008.

Reference Guide

Statutes

MCL 750.87.

M Crim JI 17.6 Assault and Infliction of Serious Injury (Aggravated Assault)

(1)[The defendant is charged with the crime of _____ / You may also consider the lesser charge of[1]] assault and infliction of serious injury. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant tried to physically injure another person.[2]

(3)Second, that the defendant intended to injure [*name complainant*] [or intended to make (*name complainant*) reasonably fear an immediate battery].

(4)Third, that the assault caused a serious or aggravated injury. A serious or aggravated injury is a physical injury that requires immediate medical treatment or that causes disfigurement, impairment of health, or impairment of a part of the body.

Use Note

[1] Use when instructing on this crime as a lesser included offense.

[2] Rarely, serious injury will result from an attempt to frighten. In that instance a further or substitute instruction on assault should be given: "An assault is also any forceful or violent act done with the intention of frightening someone else. The act must be such as would cause a reasonable person to be afraid of being injured."?

History

M Crim JI 17.6 (formerly CJI2d 17.6) was CJI 17:5:01.

Reference Guide

Statutes

MCL 750.81a.

Case Law

People v Joeseype Johnson, 407 Mich 196, 210, 284 NW2d 718 (1979); *Tinkler v Richter*, 295 Mich 396, 401, 295 NW 201 (1940); *People v Brown*, 97 Mich App 606, 296 NW2d 121 (1980); *People v Van Diver*, 80 Mich App 352, 263 NW2d 370 (1977); *People v Turner*, 37 Mich App 226, 194 NW2d 546 (1971).

M Crim JI 17.7 Assault with Intent to Do Great Bodily Harm Less Than Murder

(1)[The defendant is charged with the crime of _____ / You may also consider the lesser charge of][1] assault with intent to do great bodily harm less than murder. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant tried to physically injure another person.

(3)Second, that at the time of the assault, the defendant had the ability to cause an injury, or at least believed that [he / she] had the ability.

(4)Third, that the defendant intended to cause great bodily harm. Actual injury is not necessary, but if there was an injury, you may consider it as evidence in deciding whether the defendant intended to cause great bodily harm. Great bodily harm means any physical injury that could seriously harm the health or function of the body.

Use Note

[1] Use when instructing on this crime as a lesser included offense.

History

M Crim JI 17.7 (formerly CJI2d 17.7) was CJI 17:3:01-17:3:02. This instruction was modified by the committee in May, 2007, to reflect that an injury to be serious need not be permanent.

Reference Guide

Statutes

MCL 750.84.

Case Law

People v Joeseype Johnson, 407 Mich 196, 284 NW2d 718 (1979); *People v Smith*, 217 Mich 669, 187 NW 304 (1922); *People v Howard*, 179 Mich 478, 146 NW 315 (1914); *People v Troy*, 96 Mich 530, 537, 56 NW 102 (1893) *People v Miller*, 91 Mich 639, 52 NW 65 (1892); *People v Stinnett*, 163 Mich App 213, 413 NW2d 711 (1987); *People v Eggleston*, 149 Mich App 665, 386 NW2d 637 (1986); *People v Mitchell*, 149 Mich App 36, 385 NW2d 717 (1986); *People v Cunningham*, 21 Mich App 381, 175 NW2d 781 (1970).

M Crim JI 17.8 Dangerous Weapon

The intent with which an assault is made can sometimes be determined by whether a dangerous weapon was used. A dangerous weapon is any instrument that is used in a way that is likely to cause serious physical injury or death.

History

M Crim JI 17.8 (formerly CJI2d 17.8) was CJI 17:3:03.

Reference Guide

Case Law

People v Counts, 318 Mich 45, 27 NW2d 338 (1947); *People v Buckner*, 144 Mich App 691, 375 NW2d 794 (1985); *People v Mack*, 112 Mich App 605, 317 NW2d 190 (1981); *People v Cunningham*, 21 Mich App 381, 175 NW2d 781 (1970).

M Crim JI 17.9 Assault with a Dangerous Weapon

(1)[The defendant is charged with the crime of / You may also consider the lesser charge of[1]] felonious assault. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant either attempted to commit a battery on [*name complainant*] or did an act that would cause a reasonable person to fear or apprehend an immediate battery. A battery is a forceful or violent touching of the person or something closely connected with the person.[2]

(3)Second, that the defendant intended either to injure [*name complainant*] or to make [*name complainant*] reasonably fear an immediate battery.

(4)Third, that at the time, the defendant had the ability to commit a battery, appeared to have the ability, or thought [he / she] had the ability.

(5)Fourth, that the defendant committed the assault with a [*state dangerous weapon alleged*].[3]

Use Note

[1] Use when instructing on this crime as a lesser included offense.

[2] If the victim's consent or nature of the touching is at issue, use of M Crim JI 17.14, Definition of Force and Violence; or M Crim JI 17.15, Definition of Touching, is recommended.

[3] Where necessary, define term used:

M Crim JI 17.10____ Definition of Dangerous Weapon;

M Crim JI 17.11____Definition of Firearm—Gun, Revolver, Pistol;

M Crim JI 17.12____Definition of Brass Knuckles

History

M Crim JI 17.9 (formerly CJI2d 17.9) was CJI 17:4:01; amended September, 2008.

Reference Guide

Statutes

MCL 750.82.

Case Law

People v Burgess, 419 Mich 305, 307, 353 NW2d 444 (1984); *People v Joeseype Johnson*, 407 Mich 196, 210, 284 NW2d 718 (1979); *People v Crook,* 162 Mich App 106, 412 NW2d 661 (1987); *People v Strong*, 143 Mich App 442, 372 NW2d 335 (1985); *People v Lakeman*, 135 Mich App 235, 353 NW2d 493 (1984); *People v Davis*, 126 Mich App 66, 337 NW2d 315 (1983); *People v Rivera*, 120 Mich App 50, 327 NW2d 386 (1982); *People v Dozier*, 39 Mich App 88, 197 NW2d 314 (1972); *People v Crane*, 27 Mich App 201, 183 NW2d 307 (1970).

M Crim JI 17.10 Definition of Dangerous Weapon

(1)A dangerous weapon is any object that is used in a way that is likely to cause serious physical injury or death.

(2)Some objects, such as guns or bombs, are dangerous because they are specifically designed to be dangerous. Other objects are designed for peaceful purposes but may be used as dangerous weapons. The way an object is used or intended to be used in an assault determines whether or not it is a dangerous weapon. If an object is used in a way that is likely to cause serious physical injury or death, it is a dangerous weapon.

(3)You must decide from all of the facts and circumstances whether the evidence shows that the _____ in question here was a dangerous weapon.

History

M Crim JI 17.10 (formerly CJI2d 17.10) was CJI 17:4:03.

Reference Guide

Statutes

MCL 750.82.

Case Law

People v Brown, 406 Mich 215, 277 NW2d 155 (1979); *People v Goolsby*, 284 Mich 375, 279 NW 867 (1938); *People v Malkowski*, 198 Mich App 610, 614, 499 NW2d 450 (1993); *People v Sheets*, 138 Mich App 794, 360 NW2d 301 (1984); *People v Bender*, 124 Mich App 571, 335 NW2d 85 (1983); *People v Kay*, 121 Mich App 438, 328 NW2d 424 (1982); *People v Dixon*, 99 Mich App 847, 849, 298 NW2d 647 (1980); *People v Hale*, 96 Mich App 343, 292 NW2d 204, vacated on other grounds, 409 Mich 937, 298 NW2d 421 (1980); *People v Van Diver*, 80 Mich App 352, 263 NW2d 370 (1977); *People v Buford*, 69 Mich App 27, 244 NW2d 351 (1976); *People v Kildow*, 19 Mich App 194, 172 NW2d 492 (1969); *People v Ragland*, 14 Mich App 425, 165 NW2d 639 (1968).

M Crim JI 17.11 Definition of Firearm-Gun, Revolver, Pistol

(1)A gun [revolver / pistol] is a firearm. A firearm includes any weapon which is designed to or may readily be converted to expel a projectile by action of an explosive.

[(2)It does not matter whether or not the gun (revolver / pistol) was capable of firing a projectile or whether it was loaded.]

History

M Crim JI 17.11 (formerly CJI2d 17.11) was CJI 17:4:02, 17:4:06.

Reference Guide

Statutes

MCL 8.3; MCL 8.3t.

Case Law

People v Jones, 150 Mich App 440, 387 NW2d 875 (1986); *People v Prather*, 121 Mich App 324, 328 NW2d 556 (1982).

M Crim JI 17.12 Definition of Brass Knuckles

Brass knuckles are linked metal rings or a metal bar held or worn over the fingers in order to protect them in striking a blow and to make the blow more effective.

Use Note

The additional dangerous weapons listed in the statute require no definition.

History

M Crim JI 17.12 (formerly CJI2d 17.12) was CJI 17:4:04.

Reference Guide

Statutes

MCL 750.82.

M Crim JI 17.13 Defense—Firearm Inoperable

A gun that is so [out of repair / taken apart with parts missing / welded together / plugged up] that it is totally unusable as a firearm and cannot be easily made operable is not included in this law.

Use Note

This instruction should be used only in prosecutions for assault with a dangerous weapon (felonious assault), MCL 750.82.

History

M Crim JI 17.13 (formerly CJI2d 17.13) was CJI 17:4:05.

Reference Guide

Case Law

People v Stevens, 409 Mich 564, 297 NW2d 120 (1980); *People v Jones*, 150 Mich App 440, 387 NW2d 875 (1986).

M Crim JI 17.14 Definition of Force and Violence

As used in these instructions, the words "force and violence" mean any use of physical force against another person so as to harm or embarrass [him / her].

History

M Crim JI 17.14 (formerly CJI2d 17.14) was CJI 17:6:03.

Reference Guide

Case Law

People v Burk, 238 Mich 485, 488, 213 NW 717 (1927).

M Crim JI 17.15 Definition of Touching

For a battery to occur, the touching must have been intended by the defendant, that is, not accidental, and it must have been against [*name complainant*]'s will. It does not matter whether the touching caused an injury.

History

M Crim JI 17.15 (formerly CJI2d 17.15) was CJI 17:6:04.

Reference Guide

Case Law

Tinkler v Richter, 295 Mich 396, 401, 295 NW 201 (1940); *People v Lakeman*, 135 Mich App 235, 353 NW2d 493 (1984).

M Crim JI 17.16 Actual Injury Is Not Necessary

An assault does not have to cause an actual injury. [However, if there was an injury, you may consider the injury with the other evidence in determining whether there was an assault.]*

Use Note

*Give material in brackets when there is an actual injury.

History

M Crim JI 17.16 (formerly CJI2d 17.16) was CJI 17:1:02.

Reference Guide

Case Law

People v Joeseype Johnson, 407 Mich 196, 210, 284 NW2d 718 (1979); *People v Carlson*, 160 Mich 426, 125 NW 361 (1910); *People v Lakeman*, 135 Mich App 235, 353 NW2d 493 (1984); *People v Bryant*, 80 Mich App 428, 433, 264 NW2d 13 (1978).

M Crim JI 17.17 Mistake—Assault on a Third Person

If the defendant intended to assault one person, but by mistake or accident assaulted another person, the crime is the same as if the first person had actually been assaulted.

History

M Crim JI 17.17 (formerly CJI2d 17.17) was CJI 17:1:05.

Reference Guide

Case Law

People v Hodge, 196 Mich 546, 162 NW 966 (1917); *People v Raher*, 92 Mich 165, 52 NW 625 (1892); *People v Hurse*, 152 Mich App 811, 394 NW2d 119 (1986).

M Crim JI 17.18 Child Abuse, First Degree

(1)The defendant is charged with the crime of first-degree child abuse. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

[*Choose (2) or (3):*]

(2)First, that [*name defendant*] is the [parent / guardian] of [*name child*].

(3)First, that [*name defendant*] had care or custody of or authority over [*name child*] when the abuse allegedly happened, regardless of the length of time the child was cared for by, in the custody of, or subject to the authority of that person.

(4)Second, that the defendant either knowingly or intentionally caused [serious physical harm / serious mental harm] to [*name child*].

[*Choose (a) or (b):*]

(a)By "serious physical harm" I mean any physical injury to a child that seriously impairs the child's health or physical well-being, including, but not limited to, brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut.

(b)By "serious mental harm" I mean an injury to a child's mental condition that results in visible signs of an impairment in the child's judgment, behavior, ability to recognize reality, or ability to cope with the ordinary demands of life.

(5)Third, that [*name child*] was at the time under the age of 18.

Use Note

The jury should be instructed on parental discipline, M Crim JI 17.24, when this is raised as a defense.

History

M Crim JI 17.18 (formerly CJI2d 17.18) was CJI 17:8:01. Amended by the committee September, 1995; September, 2000; May, 2009.

Reference Guide

Statutes

MCL 750.136b.

Case Law

People v Maynor, 470 Mich 289, 683 NW2d 565 (2004); *People v Kelley*, 433 Mich 882, 446 NW2d 821, rev'g 176 Mich App 219, 439 NW2d 315 (1989); *People v Daoust*, 228 Mich App 1, 577 NW2d 179 (1998); *People v Jackson*, 140 Mich App 283, 287, 364 NW2d 310 (1985).

M Crim JI 17.19 Child Abuse, Second Degree (Willful Failure to Provide, or Abandonment)

(1)The defendant is charged with the crime of second-degree child abuse. To establish this charge, the prosecution must prove each of the following elements beyond a reasonable doubt:

[*Choose (2) or (3):*]

(2)First, that [*name defendant*] is the [parent / guardian] of [*name child*].

(3)First, that [*name defendant*] had care or custody of or authority over [*name child*] when the abuse allegedly happened.

(4)Second, that the defendant willfully [failed to provide food, clothing, or shelter necessary for the welfare of (*name child*) / abandoned (*name child*)].

(5)Third, that as a result, [*name child*] suffered [serious physical harm / serious mental harm].

[*Choose (a) or (b):*]

(a)By "serious physical harm" I mean any physical injury to a child that seriously impairs the child's health or physical well-being, including, but not limited to, brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut.

(b)By "serious mental harm" I mean an injury to a child's mental condition that results in visible signs of an impairment in the child's judgment, behavior, ability to recognize reality, or ability to cope with the ordinary demands of life.

(6)Fourth, that [*name child*] was at the time under the age of 18.

Use Note

It is unclear whether this is a specific intent crime.

The jury should be instructed on parental discipline, M Crim JI 17.24, when this is raised as a defense.

History

M Crim JI 17.19 (formerly CJI2d 17.19) was CJI 17:8:02A. Amended September, 2000.

Reference Guide

Statutes

MCL 750.136b.

M Crim JI 17.20 Child Abuse, Second Degree (Reckless Act)

(1)The defendant is charged with second-degree child abuse. To establish this charge, the prosecution must prove each of the following elements beyond a reasonable doubt:

[*Choose (2) or (3):*]

(2)First, that [*name defendant*] is the [parent / guardian] of [*name child*].

(3)First, that [*name defendant*] had care or custody of or authority over [*name child*] when the abuse allegedly happened.

(4)Second, that the defendant did some reckless act.

(5)Third, that as a result, [*name child*] suffered serious physical harm. By "serious physical harm" I mean any physical injury to a child that seriously impairs the child's health or physical well-being, including, but not limited to, brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut.

(6)Fourth, that [*name child*] was at the time under the age of 18.

Use Note

The statutory language indicates this is a general intent crime. The jury should be instructed on parental discipline, M Crim JI 17.24, when this is raised as a defense.

History

M Crim JI 17.20 (formerly CJI2d 17.20) was CJI 17:8:02B. Amended September, 2000.

Reference Guide

Statutes

MCL 750.136b.

M Crim JI 17.20a Child Abuse, Second Degree (Act Likely to Cause Serious Harm)

(1)The defendant is charged with the crime of second-degree child abuse. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

[*Choose (2) or (3):*]

(2)First, that [*name defendant*] is the [parent / guardian] of [*name child*].

(3)First, that [*name defendant*] had care or custody of or authority over [*name child*] when the abuse allegedly happened, regardless of the length of time the child was cared for by, in the custody of, or subject to the authority of that person.

(4)Second, that the defendant knowingly or intentionally did an act likely to cause serious physical or mental harm to [*name child*] regardless of whether such harm resulted.

[*Choose (a) or (b) or both:*]

(a)By "serious physical harm" I mean any physical injury to a child that seriously impairs the child's health or physical well-being, including, but not limited to, brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut.

(b)By "serious mental harm" I mean an injury to a child's mental condition that results in visible signs of an impairment in the child's judgment, behavior, ability to recognize reality, or ability to cope with the ordinary demands of life.

(5)Third, that [*name child*] was at the time under the age of 18.

Use Note

The jury should be instructed on parental discipline, M Crim JI 17.24, when this is raised as a defense.

History

M Crim JI 17.20a (formerly CJI2d 17.20a) was adopted in September, 2000, to reflect the expanded definition of second-degree child abuse found in 1999 PA 273, MCL 750.136b. Amended May, 2009.

Reference Guide

Statutes

MCL 750.136b.

M Crim JI 17.20b Child Abuse, Second Degree (Cruel Act)

(1)The defendant is charged with the crime of second-degree child abuse. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

[*Choose (2) or (3):*]

(2)First, that [*name defendant*] is the [parent / guardian] of [*name child*].

(3)First, that [*name defendant*] had care or custody of or authority over [*name child*] when the abuse allegedly happened, regardless of the length of time the child was cared for by, in the custody of, or subject to the authority of that person.

(4)Second, that the defendant knowingly or intentionally did an act that was cruel to [*name child*]. "Cruel" means brutal, inhuman, sadistic, or that which torments, regardless of whether harm results.

(5)Third, that [*name child*] was at the time under the age of 18.

Use Note

The jury should be instructed on parental discipline, M Crim JI 17.24, when this is raised as a defense.

History

M Crim JI 17.20b (formerly CJI2d 17.20b) was adopted in September, 2000, to reflect the expanded definition of second-degree child abuse found in 1999 PA 273, MCL 750.136b. Amended May, 2009.

Reference Guide

Statutes

MCL 750.136b.

M Crim JI 17.21 Child Abuse, Third Degree

(1)The defendant is charged with the crime of third-degree child abuse. To establish this charge, the prosecution must prove each of the following elements beyond a reasonable doubt:

[*Choose (2) or (3):*]

(2)First, that [*name defendant*] is the [parent / guardian] of [*name child*].

(3)First, that [*name defendant*] had care or custody of or authority over [*name child*] when the abuse allegedly happened.

[*Choose (4) or (5):*]

(4)Second, that the defendant either knowingly or intentionally caused physical harm to [*name child*].

(5)Second, that the defendant knowingly or intentionally committed an act that under the circumstances posed an unreasonable risk of harm or injury to [*name child*] and the act resulted in physical harm.

(6)Third, that [*name child*] was at the time under the age of 18.

Use Note

The jury should be instructed on parental discipline, M Crim JI 17.24, when this is raised as a defense.

History

M Crim JI 17.21 (formerly CJI2d 17.21) was CJI 17:8:03. Amended September, 1995; September, 2011; May, 2013.

Reference Guide

Statutes

MCL 750.136b.

M Crim JI 17.22 Child Abuse, Fourth Degree (Willful Failure to Provide, or Abandonment)

(1)The defendant is charged with the crime of fourth-degree child abuse. To establish this charge, the prosecution must prove each of the following elements beyond a reasonable doubt:

[*Choose (2) or (3):*]

(2)First, that [*name defendant*] is the [parent / guardian] of [*name child*].

(3)First, that [*name defendant*] had care or custody of or authority over [*name child*] when the abuse allegedly happened.

(4)Second, that the defendant willfully [failed to provide food, clothing, or shelter necessary for the welfare of (*name child*) / abandoned (*name child*)].

(5)Third, that as a result, [*name child*] suffered physical harm.

(6)Fourth, that [*name child*] was at the time under the age of 18.

Use Note

It is unclear whether this is a specific intent crime.

The jury should be instructed on parental discipline, M Crim JI 17.24, when this is raised as a defense.

History

M Crim JI 17.22 (formerly CJI2d 17.22) was CJI 17:8:04A.

Reference Guide

Statutes

MCL 750.136b.

M Crim JI 17.23 Child Abuse, Fourth Degree (Unreasonable Risk of Harm or Injury)

(1)The defendant is charged with the crime of fourth-degree child abuse. To establish this charge, the prosecution must prove each of the following elements beyond a reasonable doubt:

[*Choose (2) or (3):*]

(2)First, that [*name defendant*] is the [parent / guardian] of [*name child*].

(3)First, that [*name defendant*] had care or custody of or authority over [*name child*] when the abuse allegedly happened.

[*Choose (4) or (5):*]

(4)Second, that the defendant knowingly or intentionally committed an act that under the circumstances posed an unreasonable risk of harm or injury to [*name child*]. Actual injury is not necessary.

(5)Second, that the defendant's omission or reckless act caused physical harm to [*name child*].

(6)Third, that [*name child*] was at the time under the age of 18.

Use Note

For conviction, jurors need not all agree on paragraphs (4) or (5) as long as they unanimously agree that either paragraph (4) or (5) was proved beyond a reasonable doubt. The statutory language indicates this is a general intent crime.

The jury should be instructed on parental discipline, M Crim JI 17.24, when this is raised as a defense.

History

M Crim JI 17.23 (formerly CJI2d 17.23) was CJI 17:8:04B; amended September, 2010.

Reference Guide

Statutes

MCL 750.136b.

M Crim JI 17.24 Parental Discipline

(1)It is not a crime to discipline a child. A parent [or guardian, or any person otherwise allowed by law or authorized by the parent or guardian] may use force to discipline a child. But this does not mean that any amount of force may be used. The law permits only such force as is reasonable.

(2)The defendant is not required to prove that the acts alleged here were reasonable. The prosecutor must prove beyond a reasonable doubt that the force used was not reasonable as discipline.

Use Note

This instruction should be given only when the defense of parental discipline is raised.

History

M Crim JI 17.24 (formerly CJI2d 17.24) was CJI 17:8:05.

Reference Guide

Statutes

MCL 750.136b(9).

M Crim JI 17.24a Defense of Reasonable Response to Act of Domestic Violence

(1)The defendant has raised the defense that [his / her] conduct was a reasonable response to an act of domestic violence. The defendant has the burden of proving this defense. To satisfy this burden, the evidence must persuade you that it is more likely than not that [his / her] conduct was a reasonable response to an act of domestic violence, given all of the facts and circumstances known to [him / her] at the time.

[*Select applicable parts of (2) or (3) as appropriate.*]

(2)"Domestic violence" means the occurrence of any of the following acts by a person that is not an act of self-defense:

(a)Causing or attempting to cause physical or mental harm to a family or household member.

(b)Placing a family or household member in fear of physical or mental harm.

(c)Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.

(d)Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(3)"Family or household member" includes any of the following:

(a)A spouse or former spouse.

(b)An individual with whom the person resides or has resided.

(c)An individual with whom the person has or has had a dating relationship. "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affection involvement. Dating relationship does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.

(d)An individual with whom the person is or has engaged in a sexual relationship.

(e)An individual to whom the person is related or was formerly related by marriage.

(f)An individual with whom the person has a child in common.

(g)The minor child of an individual described above.

(4)If the defendant has proved that [his / her] conduct was a reasonable response to an act of domestic violence in light of the facts and circumstances known to [him / her] at the time, you must find [him / her] not guilty of [*specify degree*] child abuse. If [he / she] has failed to prove this defense, [his / her] defense that [his / her] conduct was a reasonable response to an act of domestic violence fails.

Use Note

Supplemental instructions may be necessary depending on the facts of the case.

History

M Crim JI 17.24a (formerly CJI2d 17.24a) was adopted by the committee in September, 2009.

Reference Guide

Statutes

MCL 400.1501, 750.136b.

M Crim JI 17.25 Stalking

(1)[The defendant is charged with / You may consider the lesser offense of] stalking. To establish this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant committed two or more willful, separate, and noncontinuous acts of unconsented contact with [*name complainant*].

(3)Second, that the contact would cause a reasonable individual to suffer emotional distress.

(4)Third, that the contact caused [*name complainant*] to suffer emotional distress.

(5)Fourth, that the contact would cause a reasonable individual to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(6)Fifth, that the contact caused [*name complainant*] to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

[*For aggravated stalking, add the following:*]

(7)Sixth, the stalking

[was committed in violation of a court order]

[was committed in violation of a restraining order of which the defendant had actual notice]

[included the defendant making one or more credible threats against [*name complainant*], a member of (his / her) family, or someone living in (his / her) household]

[was a second or subsequent stalking offense].

[*Where appropriate under the evidence, add the following*]

(8)You have heard evidence that the defendant continued to make repeated unconsented contact with [*name complainant*] after [he / she] requested the defendant to discontinue that conduct or some different form of unconsented contact, and requested the defendant to refrain from any further unconsented contact. If you believe that evidence, you may, but are not required to, infer that the continued course of conduct caused [*name complainant*] to feel terrorized, frightened, intimidated, threatened, harassed, or molested. Even if you make that inference, remember that the prosecutor still bears the burden of proving all of the elements of the offense beyond a reasonable doubt.

Use Note

[1] *Unconsented contact* is defined at MCL 750.411h(1)(e).

[2] The second and third elements constitute *harassment* as defined at MCL 750.411h(1)(c).

[3] The fourth and fifth elements are part of *stalking* as defined at MCL 750.411h(1)(d).

[4] *Credible threat* is defined at MCL 750.411i(1)(b).

History

M Crim JI 17.25 (formerly CJI2d 17.25) was adopted in October, 1993, and amended by the committee in September, 2003, to add the second alternative under paragraph (7). That addition was prompted by *People v Threatt*, 254 Mich App 504, 657 NW2d 819 (2002), holding that if the stalking is alleged to violate a temporary restraining order, as opposed to an injunction, the defendant must have actual knowledge of the restraining order, although formal service is not required.

Reference Guide

Statutes

MCL 750.411h, .411i.

Case Law

People v Coones, 216 Mich App 721, 725-726, 550 NW2d 600 (1996); *People v Kieronski*, 214 Mich App 222, 542 NW2d 339 (1995); *People v White*, 212 Mich App 298, 536 NW2d 876 (1995).

M Crim JI 17.30 Vulnerable Adult Abuse, First Degree

(1)The defendant is charged with vulnerable adult abuse in the first degree. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2)First, that [*name defendant*] was a caregiver[1] of [*name complainant*].

(3)Second, that the defendant intentionally caused [serious physical harm / serious mental harm] to [*name complainant*].[2]

[*Choose (a) or (b):*]

(a)By "serious physical harm" I mean an injury that threatens the life of a vulnerable adult, causes substantial bodily disfigurement, or seriously impairs the functioning or well-being of the vulnerable adult.

(b)By "serious mental harm" I mean an injury that results in a substantial alteration of mental functioning that is manifested in a visibly demonstrable manner.

(4)Third, that [*name complainant*] was at the time a "vulnerable adult." The term vulnerable adult means

[*Choose (a), (b), or (c) or any combination of the three:*][3]

(a)An individual age 18 or over who, because of age, developmental disability, mental illness, or physical handicap requires supervision or personal care or lacks the personal and social skills required to live independently.

(b)A person 18 years of age or older who is placed in an adult foster care family home or an adult foster care small group home.

(c)A person not less than 18 years of age who is suspected of being or believed to be abused, neglected, or exploited.

Use Notes

[1] *Caregiver* is defined by the statute as an individual who directly cares for or has physical custody of a vulnerable adult. MCL 750.145m(c).

[2] The statutory language indicates that this is a specific intent crime.

[3] The statute sets forth three separate definitions for the term *vulnerable adult*, which, in a particular case, may be limited to one or may include one or more of such definitions. MCL 750.145m(u).

History

M Crim JI 17.30 (formerly CJI2d 17.30) are for use in prosecutions for vulnerable adult abuse in the first degree under MCL 750.145n, as added by 1994 PA 149, effective October 1, 1994.

Reference Guide

Statutes

MCL 750.145m(u), .145n.

M Crim JI 17.31 Vulnerable Adult Abuse, Second Degree

(1)The defendant is charged with vulnerable adult abuse in the second degree. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2)First, that [*name defendant*] was a caregiver[1] or other person with authority over [*name complainant*].

(3)Second, that the defendant by [his / her] reckless act or reckless failure to act caused [serious physical harm / serious mental harm] to [*name of complainant*].[2]

[*Choose (a) or (b):*]

(a)By "serious physical harm" I mean an injury that threatens the life of a vulnerable adult, causes substantial bodily disfigurement, or seriously impairs the functioning or well-being of the vulnerable adult.

(b)By "serious mental harm" I mean an injury that results in a substantial alteration of mental functioning that is manifested in a visibly demonstrable manner.

(4)By "reckless act or reckless failure to act" I mean that the defendant's conduct demonstrates a deliberate disregard of the likelihood that the natural tendency of the act or failure to act is to cause serious physical harm or serious mental harm.

(5)Third, that [*name complainant*] was at the time a "vulnerable adult."?The term *vulnerable adult* means

[*Choose (a), (b), or (c) or any combination of the three:*][3]

(a)An individual age 18 or over who, because of age, developmental disability, mental illness, or physical handicap requires supervision or personal care or lacks the personal and social skills required to live independently.

(b)A person 18 years of age or older who is placed in an adult foster care family home or an adult foster care small group home.

(c)A person not less than 18 years of age who is suspected of being or believed to be abused, neglected, or exploited.

Use Notes

[1] *Caregiver* is defined by the statute as an individual who directly cares for or has physical custody of a vulnerable adult. MCL 750.145m(c).

[2] The statutory language indicates that this is a general intent crime.

[3] The statute sets forth three separate definitions for the term *vulnerable adult*, which, in a particular case, may be limited to one or may include one or more of such definitions. MCL 750.145m(u).

History

M Crim JI 17.31 (formerly CJI2d 17.31) are for use in prosecutions for vulnerable adult abuse in the first degree under MCL 750.145n, as added by 1994 PA 149, effective October 1, 1994.

Reference Guide

Statutes

MCL 750.145m(u), .145n.

Case Law

People v Hudson, 241 Mich App 268, 280, 615 NW2d 784 (2000); *People v DeKorte*, 233 Mich App 564, 567, 593 NW2d 203 (1999).

M Crim JI 17.32 Vulnerable Adult Abuse, Third Degree

(1)The defendant is charged with vulnerable adult abuse in the third degree. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2)First, that [*name defendant*] was a caregiver[1] or other person with authority over [*name complainant*].

(3)Second, that the defendant intentionally caused physical harm to [*name complainant*]. By "physical harm" I mean any injury to a vulnerable adult's physical condition.[2]

(4)Third, that [*name complainant*] was at the time a "vulnerable adult." The term *vulnerable adult* means

[*Choose (a), (b), or (c) or any combination of the three:*][3]

(a)An individual age 18 or over who, because of age, developmental disability, mental illness, or physical handicap requires supervision or personal care or lacks the personal and social skills required to live independently.

(b)A person 18 years of age or older who is placed in an adult foster care family home or an adult foster care small group home.

(c)A person not less than 18 years of age who is suspected of being or believed to be abused, neglected, or exploited.

Use Notes

[1] *Caregiver* is defined by the statute as an individual who directly cares for or has physical custody of a vulnerable adult. MCL 750.145m(c).

[2] The statutory language indicates that this is a specific intent crime.

[3] The statute sets forth three separate definitions for the term *vulnerable adult*, which, in a particular case, may be limited to one or may include one or more of such definitions. MCL 750.145m(u).

History

M Crim JI 17.32 (formerly CJI2d 17.32) are for use in prosecutions for vulnerable adult abuse in the first degree under MCL 750.145n, as added by 1994 PA 149, effective October 1, 1994.

Reference Guide

Statutes

MCL 750.145m(u), .145n.

M Crim JI 17.33 Vulnerable Adult Abuse, Fourth Degree

(1)The defendant is charged with vulnerable adult abuse in the fourth degree. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2)First, that [*name defendant*] was a caregiver[1] or other person with authority over [*name complainant*].

(3)Second, that the defendant by [his / her] reckless act or reckless failure to act caused physical harm to [*name complainant*].[2]

(4)By "physical harm" I mean any injury to a vulnerable adult's physical condition.

(5)By "reckless act or reckless failure to act" I mean that the defendant's conduct demonstrates a deliberate disregard of the likelihood that the natural tendency of the act or failure to act is to cause serious physical harm or serious mental harm.

(6)Third, that [*name complainant*] was at the time a "vulnerable adult."?The term *vulnerable adult* means

[*Choose (a), (b), or (c) or any combination of the three:*][3]

(a)An individual age 18 or over who, because of age, developmental disability, mental illness, or physical handicap requires supervision or personal care or lacks the personal and social skills required to live independently.

(b)A person 18 years of age or older who is placed in an adult foster care family home or an adult foster care small group home.

(c)A person not less than 18 years of age who is suspected of being or believed to be abused, neglected, or exploited.

Use Notes

[1] *Caregiver* is defined by the statute as an individual who directly cares for or has physical custody of a vulnerable adult. MCL 750.145m(c).

[2] The statutory language indicates that this is a general intent crime.

[3] The statute sets forth three separate definitions for the term *vulnerable adult*, which, in a particular case, may be limited to one or may include one or more of such definitions. MCL 750.145m(u).

History

M Crim JI 17.33 (formerly CJI2d 17.33) are for use in prosecutions for vulnerable adult abuse in the first degree under MCL 750.145n, as added by 1994 PA 149, effective October 1, 1994.

Reference Guide

Statutes

MCL 750.145m(c), (u), .145n.

M Crim JI 17.34 Ethnic Intimidation

(1)The defendant is charged with the crime of ethnic intimidation. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant

[*Choose one or more of the following as the evidence warrants:*]

(a)caused physical contact with [*name complainant*]; [or]

(b)threatened, by what [he / she] said or did, to cause physical contact with [*name complainant*] and that there was reasonable cause to believe that such an act would occur; [or]

(c)damaged, destroyed, or defaced property of [*name complainant*]; [or]

(d)threatened, by what [he / she] said or did, to damage, destroy, or deface property of [*name complainant*] and that there was reasonable cause to believe that such an act would occur.

(3)Second that the defendant did this without just cause or excuse.*

(4)Third, that the defendant did so because of the [race / color / religion / gender / national origin] of [*name complainant*].

Use Note

* "Just cause or excuse" applies to justifications such as duress. The court may need to give additional instructions, e.g., M Crim JI 7.6 (definition of duress), depending on the facts of the case.

History

M Crim JI 17.34 (formerly CJI2d 17.34) was adopted by the committee in September, 1997, to reflect the elements of the offense of ethnic intimidation under MCL 750.147b. Amended February, 2010.

Reference Guide

Statutes

MCL 750.147b.

M Crim JI 17.35 Assault by Strangulation or Suffocation

(1)The defendant is charged with the crime of assault by strangulation or suffocation. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant committed a battery on [*name complainant*]. A battery is a forceful, violent, or offensive touching of another person or something closely connected with that other person.

(3)Second, that the touching must have been intended by the defendant, that is, not accidental, and it must have been against [*name complainant*]'s will. It does not matter whether the touching caused an injury.

(4) Third, that the battery was committed by strangulation or suffocation. Strangulation or suffocation means intentionally impeding normal circulation of the blood or breathing by applying pressure on the throat or neck or by blocking the nose or mouth.

History

M Crim JI 17.35 was adopted as a new instruction in September 2014 for a statutory amendment to the crime of assault with intent to commit great bodily harm, which provided penalties for committing an assault by strangulation or suffocation.

Reference Guide

Statutes

MCL 750.84(1)(b).

M Crim JI 17.36 Torture

(1)The defendant is charged with the crime of torture. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant had custody or physical control over [*name complainant*]. This means that the defendant used force or the threat of force either to confine [*name complainant*] by interfering with [his / her] liberty or to restrict [*name complainant*]'s freedom of movement.

(3)Second, that the defendant exercised custody or physical control over [*name complainant*] without [his / her] consent or without lawful authority to do so.

(4)Third, that at the time that the defendant had custody or physical control over [*name complainant*], [he / she] intentionally caused [great bodily injury / and/or / severe mental pain or suffering] to [*name complainant*].

[*Choose any of the following that apply*:]

(5)Great bodily injury means:

(a)causing a serious impairment of a body function, which includes any of the following [c*hoose any that fit the evidence*]:

(i)loss of [a limb / a foot / a hand / a finger / a thumb / an eye / an ear] or loss of the use of that part or those parts;

(ii)loss or substantial impairment of a bodily function;

(iii)serious visible disfigurement;

(iv)a comatose state for more than three days;

(v)measureable brain or mental impairment;

(vi)a skull or other serious bone fracture;

(vii)subdural bleeding or bruising;

(viii)loss of an organ;

or means

(b) internal injury, poisoning, serious burns or scalding, severe cuts, or multiple puncture wounds.

(6) Severe mental pain or suffering means a substantial change in mental functioning that can be perceived by another person. It must have been caused by the defendant in one or more of the following ways:

(a)intentionally causing great bodily injury to [*name complainant*] or threatening to cause great bodily harm to [him / her];

(b)administering mind-altering substances or performing a procedure that would disrupt [*name complainant*]'s senses or personality, or threatening to do so;

(c)threatening [*name complainant*] with imminent death; or

(d)threatening that another person will imminently be killed, subjected to great bodily injury, or given a mind-altering substance meant to disrupt the senses or personality.

(7)Fourth, that the defendant intended to cause [*name complainant*] to suffer cruel or extreme physical pain, or mental pain and suffering. The prosecutor does not need to prove that [*name complainant*] actually suffered any pain.\

History

M Crim JI 17.36 was adopted as a new instruction in April 2015 for the crime of torture.

Reference Guide

Statutes

MCL 750.85

CHAPTER 18 *Robbery*

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M Crim JI 18.1 Armed Robbery

(1)The defendant is charged with the crime of armed robbery. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, the defendant [used force or violence against / assaulted[1] / put in fear] [*state complainant's name*].[2]

(3)Second, the defendant did so while [he / she] was in the course of committing a larceny. A "larceny" is the taking and movement of someone else's property or money with the intent to take it away from that person permanently.[3]

"In the course of committing a larceny" includes acts that occur in an attempt to commit the larceny, or during the commission of the larceny, or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the property or money.

(4)Third, [*state complainant's name*] was present while defendant was in the course of committing the larceny.

(5)Fourth, that while in the course of committing the larceny, the defendant:

[*Choose one or more of the following as warranted by the charge and proofs:*]

(a)possessed a weapon designed to be dangerous and capable of causing death or serious injury; [or]

(b)possessed any other object capable of causing death or serious injury that the defendant used as a weapon; [or]

(c)possessed any [other] object used or fashioned in a manner to lead the person who was present to reasonably believe that it was a dangerous weapon4; [or]

(d)represented orally or otherwise that [he / she] was in possession of a weapon.

[*Add the following paragraph if appropriate:*]

(6)Fifth, the defendant inflicted an aggravated assault or serious injury to another while in the course of committing the larceny.

Use Note

[1] If needed, a definition of "assault" can be found at M Crim JI 17.1.

[2] The "complainant" need not be the owner or rightful possessor of the property taken. He or she can be "any person who is present" while the defendant was in the course of committing the underlying larceny. MCL 750.530.

[3] When permanent deprivation of the victim's property is in dispute, note the ruling in *People v Harverson*, 291 Mich App 171, 178, 804 NW2d 757 (2010), in which the court stated that "the intent to permanently deprive includes the retention of property without the purpose to return it within a reasonable time or the retention of property with the intent to

return the property on the condition that the owner pay some compensation for its return." If the issue is contested, the court may find it useful to expand upon the definition of "take it away from that person permanently" by explaining that it means the defendant must have intended to

> (a)withhold property or cause it to be withheld from a person permanently, or for such a long time that the person loses a significant part of its value, use, or benefit; or
>
> (b)dispose of the property in such a way that it is unlikely that the owner will get it back; or
>
> (c)keep the property with the intent to give it back only if the owner buys or leases it back, or pays a reward for it; or
>
> (d)sell, give, promise, or transfer any interest in the property; or
>
> (e)make the property subject to the claim of a person other than the owner.
>
> The court may select the factually appropriate paragraph(s) from these options.

[4] For a definition of "dangerous weapon," see M Crim JI 17.10.

History

M Crim JI 18.1 (formerly CJI2d 18.1) was substantially revised by the committee in October, 2004, to reflect the elements of the offense as set forth in 2004 PA 128, effective July 1, 2004, MCL 750.529.

Reference Guide

Statutes

MCL 750.529, .530.

Case Law

People v Randolph, 466 Mich 532, 648 NW2d 164 (2002); *People v Jolly*, 442 Mich 458, 468, 502 NW2d 177 (1993); *People v Harverson*, 291 Mich App 171, 178, 804 NW2d 757 (2010); *People v Scruggs*, 256 Mich App 303, 662 NW2d 849 (2003).

M Crim JI 18.2 Robbery

(1)The defendant is charged with the crime of robbery. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, the defendant [used force or violence against / assaulted[1] / put in fear] [*state complainant's name*].[2]

(3)Second, the defendant did so while [he / she] was in the course of committing a larceny. A "larceny" is the taking and movement of someone else's property or money with the intent to take it away from that person permanently.[3]

"In the course of a larceny" includes acts that occur in an attempt to commit the larceny, or during commission of the larceny, or in flight after the commission of the larceny, or in an attempt to retain possession of the property or money.

(4)Third, [*state complainant's name*] was present while defendant was in the course of committing the larceny.

Use Note

[1] If needed, a definition of "assault" can be found at M Crim JI 17.1.

[2] The "complainant" need not be the owner or rightful possessor of the property taken. He or she can be "any person who is present" while the defendant was in the course of committing or attempting to commit the underlying larceny.

[3] If the issue is contested, the court may find it helpful to expand upon the definition of "take it away from that person permanently" in accordance with *Use Note* 3 to M Crim JI 18.1.

History

M Crim JI 18.2 (formerly CJI2d 18.2) was substantially revised by the committee in October, 2004, to reflect the elements of the offense as set forth in 2004 PA 128, effective July 1, 2004. Amended February, 2012.

Reference Guide

Statutes

MCL 750.530.

Case Law

People v Williams, 491 Mich 164, 184, 814 NW2d 270 (2012); *People v Randolph*, 466 Mich 532, 648 NW2d 164 (2002); *People v Passage*, 277 Mich App 175, 743 NW2d 746 (2007).

M Crim JI 18.3 Assault with Intent to Commit Robbery Being Armed

(1)The defendant is charged with the crime of assault with intent to commit armed robbery. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant assaulted [*name complainant*]. There are two ways to commit an assault. Either the defendant must have attempted or threatened to do immediate injury to [*name complainant*], and was able to do so, or the defendant must have committed an act that would cause a reasonable person to fear or apprehend an immediate injury.

(3)Second, that at the time of the assault, the defendant was armed with:

[*Choose one or more of the following:*]

(a)A weapon designed to be dangerous and capable of causing death or serious injury; [or with]

(b)Any [other] object capable of causing death or serious injury that the defendant used as a weapon; [or with]

(c)Any [other] object used or fashioned in a manner to lead the person who was assaulted to reasonably believe that it was a dangerous weapon.[1]

(4)Third, that at the time of the assault the defendant intended to commit robbery. Robbery occurs when a person assaults someone else and takes money or property from [him / her] or in [his / her] presence, intending to take it from the person permanently. It is not necessary that the crime be completed or that the defendant have actually taken any money or property. However, there must be proof beyond a reasonable doubt that at the time of the assault the defendant intended to commit robbery.[2]

Use Note

[1] These alternatives may be used singly or in combination depending on the evidence presented in the case. Alternative (a) should be used when there is evidence from which the jury could conclude that the defendant committed the assault while armed with such a per se dangerous weapon as a loaded gun. Alternative (b) should be used when there is evidence from which the jury could conclude that the defendant was armed with an object which, although not designed to be a dangerous weapon, is used as a weapon and, when so employed, is dangerous. A screwdriver used as a knife would fall into this category. Alternative (c) should be used when there is evidence from which the jury could conclude that the defendant was armed with an object used or fashioned in a manner to lead the victim to reasonably believe that the object is a dangerous weapon. Examples of objects that would fall into this category are unloaded or inoperable firearms, toy guns that look real, or a hand held in a pocket in such a way as to generate a reasonable belief that it is a dangerous weapon. See *People v Barkley*, 151 Mich App 234, 238, 390 NW2d 705 (1986).

[2] When permanent deprivation of the victim's property is in dispute, note the ruling in *People v Harverson*, 291 Mich App 171, 178, 804 NW2d 757 (2010), in which the court stated that "the intent to permanently deprive includes the retention of property without the purpose to return it within a reasonable time or the retention of property with the intent to return the property on the condition that the owner pay some compensation for its return." When the issue is contested, the court may find it useful to expand upon the definition of "permanently take away" by explaining that it means that the

defendant must have intended to

(a)withhold property or cause it to be withheld from a person permanently, or for such a long time that the person loses a significant part of its value, use, or benefit; or

(b)dispose of the property in such a way that it is unlikely that the owner will get it back; or

(c)keep the property with the intent to give it back only if the owner buys or leases it back, or pays a reward for it; or

(d)sell, give, promise, or transfer any interest in the property; or

(e)make the property subject to the claim of a person other than the owner.

The court may select the factually appropriate paragraph(s) from the above options.

In 2004, the Michigan Legislature amended the armed robbery statute (MCL 750.530) and defined "larceny" as including "acts that occur in an attempt to commit the larceny, or during commission of the larceny, or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the property." The 2004 statutory amendment eliminates the distinction between armed robbery and assault with intent to commit robbery being armed. As a practical matter, assault with intent to commit robbery is no longer a lesser included offense of armed robbery.

History

M Crim JI 18.3 (formerly CJI2d 18.3) was CJI 18:3:01. Amended September, 2008.

Reference Guide

Statutes

MCL 750.89, .530.

Case Law

People v Joeseype Johnson, 407 Mich 196, 284 NW2d 718 (1979); *People v Harverson*, 291 Mich App 171, 178, 804 NW2d 757 (2010); *People v Smith*, 152 Mich App 756, 761, 394 NW2d 94 (1986); *People v Barkley*, 151 Mich App 234, 238, 390 NW2d 705 (1986); *People v Harris*, 110 Mich App 636, 313 NW2d 354 (1981); *People v Krist*, 97 Mich App 669, 675, 296 NW2d 139 (1980).

M Crim JI 18.4 Assault with Intent to Commit Robbery Being Unarmed

(1)The defendant is charged with the crime of assault with intent to commit robbery while unarmed. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant assaulted [*name complainant*] with force or violence. There are two ways to commit an assault. The defendant must either have attempted or threatened to do immediate injury to [*name complainant*], and was able to do so, or the defendant must have committed an act that would cause a reasonable person to fear or apprehend an immediate battery.

(3)Second, that at the time of the assault the defendant intended to commit robbery. Robbery occurs when a person assaults someone else and takes money or property from [him / her] or in [his / her] presence, intending to take it from the person permanently. It is not necessary that the crime be completed or that the defendant has actually taken any money or property. However, there must be proof beyond a reasonable doubt that at the time of the assault the defendant intended to commit robbery.

Use Note

When permanent deprivation of the victim's property is in dispute, note the ruling in *People v Harverson*, 291 Mich App 171, 178, 804 NW2d 757 (2010), in which the court stated that "the intent to permanently deprive includes the retention of property without the purpose to return it within a reasonable time or the retention of property with the intent to return the property on the condition that the owner pay some compensation for its return." When the issue is contested, the court may find it useful to expand upon the definition of "permanently take away" by explaining that it means that the defendant must have intended to

(a)withhold property or cause it to be withheld from a person permanently, or for such a long time that the person loses a significant part of its value, use, or benefit; or

(b)dispose of the property in such a way that it is unlikely that the owner will get it back; or

(c)keep the property with the intent to give it back only if the owner buys or leases it back, or pays a reward for it; or

(d)sell, give, promise, or transfer any interest in the property; or

(e)make the property subject to the claim of a person other than the owner. The court may select the factually appropriate paragraph(s) from the above options.

History

M Crim JI 18.4 (formerly CJI2d 18.4) was CJI 18:4:01. Amended September, 2008; February, 2012.

Reference Guide

Statutes

MCL 750.88.

Case Law

People v Reeves, 458 Mich 236, 237, 580 NW2d 433 (1998); *People v Gardner*, 402 Mich 460, 265 NW2d 1 (1978); *People v Harverson*, 291 Mich App 171, 178, 804 NW2d 757 (2010); *People v Spry*, 74 Mich App 584, 254 NW2d 782 (1977).

M Crim JI 18.4a Carjacking

(1)The defendant is charged with the offense of carjacking. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, the defendant [used force or violence / threatened the use of force or violence / assaulted[1] / put in fear] [*state complainant's name*].

(3)Second, the defendant did so while [he / she] was in the course of committing a larceny of a motor vehicle. A "larceny" is the taking and movement of someone else's motor vehicle with the intent to take it away from that person permanently.[2]

"In the course of committing a larceny of a motor vehicle" includes acts that occur in an attempt to commit the larceny, or during commission of the larceny, or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the motor vehicle.

(4)Third, [*state complainant's name*] was the [operator / passenger / person in lawful possession / person attempting to recover possession] of the motor vehicle.

Use Note

[1] If needed, a definition of "assault" can be found at M Crim JI 17.1.

[2] If the issue is contested, the court may find it helpful to expand upon the definition of "take it away from that person permanently" in accordance with *Use Note* 3 to M Crim JI 18.1.

History

M Crim JI 18.4a (formerly CJI2d 18.4a) was substantially revised by the committee in October, 2004, to reflect the elements of the offense as set forth in 2004 PA 128, effective July 1, 2004, MCL 750.529a.

Reference Guide

Statutes

MCL 750.529a.

M Crim JI 18.5 Bank, Safe, and Vault Robbery

(1)The defendant is charged with the crime of bank, safe, and vault robbery. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant attempted to [break into / damage / destroy] a [*state type of money depository*], whether [he / she] succeeded or not.

(3)Second, that the defendant intended to commit [larceny / (*state other felony*)].* It is not necessary that the crime of [larceny / (*state other felony*)] be completed.

Use Note

*If larceny is charged, define as follows: Larceny means taking away someone else's property, intending to take it away from the person permanently.

This instruction should be followed by M Crim JI 18.7.

If the issue is contested, the court may find it helpful to expand upon the definition of "take it away from that person permanently," in accordance with *Use Note* 3 to M Crim JI 18.1.

History

M Crim JI 18.5 (formerly CJI2d 18.5) was CJI 18:5:01. Amended April, 2006.

Reference Guide

Statutes

MCL 750.531.

Case Law

People v Sawicki, 34 Mich App 240, 191 NW2d 104 (1971).

M Crim JI 18.6 Bank, Safe, and Vault Robbery (Alternative)

(1)The defendant is charged with the crime of bank, safe, and vault robbery. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

[*Choose (a) or (b):*]

(a)First, that the defendant [confined / wounded] or attempted or threatened to [confine / kill / wound / put in fear] someone else. Second, that the defendant did so for the purpose of stealing from a [*state type of money depository*].

(b)First, that the defendant made or attempted to make someone else give [him / her] the means to open the [*state type of money depository*]. Second, that the defendant did so by using intimidation or threats.

(2)Second, that the defendant intended to commit [larceny / (*state other felony*)].* It is not necessary that the crime of [larceny / (*state other felony*)] be completed.

Use Note

*If larceny is charged, define as follows: Larceny means taking away someone else's property, intending to take it away from the person permanently.

This is a specific intent crime.

This instruction should be followed by M Crim JI 18.7.If the issue is contested, the court may find it helpful to expand upon the definition of "take it away from that person permanently," in accordance with Use Note 3 to M Crim JI 18.1.

History

M Crim JI 18.6 (formerly CJI2d 18.6) was CJI 18:5:02. Amended April, 2006.

Reference Guide

Statutes

MCL 750.531.

Case Law

People v Quigley, 217 Mich 213, 185 NW 787 (1921); *People v Avery*, 115 Mich App 699, 720, 321 NW2d 779 (1982).

M Crim JI 18.7 Definition of Attempt

An attempt has two elements. First, the defendant must have intended to commit the crime. Second, the defendant must have taken some action toward committing the alleged crime, but failed to complete the crime. It is not enough to prove that the defendant made preparations for committing the crime. Things like planning the crime or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the crime would have been completed if it had not been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the crime the defendant is charged with attempting and not some other goal.*

Use Note

*Any attempt to commit an offense is a specific intent crime. See *People v Langworthy*, 416 Mich 630, 644-645, 331 NW2d 171 (1982); *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979) (opinion of Levin, J.).

History

M Crim JI 18.7 (formerly CJI2d 18.7) was CJI 18:5:03.

Reference Guide

Case Law

People v Bauer, 216 Mich 659, 661, 185 NW 694 (1921); *People v Gardner*, 13 Mich App 16, 18, 163 NW2d 668 (1968).

CHAPTER 19 *Kidnapping and Parental Taking*

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M Crim JI 19.7 Affirmative Defense—Protection of a Child 19-8

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M Crim JI 19.1 Kidnapping

(1)The defendant is charged with the crime of kidnapping. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant knowingly restrained another person. "Restrain" means to restrict a person's movements or to confine the person so as to interfere with that person's liberty without that person's consent or without legal authority. The restraint does not have to exist for any particular length of time and may be related or incidental to the commission of other criminal acts.

(3)Second, when the defendant did so, [he / she] intended to do one or more of the following:

[*Select appropriate subparagraph[s] based on the claims and evidence.*]

(a)hold that person for ransom or reward.

(b)use that person as a shield or hostage.

(c)engage in criminal sexual penetration or criminal sexual contact with that person.

(d)take that person outside of this state.

(e)hold that person in involuntary servitude.

(f) engage that person in child sexually abusive activity when that person was less than 18 years old. Child sexually abusive activity includes sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity.[1]

Use Note

[1] Child sexually abusive activity is defined in MCL 750.145c(1)(n) as a child engaging in a "listed sexual act." A listed sexual act is defined in MCL 750.145c(1)(i) as "sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity." Those terms, in turn, are each defined in MCL 750.145c(1), and the court may provide definitions where appropriate. See also M Crim JI 20.38, which defines these terms.

History

M Crim JI 19.1 (formerly CJI2d 19.1) was adopted in September, 2006 and amended to conform with a statutory amendment in August, 2016.

Reference Guide

Statutes

MCL 750.349(1).

M Crim JI 19.2 Kidnapping; Underlying Offense of Murder or Crime Involving Murder, Extortion, or Taking a Hostage, or No Underlying Offense

Note: This instruction was prepared to go with the first section of the statute. Check to see what section is alleged in the information before using.

(1)The defendant is charged with the crime of kidnapping. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant forcibly confined or imprisoned [*name complainant*] against [*name complainant*]'s will.*

(3)Second, that the defendant did not have legal authority to confine [*name complainant*].

(4)Third, that while [he / she] was confining [*name complainant*], the defendant forcibly moved or caused [*name complainant*] to be moved from one place to another for the purpose of kidnapping or to [murder (*name complainant*) / get money or other valuables from (*name complainant*) / take (*name complainant*) as a hostage].

(5)Fourth, that the defendant intended to kidnap or confine [*name complainant*].

(6)Fifth, that the defendant acted willfully and maliciously. This means that the defendant knew that it was wrong to confine [*name complainant*] and knew that [he / she] did not have the legal authority to do so.

Use Note

This instruction is for use when the underlying offense is murder or a crime involving murder, extortion, or taking a hostage, or when there is no underlying offense.

*When consent is an issue, an appropriate instruction should be devised.

History

M Crim JI 19.2 (formerly CJI2d 19.2) was CJI 19:1:02.

Reference Guide

Statutes

MCL 750.349.

Case Law

People v Barker, 411 Mich 291, 307 NW2d 61 (1981); *People v Adams*, 389 Mich 222, 205 NW2d 415 (1973).

M Crim JI 19.3 Kidnapping; Intent to Extort Money or Other Valuables

Note: This instruction was prepared to go with the third section of the statute. Check to see what section is alleged in the information before using.

(1)The defendant is charged with the crime of kidnapping. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that [*name complainant*] was forcibly seized, confined, or imprisoned.

(3)Second, that [*name complainant*] was confined against [his / her] will.[1]

(4)Third, that at the time the defendant intended to kidnap or confine [*name complainant*].

(5)Fourth, that the defendant kidnapped [*name complainant*] with the intent of getting money or other valuables for the release of [*name complainant*].[2]

(6)Fifth, that the defendant acted willfully and maliciously. This means that the defendant knew that it was wrong to confine [*name complainant*] and knew that [he / she] did not have the legal authority to do so.

Use Note

[1] When consent is an issue, an appropriate instruction should be devised.

[2] This is a specific intent crime.

History

M Crim JI 19.3 (formerly CJI2d 19.3) was CJI 19:1:03.

Reference Guide

Statutes

MCL 750.349.

M Crim JI 19.4 Kidnapping; Secret Confinement of Victim

Note: This instruction was prepared to go with the first or fourth sections of the statute. Check to see what section is alleged in the information before using.

(1)The defendant is charged with the crime of kidnapping. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant forcibly confined or imprisoned [*name complainant*] against [*name complainant*]'s will.[1]

(3)Second, that the defendant did not have legal authority to confine [*name complainant*].

(4)Third, that the defendant kept [*name complainant*]'s location secret. In determining whether [*name complainant*] was secretly confined, you may consider where and for how long [he / she] was confined, and whether anyone else knew that [he / she] was confined or where [he / she] was confined.

(5)Fourth, that the defendant intended the confinement to be secret.

(6)Fifth, that the defendant acted willfully and maliciously. This means that the defendant knew that it was wrong to secretly confine [*name complainant*] and knew that [he / she] did not have the legal authority to do so.[2]

Use Note

[1] When consent is an issue, an appropriate instruction should be devised.

[2] This is a specific intent crime.

History

M Crim JI 19.4 (formerly CJI2d 19.4) was CJI 19:1:04.

Reference Guide

Statutes

MCL 750.349.

Case Law

People v Jaffray, 445 Mich 287, 309, 519 NW2d 108 (1994); *People v Wesley*, 421 Mich 375, 389-390, 365 NW2d 692 (1984); *People v Warren*, 228 Mich App 336, 344-345, 578 NW2d 692 (1998), aff'd in part and rev'd in part on other grounds, 462 Mich 415, 615 NW2d 691 (2000); *People v Johnson*, 171 Mich App 801, 806-807, 430 NW2d 828 (1988); *People v McNeal*, 152 Mich App 404, 412, 393 NW2d 907 (1986); *People v Walker*, 135 Mich App 311, 321, 355 NW2d 385 (1984).

M Crim JI 19.5 Kidnapping; Holding Victim for Labor or Services

(1)The defendant is charged with the crime of kidnapping. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant forcibly confined or imprisoned [*name complainant*] against [*name complainant*]'s will.[1]

(3)Second, that the defendant did not have legal authority to confine [*name complainant*].

(4)Third, that the defendant acted willfully and maliciously. This means that the defendant knew that it was wrong to confine [*name complainant*] and knew that [he / she] did not have the legal authority to do so.

(5)Fourth, that the defendant intended to force or coerce [*name complainant*] to perform labor or services. This may be done through the wrongful use [or threatened use] of physical force or any other means.[2]

Use Note

This instruction was prepared to go with the fifth section of the statute. Check to see what section is charged in the information before using.

[1] Where consent or lawful authority is disputed, an appropriate instruction should be given.

[2] This is a specific intent crime.

History

M Crim JI 19.5 (formerly CJI2d 19.5) was CJI 19:1:05.

Reference Guide

Statutes

MCL 750.349.

Case Law

People v Wesley, 421 Mich 375, 390-391, 365 NW2d 692 (1984); *United States v Warren*, 772 F2d 827, 833-835 (11th Cir Fla 1985).

M Crim JI 19.6 Parental Taking or Retention of a Child

(1)The defendant is charged with unlawfully taking or retaining a child. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant took [*state name of child*], or that [he / she] kept [*state name of child*] for more than twenty-four hours.[1]

(3)Second, that the defendant intended to keep or conceal the child from:

[*Choose one of the following:*]

(a)The parent or legal guardian who had legal [custody / visitation rights] at the time.

(b)The person who had adopted the child.

(c)The person who had lawful charge of the child at the time.[2]

Use Note

[1] MCL 750.350a(1) states that an adoptive or natural parent of a child "shall not take that child, or retain that child for more than 24 hours." This language appears to indicate that the *actus reus* of this crime may be proved in one of two alternative ways. The first is by proof that the parent took the child, without regard to how long the parent kept the child. The second is by proof that the parent kept the child for more than 24 hours. Paragraph (2) of this instruction should be tailored to fit the facts of the particular case.

[2] This appears to be a specific intent crime. Neither MCL 750.350a nor the House Legislative Analysis accompanying it directly addresses the question as to whether apparent consent or a reasonable belief that lawful authority to take or keep the child exists, is a defense to this crime, or otherwise negates an essential element of the crime.

History

M Crim JI 19.6 (formerly CJI2d 19.6) was CJI 19:2:01.

Reference Guide

Statutes

MCL 750.350a.

Case Law

People v McBride, 204 Mich App 678, 516 NW2d 148 (1994); *People v Harvey*, 174 Mich App 58, 435 NW2d 456 (1989); *People v Fields*, 101 Mich App 287, 290-291, 300 NW2d 548 (1980); aff'd, 413 Mich 498, 320 NW2d 663 (1982).

M Crim JI 19.7 Affirmative Defense—Protection of a Child

(1)If the defendant [took / kept] the child to protect the child from an immediate and actual threat of physical or mental harm, abuse, or neglect, it is a defense to this charge.

2)This is [the only / an] issue in this case on which defendant has the burden of proof. In deciding whether the defendant has proved this defense, you should consider all of the evidence admitted during trial. If the evidence supporting this defense outweighs the evidence against it, then you must find the defendant not guilty.

(3)If you decide that the defendant has failed to prove this defense, you must still consider whether the prosecutor has met [his / her] burden of proving beyond a reasonable doubt each of the elements of unlawfully taking or retaining a child.

Use Note

Protection of a child is an affirmative defense that the defendant must prove. See MCL 750.350a(5).

History

M Crim JI 19.7 (formerly CJI2d 19.7) was CJI 19:2:02-19:2:03.

Reference Guide

Statutes

MCL 750.350a.

Case Law

Martin v Ohio, 480 US 228 (1987); *People v D'Angelo*, 401 Mich 167, 182, 257 NW2d 655 (1977); *People v Belanger*, 158 Mich App 522, 528-530, 405 NW2d 405 (1987); *People v Vera*, 153 Mich App 411, 417-418, 395 NW2d 339 (1986); *People v Kimball*, 109 Mich App 273, 286, 311 NW2d 343, modified, 412 Mich 890, 313 NW2d 285 (1981).

M Crim JI 19.8 Unlawful Imprisonment

(1)The defendant is charged with the crime of unlawful imprisonment. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant knowingly restrained another person. "Restrain" means to forcibly restrict a person's movements or to forcibly confine the person so as to interfere with that person's liberty without that person's consent or without lawful authority. The restraint does not have to exist for any particular length of time and may be related or incidental to the commission of other criminal acts.

(3)Second, the defendant did so under one or more of the following circumstances:

[*Select from the following alternatives on the basis of the claims and evidence.*]

(a)The person is restrained by means of a weapon or dangerous instrument.[1]

(b)The restrained person was secretly confined, which means to keep the confinement or location of the restrained person a secret.

(c)The person was restrained to facilitate the commission of another felony or to facilitate flight after commission of another felony.

Use Note

[1] If necessary, consult M Crim JI 17.10, Definition of Dangerous Weapon.

History

M Crim JI 19.8 (formerly CJI2d 19.8) was adopted by the committee in September, 2006.

Reference Guide

Statutes

MCL 750.349b.

CHAPTER 20 *Sex Crimes*

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M Crim JI 20.1 Criminal Sexual Conduct in the First Degree

(1) The defendant is charged with the crime of first-degree criminal sexual conduct. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant engaged in a sexual act that involved:

[*Choose (a), (b), (c), or (d):*]

(a) entry into [*name complainant*]'s [genital opening / anal opening] by the defendant's [penis / finger / tongue / (*name object*)]. Any entry, no matter how slight, is enough. It does not matter whether the sexual act was completed or whether semen was ejaculated.

(b) entry into [*name complainant*]'s mouth by the defendant's penis. Any entry, no matter how slight, is enough. It does not matter whether the sexual act was completed or whether semen was ejaculated.

(c) touching of [*name complainant*]'s [genital openings / genital organs] with the defendant's mouth or tongue.

(d) entry by [any part of one person's body / some object] into the genital or anal opening of another person's body. Any entry, no matter how slight, is enough. It is alleged in this case that a sexual act was committed by [*state alleged act*]. It does not matter whether the sexual act was completed or whether semen was ejaculated.

(3) [Follow this instruction with one or more of the nine alternatives, M Crim JI 20.3 to M Crim JI 20.11, as warranted by the evidence.]

(4) [Where the defendant is charged under MCL 750.520b(2)(b) with the twenty-five-year mandatory minimum for being seventeen years of age or older and penetrating a child under thirteen years old, instruct according to M Crim JI 20.30b.]

Use Notes

Option (2)(a) should be used to describe intercourse, anal intercourse, and most acts of penetration other than fellatio and cunnilingus.

Option (2)(b) should be used to describe fellatio. The instruction comports with the supreme court's order in *People v Johnson*, 432 Mich 931; 442 NW2d 625 (1989), which adopted Judge Michael Kelly's dissenting opinion in that case, 164 Mich App 634, 646; 418 NW2d 117 (1987). Judge Kelly concluded that fellatio requires penetration. Therefore, the jury must be instructed that proof of penetration, however slight, is necessary to convict where fellatio is alleged.

Option (2)(c) describes cunnilingus, with respect to which oral contact is sufficient by definition. *Johnson*, 164 Mich App at 649 n1.

Option (2)(d) should be used only in unusual cases, such as intercourse between persons other than the defendant, or anal or genital intercourse with entry into the defendant's body. For example, in *People v Hack*, 219 Mich App 299; 556 NW2d 187 (1996), and *People v Dilling*, 222 Mich App 44; 564 NW2d 56 (1997), the court of appeals held that the

defendants could be convicted for forcing a three-year-old to perform fellatio on a one-year-old. Although it is somewhat unclear, the statute's use of the adjective another before person's body in the definition of sexual penetration may exclude some acts from the statute, such as where the defendant forces the complainant to insert some object into the complainant's own body.

If more than one specific act of criminal sexual conduct is claimed, the trial court should instruct the jury that its verdict as to each alleged act must be unanimous. See *People v Yarger*, 193 Mich App 532; 485 NW2d 119 (1992), and *People v Van Dorsten*, 441 Mich 540; 494 NW2d 737 (1993). However, where a single act is charged with multiple aggravating circumstances, the jury need not be unanimous about which aggravating circumstance has been established as long as all jurors agree that one or more has been proven beyond a reasonable doubt. *People v Gadomski*, 232 Mich App 24, 30-32; 592 NW2d 75 (1998).

M Crim JI 20.30b should be given where the prosecutor charges that the crime was committed by a defendant who was seventeen years of age or older at the time of the offense, and the victim at that time was under the age of thirteen years, which triggers a mandatory minimum sentence under MCL 750.520b(2)(b). See *Alleyne v United States*, 570 US __; 133 S Ct 2151; 186 L Ed 2d 314 (2013), where the United States Supreme Court held that facts that would trigger a mandatory minimum sentence must be admitted by the defendant or proved beyond a reasonable doubt to the trier of fact.

History

M Crim JI 20.1 (formerly CJI2d 20.1) was CJI 20:2:01. Amended October, 1993; April, 1999; September, 2000; April 2015.

Reference Guide

Statutes

MCL 750.520b, .520f, .520l.

Case Law

People v Cooks, 446 Mich 503, 521 NW2d 275 (1994); *People v Van Dorsten*, 441 Mich 540; 494 NW2d 737 (1993); *People v Johnson*, 432 Mich 931; 442 NW2d 625 (1989); *People v Whitfield*, 425 Mich 116; 338 NW2d 206 (1986); *People v Langworthy*, 416 Mich 630; 331 NW2d 171 (1982); *People v Urynowicz*, 412 Mich 137; 312 NW2d 625 (1981); *People v Gadomski*, 232 Mich App 24, 30-32; 592 NW2d 75 (1998); *People v Dilling*, 222 Mich App 44, 564 NW2d 56 (1997); *People v Hack*, 219 Mich App 299, 556 NW2d 187 (1996); *People v Yarger*, 193 Mich App 532; 485 NW2d 119 (1992); *People v Bristol*, 115 Mich App 236; 320 NW2d 229 (1981); *People v Camon*, 110 Mich App 474; 313 NW2d 322 (1981); *People v Sommerville*, 100 Mich App 470, 299 NW2d 387 (1980). In *Alleyne v United States*, 570 US __; 133 S Ct 2151; 186 L Ed 2d 314 (2013), the United States Supreme Court held that facts that would trigger a mandatory minimum sentence must be admitted by the defendant or proved beyond a reasonable doubt to the trier of fact.

M Crim JI 20.2 Criminal Sexual Conduct in the Second Degree

(1) The defendant is charged with the crime of second-degree criminal sexual conduct. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant intentionally [touched (*name complainant*)'s / made (*name complainant*) touch (his / her) / permitted (*name complainant*) to touch (his / her)] [genital area / groin / inner thigh / buttock / (or) breast] or the clothing covering that area.

(3) Second, that this was done for sexual purposes or could reasonably be construed as having been done for sexual purposes.

(4) [*Follow this instruction with one or more of the 13 alternatives, M Crim JI 20.3 to M Crim JI 20.11d, as warranted by the evidence. See the table of contents on p. 20-1 for a list of the alternatives.*]

History

M Crim JI 20.2 (formerly CJI2d 20.2) was CJI 20:3:01, 20:3:02. Amended September, 1999; May, 2008; September, 2008.

Reference Guide

Statutes

MCL 750.520a(q), .520c, .520f, .520l.

Case Law

People v Lemons, 454 Mich 234, 253, 562 NW2d 447 (1997); *People v Piper*, 223 Mich App 642, 647, 567 NW2d 483 (1997); *People v Brewer*, 101 Mich App 194, 300 NW2d 491 (1980).

M Crim JI 20.3 Complainant Under Thirteen Years of Age

[Second / Third], that [*name complainant*] was less than thirteen years old at the time of the alleged act.

Use Note

Use this instruction in conjunction with M Crim JI 20.1, Criminal Sexual Conduct in the First Degree, M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, or M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

History

M Crim JI 20.3 (formerly CJI2d 20.3) was CJI 20:2:05.

Reference Guide

Case Law

People v Cash, 419 Mich 230, 351 NW2d 822 (1984).

M Crim JI 20.4 Complainant Between Thirteen and Sixteen Years of Age

(1) [Second / Third], that [*name complainant*] was thirteen, fourteen, or fifteen years old at the time of the alleged act.

[*Choose from options A through G:*]

A.[Same Household]:

(2) [Third / Fourth], that at the time of the alleged act the defendant and [*name complainant*] were living in the same household.

B.[Family Relationship]:

(3) [Third / Fourth], that [*name complainant*] is related to the defendant, either by blood or by marriage, as [*state relationship, e.g., first cousins*].

C.[Position of Authority]:

(4) [Third / *Fourth*], that at the time of the alleged act, the defendant was in a position of authority over [*name complainant*], and used this authority to coerce [*name complainant*] to submit to the sexual acts alleged. It is for you to decide whether, under the facts and circumstances of this case, the defendant was in a position of authority.

D.[School Teacher / Administrator]:

(5) [Third / Fourth], that at the time of the alleged act the defendant was [a teacher / a substitute teacher / an administrator] of [a public school / a *nonpublic* school / a school district / an intermediate school district] in which [*name complainant*] was enrolled.

E.[School Employee / Contractor/Volunteer]:

(6) [Third / Fourth], that at the time of the alleged act the defendant was [an employee / a contractual service provider] of [a public school / a nonpublic school / a school district / an intermediate school district] in which [*name complainant*] was enrolled, or was [a volunteer who was not a student in any public school or nonpublic school / an employee of this state or of a local unit of government of this state or of the United States] assigned to provide any service to that [public school / nonpublic school / school district / intermediate school district].

(7) [Fourth / Fifth], that the defendant used [his / her] [employee / contractual / volunteer] status to [gain access to / establish a relationship with] [*name complainant*].

F.[Child-Care Provider / Employee/Volunteer]:

(8) [Third / Fourth], that at the time of the alleged act, the defendant was [an employee / a contractual service provider / volunteer] of the child-care organization that [*name complainant*] attended.

(9) [Fourth / Fifth], that the alleged act occurred when [*name complainant*] was attending that child-care organization.

G.[Foster-Care Operator]:

(10) [Third / Fourth], that at the time of the alleged act, the defendant was a *licensed* operator of the [foster-family home / foster-family group home] where [*name complainant*] resided.

(11) [Fourth / Fifth], that the alleged act occurred when [*name* complainant] was residing at the [foster-family home / foster-family group home].

Use Note

Use this instruction in conjunction with M Crim JI 20.1, Criminal Sexual Conduct in the First Degree, M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, or M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

History

M Crim JI 20.4 (formerly CJI2d 20.4) was CJI 20:2:06. Amended September 1999; September 2008; January 2015.

Reference Guide

Statutes

MCL 750.520b(1)(b); MCL 750.520c(1)(b); MCL 750.520g(2)

Case Law

People v Cash, 419 Mich 230, 351 NW2d 822 (1984); *Boyer v Backus*, 282 Mich 701, 280 NW 756 (1938); *People v Phillips*, 251 Mich App 100, 649 NW2d 407 (2002); *People v Knapp*, 244 Mich App 361, 624 NW2d 227 (2001); *People v Reid*, 233 Mich App 457, 592 NW2d 767 (1999); *People v Premo*, 213 Mich App 406, 410–411, 540 NW2d 715 (1995); *People v Armstrong*, 212 Mich App 121, 536 NW2d 789 (1995); *People v Garrison*, 128 Mich App 640, 341 NW2d 170 (1983).

M Crim JI 20.5 Sexual Act in Conjunction with the Commission of a Felony

(1) [Second / Third], that the alleged sexual act occurred under circumstances that also involved [*state felony*].

(2) [*Give the elements of the felony alleged.*]

Use Note

Use this instruction in conjunction with M Crim JI 20.1, Criminal Sexual Conduct in the First Degree, M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, or M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

The jury must be instructed on all of the elements of the felony.

History

M Crim JI 20.5 (formerly CJI2d 20.5) was CJI 20:2:07.

Reference Guide

Statutes

MCL 750.520b(1)(c).

Case Law

People v Lockett, 295 Mich App 165, 814 NW2d 295 (2012); *People v White*, 168 Mich App 596, 425 NW2d 193 (1988); *People v Jones*, 144 Mich App 1, 373 NW2d 226 (1985).

M Crim JI 20.6 Aiders and Abettors—Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless

(1) [Second / Third], that before or during the alleged sexual act, the defendant was assisted by another person, who either did something or gave encouragement to assist the commission of the crime.

(2) [Third / Fourth], that [*name complainant*] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.

[*Choose one or more of (3), (4), or (5):*]

(3) Mentally incapable means that [*name complainant*] was suffering from a mental disease or defect that made [him / her] incapable of appraising either the physical or moral nature of [his / her] conduct.

(4) Mentally incapacitated means that [*name complainant*] was unable to understand or control what [he / she] was doing because of [drugs or alcohol given to (him / her) / something done to (him / her)] without [his / her] consent.

(5) Physically helpless means that [*name complainant*] was unconscious, asleep, or physically unable to communicate that [he / she] did not want to take part in the alleged act.

(6) [Fourth / Fifth], that the defendant knew or should have known that [*name complainant*] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.

Use Note

Use this instruction in conjunction with M Crim JI 20.1, Criminal Sexual Conduct in the First Degree, M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, or M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

See M Crim JI 8.1, Aiding and Abetting.

History

M Crim JI 20.6 (formerly CJI2d 20.6) was CJI 20:2:08; amended September, 2005.

Reference Guide

Statutes

MCL 767.39.

Case Law

People v Breck, 230 Mich App 450, 455, 584 NW2d 602 (1998); *People v Baker*, 157 Mich App 613, 403 NW2d 479 (1986); *People v Pollard (People v Clark),* 140 Mich App 216, 363 NW2d 453 (1985).

M Crim JI 20.7 Aiders and Abettors—Use of Force or Coercion

(1) [Second / Third], that before or during the alleged sexual act, the defendant was assisted by another person, who either did something or gave encouragement to assist the commission of the crime.

(2) [Third / Fourth], that the defendant used force or coercion to commit the sexual act.

Use Note

Use this instruction in conjunction with M Crim JI 20.1, Criminal Sexual Conduct in the First Degree, M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, or M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

See M Crim JI 8.1, Aiding and Abetting.

See M Crim JI 20.24, Definition of Sufficient Force.

History

M Crim JI 20.7 (formerly CJI2d 20.7) was CJI 20:2:09.

Reference Guide

Statutes

MCL 750.520b(1)(d)(ii).

Case Law

People v Vaughn, 186 Mich App 376, 465 NW2d 365 (1990).

M Crim JI 20.8 Armed with a Weapon

[Second / Third], that the defendant was armed at the time with:

[*Choose one or more of the following:*]

(a) A weapon [or with]

(b) Any [other] object capable of causing physical injury that the defendant used as a weapon [or with]

(c) Any [other] object used or fashioned in a manner to lead [*name complainant*] to reasonably believe that it was a weapon.

Use Note

Use this instruction in conjunction with M Crim JI 20.1, Criminal Sexual Conduct in the First Degree, M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, or M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

History

M Crim JI 20.8 (formerly CJI2d 20.8) was CJI 20:2:10.

Reference Guide

Statutes

MCL 750.520b(1)(e).

Case Law

People v Proveaux, 157 Mich App 357, 403 NW2d 135 (1987); *People v Sterling*, 154 Mich App 223, 397 NW2d 182 (1986); *People v Flanagan*, 129 Mich App 786, 342 NW2d 609 (1983); *People v Brown*, 105 Mich App 58, 306 NW2d 392 (1981), aff'd in part and vacated in part on other grounds sub nom *People v Robideau*, 419 Mich 458, 355 NW2d 592 (1984); *People v Davis*, 101 Mich App 198, 202, 300 NW2d 497 (1980).

M Crim JI 20.9 Personal Injury—Use of Force or Coercion

(1) [Second / Third], that the defendant caused personal injury to [*name complainant*].

(2) Personal injury means bodily injury, disfigurement, chronic pain, pregnancy, disease, loss or impairment of a sexual or reproductive organ, or mental anguish. Mental anguish means extreme pain, extreme distress, or extreme suffering, either at the time of the event or later as a result of it.

[(3) Here are some things you may think about in deciding whether (*name complainant*) suffered mental anguish:

(a) Was (*name complainant*) upset, crying, or hysterical during or after the event?

(b) Did (he / she) need psychological treatment?

(c) Did the incident interfere with (*name complainant*)'s ability to work or lead a normal life?

(d) Was (*name complainant*) afraid that (he / she) or someone else would be hurt or killed?

(e) Did (he / she) feel angry or humiliated?

(f) Did (*name complainant*) need medication for anxiety, insomnia, or other symptoms?

(g) Did the emotional effects of the incident last a long time?

(h) Did (*name complainant*) feel scared afterward about the possibility of being attacked again?

(i) Was the defendant (*name complainant*)'s parent?

(4) These are not the only things you should think about. No single factor is necessary. You must think about all the facts and circumstances to decide whether (*name complainant*) suffered mental anguish.][1]

(5) [Third / Fourth], the prosecutor must prove that the defendant used force or coercion to commit the sexual act. "Force or coercion" means that the defendant either used physical force or did something to make [*name complainant*] reasonably afraid of present or future danger.[2]

Use Note

[1] Paragraphs (3) and (4) are discretionary. If used, both paragraphs must be given together. The factors listed are taken from *People v Petrella*, 424 Mich 221, 270-271, 380 NW2d 11, 33 (1985).

[2] See M Crim JI 20.24, Definition of Sufficient Force. Use this instruction in conjunction with M Crim JI 20.1, Criminal Sexual Conduct in the First Degree, M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, or M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

History

M Crim JI 20.9 (formerly CJI2d 20.9) was CJI 20:2:11.

Reference Guide

Statutes

MCL 750.520a(n), .520b.

Case Law

People v Petrella, 424 Mich 221, 270-271, 380 NW2d 11, 33 (1985); *People v Eisen*, 296 Mich App 326, 820 NW2d 229 (2012); *People v Asevedo*, 217 Mich App 393, 551 NW2d 478 (1996); *People v Kraai*, 92 Mich App 398, 285 NW2d 309 (1979); *People v Payne*, 90 Mich App 713, 282 NW2d 456 (1979).

M Crim JI 20.10 Personal Injury—Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless

(1) [Second / Third], that the defendant caused personal injury to [*name complainant*].

(2) Personal injury means bodily injury, disfigurement, chronic pain, pregnancy, disease, loss or impairment of a sexual or reproductive organ, or mental anguish. Mental anguish means extreme pain, extreme distress, or extreme suffering, either at the time of the event or later as a result of it.

[(3) Here are some things you may think about in deciding whether (*name complainant*) suffered mental anguish:

(a) Was (*name complainant*) upset, crying, or hysterical during or after the event?

(b) Did (he / she) need psychological treatment?

(c) Did the incident interfere with (*name complainant*)'s ability to work or lead a normal life?

(d) Was (*name complainant*) afraid that (he / she) or someone else would be hurt or killed?

(e) Did (he / she) feel angry or humiliated?

(f) Did (he / she) need medication for anxiety, insomnia, or other symptoms?

(g) Did the emotional effects of the incident last a long time?

(h) Did (*name complainant*) feel scared afterward about the possibility of being attacked again?

(i) Was the defendant (*name complainant*)'s parent?

(4) These are not the only things you should think about. No single factor is necessary. You must think about all the facts and circumstances to decide whether (*name complainant*) suffered mental anguish.]*

(5) [Third / Fourth], the prosecutor must prove that [*name complainant*] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.

[*Choose one or more of (6), (7), or (8):*]

(6) Mentally incapable means that [*name complainant*] was suffering from a mental disease or defect that made [him / her] incapable of appraising either the physical or moral nature of [his / her] conduct.

(7) Mentally incapacitated means that [*name complainant*] was unable to understand or control what [he / she] was doing because of [drugs or alcohol given to (him / her) / something done to (him / her)] without [his / her] consent.

(8) Physically helpless means that [*name complainant*] was unconscious, asleep, or physically unable to communicate that [he / she] did not want to take part in the alleged act.

(9) Fourth, that the defendant knew or should have known that [*name complainant*] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.

Use Note

*Paragraphs (3) and (4) are discretionary. If used, both paragraphs must be given together. The factors listed are taken from *People v Petrella*, 424 Mich 221, 270-271, 380 NW2d 11 (1985).

Use this instruction in conjunction with M Crim JI 20.1, Criminal Sexual Conduct in the First Degree, M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, or M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

History

M Crim JI 20.10 (formerly CJI2d 20.10) was CJI 20:2:12; amended September, 2005.

Reference Guide

Case Law

People v Petrella, 424 Mich 221, 270-271, 380 NW2d 11 (1985).

M Crim JI 20.11 Sexual Act with Mentally Incapable, Mentally Disabled, Mentally Incapacitated, or Physically Helpless Person

(1) [Second / Third], that [*name complainant*] was [mentally incapable / mentally disabled / mentally incapacitated / physically helpless] at the time of the alleged act.

[*Choose one or more of (2), (3), (4), or (5):*]

(2) Mentally incapable means that [*name complainant*] was suffering from a mental disease or defect that made [him / her] incapable of appraising either the physical or moral nature of [his / her] conduct.

(3) Mentally disabled means that [*name complainant*] has a mental illness, is intellectually disabled, or has a developmental disability. "Mental illness" is a substantial disorder of thought or mood that significantly impairs judgment, behavior, or the ability to recognize reality and deal with the ordinary demands of life. "Intellectual disability" means significantly subaverage intellectual functioning that appeared before the defendant was 18 years old and impaired two or more of [his / her] adaptive skills.[1] "Developmental disability" means an impairment of general thinking or behavior that originated before the age of eighteen, has continued since it started or can be expected to continue indefinitely, is a substantial burden to [*name complainant*]'s ability to function in society, and is caused by [intellectual disability as described / cerebral palsy / epilepsy / autism / an impairing condition requiring treatment and services similar to those required for intellectual disability].

(4) Mentally incapacitated means that [*name complainant*] was [temporarily] unable to understand or control what [he / she] was doing because of [drugs, alcohol or another substance given to (him / her) / something done to (him / her)] without [his / her] consent.

(5) Physically helpless means that [*name complainant*] was unconscious, asleep, or physically unable to communicate that [he / she] did not want to take part in the alleged act.

(6) [Third / Fourth], that the defendant knew or should have known that [name complainant] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.

[*Choose (7) or (8*):]

(7) [Fourth / Fifth], that the defendant and [*name complainant*] were related to each other, either by blood or marriage, as [*state relationship, e.g., first cousins*].

(8) [Fourth / Fifth], that at the time of the alleged act the defendant was in a position of authority over [*name complainant*], and used this authority to coerce [*name complainant*] to submit to the sexual acts alleged. It is for you to decide whether, under the facts and circumstances of this case, the defendant was in a position of authority.

Use Note

Use this instruction in conjunction with M Crim JI 20.1, Criminal Sexual Conduct in the First Degree, M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, or M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

[1] The court may provide the jury with a definition of adaptive skills where appropriate. The phrase is defined in MCL 330.1100a(3), and means skills in 1 or more of the following areas:

(a) Communication.
(b) Self-care.
(c) Home living.
(d) Social skills.
(e) Community use.
(f) Self-direction.
(g) Health and safety.
(h) Functional academics.
(i) Leisure.
(j) Work.

History

M Crim JI 20.11 (formerly CJI2d 20.11) was CJI 20:2:13; amended September, 2005, June 2015, January 2016.

Reference Guide

Statutes

MCL 750.520b(1)(g), 767.39

Caselaw

People v Baker, 157 Mich App 613, 403 NW2d 479 (1986); *People v Pollard* (*People v Clark*), 140 Mich App 216, 363 NW2d 453 (1985).

M Crim JI 20.11a Department of Corrections Employee

(1)[Third / Sixth], that [*name complainant*] was under the jurisdiction of the department of corrections.

(2)[Fourth / Seventh], that the defendant was [an employee of / a contractual employee of / a volunteer with] the department of corrections.

(3)[Fifth / Eighth], that the defendant knew that [*name complainant*] was under the jurisdiction of the department of corrections.

Use Note

This aggravating circumstance is intended for use with M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, and M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

History

M Crim JI 20.11a (formerly CJI2d 20.11a) was adopted in September, 2008.

Reference Guide

Statutes

MCL 750.520c.

M Crim JI 20.11b Department of Corrections Vendor

(1)[Third / Sixth], that [*name complainant*] was under the jurisdiction of the department of corrections.

(2)[Fourth / Seventh], that the defendant was [an employee of / a contractual employee of / a volunteer with] a private vendor that operates a youth correctional facility.

(3)[Fifth / Eighth], that the defendant knew that [*name complainant*] was under the jurisdiction of the department of corrections.

Use Note

This aggravating circumstance is intended for use with M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, and M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

The youth correctional facility is operated under section 20g of the corrections code of 1953, 1953 PA 232, MCL 791.220g. The jury should be appropriately instructed if this issue is in dispute.

History

M Crim JI 20.11b (formerly CJI2d 20.11b) was adopted in September, 2008.

Reference Guide

Statutes

MCL 750.520c.

M Crim JI 20.11c County Corrections Employee

(1)[Third / Sixth], that [*name complainant*] was a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program.

(2)[Fourth / Seventh], that the defendant was [an employee of / a contractual employee of / a volunteer with] the county or the department of corrections.

(3)[Fifth / Eighth], that the defendant knew that [*name complainant*] was under the county's jurisdiction.

Use Note

This aggravating circumstance is intended for use with M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, and M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

History

M Crim JI 20.11c (formerly CJI2d 20.11c) was adopted in September, 2008.

Reference Guide

Statutes

MCL 750.520c.

M Crim JI 20.11d Pretrial and Juvenile Detainees

(1) [Third / Sixth], that the defendant knew or had reason to know that a court had [detained the (*name complainant*) in a facility while (*name complainant*) was awaiting a trial or hearing / committed (*name complainant*) to a facility as a result of (*name complainant*) having been found responsible for committing an act that would be a crime if committed by an adult].

(2) [Fourth / Seventh], that the defendant was [an employee of / a contractual employee of / a volunteer with] the facility in which [*name complainant*] was detained or to which [*name complainant*] was committed.

Use Note

This aggravating circumstance is intended for use with M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, and M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

History

M Crim JI 20.11d (formerly CJI2d 20.11d) was adopted in September, 2008.

Reference Guide

Statutes

MCL 750.520c.

M Crim JI 20.12 Criminal Sexual Conduct in the Third Degree

(1) The defendant is charged with the crime of third-degree criminal sexual conduct. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant engaged in a sexual act that involved:

[*Choose one of the following:*]

(a) entry into [name complainant]'s [genital opening / anal opening] by the defendant's [penis / finger / tongue / (*name object*)]. Any entry, no matter how slight, is enough. It does not matter whether the sexual act was completed or whether semen was ejaculated.

(b) entry into [*name complainant*]'s mouth by the defendant's penis. Any entry, no matter how slight, is enough. It does not matter whether the sexual act was completed or whether semen was ejaculated.

(c) touching of [name complainant]'s [genital openings / genital organs] with the defendant's mouth or tongue.

(d) entry by [any part of one person's body / some object] into the genital or anal opening of another person's body. Any entry, no matter how slight, is enough. It is alleged in this case that a sexual act was committed by [*state alleged act*]. It does not matter whether the sexual act was completed or whether semen was ejaculated.

(3) [*Follow this instruction with one or more of the following alternatives, M Crim JI 20.14, M Crim JI 20.14a, M Crim JI, 20.14b, M Crim JI, 20.14c, M Crim JI, 20.14d, M Crim JI 20.15, M Crim JI 20.16, or M Crim JI, 20.16a, as warranted by the evidence.*]

Use Note

Option (2)(a) should be used to describe intercourse, anal intercourse, and most acts of penetration other than fellatio and cunnilingus.

Option (2)(b) should be used to describe fellatio. The instruction comports with the supreme court's order in *People v Johnson*, 432 Mich 931, 442 NW2d 625 (1989), which adopted Judge Michael Kelly's dissenting opinion in that case, 164 Mich App 634, 646, 418 NW2d 117 (1987). Judge Kelly concluded that fellatio requires penetration. Therefore, the jury must be instructed that proof of penetration, however slight, is necessary to convict where fellatio is alleged.

Option (2)(c) describes cunnilingus, with respect to which oral contact is sufficient by definition. *Johnson*, 164 Mich App at 649 n1.

Option (2)(d) should be used only in unusual cases, such as intercourse between persons other than the defendant, or anal or genital intercourse with entry into the defendant's body. Although it is somewhat unclear, the statute's use of the adjective *another* before *person's body* in the definition of sexual penetration may exclude some acts from the statute, such as where the defendant forces the complainant to insert some object into the complainant's own body.

History

M Crim JI 20.12 (formerly CJI2d 20.12) was CJI 20:4:01. Amended October, 1993; September, 1996; September, 2000.

Reference Guide

Statutes

MCL 750.520d, .520l.

Case Law

People v Petrella, 424 Mich 221, 239, 380 NW2d 11 (1985); *People v Urynowicz*, 412 Mich 137, 312 NW2d 625 (1981); *People v Legg*, 197 Mich App 131, 494 NW2d 797 (1992); *People v Hale*, 142 Mich App 451, 370 NW2d 382 (1985); *People v Jansson*, 116 Mich App 674, 323 NW2d 508 (1982).

M Crim JI 20.13 Criminal Sexual Conduct in the Fourth Degree

(1) The defendant is charged with the crime of fourth-degree criminal sexual conduct. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant intentionally [touched (*name complainant*)'s / made (*name complainant*) touch (his / her)] [genital area / groin / inner thigh / buttock / (or) breast] or the clothing covering that area.

(3) Second, that this touching was done for sexual purposes or could reasonably be construed as having been done for sexual purposes.

(4) [*Follow this instruction with M Crim JI 20.14a, M Crim JI, 20.14b, M Crim JI, 20.14c, M Crim JI, 20.14d, M Crim JI 20.15, M Crim JI 20.16, or M Crim JI, 20.16a, as warranted by the evidence*.]

Use Note

Use this instruction where the facts describe an offensive touching.

Where an offensive touching involving an employee of the Department of Corrections is alleged, an appropriate instruction conforming to MCL 750.520e(1)(c) should be drafted.

History

M Crim JI 20.13 (formerly CJI2d 20.13) was CJI 20:5:01, 20:5:02; amended September, 1992; September, 1999.

Reference Guide

Statutes

MCL 750.520e, .520l.

Case Law

People v Petrella, 424 Mich 221, 239 n10, 380 NW2d 11 (1985).

M Crim JI 20.14 Complainant Between Thirteen and Sixteen Years of Age

Second, that [*name complainant*] was thirteen, fourteen, or fifteen years old at the time of the alleged act.

Use Note

Use this instruction in conjunction with M Crim JI 20.12, Criminal Sexual Conduct in the Third Degree.

History

M Crim JI 20.14 (formerly CJI2d 20.14) was CJI 20:4:05.

M Crim JI 20.14a Complainant Between Thirteen and Sixteen Years of Age and Defendant Five or More Years Older

Third, that [*name complainant*] was thirteen, fourteen, or fifteen years old at the time of the alleged act and defendant was then five or more years older than that.

Use Note

Use this instruction only in connection with the offense of criminal sexual conduct in the fourth degree, M Crim JI 20.13.

History

M Crim JI 20.14a (formerly CJI2d 20.14a) was adopted by the committee in September, 1996.

M Crim JI 20.14b Complainant Sixteen or Seventeen Years of Age

(1)[Second / Third], that [*name complainant*] was sixteen or seventeen years old at the time of the alleged act.

[*Choose Option A or B:*]

A.[School Teacher / Administrator]:

(2)[Third / Fourth], that at the time of the alleged act, the defendant was [a teacher / a substitute teacher / an administrator] of [a public school / a nonpublic school / a school district / an intermediate school district] in which [*name complainant*] was enrolled.[1]

B.[School Employee / Contractor / Volunteer / Government Employee]:

(3)[Third / Fourth], that at the time of the alleged act, the defendant was

[Choose *Option 1 or 2*:]

1.[School Employee / Contractor]:

[an employee / a contractual service provider] of [a public school / a nonpublic school / a school district / an intermediate school district] in which [*name complainant*] was enrolled.

2.(Volunteer / Government Employee):

[a nonstudent volunteer / an employee of this state or of a local unit of government of this state or of the United States] assigned to provide any service to the [public school / nonpublic school / school district / intermediate school district] in which [*name complainant*] was enrolled.

(4)[Fourth / Fifth], that the defendant used that status to [gain access to / establish a relationship with] [*name complainant*].[2]

Use Note

Use this instruction where appropriate in conjunction with M Crim JI 20.12, Criminal Sexual Conduct in the Third Degree, or M Crim JI 20.13, Criminal Sexual Conduct in the Fourth Degree. If the complainant is less than 16 years old, M Crim JI 20.4 (Complainant Thirteen, Fourteen, or Fifteen Years of Age) may apply. If the complainant is over 18 years old, M Crim JI 20.14c (Complainant at Least Sixteen but Less Than Twenty-Six Years of Age Receiving Special Education Services) may apply.

[1] This paragraph does not apply if the complainant was emancipated or if the defendant and the complainant are lawfully married to each other. MCL 750.520d(1)(e)(i).

[2] This element only applies to Option B.

History

M Crim JI 20.14b was added January 2015.

Reference Guide

Statutes

MCL 750.520d(1)(e); MCL 750.520e(1)(f)

M Crim JI 20.14c Complainant At Least Sixteen But Less Than Twenty-Six Years of Age Receiving Special Education Services

(1) [Second / Third], that [*name complainant*] was at least sixteen years old but less than twenty-six years old at the time of the alleged act and was receiving special education services.

[*Choose Option A or B:*]

A.[Teacher / Administrator / Employee / Contractor]:

(2)[Third / Fourth], that at the time of the alleged act, the defendant was [a teacher / a substitute teacher / an administrator / an employee / a contractual service provider] of [a public school / a nonpublic school / a school district / an intermediate school district] from which [*name complainant*] was receiving special education services.[1]

B.[Volunteer / Government Employee]:

(3)[Third / Fourth], that at the time of the alleged act, the defendant was [a nonstudent volunteer / an employee of this state or of a local unit of government of this state or of the United States] assigned to provide any service to the [public school / nonpublic school / school district / intermediate school district] in which [*name complainant*] was enrolled.

(4)[Fourth / Fifth], that the defendant used that status [to gain access to / establish a relationship with] [*name complainant*].[2]

Use Note

Use this instruction where appropriate in conjunction with M Crim JI 20.12, Criminal Sexual Conduct in the Third Degree, or M Crim JI 20.13, Criminal Sexual Conduct in the Fourth Degree.

[1] This paragraph does not apply if the defendant and the complainant are lawfully married to each other. MCL 750.520d(1)(f)(i).

[2] This element only applies to Option B.

History

M Crim JI 20.14c was added January 2015.

Reference Guide

Statutes

MCL 750.520d(1)(f); MCL 750.520e(1)(g)

M Crim JI 20.14d Complainant At Least Sixteen Years Old and Attending Day-Care or Residing in Foster-Care

(1)[Second / Third], that *[name complainant]* was at least sixteen years old and was [attending child-care at (*name of organization*) / residing in foster-care at (*name of facility*)] at the time of the alleged act.

[*Choose Option A or B:*]

A.[Child-Care Contractor / Employee / Volunteer]:

(2) [Third / Fourth], that at the time of the alleged act, the defendant was [an employee / a contractual service provider / volunteer] of [*name of organization*], which is a child-care organization.

B.[Foster-Care Provider]:

(3)[Third / Fourth], that at the time of the alleged act, the defendant was a licensed operator of [*name of facility*], which is a [foster-family home / foster-family group home].

Use Note

Use this instruction where appropriate in conjunction with M Crim JI 20.12, Criminal Sexual Conduct in the Third Degree, or with M Crim JI 20.13, Criminal Sexual Conduct in the Fourth Degree.

History

M Crim JI 20.14d was added January 2015.

Reference Guide

Statutes

MCL 750.520d(1)(g); MCL 750.520e(1)(h)

Staff Comment

The decision whether the institution where the complainant was attending or residing is a child-care organization or foster-care facility, as defined in §1 of 1973 PA 116, MCL 722.111, under MCL 750.520d or MCL 750.520e, appears to be a legal question decided by the court, if challenged by the defendant. This Comment has not been approved by the Supreme Court, and should not be considered an authoritative construction of the applicable statutes.

M Crim JI 20.15 Use of Force or Coercion

[Second / Third], that the defendant used force or coercion to commit the sexual act. "Force or coercion" means that the defendant either used physical force or did something to make [*name complainant*] reasonably afraid of present or future danger.

Use Note

Use this instruction in conjunction with M Crim JI 20.12, Criminal Sexual Conduct in the Third Degree, or M Crim JI 20.13, Criminal Sexual Conduct in the Fourth Degree.

See M Crim JI 20.24, Definition of Sufficient Force.

History

M Crim JI 20.15 (formerly CJI2d 20.15) was CJI 20:4:06, 20:5:03.

Reference Guide

Statutes

MCL 750.520d, .520e.

Case Law

People v Eisen, 296 Mich App 326, 820 NW2d 229 (2012).

M Crim JI 20.16 Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless

(1)[Second / Third], that [*name complainant*] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.

[*Choose one or more of (a), (b), or (c):*]

(a)Mentally incapable means that [*name complainant*] was suffering from a mental disease or defect that made [him / her] incapable of appraising either the physical or moral nature of [his / her] conduct.

(b)Mentally incapacitated means that [*name complainant*] was unable to understand or control what [he / she] was doing because of [drugs or alcohol given to (him / her) / something done to (him / her)] without [his / her] consent.

(c)Physically helpless means that [*name complainant*] was unconscious, asleep, or physically unable to communicate that [he / she] did not want to take part in the alleged act.

(2)[Third / Fourth], that the defendant knew or should have known that [*name complainant*] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.

Use Note

Use this instruction in conjunction with M Crim JI 20.12, Criminal Sexual Conduct in the Third Degree, or M Crim JI 20.13, Criminal Sexual Conduct in the Fourth Degree.

History

M Crim JI 20.16 (formerly CJI2d 20.16) was CJI 20:4:07, 20:5:04; amended September 2005.

Reference Guide

Statutes

MCL 750.520d, .520e.

M Crim JI 20.16a Related Within Third Degree

[Second / Third], that the defendant is related to the complainant by blood or marriage within the third degree as [*state relationship claimed*].

[The defendant has the burden of proving by a preponderance of the evidence (his / her) claim that the complainant was in a position of authority over (him / her) and used that authority to force the defendant to engage in the sexual conduct.]

Use Note

Use this instruction in conjunction with M Crim JI 20.12, Criminal Sexual Conduct in the Third Degree, or M Crim JI 20.13, Criminal Sexual Conduct in the Fourth Degree.

MCL 750.520d(1)(d) provides that this crime is committed only if the sexual conduct "occurs under circumstances not otherwise prohibited by this chapter." *People v Goold*, 241 Mich App 333, 615 NW2d 794 (2000).

History

M Crim JI 20.16a (formerly CJI2d 20.16a) was added by the committee in September, 1996 to reflect the changes in the statute made by 1996 PA 155.

Reference Guide

Statutes

MCL 750.520d, .520e.

Case Law

People v Goold, 241 Mich App 333, 615 NW2d 794 (2000).

M Crim JI 20.17 Assault with Intent to Commit Criminal Sexual Conduct Involving Penetration

(1) The defendant is charged with the crime of assault with intent to commit criminal sexual conduct involving sexual penetration. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant either attempted to commit a battery on [*name complainant*] or did an act that would cause a reasonable person to fear or apprehend an immediate battery. A battery is a forceful or violent touching [without lawful consent]* of the person or something closely connected with the person of another.

(3) Second, that the defendant intended either to injure [*name complainant*] or intended to make [*name complainant*] reasonably fear an immediate battery.

(4) Third, that at the time, the defendant had the ability to commit a battery, appeared to have the ability, or thought [he / she] had the ability.

(5) Fourth, that when the defendant assaulted [*name complainant*], the defendant intended to commit a sexual act involving criminal sexual penetration. This means that the defendant must have intended some actual entry into one person's [genital opening / anal opening / mouth] with another person's [penis / finger / tongue / (*state object*)].

(6) It is not required that the defendant actually began to commit the sexual act. To prove this charge, the prosecutor must prove that the defendant made an attempt or a threat while intending to commit the act.

(7) An actual touching or penetration is not required. To prove this charge, the prosecutor must prove that the defendant committed the assault and intended to commit criminal sexual penetration.

Use Note

*Use the bracketed material only if consent is not a defense to the criminal sexual conduct that is the object of the assault.

History

M Crim JI 20.17 (formerly CJI2d 20.17) was CJI 20:6:01; amended September, 1999; September, 2000; September, 2005; September, 2008.

Reference Guide

Statutes

MCL 750.520g.

Case Law

People v Starks, 473 Mich 227, 236, 701 NW2d 136 (2005); *People v Nickens*, 470 Mich 622, 633, 685 NW2d 657 (2004); *People v Cornell*, 466 Mich 335, 646 NW2d 127 (2002*); People v Snell*, 118 Mich App 750, 325 NW2d 563 (1982); *People v Love*, 91 Mich App 495, 283 NW2d 781 (1979).

M Crim JI 20.18 Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact)

(1) The defendant is charged with the crime of assault with intent to commit criminal sexual conduct involving sexual contact. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant either attempted to commit a battery on [*name complainant*] or did an act that would cause a reasonable person to fear or apprehend an immediate battery. A battery is a forceful or violent touching [without lawful consent]* of the person or something closely connected with the person of another.

(3) Second, that the defendant intended either to injure [*name complainant*] or to make [*name complainant*] reasonably fear an immediate battery.

(4) Third, that at the time, the defendant had the ability to commit a battery, appeared to have the ability, or thought [he / she] had the ability.

(5) Fourth, that when the defendant assaulted [*name complainant*], the defendant intended to commit a sexual act involving criminal sexual contact. This means that the defendant must have specifically intended to [touch (*name complainant*)'s / have (*name complainant*) touch (his / her)] genital area, groin, inner thigh, buttock, breast, or the clothing covering those areas.

(6) Fifth, that when the defendant assaulted [*name complainant*], the defendant must have specifically intended to do the act involving criminal sexual contact for the purpose of sexual arousal or gratification.

(7) Sixth [*Follow this instruction with one or more of the alternatives found at M Crim JI 20.3 through 20.11d as warranted by the evidence.*]

(8) However, an actual touching or penetration is not required.

Use Note

*Use the bracketed material only if consent is not a defense to the criminal sexual conduct that is the object of the assault.

History

M Crim JI 20.18 (formerly CJI2d 20.18) was CJI 20:6:02; amended September, 1992; September, 1999; September, 2005; May, 2008; September, 2008.

Reference Guide

Statutes

MCL 750.520g, .520l.

Case Law

People v Snell, 118 Mich App 750, 325 NW2d 563 (1982).

M Crim JI 20.19 Complainant Under Sixteen Years of Age

[Fifth / Sixth], that [*name complainant*] was less than sixteen years old at the time of the alleged act.

Use Note

Use this instruction in conjunction with M Crim JI 20.17, Assault with Intent to Commit Criminal Sexual Conduct Involving Penetration.

History

M Crim JI 20.19 (formerly CJI2d 20.19) was CJI 20:6:03; amended September, 1992.

M Crim JI 20.20 Sexual Assault in Conjunction with the Commission of a Felony

(1)[Fifth / Sixth], that the alleged assault occurred under circumstances that also involved [*state felony*].

(2)[*Give the elements of the felony alleged.*]

Use Note

Use this instruction in conjunction with M Crim JI 20.17, Assault with Intent to Commit Criminal Sexual Conduct Involving Penetration.

When this section is used, the jury must be instructed on all of the elements of the felony.

History

M Crim JI 20.20 (formerly CJI2d 20.20) was CJI 20:6:04; amended September, 1992.

Reference Guide

Statutes

MCL 750.520b(1)(c).

Case Law

People v Lockett, 295 Mich App 165, 814 NW2d 295 (2012); *People v White*, 168 Mich App 596, 425 NW2d 193 (1988); *People v Jones*, 144 Mich App 1, 373 NW2d 226 (1985).

M Crim JI 20.21 Armed with a Weapon

[Fifth / Sixth], that the defendant was armed at the time with:

[*Choose one or more of the following:*]

(a) A weapon [or with]

(b) Any [other] object capable of causing physical injury that the defendant used as a weapon [or with]

(c) Any [other] object used or fashioned in a manner to lead [*name complainant*] to reasonably believe that it was a weapon.

Use Note

Use this instruction in conjunction with M Crim JI 20.17, Assault with Intent to Commit Criminal Sexual Conduct Involving Penetration.

History

M Crim JI 20.21 (formerly CJI2d 20.21) was CJI 20:6:05; amended September, 1992.

Reference Guide

Statutes

MCL 750.520g.

M Crim JI 20.22 Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless

(1)[Fifth / Sixth], that [*name complainant*] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.

[*Choose one or more of (a), (b), or (c):*]

(a) Mentally incapable means that [*name complainant*] was suffering from a mental disease or defect that made [him / her] incapable of appraising either the physical or moral nature of [his / her] conduct.

(b) Mentally incapacitated means that [*name complainant*] was unable to understand or control what [he / she] was doing because of [drugs or alcohol given to (him / her) / something done to (him / her)] without [his / her] consent.

(c) Physically helpless means that [*name complainant*] was unconscious, asleep, or physically unable to communicate that [he / she] did not want to take part in the alleged act.

(2)[Sixth / Seventh], that the defendant knew or should have known that [*name complainant*] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.

Use Note

Use this instruction in conjunction with M Crim JI 20.17, Assault with Intent to Commit Criminal Sexual Conduct Involving Penetration.

History

M Crim JI 20.22 (formerly CJI2d 20.22) was CJI 20:6:06; amended September, 1992; September, 2005.

Reference Guide

Statutes

MCL 750.520g.

M Crim JI 20.23 Use of Force or Coercion in Attempt

[Fifth / Sixth], that the defendant used force or coercion in attempting or threatening to commit the sexual act. "Force or coercion" means that the defendant either used physical force or did something to make [*name complainant*] reasonably afraid of present or future danger.

Use Note

Use this instruction in conjunction with M Crim JI 20.17, Assault with Intent to Commit Criminal Sexual Conduct Involving Penetration.

See M Crim JI 20.24, Definition of Sufficient Force.

History

M Crim JI 20.23 (formerly CJI2d 20.23) was CJI 20:6:07; amended September, 1992.

Reference Guide

Statutes

MCL 750.520g.

Case Law

People v Eisen, 296 Mich App 326, 820 NW2d 229 (2012).

M Crim JI 20.24 Definition of Sufficient Force

[*Choose any of the following that are applicable:*]

(1) It is enough force if the defendant overcame [*name complainant*] by physical force.

(2) It is enough force if the defendant threatened to use physical force on [*name complainant*] and [*name complainant*] believed that the defendant had the ability to carry out those threats.

(3) It is enough force if the defendant threatened to get even with [*name complainant*] in the future, and [*name complainant*] believed that the defendant had the ability to carry out those threats.

(4) It is enough force if the defendant threatened to kidnap [*name complainant*], or threatened to force [*name complainant*] to do something against [his / her] will, or threatened to physically punish someone, and [*name complainant*] believed that the defendant had the ability to carry out those threats.

(5) It is enough force if the defendant was giving [*name complainant*] a medical exam or treatment and did so in a way or for a reason that is not recognized as medically acceptable. A physical exam by a doctor that includes inserting fingers into the vagina or rectum is not in itself criminal sexual conduct. You must decide whether the defendant did the exam or treatment as an excuse for sexual purposes and in a way that is not recognized as medically acceptable.

(6) It is enough force if the defendant, through concealment or by the element of surprise, was able to overcome [achieve sexual contact with]* [*name complainant*].

(7) It is enough force if the defendant used force to induce the victim to submit to the sexual act or to seize control of the victim in a manner facilitating commission of the sexual act without regard to the victim's wishes.

Use Note

*Use the bracketed expression "achieve sexual contact" when criminal sexual contact in the fourth degree is charged. See MCL 750.520e(1)(b)(v).

History

M Crim JI 20.24 (formerly CJI2d 20.24) was CJI 20:2:14. Amended September, 2000.

Reference Guide

Statutes

MCL 750.520b(1)(f), .520e(1).

Case Law

People v Carlson, 466 Mich 130, 644 NW2d 704 (2002); *People v Crippen*, 242 Mich App 278, 617 NW2d 760 (2000); *People v Regts*, 219 Mich App 294, 296-298, 555 NW2d 896 (1996); *People v Premo*, 213 Mich App 406, 540 NW2d 715 (1995).

M Crim JI 20.25 Testimony of the Victim Need Not Be Corroborated

To prove this charge, it is not necessary that there be evidence other than the testimony of [*name complainant*], if that testimony proves guilt beyond a reasonable doubt.

Use Note

This is a permissive instruction. It is especially appropriate where the defense has argued lack of corroboration.

History

M Crim JI 20.25 (formerly CJI2d 20.25) was CJI 20:1:01.

Reference Guide

Statutes

MCL 750.520h.

Case Law

People v Smith, 149 Mich App 189, 195, 385 NW2d 654 (1986); *People v Norwood*, 70 Mich App 53, 57, 245 NW2d 170 (1976).

M Crim JI 20.26 The Victim Need Not Resist

To prove this charge, the prosecutor does not have to show that [*name complainant*] resisted the defendant.

Use Note

This is a permissive instruction. It is especially appropriate where the defense has argued lack of resistance.

History

M Crim JI 20.26 (formerly CJI2d 20.26) was CJI 20:1:02.

Reference Guide

Statutes

MCL 750.520i.

Case Law

People v Nelson, 79 Mich App 303, 318, 261 NW2d 299 (1977), aff'd in part, vacated in part on other grounds, 406 Mich 1020, 281 NW2d 134 (1979).

M Crim JI 20.27 Consent

(1) There has been evidence in this case about the defense of consent. A person consents to a sexual act by agreeing to it freely and willingly, without being forced or coerced.

(2) It is not necessary to show that [*name complainant*] resisted the defendant to prove that this crime was committed. Nor is it necessary to show that [*name complainant*] did anything to lessen the danger to [himself / herself].

(3) In deciding whether or not the [*name complainant*] consented to the act, you should consider all of the evidence. It may help you to think about the following questions:

(a)Was [*name complainant*] free to leave and not take part in the sexual act?

[(b)Did the defendant threaten (*name complainant*) with present or future injury?]

[(c)Did the defendant use force, violence, or coercion?]

[(d)Did the defendant display a weapon?]

[(e)*Name any other relevant circumstances*.]

(4) If you find that the evidence raises a reasonable doubt as to whether [*name complainant*] consented to the act freely and willingly, then you must find the defendant not guilty.

Use Note

Consent is an affirmative defense. No evidence of nonconsent need be placed in evidence by the prosecution. This instruction should be given only where there is evidence of consent. It is also obviously inappropriate where the victim is mentally disabled, physically helpless, or below the age of consent.

History

M Crim JI 20.27 (formerly CJI2d 20.27) was CJI 20:1:03.

Reference Guide

Statutes

MCL 750.520j.

Case Law

People v LaLone, 432 Mich 103, 437 NW2d 611 (1989); *People v Hackett*, 421 Mich 338, 365 NW2d 120 (1984); *People v Arenda*, 416 Mich 1, 330 NW2d 814 (1982); *People v Stull*, 127 Mich App 14, 338 NW2d 403 (1983); *People v Thompson*, 117 Mich App 522, 324 NW2d 22 (1982); *People v Hearn*, 100 Mich App 749, 755, 300 NW2d 396 (1980).

M Crim JI 20.28 Uncharged Acts in Criminal Sexual Conduct Cases

(1)You have heard evidence that was introduced to show that the defendant has engaged in improper sexual conduct for which the defendant is not on trial.

(2)If you believe this evidence, you must be very careful to consider it for only one, limited purpose, that is, to help you judge the believability of testimony of [*name complainant*] regarding the act(s) for which the defendant is now on trial.

(3)You must not consider this evidence for any other purpose. For example, you must not decide that it shows that the defendant is a bad person or that the defendant is likely to commit crimes. You must not convict the defendant here because you think [he / she] is guilty of other bad conduct.

Use Note

This instruction is for use when evidence of other acts has been introduced to show that there existed similar sexual familiarity between the defendant and the complainant to help the jury in judging the credibility of the complainant's testimony. *People v DerMartzex*, 390 Mich 410, 213 NW2d 97 (1973).

History

M Crim JI 20.28 (formerly CJI2d 20.28) was CJI 20:1:04; amended May, 2010.

Reference Guide

Court Rules

MRE 404(b).

Case Law

People v Jones, 417 Mich 285, 335 NW2d 465 (1983); *People v DerMartzex*, 390 Mich 410, 213 NW2d 97 (1973); *People v Jenness*, 5 Mich 305, 323-324 (1858); *People v Wright*, 161 Mich App 682, 687, 411 NW2d 826 (1987).

M Crim JI 20.28a Evidence of Other Acts of Child Sexual Abuse

(1)The prosecution has introduced evidence of claimed acts of sexual misconduct by the defendant with [a minor / minors] for which [he / she] is not on trial.

(2)Before you may consider such alleged acts as evidence against the defendant, you must first find that the defendant actually committed those acts.

(3)If you find that the defendant did commit those acts, you may consider them in deciding if the defendant committed the [offense / offenses] for which [he / she] is now on trial.

(4) You must not convict the defendant here solely because you think [he / she] is guilty of other bad conduct. The evidence must convince you beyond a reasonable doubt that the defendant committed the alleged crime, or you must find [him / her] not guilty.

History

M Crim JI 20.28a (formerly CJI2d 20.28a) was adopted by the committee in September, 2006, for use with MCL 768.27a, effective January 1, 2006. The instruction was renumbered from M Crim JI 5.8b in May, 2008, to be more specifically accessible in criminal sexual conduct prosecutions. This instruction was further modified in September, 2009, to incorporate the cautionary component of M Crim JI 4.11.

Reference Guide

Statutes

MCL 28.722, 768.27a.

M Crim JI 20.29 Limiting Instruction on Expert Testimony (in Child Criminal Sexual Conduct Cases)

(1) You have heard [*name expert*]'s opinion about the behavior of sexually abused children.

(2) You should consider that evidence only for the limited purpose of deciding whether [*name complainant*]'s acts and words after the alleged crime were consistent with those of sexually abused children.

(3) That evidence cannot be used to show that the crime charged here was committed or that the defendant committed it. Nor can it be considered an opinion by [*name expert*] that [*name complainant*] is telling the truth.

Use Note

This instruction is intended for use where expert testimony is offered to rebut an inference that a child complainant's behavior is inconsistent with that of actual victims of child sexual abuse. *People v Beckley*, 434 Mich 691, 725, 456 NW2d 391 (1990).

History

M Crim JI 20.29 (formerly CJI2d 20.29) was CJI 20:1:06.

Reference Guide

Court Rules

MRE 702-703.

Case Law

Daubert v Merrell Dow Pharms, 509 US 579 (2004); *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 685 NW2d 391 (2004); *People v Peterson* and *People v Smith*, 450 Mich 349, 352-353, 537 NW2d 857 (1995); *People v Beckley*, 434 Mich 691, 456 NW2d 391 (1990); *People v Steele*, 283 Mich App 472, 769 NW2d 256 (2009); *People v Dobek*, 274 Mich App 58, 732 NW2d 546 (2007).

M Crim JI 20.30 Criminal Sexual Conduct—No Spousal Exception

The defendant may be convicted of [*state crime*] even if [*name complainant*] is [his / her] spouse.

Use Note

Use only where the defendant and the complainant are married at the time of the offense or trial.

History

M Crim JI 20.30 (formerly CJI2d 20.30) was CJI 20:1:05.

Reference Guide

Statutes

MCL 750.520l.

M Crim JI 20.30a Criminal Sexual Conduct, One Wrongful Act—Multiple Aggravating Circumstances

The defendant is charged with criminal sexual conduct in the [*state degree*] degree. The prosecutor claims that the alleged sexual act was accompanied by one or more aggravating circumstances as explained earlier in my instructions.

If you all agree that the defendant committed the sexual act alleged, it is not necessary that you all agree on which of these aggravating circumstances accompanied the act, as long as you all agree that the prosecutor has proved at least one of the circumstances beyond a reasonable doubt.

Use Note

This instruction is intended for use where the prosecutor's theory of the case is that the defendant committed one sexual act accompanied by more than one aggravating circumstance.

History

M Crim JI 20.30a (formerly CJI2d 20.30a) was adopted in September, 2006.

M Crim JI 20.30b Defendant Seventeen Years of Age or Older and Victim Under the Age of Thirteen

(1) If you find that the defendant is guilty of first-degree criminal sexual conduct, then you must decide whether the prosecutor has proved each of the following elements beyond a reasonable doubt:

(2) First, that [*name complainant*] was less than thirteen years old when the offense occurred, and,

(3) Second, that the defendant was seventeen years of age or older when the offense occurred.

Use Note

M Crim JI 20.30b should be given where the charge is that the crime was committed by a defendant who was seventeen years of age or older at the time of the offense, and the victim at that time was under the age of thirteen years, which triggers a mandatory minimum sentence under MCL 750.520b(2)(b).

History

M Crim JI 20.30b was adopted in April 2015.

Reference Guide

Statutes

MCL 750.520b(2)(b)

Case Law

In *Alleyne v United States*, 570 US __; 133 S Ct 2151; 186 L Ed 2d 314 (2013), the United States Supreme Court held that facts that would trigger a mandatory minimum sentence must be admitted by the defendant or proved beyond a reasonable doubt to the trier of fact.

M Crim JI 20.31 Gross Indecency

(1) The defendant is charged with the crime of committing an act of gross indecency. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant engaged in a sexual act that involved one or more of the following:[1]

[*Choose (a), (b), (c), (d), (e), or (f):*]

(a) entry into another person's [vagina / anus] by the defendant's [penis / finger / tongue / (*name object*)]. Any entry, no matter how slight, is enough. It does not matter whether the sexual act was completed or whether semen was ejaculated.

or

(b) entry into another person's mouth by the defendant's penis. Any entry, no matter how slight, is enough. It does not matter whether the sexual act was completed or whether semen was ejaculated.

or

(c) touching of another person's [genital openings / genital organs] with the defendant's mouth or tongue.

or

(d) entry by [any part of one person's body / some object] into the genital or anal opening of another person's body. Any entry, no matter how slight, is enough. It is alleged in this case that a sexual act was committed by [*state alleged act*]. It does not matter whether the sexual act was completed or whether semen was ejaculated.

or

(e) masturbation of oneself or another.

or

(f) masturbation in the presence of a minor, whether in a public place or private place.

[*Add (3) unless only (2)(f) is being given.*]

(3) Second, that the sexual act was committed in a public place. A place is public when a member of the public, who is in a place the public is generally invited or allowed to be, could have been exposed to or viewed the act.[2]

Use Note

[1] This list of acts is not intended to be exhaustive. See *People v Drake*, 246 Mich App 637, 633 NW2d 469 (2001).

[2] If necessary, the court may add that if the sexual act is committed in a public place, the consent of the participants or the acquiescence of any observer is not a defense.

History

M Crim JI 20.31 (formerly CJI2d 20.31) was last revised in May, 2002, to reflect the holding of the court of appeals in *People v Bono* (On Remand), 249 Mich App 115, 641 NW2d 278 (2002).

Reference Guide

Case Law

People v Williams, 462 Mich 861, 613 NW2d 721 (2000); *People v Bono (On Remand)*, 249 Mich App 115, 641 NW2d 278 (2002*); People v Drake*, 246 Mich App 637, 633 NW2d 469 (2001).

M Crim JI 20.32 Sodomy

The defendant is charged with the crime of sodomy. To prove this charge, the prosecutor must prove that the defendant voluntarily engaged in anal intercourse with another person. Anal intercourse is defined as a man penetrating the anus of another person with his penis. Any entry into the anus, no matter how slight, is enough. It does not matter whether the sexual act was completed or whether semen was ejaculated.

Use Note

If the defendant is charged with a sexual act with an animal, an instruction addressing that situation should be prepared.

History

M Crim JI 20.32 (formerly CJI2d 20.32) was CJI 20:8:01.

Reference Guide

Statutes

MCL 750.158, .159.

Case Law

Lawrence v Texas, 539 US 558 (2003); *People v Helzer*, 404 Mich 410, 273 NW2d 44 (1978); *People v Schmitt*, 275 Mich 575, 267 NW 741 (1936); *People v Coulter*, 94 Mich App 531, 288 NW2d 448 (1980); *People v Carrier*, 74 Mich App 161, 254 NW2d 35 (1977); *People v Vasquez*, 39 Mich App 573, 197 NW2d 840 (1972); *People v Haggerty*, 27 Mich App 594, 183 NW2d 862 (1970); *People v Askar*, 8 Mich App 95, 153 NW2d 888 (1967); *People v Dexter*, 6 Mich App 247, 148 NW2d 915 (1967).

M Crim JI 20.33 Indecent Exposure

(1) The defendant is charged with the crime of indecent exposure. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant exposed [his / her] [*state part of body*].

(3) Second, that the defendant knew that [he / she] was exposing [his / her] [*state part of body*].

[*Use the following paragraph only if a violation of MCL 750.335a(2)(b) is charged.*]

(4) Third, that the defendant was fondling [his / her] [genitals / pubic area / buttocks / breasts*].

(5) [Third / Fourth], that the defendant did this in a place under circumstances in which another person might reasonably have been expected to observe it and which created a substantial risk that someone might be offended or in a place where such exposure is likely to be an offense against your community's generally accepted standards of decency and morality. In determining this, you must think about the nature of the act and all of the circumstances surrounding the act. [*State any other relevant factors, e.g., the age and experience of the persons who observed the act, the purpose of the act, etc.*]

Use Note

*Breasts is an option only for females.

History

M Crim JI 20.33 (formerly CJI2d 20.33) was CJI 20:9:01; amended September, 1998; September, 2005; April, 2006.

Reference Guide

Statutes

MCL 750.335a.

Case Law

In re Certified Question from US Dist Court, Eastern Dist, 420 Mich 51, 63, 359 NW2d 513 (1984); *People v Helzer*, 404 Mich 410, 273 NW2d 44 (1978); *People v Hildabridle*, 353 Mich 562, 563-564, 92 NW2d 6 (1958); *In re Kemmerer*, 309 Mich 313, 15 NW2d 652 (1944), cert denied, 329 US 767 (1946); *People v Ring*, 267 Mich 657, 255 NW 373 (1934); *People v Kratz*, 230 Mich 334, 337, 203 NW114 (1925); *People v Neal*, 266 Mich App 654, 702 NW2d 696 (2005); *People v Huffman*, 266 Mich App 354, 360, 702 NW2d 621 (2005), cert denied, 549 US 814 (2006); *People v Vronko*, 228 Mich App 649, 653, 579 NW2d 138 (1998); *People v Wilson*, 95 Mich App 440, 291 NW2d 73 (1980); *People v Winford*, 59 Mich App 404, 229 NW2d 474 (1975), aff'd, 404 Mich 400, 273 NW2d 54 (1978); *People v Griffes*, 13 Mich App 299, 164 NW2d 426 (1968).

M Crim JI 20.34 Pandering

(1) The defendant is charged with the crime of pandering. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

[*Choose (2) or (3):*]

(2) First, that the defendant [forced / persuaded / encouraged / tricked] [*state name*] to become a prostitute. A prostitute is a person who does sexual acts for money.

(3) First, that the defendant [took / agreed to take / gave / agreed to give] money or anything of value for making or attempting to make [*state name*] become a prostitute. A prostitute is a person who does sexual acts for money.

(4) Second, that the defendant did this knowingly and intentionally.

History

M Crim JI 20.34 (formerly CJI2d 20.34) was CJI 20:10:01, 20:10:02. Amended September, 2000.

Reference Guide

Statutes

MCL 750.455.

Case Law

People v Morey, 461 Mich 325, 603 NW2d 250 (1999); *People v Rocha*, 110 Mich App 1, 312 NW2d 657 (1981).

M Crim JI 20.35 Accepting the Earnings of a Prostitute

(1) The defendant is charged with the crime of making a profit from the earnings of a prostitute. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [received / took] [money / something of value] from a prostitute. A prostitute is a person who does sexual acts for money.

(3) Second, that the defendant knew that the woman was a prostitute when the defendant [received / took] the [money / valuable thing].

(4) Third, that the defendant knew when [he / she] [received / took] it that the [money / valuable thing] had been earned by prostitution.

(5) Fourth, that the defendant did not give the prostitute anything of value in exchange. If you find that the defendant did give something of value to her, you must decide whether the defendant made a profit from her earnings, that is, whether the defendant [received / took] some of her earnings without giving anything in return. The evidence must convince you that the defendant intended to make a profit and actually [received / took] [money / something of value] without giving anything in return.

History

M Crim JI 20.35 (formerly CJI2d 20.35) was CJI 20:11:01.

Reference Guide

Statutes

MCL 750.457.

Case Law

People v Jackson, 280 Mich 6, 273 NW 327 (1937); *People v Harrison*, 75 Mich App 556, 561, 255 NW2d 682 (1977).

M Crim JI 20.36 Inference of Lack of Consideration

(1) It is up to you to determine whether the defendant knowingly [received / took] the earnings of a prostitute. If you find that the defendant did so and this fact is not explained, you may infer that the defendant [received / took] the earnings without giving anything of value in return. However, you do not have to make this inference.

(2) Only you have the right to decide whether the facts and circumstances of this case, as shown by the evidence, justify an inference that the defendant accepted the earnings of a prostitute without giving anything in return.

(3) If you have a reasonable doubt as to whether the defendant made a profit from the prostitution of the woman in this case, you must find the defendant not guilty.

History

M Crim JI 20.36 (formerly CJI2d 20.36) was CJI 20:11:02.

Reference Guide

Statutes

MCL 750.457.

Case Law

People v Jackson, 280 Mich 6, 273 NW 327 (1937); *People v Brown*, 36 Mich App 187, 193 NW2d 426 (1971); *People v Hill*, 32 Mich App 404, 188 NW2d 896 (1971).

M Crim JI 20.37 Use of Computer to Commit Specified Crimes

[*M Crim JI 20.37 (formerly CJI2d 20.37) was adopted by the Committee in October 2004, to set forth the elements of MCL 750.145d as last amended by 2000 PA 185, effective September 18, 2000. It was renumbered, effective October 2014, as M Crim JI 35.10.*]

M Crim JI 20.38 Child Sexually Abusive Activity – Causing or Allowing

(1) The defendant is charged with the crime of causing or allowing a child to engage in sexually abusive activity in order to create or produce child sexually abusive material. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [persuaded / induced / enticed / coerced / caused / knowingly allowed] a child under 18 years old to engage in child sexually abusive activity.

(3) Child sexually abusive activity includes:

[*Choose* any *of the following that apply*:][1]

(a) sexual intercourse, which is penetration of a genital, oral, or anal opening by the genitals, mouth, or tongue, or with an artificial genital, whether the intercourse is real or simulated, and whether it is between persons of the same or opposite sex, or between a person and an animal, [and / or]

(b) erotic fondling, which is the touching of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for the purpose of sexual gratification or stimulation of any person involved, but does not include other types of touching, even if affectionate, [and / or]

(c) sadomasochistic abuse, which is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation, [and / or]

(d) masturbation, which is stimulation by hand or by an object of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for sexual gratification or stimulation, [and / or]

(e) passive sexual involvement, which is watching, drawing attention to, or exposing someone to persons who are performing real or simulated sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, sexual excitement, or erotic nudity for the purpose of sexual gratification or stimulation of any person involved, [and / or]

(f) sexual excitement, which is the display of someone's genitals in a state of stimulation or arousal, [and / or]

(g) erotic nudity, which is showing the genital, pubic, or rectal area of someone in a way that tends to produce lewd or lustful emotions.

(4) Second, that the defendant caused or allowed the person to engage in child sexually abusive activity for the purpose of producing or making child sexually abusive material. Child sexually abusive materials are pictures, movies, or illustrations, made or produced by any means,[2] of [a person under 18 years old / the representation of a person under 18 years old] engaged in sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, and/or erotic nudity.[2]

(5) Third, that the defendant knew or reasonably should have known that the person was less than 18 years old, or failed to take reasonable precautions to determine whether the person was less than 18 years old.[3]

Use Note

[1] The statute prohibits both real and simulated sexual acts. Where the acts are simulated, or simulated acts are included, the instructions should be modified accordingly.

[2] The statute, MCL 750.145c(1)(o), provides a list of forms that child sexually abusive materials can take:

. . . any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image, computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.

The Committee believes that the phrase, "pictures, movies, or illustrations, made or produced by any means," will generally suffice to describe such materials. However, the court may prefer to select a more specific term or phrase from the statutory list.

[3] The statute lists several alternatives for this element of the offense in MCL 750.145c(2), (3), and (4):

. . . if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

Generally, the language of the instruction will suffice. However, in appropriate cases, the court may select some or all of the other statutory language for this element.

History

M Crim JI 20.38 was adopted in June 2016.

Reference Guide

Statutes

MCL 750.145c.

M Crim JI 20.38a Child Sexually Abusive Activity – Producing

(1) The defendant is charged with the crime of producing child sexually abusive material. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [arranged for / produced / made[1] / copied / reproduced / financed / (attempted / prepared / conspired) to (arrange for / produce / make / copy / reproduce / finance)] child sexually abusive [activity / material].

(3) Child sexually abusive materials are pictures, movies, or illustrations, made or produced by any means,[2] of [a person under 18 years old / the representation of a person under 18 years old] engaged in one or more of the following sexual acts:

[*Choose any of the following that apply*:][3]

(a) sexual intercourse, which is penetration of a genital, oral, or anal opening by the genitals, mouth, or tongue, or with an artificial genital, whether the intercourse is real or simulated, and whether it is between persons of the same or opposite sex, or between a person and an animal, [and / or]

(b) erotic fondling, which is the touching of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for the purpose of sexual gratification or stimulation of any person involved, but does not include other types of touching, even if affectionate, [and / or]

(c) sadomasochistic abuse, which is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation, [and / or]

(d) masturbation, which is stimulation by hand or by an object of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for sexual gratification or stimulation, [and / or]

(e) passive sexual involvement, which is watching, drawing attention to, or exposing someone to persons who are performing real or simulated sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, sexual excitement, or erotic nudity for the purpose of sexual gratification or stimulation of any person involved, [and / or]

(f) sexual excitement, which is the display of someone's genitals in a state of stimulation or arousal, [and / or]

(g) erotic nudity, which is showing the genital, pubic, or rectal area of someone in a way that tends to produce lewd or lustful emotions.

[*Choose either (4) or (5), depending on whether the depiction is an actual person or is a created representation of a person under the age of 18*:]

(4) Second, that the defendant knew or should reasonably have known that the person shown in the sexually abusive material was less than 18 years old, or failed to take reasonable precautions to determine whether the person was less than 18 years old. [4]

(5) Second, that the defendant produced a portrayal of a person appearing to be less than 18 years old, knowing that the person portrayed appeared to be less than 18 years old, and all of the following conditions apply: [4]

(a) An average person, applying current community standards, would find that the material appealed to an unhealthy or shameful interest in nudity, sex, or excretion.[5]

(b) A reasonable person would not find any serious literary, artistic, political, or scientific value in the material.

(c) The material shows or describes sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity, as previously described for you.

Use Note

[1] *Make* is defined in MCL 750.145c(1)(j) as:

. . . to bring into existence by copying, shaping, changing, or combining material, and specifically includes, but is not limited to, intentionally creating a reproduction, copy, or print of child sexually abusive material, in whole or part. Make does not include the creation of an identical reproduction or copy of child sexually abusive material within the same digital storage device or the same piece of digital storage media.

[2] The statute, MCL 750.145c(1)(o), provides a list of forms that child sexually abusive materials can take:

. . . any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image, computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.

The Committee believes that the phrase, "pictures, movies, or illustrations, made or produced by any means," will generally suffice to describe such materials. However, the court may prefer to select a more specific term or phrase from the statutory list.

[3] The statute prohibits both real and simulated sexual acts. Where the acts are simulated, the instructions should be modified accordingly.

[4] The statute lists several alternatives for this element of the offense in MCL 750.145c(2), (3), and (4):

. . . if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

Generally, the language of the instruction will suffice. However, in appropriate cases, the court may select some or all of the other statutory language for this element.

[5] If necessary, *excretion* may be defined as the act or product of urinating or defecating.

History

M Crim JI 20.38a was adopted in June 2016.

Reference Guide

Statutes

MCL 750.145c.

M Crim JI 20.38b Child Sexually Abusive Activity – Distributing

(1) The defendant is charged with the crime of distributing child sexually abusive material. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [distributed / promoted / financed the (distribution / promotion) of / received for the purpose of (distributing / promoting) / (conspired / attempted / prepared) to (distribute / receive / finance / promote)] child sexually abusive [material / activity].

(3) Child sexually abusive materials are pictures, movies, or illustrations[1] of [a person under 18 years old / the representation of a person under 18 years old] engaged in one or more of the following sexual acts:

[*Choose any of the following that apply*:][2]

(a) sexual intercourse, which is penetration of a genital, oral, or anal opening by the genitals, mouth, or tongue, or with an artificial genital, whether the intercourse is real or simulated, and whether it is between persons of the same or opposite sex, or between a person and an animal, [and / or]

(b) erotic fondling, which is the touching of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for the purpose of sexual gratification or stimulation of any person involved, but does not include other types of touching, even if affectionate, [and / or]

(c) sadomasochistic abuse, which is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation, [and / or]

(d) masturbation, which is stimulation by hand or by an object of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for sexual gratification or stimulation, [and / or]

(e) passive sexual involvement, which is watching, drawing attention to, or exposing someone to persons who are performing real or simulated sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, sexual excitement, or erotic nudity for the purpose of sexual gratification or stimulation of any person involved, [and / or]

(f) sexual excitement, which is the display of someone's genitals in a state of stimulation or arousal, [and / or]

(g) erotic nudity, which is showing the genital, pubic, or rectal area of someone in a way that tends to produce lewd or lustful emotions.

[*Choose* either *(4) or (5), depending on whether the depiction is an actual person or is a created representation of a person under the age of 18:*]

(4) Second, that the defendant knew or should reasonably have known[3] that the person shown in the sexually abusive material was less than 18 years old, or failed to take reasonable precautions to determine whether the person was less than 18 years old.

(5) Second, that the defendant distributed a portrayal of a person appearing to be less than 18 years old, knowing that the person portrayed appeared to be less than 18 years old, and all of the following conditions apply:

(a) An average person, applying current community standards, would find that the material appealed to an unhealthy or shameful interest in nudity, sex, or excretion.[4]

(b) A reasonable person would not find any serious literary, artistic, political, or scientific value in the material.

(c) The material shows or describes sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity, as previously described for you.

Use Note

[1] The statute, MCL 750.145c(1)(o), provides a list of forms that child sexually abusive materials can take:

. . . any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image, computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.

The Committee believes that the phrase, "pictures, movies, or illustrations, made or produced by any means," will generally suffice to describe such materials. However, the court may prefer to select a more specific term or phrase from the statutory list.

[2] The statute prohibits both real and simulated sexual acts. Where the acts are simulated or simulated acts are included, the instructions should be modified accordingly.

[3] The statute lists several alternatives for this element of the offense in MCL 750.145c(2), (3), and (4):

. . . if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

Generally, the language of the instruction will suffice. However, in appropriate cases, the court may select some or all of the other statutory language for this element.

[4] If necessary, *excretion* may be defined as the act or product of urinating or defecating.

History

M Crim JI 20.38b was adopted in June 2016.

Reference Guide

Statutes

MCL 750.145c.

M Crim JI 20.38c Child Sexually Abusive Activity – Possessing or Accessing

(1) The defendant is charged with the crime of possessing or accessing child sexually abusive material. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [possessed child sexually abusive material / looked for child sexually abusive material and intentionally caused it to be sent to or seen by another person].

(3) Child sexually abusive materials are pictures, movies, or illustrations[1] of [a person under 18 years of age / the representation of a person under 18 years of age] engaged in one or more of the following sexual acts:

[*Choose any of the following that apply*:][2]

(a) sexual intercourse, which is penetration of a genital, oral, or anal opening by the genitals, mouth, or tongue, or with an artificial genital, whether the intercourse is real or simulated, and whether it is between persons of the same or opposite sex, or between a person and an animal, [and / or]

(b) erotic fondling, which is the touching of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for the purpose of sexual gratification or stimulation of any person involved, but does not include other types of touching, even if affectionate, [and / or]

(c) sadomasochistic abuse, which is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation, [and / or]

(d) masturbation, which is stimulation by hand or by an object of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for sexual gratification or stimulation, [and / or]

(e) passive sexual involvement, which is watching, drawing attention to, or exposing someone to persons who are performing real or simulated sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, sexual excitement, or erotic nudity for the purpose of sexual gratification or stimulation of any person involved, [and / or]

(f) sexual excitement, which is the display of someone's genitals in a state of stimulation or arousal, [and / or]

(g) erotic nudity, which is showing the genital, pubic, or rectal area of someone in a way that tends to produce lewd or lustful emotions.

[*Choose either (4) or (5), depending on whether the depiction is an actual person or is a created representation of a person under the age of 18:*]

(4) Second, that the defendant knew or should reasonably have known[3] that the person shown in the sexually abusive material was less than 18 years old, or failed to take reasonable precautions to determine whether the person was less than 18 years old.

(5) Second, that the defendant possessed or accessed a portrayal of a person appearing to be under the age of 18,

knowing that the person portrayed appeared to be under the age of 18, and all of the following conditions apply:

(a) An average person, applying current community standards, would find that the material appealed to an unhealthy or shameful interest in nudity, sex, or excretion.[4]

(b) A reasonable person would not find any serious literary, artistic, political, or scientific value in the material.

(c) The material shows or describes sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity, as previously described for you.

6) Third, that the defendant [knew that (he / she) possessed / knowingly looked for] the material.

Use Note

[1] The statute, MCL 750.145c(1)(o), provides a list of forms that child sexually abusive materials can take:

. . . any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image, computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.

The Committee believes that the phrase, "pictures, movies, or illustrations, made or produced by any means," will generally suffice to describe such materials. However, the court may prefer to select a more specific term or phrase from the statutory list.

[2] The statute prohibits both real and simulated sexual acts. Where the acts are simulated, the instructions should be modified accordingly.

[3] The statute lists several alternatives for this element of the offense in MCL 750.145c(2), (3), and (4)"

. . . if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

Generally, the language of the instruction will suffice. However, in appropriate cases, the court may select some or all of the other statutory language for this element.

[4] If necessary, *excretion* may be defined as the act or product of urinating or defecating.

History

M Crim JI 20.38c was adopted in June 2016.

Reference Guide

Statutes

MCL 750.145c.

M Crim JI 20.39 Sex Offenders Registration Act Violations-Failure to Register

(1) The defendant is charged with failing to register as a sex offender. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that the defendant has been convicted of [*identify offense*], which required [him / her] to register as a sex offender.

(3) Second, that the defendant [resided / was employed / attended school] in the [county / city / village / township] of [*name political entity*] when [he / she] was required to register.[1]

(4) Third, that the defendant failed to register as a sex offender with the [Michigan State Police / county sheriff's department / local police agency] in the [county / city / village / township] where [he / she] [resided[2] / worked / went to school].[3]

(5) Fourth, that the defendant's failure to register was willful.[4] "Willful" means that the defendant freely chose not to register and was not stopped from registering by circumstances [he / she] did not control. It is not necessary for the prosecutor to prove that the defendant had a bad purpose or the purpose to do something wrong when [he / she] failed to register.

Use Note

Take note that enforcement of certain provisions of the statute is in question under the pretrial summary disposition decision in *Doe v Snyder*, No. 12-11194 (ED Mich, March 31, 2015).

[1] M Crim JI 20.39k describes the in-person requirement for registration.

[2] M Crim JI 20.39l defines *residence* and *domicile*.

[3] M Crim JI 20.39j should be used as the venue instruction.

[4] Failure to register requires "willful" conduct. MCL 28.729(1). However, it is not a specific intent crime; instead, it requires only the knowing exercise of choice. *See People v Lockett*, 253 Mich App 651, 655, 659 NW 2d 681 (2003).

History

Instructions for violations of the Sex Offenders Registration Act were adopted August 2015.

Reference Guide

Statutes

MCL 28.724(5), (6), 28.729(1).

Case Law

People v Lockett, 253 Mich App 651, 655, 659 NW2d 681 (2003).

M Crim JI 20.39a Sex Offenders Registration Act Violations - Failure to Notify

(1) The defendant is charged with being a sex offender who failed to notify authorities of a reportable change in [his / her] sex offender registry information. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that the defendant has been convicted of [*identify offense*], which would require [him / her] to provide certain information for the sex offender registry and to immediately report changes in the registry information to the [Michigan State Police / county sheriff's department / local police agency] when the defendant:

[*Choose applicable provisions*]

(a) changes or vacates where [he / she] is [residing / domiciled] [, and / or]

(b) changes or discontinues where [he / she] is [employed / attending an institution of higher education] [, and / or]

(c) changes [his / her] [name / motor vehicle ownership or use / e-mail or Internet communications address].

(3) Second, that the defendant

[*Choose applicable provisions:*]

(a) changed or vacated [his / her] [residence / domicile] [, and / or]

(b) changed or discontinued where [he / she] was [employed / attending an institution of higher education] [, and / or]

(c) changed [his / her] [name / motor vehicle ownership or use / e-mail or Internet communications address].

(4) Third, that the defendant failed to notify[1] the [Michigan State Police / county sheriff's department / local police agency] in the [county / city / village / township] where [he / she] lived[2] of the change in registry information within three days.[3]

(5) Fourth, that the defendant's failure to register was willful.[4] "Willful" means that the defendant freely chose not to provide notification of a change in registry information and was not stopped from doing so by circumstances [he / she] did not control. It is not necessary for the prosecutor to prove that the defendant had a bad purpose or the purpose to do something wrong when [he / she] failed to notify.

Use Note

Take note that enforcement of certain provisions of the statute is in question under the pretrial summary disposition decision in *Doe v Snyder*, No. 12-11194 (ED Mich, March 31, 2015).

[1] M Crim JI 20.39k describes the obligation to provide in-person notification of changes.

[2] M Crim JI 20.39j should be used as the venue instruction.

[3] MCL 28.725(1) requires "immediate" notification of listed changes. MCL 28.722(g) defines *immediate* as within three days.

[4] Failure to register requires "willful" conduct. MCL 28.729(1). However, it is not a specific intent crime; instead, it requires only the knowing exercise of choice. *See People v Lockett*, 253 Mich App 651, 655, 659 NW 2d 681 (2003).

History

Instructions for violations of the Sex Offenders Registration Act were adopted August 2015.

Reference Guide

Statutes

MCL 28.725(1), 28.729(1).

Case Law

People v Lockett, 253 Mich App 651, 655, 659 NW2d 681 (2003).

M Crim JI 20.39b – Sex Offenders Registration Act Violations - Failure to Report Before Moving to Another State or Moving to or Visiting Another Country for More Than Seven Days

(1) The defendant is charged with being a sex offender who failed to report in person to notify authorities that [he / she] was going to move to another [state / country]. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that the defendant has been convicted of [*identify offense*], which would require [him / her] to register as a sex offender who must notify the [Michigan State Police / county sheriff's department / local police agency] before

[*Choose from the following*:]

(a) moving to another [state / country].

(b) visiting another country for more than seven days.

(3) Second, that the defendant was a resident[1] of the [county / city / village / township] of [*name political entity*] in Michigan as of [*provide date that the defendant was alleged to have lived in Michigan*].

(4) Third, that the defendant

[*Choose from the following*:]

(a) moved to [*identify state or country*].

(b) visited [*identify country*] for more than seven days.

(5) Fourth, that the defendant failed to notify[2] the [Michigan State Police / county sheriff's department / local police agency] that [he / she] was

[*Choose from the following*:]

(a) moving to [*identify state or country*]

(b) visiting [*identify country*] for more than seven days

no later than [three days / twenty-one days][3] before [he / she] [moved / visited].[4]

(6) Fifth, that the defendant's failure to report was willful.[5] "Willful" means that the defendant freely chose not to report before [moving to another (state / country) / visiting another country for more than seven days], and was not stopped from doing so by circumstances [he / she] did not control. But, it is not necessary for the prosecutor to prove that the defendant had a bad purpose or the purpose to do something wrong when [he / she] failed to report.

Use Note

Take note that enforcement of certain provisions of the statute is in question under the pretrial summary disposition decision in *Doe v Snyder*, No. 12-11194 (ED Mich, March 31, 2015).

[1] "Residence" and "domicile" are defined in M Crim JI 20.39*l*.

[2] M Crim JI 20.39k describes the obligation to provide in-person notification of changes.

[3] Use three days if the defendant moved to another state, and twenty-one days if the defendant moved to or visited another country. Moving to another state requires "immediate" notification under MCL 28.725(6). MCL 28.722(g) defines *immediate* as within three days. Moving to or visiting another country requires notification within twenty-one days under MCL 28.725(7).

[4] M Crim JI 20.39j should be used as the venue instruction.

[5] Failure to register requires "willful" conduct. MCL 28.729(1). However, it is not a specific intent crime; instead, it requires only the knowing exercise of choice. *See People v Lockett*, 253 Mich App 651, 655, 659 NW2d 681 (2003).

History

Instructions for violations of the Sex Offenders Registration Act were adopted August 2015.

Reference Guide

Statutes

MCL 28.725(1), 28.729(1).

Case Law

People v Lockett, 253 Mich App 651, 655, 659 NW2d 681 (2003).

M Crim JI 20.39c Sex Offenders Registration Act Violations – Providing False or Misleading Information

(1) The defendant is charged with being a sex offender who provided false or misleading sex offender registry information. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that the defendant has been convicted of [*identify offense*], which would require [him / her] to provide certain information for the sex offenders registry.

(3) Second, that [*name witness who prepared the registration or took the defendant's notification/verification information*] took information provided by the defendant concerning [his / her / the]

[*Choose applicable provision(s)*:]

(a) name(s) or any alias(es) that [he / she] used [, and / or]

(b) social security number [, and / or]

(c) date of birth [, and / or]

(d) address or location of [his / her] domicile or temporary lodging [, and / or]

(e) employer(s) [, and / or]

(f) school(s) [he / she] [is attending / will be attending] [, and / or]

(g) telephone number(s) [, and / or]

(h) e-mail or instant messaging address(es), including login name(s) and identifier(s) [, and / or]

(i) motor vehicle(s), aircraft(s) or water vessel(s) [, and / or]

(j) driver's license or state identification card number [, and / or]

(k) passport or immigration documents [, and / or]

(l) occupational or professional license(s).

(4) Third, that the information provided by the defendant concerning [his / her / the]

[*Choose applicable provision(s)*:]

(a) name(s) or any alias(es) that [he / she] used [, and / or]

(b) social security number [, and / or]

(c) date of birth [, and / or]

(d) address or location of [his / her] domicile or temporary lodging [, and / or]

(e) employer(s) [, and / or]

(f) school(s) [he / she] [is attending / will be attending] [, and / or]

(g) telephone number(s) [, and / or]

(h) email or instant messaging address(es), including login name(s) and identifier(s) [, and / or]

(i) motor vehicle(s), aircraft(s) or water vessel(s) [, and / or]

(j) driver's license or state identification card number [, and / or]

(k) passport or immigration documents [, and / or]

(l) occupational or professional license(s)

was false or misleading.

(5) Fourth, that the defendant provided false or misleading information willfully.[1] "Willfully" means that the defendant freely chose to provide false or misleading information, knowing that the information was false or misleading. It is not necessary for the prosecutor to prove that the defendant had a bad purpose or the purpose to do something wrong when [he / she] failed to notify.

Use Note

Take note that enforcement of certain provisions of the statute is in question under the pretrial summary disposition decision in *Doe v Snyder*, No. 12-11194 (ED Mich, March 31, 2015).

[1] Providing false or misleading information requires "willful" conduct. MCL 28.729(1). However, it is not a specific intent crime; instead, it requires only the knowing exercise of choice. *See People v Lockett*, 253 Mich App 651, 655, 659 NW2d 681 (2003).

Use the general venue instruction – M Crim JI 3.10.

History

Instructions for violations of the Sex Offenders Registration Act were adopted August 2015.

Reference Guide

Statutes

MCL 28.727(6), 28.727(1)(a)-(m), 28.729(1).

Case Law

People v Lockett, 253 Mich App 651, 655, 659 NW2d 681 (2003).

M Crim JI 20.39d Sex Offenders Registration Act Violations – Identification Requirements

(1) The defendant is charged with being a sex offender who failed to obtain and maintain a valid vehicle operator's license or a state identification card. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that the defendant has been convicted of [*identify offense*], which requires [him / her] to obtain and maintain a valid vehicle operator's license or a state identification card with an accurate digitized photograph of the defendant.

(3) Second, that the defendant was instructed by [*name witness who directed the defendant to obtain a driver's license*] to [obtain a driver's license or state identification card / obtain a more current digitized photograph for the defendant's driver's license or state identification card].

(4) Third, that the defendant failed or refused to [obtain a driver's license or state identification card / obtain a more current digitized photograph for the defendant's driver's license or state identification card] as instructed.

(5) Fourth, that the failure to [obtain a driver's license or state identification card / obtain a more current digitized photograph of a driver's license or state identification card] was willful. "Willful" means that the defendant freely chose not to [obtain a driver's license or state identification card / obtain a more current digitized photograph for the defendant's driver's license or state identification card] and was not stopped from registering by circumstances [he / she] did not control. It is not necessary that the prosecutor prove that the defendant had a bad purpose or the purpose to do something wrong when [he / she] failed to sign the registration and notice.[1]

Use Note

Take note that enforcement of certain provisions of the statute is in question under the pretrial summary disposition decision in *Doe v Snyder*, No. 12-11194 (ED Mich, March 31, 2015).

[1] Failure to register requires "willful" conduct. MCL 28.729(1). However, it is not a specific intent crime; instead, it requires only the knowing exercise of choice. *See People v Lockett*, 253 Mich App 651, 655, 659 NW2d 681 (2003).

Use the general venue instruction – M Crim JI 3.10.

History

Instructions for violations of the Sex Offenders Registration Act were adopted August 2015.

Reference Guide

Statutes

MCL 28.725b(7), 28.729(1).

Case Law

People v Lockett, 253 Mich App 651, 655, 659 NW2d 681 (2003).

M Crim JI 20.39e Sex Offenders Registration Act Violations-Failure to Verify

(1) The defendant is charged with failing to verify his residence as a sex offender. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that the defendant was convicted of [*identify offense*], which required [him / her] to verify where [he / she] was living in [*provide the month that the defendant was to verify according to the defendant's birthday and the tier of his or her offense*].[1]

(3) Second, that the defendant failed to report in person and verify [his / her] address with the [Michigan State Police / county sheriff's department / local police agency] in the [county / city / village / township] where the defendant's residence or domicile[2] was located[3] on [*provide the month that the defendant was to verify according to the defendant's birthday and the tier of his or her offense*].[1]

Use Note

Take note that enforcement of certain provisions of the statute is in question under the pretrial summary disposition decision in *Doe v Snyder*, No. 12-11194 (ED Mich, March 31, 2015).

[1] Tiers, offenses, and reporting dates are set forth in full, below.

[2] "Residence" and "domicile" are defined in M Crim JI 20.39l.

[3] Use the general venue instruction – M Crim JI 3.10.

History

Instructions for violations of the Sex Offenders Registration Act were adopted August 2015.

Reference Guide

Statutes

MCL 28.725a(3), 28.729(2).

Case Law

People v Lockett, 253 Mich App 651, 655; 659 NW2d 681 (2003).

Staff Comment

Failure to verify does not include a "willful" requirement in the punishment section, MCL 28.729(2). However, "impossibility" may be a defense. *See People v Likine*, 492 Mich 367, 823 NW2d 50 (2012).

Verification schedules for offenders are as follows:

Tier 1 Offenders: Verify once a year during the month of their birth.

Tier 1 Offenses are:

Offense Name	Statute
Child Sexually Abusive Activity or Material Possession	MCL 750.145c(4)
Aggravated Indecent Exposure, if victim was under 18 years old	MCL 750.335(2)(b)
Criminal Sexual Conduct 4th Degree, if victim was over 17 years old	MCL 750.520e
Unlawful Imprisonment, if victim was less than 18 years old	MCL 750.349b
Assault w/ Intent to Commit Criminal Sexual Conduct 2nd, if victim was more than 17 years old	MCL 750.520g(2)
Capturing/ Distributing Image of Unclothed Person if victim was under 18 years old	MCL 750.539j
Any violation of state law or local ordinance that by its nature constitutes a sexual offense against an individual who was under 18 years old	MCL 28.722(s)(vi)
Any offense committed by a person who was, at the time of the offense, a sexually delinquent person.	
Any offense substantially similar to a listed offense under a law of the United States, any state, or any country or under tribal or military law.	

Tier 2 Offenders: Verify twice a year per the schedule below.

Birth Month	Reporting Months
January	January and July
February	February and August
March	March and September
April	April and October
May	May and November
June	June and December
July	January and July
August	February and August
September	March and September
October	April and October
November	May and November
December	June and December

Tier 2 Offenses are:

Offense Name	Statute
Accosting, Enticing, or Soliciting a Child for Immoral Purposes	MCL 750.145a
Accosting, Enticing, or Soliciting a Child for Immoral Purposes w/ a prior conviction.	MCL 750.145b
Child Sexually Abusive Activity or Material Producing/Financing	MCL 750.145c(2)
Child Sexually Abusive Activity or Material Distributing/Promoting	MCL 750.145c(3)

Use of Internet/Computer System/ Prohibited Communication	MCL 750.145d(1)(a)
Crime Against Nature or Sodomy	MCL 740.158
Gross Indecency Between Male Persons, if victim was between 13 and 17 years old	MCL 750.338
Gross Indecency Between Female Persons, if victim was between 13 and 17 years old	MCL 750.338a
Gross Indecency Between Male and Female Persons, if victim was between 13 and 17 years old	MCL 750.338b
Soliciting, Accosting, or Inviting to Commit Prostitution or Immoral Act if victim was less than 18 years old	MCL 750.448
Pandering	MCL 750.455
Criminal Sexual Conduct 2nd Degree, if victim was over 13 years old	MCL 750.520c
Criminal Sexual Conduct 4th Degree, if victim was between 13 and 17 years old	MCL 750.520e
Assault w/ Intent to Commit 2nd Degree Criminal Sexual Conduct, if victim was between 13 and 17 years old	MCL 750.520g(2)
Any offense substantially similar to a listed offense under the law of the United States, any state, or any country, or under tribal or military law.	

Tier 3 Offenders: Verify four times a year per the schedule below.

Birth Month	Reporting Months
January	January, April, July, and October.
February	February, May, August, and November.
March	March, June, September, and December.
April	January, April, July, and October
May	February, May, August, and November.
June	March, June, September, and December
July	January, April, July, and October
August	February, May, August, and November
September	March, June, September, and December
October	January, April, July, and October
November	February, May, August and November
December	March, June, September, and December

Tier 3 offenses are:

Offense Name	Statute
Gross Indecency Between Male Persons, if victim was under 13 years old	MCL 750.338
Gross Indecency Between Female Persons, if victim was under 13 years old	MCL 750.338a
Gross Indecency Between Male and Female Persons, if victim was under 13 years old	MCL 750.338b
Kidnapping, if victim was under 18 years old	MCL 750.349

Child Kidnapping, if victim was under 13 years old	MCL 750.350
1st Degree Criminal Sexual Conduct	MCL 750.520b
2nd Degree Criminal Sexual Conduct	MCL 750.520c
3rd Degree Criminal Sexual Conduct	MCL 750.520d
4th Degree Criminal Sexual Conduct, if victim was under 13 years old	MCL 750.520e
Assault w/ Intent to Commit Criminal Sexual Conduct involving Sexual Penetration	MCL 750.520(g)(1)
Assault w/Intent to Commit Criminal Sexual Conduct 2nd, if victim was under 13 years old	MCL 750.520g(2)
Any offense substantially similar to the listed offense under a law of the United States, any state, or any country or under tribal or military law.	

M Crim JI 20.39f Sex Offenders Registration Act Violations - Failure to Sign Registration and Notice

(1) The defendant is charged with being a sex offender who failed to sign a registration and notice form after its completion. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that the defendant has been convicted of [*identify offense*], which requires [him / her] to provide certain information for the sex offender registry and to sign a registration and notice form after it was completed and notice of the defendant's reporting duties had been described to [him / her].

(3) Second, that the registration and notice form was completed by [*name witness who prepared the form*], and that the form explained the defendant's duties to register, verify domicile, and report changes.

(4) Third, that the defendant failed or refused to sign the form.

(5) Fourth, that the failure to sign the registration and notice was willful. "Willful" means that the defendant freely chose not to sign the form and was not stopped from doing so by circumstances [he / she] did not control. It is not necessary that the prosecutor prove that the defendant had a bad purpose or the purpose to do something wrong when [he / she] failed to sign the registration and notice.

Use Note

Take note that enforcement of certain provisions of the statute is in question under the pretrial summary disposition decision in *Doe v Snyder*, No. 12-11194 (ED Mich, March 31, 2015).

Failing to sign the notice requires "willful" conduct. MCL 28.729(3). However, it is not a specific intent crime; instead, it requires only the knowing exercise of choice. *See People v Lockett*, 253 Mich App 651, 655, 659 NW2d 681 (2003).

Use the general venue instruction – M Crim JI 3.10.

History

Instructions for violations of the Sex Offenders Registration Act were adopted August 2015.

Reference Guide

Statutes

MCL 28.727(4), 28.729(3).

Case Law

People v Lockett, 253 Mich App 651, 655, 659 NW2d 681 (2003).

M Crim JI 20.39g Sex Offenders Registration Act Violations - Failure to Pay Registration Fee

(1) The defendant is charged with being a sex offender who failed to pay a sex offender registration or verification fee. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that the defendant has been convicted of [*identify offense*], which requires [him / her] to register as a sex offender and pay fees for registration and verification of information.

[*Choose (3) or (4):*]

(3) Second, that the defendant was registered as a sex offender by [*name witness who prepared the registration and notification form*], and was informed of [his / her] obligation to pay the registration fee.

(4) Second, that the defendant reported to verify [his / her] residence or domicile with the [Michigan State Police / county sheriff's department / local police agency], and was informed of [his / her] obligation to pay the verification fee.

(5) Third, that the defendant failed or refused to pay the fee.

(6) Fourth, that the failure to pay was willful. "Willful" means that the defendant freely chose not to pay and was not stopped from paying by circumstances [he / she] did not control.[1]

[*Instruct as follows where the defendant claims that he/she was indigent.*]

(7) The defendant contends that [he / she] was too poor to pay the fee, so the failure to pay was not willful. In order to present this defense, there must be some evidence that the defendant presented information to the [Michigan State Police / county sheriff's department / local police agency] where [he / she] reported showing that [he / she] could not pay. If the defendant was too poor to pay the fee and presented information to the [Michigan State Police / county sheriff's department / local police agency], the failure to pay was not willful. The burden is on the prosecutor to show that the failure to pay was willful.[2]

Use Note

Take note that enforcement of certain provisions of the statute is in question under the pretrial summary disposition decision in *Doe v Snyder*, No. 12-11194 (ED Mich, March 31, 2015).

[1] Failure to pay requires "willful" conduct. MCL 28.729(1). However, it is not a specific intent crime; instead, it requires only the knowing exercise of choice. *See People v Lockett*, 253 Mich App 651, 655, 659 NW2d 681 (2003).

[2] Payment may be delayed under MCL 28.725b(3) where the defendant presents evidence of indigency to the reporting agency.

Use the general venue instruction – M Crim JI 3.10.

History

Instructions for violations of the Sex Offenders Registration Act were adopted August 2015.

Reference Guide

Statutes

MCL 28.725a(6), 28.725b(3), 28.729(4)

Case Law

People v Lockett, 253 Mich App 651, 655, 659 NW2d 681 (2003).

M Crim JI 20.39h Sex Offenders Registration Act Violations – Registering Agent Offenses

(1) The defendant is charged with violating the Sex Offenders Registration Act by improperly using or disclosing non-public offender information. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that [*name offender*] is an individual who is required to be registered under the Michigan Sex Offenders Registration Act.

(3) Second, the defendant had knowledge of registration information for [*name offender*].

(4) Third, that the defendant [divulged / used / published][1]

[*Choose applicable provision(s):*]

(a) the identity of the victim of [*name offender*]'s offense [, and / or]

(b) [*name offender*]'s social security number [, and / or]

(c) any arrests of [*name offender*] that did not result in a conviction [, and / or]

(d) any of [*name offender*]'s travel or immigration document numbers [, and / or]

(e) any e-mail or instant messaging addresses, or any login names or other identifiers assigned to [*name offender*] [, and / or]

(f) [*name offender*]'s driver's license number.

Use Note

Take note that enforcement of certain provisions of the statute is in question under the pretrial summary disposition decision in *Doe v Snyder*, No. 12-11194 (ED Mich, March 31, 2015).

[1] The non-public offender information is found at MCL 28.728(3)

Use the general venue instruction – M Crim JI 3.10.

History

Instructions for violations of the Sex Offenders Registration Act were adopted August 2015.

Reference Guide

Statutes

MCL 28.730(4), 28.728(3).

M Crim JI 20.39i Sex Offenders Registration Act Violations – Student Safety Zone Offenses

(1) The defendant is charged with being a sex offender who violated school safety zone limitations. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that the defendant has been convicted of [*identify offense*] and was registered as a sex offender, which prohibits [him / her] from [living / working / loitering] within 1000 feet of school property.

A school includes a public, private, denominational or parochial institution offering developmental kindergarten, kindergarten, or education for grades 1 through 12, but does not include a home school.

School property means any building, facility, structure, or real property owned, leased, or otherwise controlled by a school on a continuous basis for the purposes of providing education instruction or to be used by students under the age of 19 years for sports or other recreational activities.

(3) Second, that defendant [resided / worked / loitered] within 1000 feet of the property of [*name instructional institution*], which is a school.

[*Provide the following definition if appropriate or if the jury asks for the meaning of loitering*]

Loitering means remaining for a period of time within the 1000-foot zone under circumstances that a reasonable person would determine was for the primary purpose of observing or contacting someone less than 18 years of age.

Use Note

Take note that enforcement of certain provisions of the statute is in question under the pretrial summary disposition decision in *Doe v Snyder*, No. 12-11194 (ED Mich, March 31, 2015).

Use the general venue instruction – M Crim JI 3.10.

History

Instructions for violations of the Sex Offenders Registration Act were adopted August 2015.

Reference Guide

Statutes

MCL 28.733, 28.734, 28.735.

M Crim JI 20.39j Sex Offenders Registration Act Violations – Venue

(1) The prosecutor must also prove when and where the crime occurred by proving both of the following beyond a reasonable doubt.

(2) First, that the crime occurred [on or about (*state date alleged*) / between the dates of (*state period of time alleged*)].

(3) Second, that [the defendant's last registered address or residence / the defendant's actual address or residence / the place where the defendant was arrested for the crime] was within the [county / city / village / township] of [*name political entity*].

[*If there is a question where the defendant resided, provide appropriate instruction(s) below*]

(a) The defendant's residence is in the [county / city / township / village] where the defendant habitually sleeps and keeps [his / her] personal effects, and where the defendant regularly uses as [his / her] place of lodging.

(b) If the defendant has more than one residence, or if [his / her] spouse has a separate residence, the defendant resides at the place where [he / she] spends the greater part of [his / her] time.

(c) If the defendant is homeless or has no permanent or temporary residence, [his / her] residence is the [city / township / village] where [he / she] spends the greater part of [his / her] time.

Use Note

Take note that enforcement of certain provisions of the statute is in question under the pretrial summary disposition decision in *Doe v Snyder*, No. 12-11194 (ED Mich, March 31, 2015).

Use this venue instruction for failure to register under the act or for violations under MCL 28.725.

History

Instructions for violations of the Sex Offenders Registration Act were adopted August 2015.

Reference Guide

Statutes

MCL 28.729(8), 28.722(p)

Case Law

People v Dowdy, 489 Mich 373, 802 NW2d 239 (2011).

M Crim JI 20.39k Sex Offenders Registration Act Violations – Registration / Notification / Verification In-person Requirement

In order to [register / verify registration information / provide notification of changes to registration information], the defendant is required to report in person to the [Michigan State Police / county sheriff's department / local police agency] in the [county / city / village / township] where [his / her] residence or domicile is located.

Use Note

Take note that enforcement of certain provisions of the statute is in question under the pretrial summary disposition decision in *Doe v Snyder*, No. 12-11194 (ED Mich, March 31, 2015).

Use this instruction where there is a question whether the defendant registered, verified or notified properly.

Use M Crim JI 20.39*l* if there is some question where the defendant lived.

History

Instructions for violations of the Sex Offenders Registration Act were adopted August 2015.

Reference Guide

Statutes

MCL 28.724(5), (6), 28.725(1), 28.724a(2), 28.725a(3*)*.

M Crim JI 20.39*l* Sex Offenders Registration Act Violations – Definitions – Residence / Domicile

(1) As I have explained to you, the prosecutor has the burden of proving beyond a reasonable doubt that

[*Select (a) or (b):*]

(a) the defendant's residence or domicile was in the [county / city / township / village] of [*name political entity*].

(b) the defendant moved from [his / her] residence or domicile in the [county / city / township / village] of [*name political entity*].

[*Select any of the following that may apply:*]

(2) The defendant's residence is in the [county / city / township / village] where the defendant habitually sleeps and keeps [his / her] personal effects, and that the defendant regularly uses as [his / her] place of lodging.

(3) If the defendant has more than one residence, or if [his / her] spouse has a separate residence, the defendant resides at the place where [he / she] spends the greater part of [his / her] time.

(4) If the defendant is homeless or has no permanent or temporary residence, [his / her] residence is the [county / city / township / village] where [he / she] spends the greater part of [his / her] time.

(5) The defendant's domicile is the place where [he / she] intends to stay, and to which [he / she] returns after going somewhere else.

Use Note

Take note that enforcement of certain provisions of the statute is in question under the pretrial summary disposition decision in *Doe v Snyder*, No. 12-11194 (ED Mich, March 31, 2015).

Use this instruction if there is some question where the defendant lived or if the defendant was homeless, or in cases where the prosecutor alleges that the defendant moved without notifying appropriate authorities.

History

Instructions for violations of the Sex Offenders Registration Act were adopted August 2015.

Reference Guide

Statutes

MCL 28.722(p)

Case Law

People v Dowdy, 489 Mich 373, 802 NW2d 239 (2011).

M Crim JI 20.40 Accosting a Child for Immoral Purposes

(1) The defendant is charged with the crime of accosting a child for an immoral purpose. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [accosted, enticed, or solicited[1] / encouraged] [*name complainant*].

[*Choose either (3) or (4), depending on the age of the complainant:*]

(3) Second, that [*name complainant*] was less than 16 years old. It does not matter whether the defendant knew [*name complainant*]'s age.

(4) Second, that the defendant believed [*name complainant*] was less than 16 years old. It does not matter if [*name complainant*] was older as long as the prosecutor proves that the defendant believed [*name complainant*] was less than 16 years old.

[*Choose either (5) or (6)*:] [2]

(5) Third, that when the defendant accosted, enticed, or solicited [*name complainant*], [he / she] intended to induce or force [*name complainant*] to [commit an immoral act / submit to an act of sexual intercourse / submit to an act of gross indecency / submit to an act of depravity / submit to an act of delinquency].[3] It does not matter whether [*name complainant*] actually submitted to the [immoral act / sexual intercourse / gross indecency / act of depravity / act of delinquency].

(6) Third, that the defendant encouraged [*name complainant*] to [engage in an immoral act / engage in sexual intercourse / engage in an act of gross indecency / engage in an act of depravity / engage in an act of delinquency].[3] It does not matter whether [*name complainant*] actually engaged in the [immoral act / sexual intercourse / gross indecency / act of depravity / act of delinquency].

Use Note

[1] The court may choose to provide dictionary definitions for these terms at this point, or may do so if asked for definitions by the jury or the parties.

[2] If the prosecutor has charged that the defendant "accosted, enticed or solicited" the complainant, use paragraph (5) for the third element. If the prosecutor has charged that the defendant "encouraged" the complainant, use paragraph (6) for the third element.

[3] The statute does not define any of these acts. No statute or case law defines the phrases "immoral act" or "act of depravity" (though the phrase "immoral act" was tied to sexual intercourse between a male child and a female adult in *People v Riddle*, 322 Mich 199, 33 NW2d 759 (1948), and to an act of "gross indecency" in *People v Pippin*, 316 Mich 191, 25 NW2d 164 (1946)). MCL 750.520a(r) equates sexual intercourse with sexual penetration (which also includes cunnilingus, fellatio and anal intercourse). In *People v Tennyson*, 487 Mich 730, 790 NW2d 354 (2010), the Supreme Court associated an "act of delinquency" with violation of a statute or ordinance by a minor. The meaning of "gross indecency" was discussed in *People v Lino*, 447 Mich 567, 527 NW2d 434 (1994).

History

This instruction was adopted effective July 2016.

Reference Guide

Statutes

MCL 750.145a.

Case Law

People v Kowalski, 489 Mich 488, 803 NW2d 200 (2011); *People v Gaines*, 306 Mich App 289, 856 NW2d 222 (2014).

CHAPTER 21 *Extortion*

M Crim JI 21.1 Extortion—Threatening Injury 21-2

M Crim JI 21.2 Extortion—Accusation of Crime 21-3

M Crim JI 21.3 Definition of Threat 21-4

M Crim JI 21.4 Definition of Against His or Her Will 21-5

M Crim JI 21.5 Abandonment of Intent to Injure 21-6

M Crim JI 21.6 Truth Is Not a Defense 21-7

M Crim JI 21.1 Extortion—Threatening Injury

(1) The defendant is charged with the crime of extortion. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant threatened to injure [(*name complainant*) / (*name complainant*)'s property / someone in (*name complainant*)'s immediate family], that is, that the defendant threatened to [*state nature of threat*].[1]

(3) Second, that the defendant made this threat by saying it or by writing it down. [A gesture alone is not enough.]

(4) Third, that the defendant made the threat willfully, without just cause or excuse,[2] and with the intent to [get money by doing it / make the person threatened (do / not do) something against the person's will / (*state other goal*)].[3]

Use Note

[1] Define threat, M Crim JI 21.3.

[2] "Just cause or excuse" applies to justifications such as duress. The court may need to give additional instructions, e.g., M Crim JI 7.6 (definition of duress), depending on the facts of the case.

[3] This is a specific intent crime.

Use M Crim JI 21.4, Definition of Against His or Her Will, when necessary.

History

M Crim JI 21.1 (formerly CJI2d 21.1) was CJI 21:1:01. The instruction was modified by the committee in September, 2001, to clarify the malice and intent elements of the offense.

Reference Guide

Statutes

MCL 750.213.

Case Law

People v Harris, 495 Mich 120, 845 NW2d 477 (2014); *People v Poindexter*, 138 Mich App 322, 361 NW2d 346 (1984); *People v Krist*, 97 Mich App 669, 676, 296 NW2d 139 (1980); *People v Bruno*, 30 Mich App 375, 186 NW2d 339 (1971).

M Crim JI 21.2 Extortion—Accusation of Crime

(1)The defendant is charged with the crime of extortion. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant threatened to accuse [*name complainant*] of [*state crime or nature of threat*].

(3)Second, that the defendant made this threat by saying it or by writing it down. [A gesture alone is not enough.]

(4)Third, that the defendant made the threat willfully, without just cause or excuse, and with the intent to [get money by doing it / make the person threatened (do / not do) something against the person's will / (*state other goal*)].*

Use Note

*This is a specific intent crime.

Define "against the person's will" when necessary, M Crim JI 21.4.

History

M Crim JI 21.2 (formerly CJI2d 21.2) was CJI 21:1:02. The instruction was modified by the committee in September, 2001 to clarify the malice and intent elements of the offense.

Reference Guide

Statutes

MCL 750.213.

Case Law

People v Percin, 330 Mich 94, 47 NW2d 29 (1951); *People v Watson*, 307 Mich 378, 11 NW2d 926 (1943); *People v Whittemore*, 102 Mich 519, 61 NW 13 (1894).

M Crim JI 21.3 Definition of Threat

A threat for the purpose of extortion is a written or spoken statement of an intent to injure another person or that person's property or family. A threat does not have to be stated in any particular words. It can be said in general or vague terms, without saying exactly what kind of injury is being threatened. It can also be made by suggestion. However, a threat has to be definite enough to be understood by a person of ordinary intelligence as being a threat of injury.

History

M Crim JI 21.3 (formerly CJI2d 21.3) was CJI 21:1:03.

Reference Guide

Case Law

People v Harris, 495 Mich 120, 845 NW2d 477 (2014); *People v Krist*, 97 Mich App 669, 296 NW2d 139 (1980).

M Crim JI 21.4 Definition of Against His or Her Will

A person acts against [his / her] will if [he / she] only does the act in order to avoid injury to [himself / herself] or a member of [his / her] immediate family or to avoid personal disgrace. In other words, an act is against a person's will when circumstances force [him / her] to make a choice and [he / she] has to choose the lesser of two evils.

History

M Crim JI 21.4 (formerly CJI2d 21.4) was CJI 21:1:04.

Reference Guide

Case Law

People v Krist, 97 Mich App 669, 673, 296 NW2d 139 (1980).

M Crim JI 21.5 Abandonment of Intent to Injure

The crime of extortion is complete if the defendant made a threat and if at that time [he / she] intended to [get money by doing it / make the person threatened do something against the person's will / (*state other goal*)]. It does not matter whether the threat was successful or whether the person the defendant threatened became afraid. It also does not matter whether the person who was threatened actually did what the defendant wanted. The crime is complete when the threat is made, and it is not a defense that the defendant later gave up, or abandoned, [his / her] intent or that [he / she] never injured anyone. No act besides the threat itself is necessary.

History

M Crim JI 21.5 (formerly CJI2d 21.5) was CJI 21:1:05.

Reference Guide

Case Law

People v Percin, 330 Mich 94, 47 NW2d 29 (1951); *People v Poindexter*, 138 Mich App 322, 361 NW2d 346 (1984).

M Crim JI 21.6 Truth Is Not a Defense

If you find that the defendant threatened to charge [*name complainant*] with a crime and that [he / she] did this in order to [get money by doing it / make the person threatened do something against the person's will / (*state other goal*)], it is not a defense that the charges against [*name complainant*] were true.

History

M Crim JI 21.6 (formerly CJI2d 21.6) was CJI 21:1:06.

Reference Guide

Case Law

People v Maranian, 359 Mich 361, 375, 102 NW2d 568 (1960); *People v Whittemore*, 102 Mich 519, 61 NW 13 (1894).

CHAPTER 22 *General Property*

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M Crim JI 22.1 Fair Market Value Test

(1)The test for the value of property is the reasonable and fair market value of the property at the time and in the area of the [*state crime*].

(2)Fair market value is defined as the price the property would have sold for in the open market at that time and in that place [if the following things were true: the owner wanted to sell but did not have to, the buyer wanted to buy but did not have to, the owner had a reasonable time to find a buyer, and the buyer knew what the property was worth and what it could be used for].

Use Note

If larceny in installments is involved, see M Crim JI 22.4.

History

M Crim JI 22.1 (formerly CJI2d 22.1) was CJI 22:1:01.

Reference Guide

Case Law

People v Hanenberg, 274 Mich 698, 265 NW 506 (1936); *People v Brown*, 179 Mich App 131, 445 NW2d 801 (1989); *People v Johnson*, 133 Mich App 150, 155, 348 NW2d 716 (1984).

M Crim JI 22.2 Definition of Owner—Larceny

"Owner" in this case means the actual owner of the property [or any other person whose consent was necessary before the property could be taken].

Use Note

This instruction is for use in agency situations or where some person other than the owner had custody of the property.

History

M Crim JI 22.2 (formerly CJI2d 22.2) was CJI 22:1:02.

Reference Guide

Case Law

People v Hatch, 156 Mich App 265, 267, 401 NW2d 344 (1986).

M Crim JI 22.3 Honest Taking—Larceny

When someone takes property because [he / she] honestly believes that [he / she] has the right to [take / use] it, this is not larceny, even if the person who took it was mistaken.

Use Note

Use when appropriate.

History

Crim JI 22.3 (formerly CJI2d 22.3) was CJI 22:1:03.

Reference Guide

Case Law

People v Hillhouse, 80 Mich 580, 45 NW 484 (1890); *People v Karasek*, 63 Mich App 706, 234 NW2d 761 (1975); *People v McCann*, 42 Mich App 47, 201 NW2d 345 (1972).

M Crim JI 22.4 Embezzlement (Larceny) in Installments

(1)There has been evidence in this case that there was more than one [larceny / embezzlement] of [money / property] from the same person. You must now determine whether there were several small [larcenies / embezzlements], or one large one.

(2)If the evidence shows that the defendant took [money / property] at different times from the same person under one intention, one general impulse, and one plan, and the [money / property] taken was worth a total of more than $100, then there was one large [larceny / embezzlement] of more than $100.

(3)But if the evidence shows that each time the defendant took [money / property] it was worth no more than $100 and each time the defendant had a separate intention, with no general impulse or plan, then there were several small larcenies of no more than $100 each.

Use Note

This can also be used in conjunction with M Crim JI 23.1, Larceny.

History

M Crim JI 22.4 (formerly CJI2d 22.4) was CJI 22:1:04.

Reference Guide

Case Law

People v Johnson, 81 Mich 573, 576, 45 NW 1119, 1120 (1890); *People v Adams*, 128 Mich App 25, 29, 339 NW2d 687 (1983).

M Crim JI 22.5 Definition of Agent

An agent is a person who has been given authority to represent another person or to act on the other person's behalf.

History

M Crim JI 22.5 (formerly CJI2d 22.5) was CJI 22:2:01.

M Crim JI 22.6 Definition of Alteration

(1)Any unauthorized change made to a [*name article*] is called an alteration. Alteration includes changing by erasing, crossing out, inserting new material, or doing anything else that changes the effect of a document in any way, including

(a)changing the number or relationship of the people mentioned in the document;

(b)completing an uncompleted document in an unauthorized way; or

(c)adding to or removing anything from a signed document.

[(2)If a document contains blanks or is incomplete in some other way, it can be filled out in an authorized way and is then valid and complete.]

Use Note

See M Crim JI 22.17, Definition of Material Alteration.

History

M Crim JI 22.6 (formerly CJI2d 22.6) was CJI 22:2:02.

M Crim JI 22.7 Definition of Bailee

A bailee is a person to whom goods are delivered for a specific purpose, to be returned when that purpose is ended.

History

M Crim JI 22.7 (formerly CJI2d 22.7) was CJI 22:2:03.

M Crim JI 22.8 Definition of Certificate (of Notary Public or Any Public Official)

A certificate by a public official is a signed statement that is evidence of the truth of the facts stated in the certificate. [A certificate does not have to be sworn to.]

History

M Crim JI 22.8 (formerly CJI2d 22.8) was CJI 22:2:04.

M Crim JI 22.9 Definition of Check

A check is a written order directing a bank to pay the amount written on it to the person named on it [or to another person specified by the person named on it] [or to any person presenting the check, if the check is made payable to cash].

History

M Crim JI 22.9 (formerly CJI2d 22.9) was CJI 22:2:05.

M Crim JI 22.10 Definition of Commingling

Commingling means failing to keep designated money separate from the money belonging to some other person or business.

History

M Crim JI 22.10 (formerly CJI2d 22.10) was CJI 22:2:06.

M Crim JI 22.11 Definition of Conversion

Conversion means using or keeping someone else's property without that person's permission.

History

M Crim JI 22.11 (formerly CJI2d 22.11) was CJI 22:2:07.

M Crim JI 22.12 Definition of Corruptly

An act is committed corruptly when it is done with the knowledge that it is wrong and with the intent to get money or to gain some other advantage.

History

M Crim JI 22.12 (formerly CJI2d 22.12) was CJI 22:2:08.

M Crim JI 22.13 Definition of Counterfeit

To counterfeit means to make an unauthorized copy, imitation, or forgery, of something with the intent to deceive or cheat someone by using the copy, imitation, or forgery as if it were real.

History

M Crim JI 22.13 (formerly CJI2d 22.13) was CJI 22:2:09.

M Crim JI 22.14 Definition of Delivery

To deliver something means to voluntarily transfer possession of it to someone else.

History

M Crim JI 22.14 (formerly CJI2d 22.14) was CJI 22:2:13.

M Crim JI 22.15 Definition of Deposit Account

A deposit account is an account, such as a savings or passbook account, kept at a bank, savings and loan association, credit union, or similar place.

History

M Crim JI 22.15 (formerly CJI2d 22.15) was CJI 22:2:14.

M Crim JI 22.16 Definition of Draft

A draft is a written document telling someone to pay an amount of money to the person named on the document.

History

M Crim JI 22.16(formerly CJI2d 22.16) was CJI 22:2:15.

M Crim JI 22.17 Definition of Material Alteration

An alteration of a document is called a material alteration if it changes the meaning of the document in any way, including

(a) changing the number or relationship of the people mentioned in the document;

(b) completing an uncompleted document in an unauthorized way; or

(c) adding to or removing anything from a signed document.

History

M Crim JI 22.17 (formerly CJI2d 22.17) was CJI 22:2:19.

Reference Guide

Statutes

MCL 440.3407.

M Crim JI 22.18 Definition of Order (for Money or Property)

An order is a written document telling someone to pay a specified amount of money to the person named on the document.

Use Note

See MCL 440.3102(1)(b).

History

M Crim JI 22.18 (formerly CJI2d 22.18) was CJI 22:2:21.

Reference Guide

Statutes

MCL 440.3102(1)(b).

M Crim JI 22.19 Definition of Public Official (Officer)

A public official or officer means a person who holds public office in this state [or who was holding public office at the time of the alleged crime]. It does not matter whether the person is elected or appointed.

History

M Crim JI 22.19 (formerly CJI2d 22.19) was CJI 22:2:23.

M Crim JI 22.20 Definition of Security Interest

A security interest means an interest in property that makes sure that a person will pay something or perform some service. For instance, collateral for a loan is a type of security interest.

History

M Crim JI 22.20 (formerly CJI2d 22.20) was CJI 22:2:24.

M Crim JI 22.21 Definition of Trustee

A trustee is a person who holds money or property for someone else under an agreement to administer it for the other person's benefit.

History

M Crim JI 22.21 (formerly CJI2d 22.21) was CJI 22:2:26.

Reference Guide

Case Law

Black's Law Dictionary 1357 (5th ed 1979).

M Crim JI 22.22 Definition of Utter

To utter means to put something into circulation. To utter and publish means to offer something as if it is real, whether or not anyone accepts it as real. Uttering and publishing a check means presenting it to get payment, whether or not any money is actually obtained.

History

M Crim JI 22.22 (formerly CJI2d 22.22) was CJI 22:2:27.

Reference Guide

Case Law

Black's Law Dictionary 1387 (5th ed 1979).

CHAPTER 23 *Larceny*

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M Crim JI 23.1 Larceny

(1)The defendant is charged with the crime of larceny. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant took someone else's property.

(3)Second, that the property was taken without consent.

(4)Third, that there was some movement of the property. [It does not matter whether the defendant actually kept the property or whether the property was taken off the premises].[1]

(5)Fourth, that at the time the property was taken, the defendant intended to permanently deprive the owner of the property.[2]

(6)Fifth, that the property had a fair market value at the time it was taken of:[3]

[*Choose only one of the following unless instructing on lesser offenses:*]

(a)$20,000 or more.

(b)$1,000 or more, but less than $20,000.

(c)$200 or more, but less than $1,000.

(d)some amount less than $200.

[*Use the following paragraph only if applicable.*]

(7)[You may add together the values of property stolen in separate incidents if part of a scheme or course of conduct within a 12-month period when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

[1] Use bracketed material when appropriate.

[2] This is a specific intent crime.

When permanent deprivation of the victim's property is in dispute, note the ruling in People v Harverson, 291 Mich App 171, 178, 804 NW2d 757 (2010), in which the court stated that "the intent to permanently deprive includes the retention of property without the purpose to return it within a reasonable time or the retention of property with the intent to return the property on the condition that the owner pay some compensation for its return." When the issue is contested, the court may find it useful to expand on the definition of "permanently deprive" by giving examples such as the following:

(a) withhold property or cause it to be withheld from a person permanently, or for such a period of time that the person loses a significant part of its value, use, or benefit, or

(b) dispose of the property in such a way that it is unlikely that the owner will get it back, or

(c) keep the property with the intent to give it back only if the owner buys or leases it back, or pays a reward for it, or

(d) sell, give, promise, or transfer any interest in the property, or

(e) make the property subject to the claim of a person other than the owner.

[3] The Fair Market Value Test, M Crim JI 22.1, should be given when applicable.

History

M Crim JI 23.1 (formerly CJI2d 23.1) was CJI 23:1:01; amended September, 1999, to reflect changes made by 1998 PA 311, eff. January 1, 1999.

Reference Guide

Statutes

MCL 750.356.

Case Law

People v Kyllonen, 402 Mich 135, 262 NW2d 2 (1978*); People v Harverson*, 291 Mich App 171, 178, 804 NW2d 757 (2010); *People v Hatch*, 156 Mich App 265, 401 NW2d 344 (1986); *People v Long*, 93 Mich App 579, 286 NW2d 909 (1979); *People v Lerma*, 66 Mich App 566, 239 NW2d 424 (1976); *People v Wilbourne*, 44 Mich App 376, 205 NW2d 250 (1973); *People v Fisher,* 32 Mich App 28, 188 NW2d 75 (1971); *People v Alexander*, 17 Mich App 30, 169 NW2d 190 (1969); *People v Anderson*, 7 Mich App 513, 152 NW2d 40 (1967).

M Crim JI 23.2 Inference of Larceny from Possession of Recently Stolen Property

(1) If you determine that the defendant had possession of the property in question here and that this property was recently stolen, you may infer that the defendant committed the theft charged. However, you do not have to make this inference.

(2) The term "recently stolen property" has no fixed meaning. You should think about what kind of property it was, how hard it was to transfer, and all of the other circumstances in deciding whether the time between the alleged theft and the defendant's alleged possession of the property was so short that no one else had time to possess it.

Use Note

This instruction is for use when it is alleged that the defendant was in possession of recently stolen property and some evidence showing such possession has been introduced at trial.

History

M Crim JI 23.2 (formerly CJI2d 23.2) was CJI 23:1:02.

Reference Guide

Case Law

People v Hogan, 123 Mich 233, 81 NW 1096 (1900); *People v Miller*, 141 Mich App 637, 641, 367 NW2d 892 (1985); *People v Thompson*, 114 Mich App 302, 307, 319 NW2d 568 (1982); *People v Strawther*, 47 Mich App 504, 209 NW2d 737 (1973); *People v Helcher*, 14 Mich App 386, 388, 165 NW2d 669 (1968); *People v Cybulski*, 11 Mich App 244, 160 NW2d 764 (1968).

M Crim JI 23.3 Larceny from the Person

(1)The defendant is charged with the crime of larceny from the person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant took someone else's property.

(3)Second, that the defendant took the property without consent.[1]

(4)Third, that the defendant moved the property, but it does not matter whether the defendant actually kept the property.

(5)Fourth, that the defendant took the property from [*name complainant*]'s person or from [his / her] immediate presence. Immediate presence means that the property was physically connected to [*name complainant*] or was right next to [him / her].

(6)Fifth, that at the time it was taken, the defendant intended to permanently deprive the owner of the property.[2]

Use Note

[1] This instruction may need to be modified where a codefendant is charged with the taking or the defendant is charged with aiding and abetting the taking.

[2] This is a specific intent crime. When the issue is contested, the court may find it useful to expand on the definition of "permanently deprive." See the examples listed in the *Use Note* under M Crim JI 23.1, Larceny.

Staff Comment

Consistent with *People v Smith-Anthony,* 494 Mich 669, 682; 837 NW2d 415 (2013), the instruction is modified to delete "immediate area of control" from paragraph (5), and to add a plain-English version of the definition supplied by the Supreme Court—Immediate presence means having no object or space intervening, nearest or next—to that same paragraph. Changes were also made to eliminate the use of the passive voice, and another provision was added to the Use Note that the instruction may need to be modified where the prosecutor's theory involves aiding and abetting or a codefendant is charged.

History

M Crim JI 23.3 (formerly CJI2d 23.3) was CJI 23:2:01. Amended December 2014.

Reference Guide

Statutes

MCL 750.357.

Case Law

People v Smith-Anthony, 494 Mich 669, 682; 837 NW2d 415 (2013), *People v Chamblis*, 395 Mich 408; 236 NW2d 473 (1975); *People v Gould*, 384 Mich 71; 179 NW2d 617 (1970); *People v Gadson*, 348 Mich 307; 83 NW2d 227 (1957); *People v Wallace*, 173 Mich App 420, 426; 434 NW2d 422 (1988).

M Crim JI 23.4 Larceny in a Building

(1) The defendant is charged with the crime of larceny in a building. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant, took someone else's property.

(3) Second, that the property was taken without consent.

(4) Third, that the property was taken in a [*state type of building*].[1]

(5) Fourth, that there was some movement of the property. [It does not matter whether the defendant actually kept the property or whether the property was taken off the premises].

(6) Fifth, that the property was worth something at the time it was taken.

(7) Sixth, that at the time the property was taken, the defendant intended to permanently deprive the owner of the property.[2]

Use Note

[1] The statute lists the following types of building: "dwelling house, house trailer, office, store, gasoline service station, shop, warehouse, mill, factory, hotel, school, barn, granary, ship, boat, vessel, church, house of worship, locker room or any building used by the public." MCL 750.360.

[2] This is a specific intent crime.

When the issue is contested, the court may find it useful to expand on the definition of "permanently deprive." See the examples listed in the *Use Note* under M Crim JI 23.1, Larceny.

History

M Crim JI 23.4 (formerly CJI2d 23.4) was CJI 23:3:01.

Reference Guide

Statutes

MCL 750.360.

Case Law

People v Mumford, 171 Mich App 514, 517-518, 430 NW2d 770 (1988); *People v McFarland*, 165 Mich App 779, 419 NW2d 68 (1988); *People v Cavanaugh*, 127 Mich App 632, 339 NW2d 509 (1983); *Freeman v Meijer, Inc*, 95 Mich App 475, 291 NW2d 87 (1980); *People v Bullock*, 48 Mich App 700, 211 NW2d 108 (1973).

M Crim JI 23.5 Larceny from a Vehicle

(1) The defendant is charged with the crime of larceny from a vehicle. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant took a [wheel / tire / air bag / catalytic converter / radio / stereo / clock / telephone / computer / electronic device].

(3) Second, that the property was taken without consent.

(4) Third, that when it was taken, the property was in or on a [motor vehicle / house trailer / trailer / semitrailer].

(5) Fourth, that there was some movement of the property. [It does not matter whether the defendant actually kept the property.]

(6) Fifth, that at the time the property was taken, the defendant intended to permanently deprive the owner of the property.

Use Note

When the issue is contested, the court may find it useful to expand on the definition of "permanently deprive." See the examples listed in the *Use Note* under M Crim JI 23.1, Larceny.

History

M Crim JI 23.5 (formerly CJI2d 23.5) was CJI 23:4:01; amended September, 1999, to reflect changes made by 1998 PA 311, eff. January 1, 1999; amended May, 2009, to reflect changes made by 2008 PA 476, eff. April 1, 2009.

Reference Guide

Statutes

MCL 750.356a.

Case Law

People v Miller, 288 Mich App 207, 795 NW2d 156 (2010); *People v James*, 142 Mich App 225, 228, 369 NW2d 216 (1985); *People v Price*, 21 Mich App 694, 176 NW2d 426 (1970).

M Crim JI 23.6 Breaking or Entering a Vehicle with Intent to Steal

(1) The defendant is charged with the crime of breaking or entering a vehicle with the intent to steal property worth [$20,000 or more / $1,000 or more, but less than $20,000 / $200 or more, but less than $1,000 / less than $200]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that there was either a breaking or an entering of the [motor vehicle / house trailer / trailer / semitrailer]. For a breaking, it does not matter whether anything was actually broken; however, some force must have been used. The opening of a closed door or the pushing open of a vent window, for example, is enough force to count as a breaking. For an entry, it does not matter whether the defendant got [his / her] entire body inside. If the defendant put any part of [his / her] body into the [motor vehicle / house trailer / trailer / semitrailer], that is enough to count as an entry.

(3) Second, that at the time of the breaking or entering, the defendant intended to take some property and permanently deprive the owner of it. [It does not matter whether the defendant actually took the property.] [1]

(4) Third, that the fair market value of the property was:[2]

[*Choose only one of the following unless instructing on lesser offenses.*]

(a)$20,000 or more.

(b)$1,000 or more, but less than $20,000.

(c)$200 or more, but less than $1,000.

(d)some amount less than $200.

[*Use the following paragraph only if applicable.*]

(5) [You may add together the values of property stolen in separate incidents if part of a scheme or course of conduct within a 12-month period when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

[1] This is a specific intent crime.

When the issue is contested, the court may find it useful to expand on the definition of "permanently deprive." See the examples listed in the *Use Note* under M Crim JI 23.1, Larceny.

[2] The Fair Market Value Test, M Crim JI 22.1, should be given when applicable.

History

M Crim JI 23.6 (formerly CJI2d 23.6) was CJI 23:4:02; amended September, 1999, to reflect changes made by 1998 PA 311, eff. January 1, 1999.

Reference Guide

Statutes

MCL 750.110, .412.

Case Law

People v Nichols, 69 Mich App 357, 244 NW2d 335 (1976); *People v Matusik*, 63 Mich App 347, 234 NW2d 517 (1975); *People v Chronister*, 44 Mich App 478, 205 NW2d 238 (1973).

M Crim JI 23.6a Breaking or Entering a Vehicle with Intent to Steal Causing Damage

(1) The defendant is charged with the crime of breaking or entering a vehicle with the intent to steal property worth [$200 or more, but less than $1,000 / less than $200] causing damage to the vehicle. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that there was either a breaking or an entering of the [motor vehicle / house trailer / trailer / semitrailer]. For a breaking, it does not matter whether anything was actually broken; however, some force must have been used. The opening of a closed door or the pushing open of a vent window, for example, is enough force to count as a breaking. For an entry, it does not matter whether the defendant got [his / her] entire body inside. If the defendant put any part of [his / her] body into the [motor vehicle / house trailer / trailer / semitrailer], that is enough to count as an entry.

(3) Second, that at the time of the breaking or entering, the defendant intended to take some property and permanently deprive the owner of it. [It does not matter whether the defendant actually took the property.][1]

(4) Third, that the fair market value of the property was:[2]

[*Choose only one of the following unless instructing on lesser offenses.*]

(a) $200 or more, but less than $1,000.

(b) less than $200.

(5) Fourth, that in doing so the defendant broke, tore, cut, or otherwise damaged any part of the [motor vehicle / house trailer / trailer / semitrailer].

Use Note

[1] This is a specific intent crime.

When the issue is contested, the court may find it useful to expand on the definition of "permanently deprive." See the examples listed in the *Use Note* under M Crim JI 23.1, Larceny.

[2] The Fair Market Value Test, M Crim JI 22.1, should be given when applicable.

History

M Crim JI 23.6 (formerly CJI2d 23.6a (formerly CJI2d 23.7)) was CJI 23:4:02; added September, 1999, to reflect changes made by 1998 PA 311, eff. January 1, 1999.

Reference Guide

Statutes

MCL 750.110, .412.

Case Law

People v Kloosterman, 295 Mich App 68, 810 NW2d 917 (2011); *People v Nichols*, 69 Mich App 357, 244 NW2d 335 (1976); *People v Matusik*, 63 Mich App 347, 234 NW2d 517 (1975); *People v Chronister*, 44 Mich App 478, 205 NW2d 238 (1973).

M Crim JI 23.7 Breaking or Entering a Vehicle with Intent to Steal Property, Damaging the Vehicle

(1) The defendant is charged with the crime of breaking or entering a vehicle with the intent to steal property and damaging the vehicle. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that there was either a breaking or an entering of the [motor vehicle / house trailer / trailer / semitrailer]. For a breaking, it does not matter whether anything was actually broken; however, some force must have been used. The opening of a closed door or the pushing open of a vent window, for example, is enough force to count as a breaking. For an entry, it does not matter whether the defendant got [his / her] entire body inside. If the defendant put any part of [his / her] body into the [motor vehicle / house trailer / trailer / semitrailer], that is enough to count as an entry.

(3) Second, that in breaking or entering, the defendant damaged the [motor vehicle / house trailer / trailer / semitrailer].

(4) Third, that at the time of the breaking or entering, the defendant intended to permanently deprive the owner of some property. [It does not matter whether the defendant actually took the property.]*

Use Note

*This is a specific intent crime.

When the issue is contested, the court may find it useful to expand on the definition of "permanently deprive." See the examples listed in the *Use Note* under M Crim JI 23.1, Larceny.

History

M Crim JI 23.7 (formerly CJI2d 23.7) was CJI 23:4:03.

Reference Guide

Statutes

MCL 750.356a.

M Crim JI 23.8 Larceny (by Trick)

(1) The defendant is charged with the crime of larceny. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant took someone else's property.

(3) Second, that the property was taken without consent.

(4) Third, that there was some movement of the property. [It does not matter whether the defendant actually kept the property.]

(5) Fourth, that at the time the property was taken, the defendant intended to permanently deprive the owner of the property.[1]

[(6) Or, if the property was given to the defendant for some limited, special, or temporary purpose but the owner[2] had no intention of actually giving the defendant ownership of it, and the defendant then took the property in a way that the defendant knew was not included in that purpose, that may be considered as taking the property without the owner's consent.][3]

[(7) Or, if you find that the defendant got the property by using some trick or pretense, you may consider whether the owner would have consented to the defendant taking the property if the owner had known the true nature of the act or transaction involved.][3]

[*Use (8) for felonies:*]

(8) Fifth, that the property had a fair market value of more than $100 at the time it was taken.[4]

[*Use (9) for misdemeanors:*]

(9) Fifth, that the property was worth something at the time it was taken.

Use Note

[1] This is a specific intent crime.

When the issue is contested, the court may find it useful to expand on the definition of "permanently deprive." See the examples listed in the *Use Note* under M Crim JI 23.1, Larceny.

[2] The complainant usually is, but need not be, the owner. Substitute other language as appropriate.

[3] Larceny by trick is not a crime separate from larceny. Give either (6) or (7), or both, as appropriate. See M Crim JI 23.9, Definition of Pretense.

[4] The Fair Market Value Test, M Crim JI 22.1, should be given when applicable.

History

M Crim JI 23.8 (formerly CJI2d 23.8) was CJI 23:5:01.

Reference Guide

Statutes

MCL 750.356.

Case Law

People v Martin, 116 Mich 446, 74 NW 653 (1898); *People v Shaw*, 57 Mich 403, 24 NW 121 (1885); *People v Styles*, 61 Mich App 532, 233 NW2d 70 (1975).

M Crim JI 23.9 Definition of Pretense

(1) A pretense is the use of a statement, writing, or any other device that is false [and / or] that could mislead the person it is presented to.

(2) A pretense is to knowingly:

[*Choose one or more of the following:*]

(a) make someone else believe something that is false;

(b) keep someone else from finding out important information about the property involved;

(c) [sell / transfer / mortgage] property while hiding a claim [or other legal obstacle] against it; [or]

[(d) promise to do something or have something done knowing that it is not really going to be done.]*

Use Note

*Use (d) only for larceny by trick offenses.

History

M Crim JI 23.9 was CJI 23:5:02, 23:7:02.

Reference Guide

Statutes

MCL 750.218.

Case Law

People v Larco, 331 Mich 420, 49 NW2d 358 (1951); *People v Bird*, 126 Mich 631, 86 NW 127 (1901); *People v Jacobs*, 35 Mich 36 (1876); *People v Clark*, 10 Mich 310 (1862); *People v Jones*, 126 Mich App 191, 197, 336 NW2d 889 (1983); *People v Wilson*, 122 Mich App 270, 332 NW2d 465 (1982); *People v Marks*, 12 Mich App 690, 163 NW2d 506 (1968).

M Crim JI 23.10 Larceny by Conversion [For Offenses Committed On or After January 1, 1999]

(1) The defendant is charged with the crime of larceny by conversion. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the property was voluntarily transferred to the defendant. [It does not matter whether the property was transferred legally.]

(3) Second, that the property had a fair market value[1] at the time it was transferred of:

[*Choose only one of the following unless instructing on lesser offenses:*]

(a) $20,000 or more.

(b) $1,000 or more, but less than $20,000.

(c) $200 or more, but less than $1,000.

(d) some amount less than $200.

(4) Third, that the defendant either hid the property or wrongfully deprived the owner[2] of the possession of it. Wrongfully depriving means using or keeping someone else's property without that person's permission.

(5) Fourth, that the defendant intended to defraud or cheat the owner out of the property permanently.[3]

(6) Fifth, that the act was done without the owner's consent.

[*Choose one or more of the following:*]

(7) If the property was given to the defendant for some limited, special, or temporary purpose but the owner had no intention of actually giving the defendant ownership of it, and the defendant then took the property in a way that the defendant knew was not included in that purpose, that may be considered taking the property without the owner's consent.

(8) If the property was given to the defendant because the owner had a relationship of trust with the defendant and the owner had no intention of actually giving the defendant ownership of the property, and the defendant then took the property in a way that the owner did not intend, that may be considered as taking the property without the owner's consent. A relationship of trust means any relationship that exists because of the defendant's position as a [*state position*].[4]

(9) If you find that the defendant got the property by using some trick or pretense, you may consider whether the owner would have consented to the defendant taking the property if the owner had known the true nature of the act or transaction involved.

Use Note

[1] The Fair Market Value Test, M Crim JI 22.1, should be given when applicable.

[2] The complainant usually is, but need not be, the owner. Substitute other language as appropriate.

[3] This is a specific intent crime.

When the issue is contested, the court may find it useful to expand on the definition of "permanently deprive." See the examples listed in the *Use Note* under M Crim JI 23.1, Larceny.

[4] Choose one of the following: [agent / servant / employee / trustee / bailee / custodian]. Define terms used where necessary. See chapter 22.

History

M Crim JI 23.10 (formerly CJI2d 23.10) was CJI 23:6:01; amended September, 1999.

Reference Guide

Statutes

MCL 750.362.

Case Law

Nelson & Witt v Texas Co, 256 Mich 65, 70, 239 NW 289 (1931); *People v Taugher*, 102 Mich 598, 61 NW 66 (1894); *People v Mason*, 247 Mich App 64, 634 NW2d 382 (2001); *People v O'Shea*, 149 Mich App 268, 275-276, 385 NW2d 768 (1986); *People v McIntosh*, 103 Mich App 11, 17, 302 NW2d 321 (1981); *People v Scott*, 72 Mich App 16, 248 NW2d 693 (1976); *People v Moore*, 43 Mich App 693, 696, 204 NW2d 737 (1972).

M Crim JI 23.11 False Pretenses

(1) The defendant is charged with the crime of obtaining [property / money] by false pretenses. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant used a pretense.[1]

(3) Second, that the defendant knew that the pretense was false at the time [he / she] used it.

(4) Third, that at the time [he / she] used the pretense, the defendant intended to defraud or cheat someone.

(5) Fourth, that another person relied on the defendant's pretense.[2]

(6) Fifth, that by relying on this pretense, this person suffered the loss of something of value.

(7) Sixth, that the amount lost had a fair market value[3] at the time it was taken of:

[*Choose only one of the following unless instructing on lesser offenses:*]

(a) $20,000 or more.

(b) $1,000 or more, but less than $20,000.

(c) $200 or more, but less than $1,000.

(d) some amount less than $200.

[*Use the following paragraph if applicable, MCL 750.218(6):*]

[(8)You may add together the values of the property taken in separate incidents if part of a scheme or course of conduct within a 12-month period when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

[1] Give M Crim JI 23.9, Definition of Pretense.

[2] See M Crim JI 23.12, Reliance on Representation.

[3] The Fair Market Value Test, M Crim JI 22.1, should be given when applicable.

History

M Crim JI 23.11 (formerly CJI2d 23.11) was CJI 23:7:01. Amended April, 2006.

Reference Guide

Statutes

MCL 750.218.

Case Law

In re People v Jory, 443 Mich 403, 413, 505 NW2d 228 (1993); *People v Christenson*, 412 Mich 81, 312 NW2d 618 (1981); *People v Lueth*, 253 Mich App 670, 680-681, 660 NW2d 322 (2002); *People v Reigle*, 223 Mich App 34, 37-38, 566 NW2d 21 (1997); *People v Peach*, 174 Mich App 419, 422-423, 437 NW2d 9 (1989); *People v Harajli*, 161 Mich App 399, 411 NW2d 765 (1987); *People v Jones*, 143 Mich App 775, 372 NW2d 657 (1985); *People v Wilson*, 107 Mich App 470, 473 n1, 309 NW2d 584 (1981); *People v McCoy*, 75 Mich App 164, 254 NW2d 829 (1977).

M Crim JI 23.12 Reliance on Representation

If [*name complainant*] made and relied more on [his / her] own investigation or an independent source than on what the defendant said, then [*name complainant*] cannot claim that the defendant misled [him / her] and you must find the defendant not guilty.

Use Note

Individual fact situations may call for separate instructions on reliance that are beyond the scope of this book.

History

M Crim JI 23.12 (formerly CJI2d 23.12) was CJI 23:7:03.

Reference Guide

Case Law

People v Gould, 156 Mich App 413, 402 NW2d 27 (1986); *People v Jones*, 143 Mich App 775, 372 NW2d 657 (1985); *People v Chappelle*, 114 Mich App 364, 319 NW2d 584 (1982); *People v Wilde*, 42 Mich App 514, 202 NW2d 542 (1972).

M Crim JI 23.13 Retail Fraud—Theft

(1) The defendant is charged with retail fraud in the [first / second / third] degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant took some property that the store offered for sale.

(3) Second, that the defendant moved the property. Any movement is enough. It does not matter whether the defendant actually got the property past the cashier or out of the store.

(4) Third, that the defendant intended to steal the property.[1] By "intended to steal," I mean that the defendant intended to permanently take the property from the store without the store's consent.[2]

(5) Fourth, that this happened either inside the store or in the immediate area around the store, while the store was open to the public.

(6) Fifth, that the price of the property was:

[*Choose only one of the following unless instructing on lesser offenses:*]

(a) $1,000 or more.

(b) $200 or more, but less than $1,000.

(c) some amount less than $200.

[*Use the following paragraph only if applicable:*]

(7) [You may add together the prices of property taken in separate incidents if part of a scheme or course of conduct within a 12-month period when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

This instruction is designed for use for first-, second-, and third-degree retail fraud cases involving alleged theft of property.

[1] The statutory language makes this a specific intent crime.

[2] When the issue is contested, the court may find it useful to expand on the definition of *permanently deprive*. See the definitions listed in the Use Note under M Crim JI 23.1, Larceny.

History

M Crim JI 23.13 (formerly CJI2d 23.14) was CJI 23:8:01; amended September, 1999, to reflect changes made by 1998 PA 311, eff. January 1, 1999.

Reference Guide

Statutes

MCL 750.356c, .356d.

Case Law

People v Munn, 198 Mich App 726, 499 NW2d 459 (1993).

M Crim JI 23.14 Retail Fraud—Price Switching

(1) The defendant is charged with retail fraud in the [first / second / third] degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant altered or switched a price tag [or in some other way misrepresented the price of property].

(3) Second, that the defendant did this intending either to pay less than the actual price for the property or not to pay for the property at all.*

(4) Third, that this happened either inside the store or in the immediate area around the store, while the store was open to the public.

(5) Fourth, that the difference between the sale price and the price the defendant intended to pay was:

[*Choose only one of the following unless instructing on lesser offenses.*]

(a) $1,000 or more.

(b) $200 or more, but less than $1,000.

(c) some amount less than $200.

[*Use the following paragraph only if applicable:*]

(6) [You may add together the amounts unlawfully taken in separate incidents if part of a scheme or course of conduct within a 12-month period when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

This instruction is designed for use for first-, second-, and third-degree retail fraud cases involving alleged price switching.

*The statutory language makes this a specific intent crime.

History

M Crim JI 23.14 (formerly CJI2d 23.14) was CJI 23:8:02; amended September, 1999, to reflect changes made by 1998 PA 311, eff. January 1, 1999.

Reference Guide

Statutes

MCL 750.356c, .356d.

M Crim JI 23.15 Retail Fraud—False Exchange

(1) The defendant is charged with retail fraud in the [first / second / third] degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant exchanged or tried to exchange property that had not been paid for and that belonged to the store. It does not matter whether the defendant tried to exchange it for money or other property.

(3) Second, that the defendant did this with the intent to defraud or cheat the store.*

(4) Third, that this happened during store hours, either inside the store or in the immediate area around the store.

(5) Fourth, that the [amount of money / value of the property] that the defendant obtained or attempted to obtain was:

[*Choose only one of the following unless instructing on lesser offenses:*]

(a) $1,000 or more.

(b) $200 or more, but less than $1,000.

(c) some amount less than $200.

[*Use the following paragraph only if applicable:*]

(6) [You may add together amounts obtained or attempted to be obtained in separate incidents if part of a scheme or course of conduct within a 12-month period when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

This instruction is designed for use for first-, second-, and third-degree retail fraud cases involving alleged false exchange.

*The statutory language makes this a specific intent crime.

History

M Crim JI 23.15 (formerly CJI2d 23.15) was CJI 23:8:03; amended September, 1999, to reflect changes made by 1998 PA 311, eff. January 1, 1999.

Reference Guide

Statutes

MCL 750.356c, .356d.

M Crim JI 23.16 Retail Fraud—Prior Convictions [*deleted*]

Instruction deleted. The factual question of whether the defendant has previously been convicted of similar offenses so as to aggravate the level of retail fraud charges is now *for the court* as part of sentencing pursuant to MCL 750.356c(4), .356d(7).

M Crim JI 23.17 Defrauding a Vulnerable Adult

(1) The defendant is charged with obtaining or using the money or property of a vulnerable adult through fraud or deceit. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [obtained or used / attempted to obtain or use] the [money / property] of [*name complainant*].

(3) Second, that the defendant used [fraud / deceit / misrepresentation / coercion / unjust enrichment] to [obtain or use / attempt to obtain or use] the [money / property].

(4) Third, that, at the time, [*name complainant*] was a vulnerable adult.[1] This means that [*name complainant*] was:

[*Choose appropriate designation and applicable provisions:*]

(a) 18 years old or older and was [aged / developmentally disabled / mentally ill / physically disabled][2] such that [he / she] required supervision or personal care or [he / she] lacked personal and social skills required to live independently.

(b) a person placed in an adult foster care home by a state licensed agency.

(c) a person 18 years old or older who is suspected of being abused, neglected, or exploited.

[*Use the following where appropriate if (a) applies:*]

A person is developmentally disabled if [he /she] has a severe, long-lasting condition that includes all of the following:

(i) The condition is a result of a mental impairment or a physical impairment, or a combination of mental and physical impairments; and

(ii) Symptoms of the impairment[s] appeared before [he / she] was 22 years old; and

(iii) The impairment[s] [is / are] likely to continue indefinitely; and

(iv) the impairment[s] result[s] in substantial limitations in 3 or more of the following abilities: [self-care / understanding and expressing language / learning / mobility / self-direction / capacity for independent living / economic self-sufficiency]; and

(v) The impairment[s] reflect[s] [his / her] need for any form of special care, treatment or other services for life or for an extended period of time, and are individually planned and coordinated.

A person is mentally ill if [he / she] has a substantial disorder of thought or mood that significantly impairs [his / her] judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

(4) Fourth, that the defendant knew or should have known that [*name complainant*] was a vulnerable adult.

(5) Fifth, that the [amount of money (taken / attempted to be taken was / the fair market value of the property (taken / attempted to be taken was].

[*Choose only one of the following unless instructing on lesser offenses:*]

(a)$100,000 or more.

(b)$50,000 or more but less than $100,000.

(c)$20,000 or more but less than $50,000.

(d)$1,000 or more but less than $20,000.

(e)$200 or more but less than $1,000.

(f)some amount less than $200.

[*Use the following paragraph only if applicable:*]

(7) [You may add together all money or property obtained or used or attempted to be obtained or used [in a twelve-month period[3]] when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

(8) Sixth, that the property was taken for the direct benefit of the defendant, or to indirectly benefit [him / her]. An indirect benefit means that the defendant gained some advantage or value other than possession or use of the money or property, itself.

Use Note

[1] The definition of *vulnerable adult* is found in MCL 750.145m(u), whether or not a court has determined that the person is incapacitated. *See* MCL 750.174a(15)(c).

[2] The terms "developmental disability" and "mental illness" are referenced in MCL 750.145m(d) and (*i*), respectively. *Developmental disability* is defined in MCL 330.1100a(25); *mental illness* is defined in MCL 330.1400(g).

[3] This time limitation only applies if the defendant's scheme or conduct was directed against more than one person. MCL 750.174a(8).

Staff Comment

The statute does not define the terms *fraud, deceit, misrepresentation, coercion,* or *unjust enrichment*. Where the jury has a question about the meaning of terms, a party requests a definition, or the court decides that providing a definition is appropriate, the Committee suggests the following (but the court may opt to use other definitions). *Fraud* means using falsehoods, trickery or concealment to mislead someone in order to cause or induce that person to perform an act or not to

act. *Deceit* means doing something to give a false impression in order to cause or induce someone to perform an act or not to act. *Misrepresentation* means a false or misleading statement. *Coercion* means inducing another person to act against his or her will by the use of physical force, intimidation, threats or some other form of pressure. *Unjust enrichment* requires the receipt of a benefit by the defendant from the victim and an inequity resulting to the victim because of the retention of the benefit by the defendant. *Karaus v Bank of New York Mellon*, 300 Mich App 9 (2012).

History

M Crim JI 23.17 was adopted August, 2016.

Reference Guide

Statutes

MCL 750.174a

MCL 750.145m

MCL 330.1100a

MCL 330.1400(g)

CHAPTER 24 *Automobile Theft*

M Crim JI 24.1 Unlawfully Driving Away an Automobile 24-2

M Crim JI 24.2 Use of an Automobile Without Authority and Without Intent to Steal..... 24-3

M Crim JI 24.3 Employee's Use of an Automobile Without Authority 24-4

M Crim JI 24.4 Distinction Between UDAA and Use of an Automobile Without Authority..... 24-5

M Crim JI 24.5 Tampering with a Motor Vehicle 24-6

M Crim JI 24.6 Possession of a Stolen Automobile with Intent to Pass Title..... 24-7

M Crim JI 24.7 False Statement About Title to a Motor Vehicle 24-8

M Crim JI 24.8 Altering Identification of a Motor Vehicle with Intent to Mislead 24-9

M Crim JI 24.9 Lesser Included Offense—Altering Identification of a Motor Vehicle Without Intent to Mislead 24-10

M Crim JI 24.1 Unlawfully Driving Away an Automobile

(1) The defendant is charged with the crime of unlawfully driving away a motor vehicle. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the vehicle belonged to someone else.

(3) Second, that the defendant took possession of the vehicle and [drove / took] it away.

(4) Third, that these acts were both done [without authority / without the owner's permission].

(5) Fourth, that the defendant intended to take possession of the vehicle and [drive / take] it away. It does not matter whether the defendant intended to keep the vehicle.*

[(6) Anyone who assists in taking possession of a vehicle or assists in driving or taking away a vehicle knowing that the vehicle was unlawfully possessed is also guilty of this crime if the assistance was given with the intention of helping another commit this crime.]

Use Note

To distinguish unlawfully taking and using from UDAA, see M Crim JI 24.4.

*This is a specific intent crime.

History

M Crim JI 24.1 (formerly CJI2d 24.1) was CJI 24:1:01, 24:1:02.

Reference Guide

Statutes

MCL 750.412, .413.

Case Law

People v Hendricks, 446 Mich 435, 521 NW2d 546 (1994); *People v Dutra*, 155 Mich App 681, 400 NW2d 619 (1986); *People v Harris*, 82 Mich App 135, 266 NW2d 477 (1978); *People v Shipp*, 68 Mich App 452, 243 NW2d 18 (1976); *People v Lerma*, 66 Mich App 566, 239 NW2d 424 (1976); *People v Andrews*, 45 Mich App 354, 357, 206 NW2d 517 (1973); *People v Davis*, 36 Mich App 164, 193 NW2d 393 (1971); *People v Snake*, 22 Mich App 79, 82, 176 NW2d 726 (1970).

M Crim JI 24.2 Use of an Automobile Without Authority and Without Intent to Steal

(1) [The defendant is charged with the crime of / You may also consider the lesser charge of] using a motor vehicle without authority. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the vehicle belonged to someone else.

(3) Second, that the defendant used the vehicle.

(4) Third, that the defendant did this without authority.

(5) Fourth, that the defendant intended to use the vehicle, knowing that [he / she] did not have the authority to do so.

[(6) Anyone who assists in using a vehicle is also guilty of this crime if (he / she) gave the assistance knowing that the person who was taking or using it did not have the authority to do so.]

Use Note

To distinguish unlawfully taking and using from UDAA, see M Crim JI 24.4.

History

M Crim JI 24.2 (formerly CJI2d 24.2) was CJI 24:2:01, 24:2:02.

Reference Guide

Statutes

MCL 750.414.

Case Law

People v Laur, 128 Mich App 453, 340 NW2d 655 (1983); *People v Hayward*, 127 Mich App 50, 60-61, 338 NW2d 549 (1983).

M Crim JI 24.3 Employee's Use of an Automobile Without Authority

Any employee who has authority to drive someone else's vehicle is guilty of this crime only if [he / she] drives or uses the vehicle without the owner's permission and in a way the employee knew was unauthorized.

History

M Crim JI 24.3 (formerly CJI2d 24.3) was CJI 24:2:03.

Reference Guide

Statutes

MCL 750.414.

M Crim JI 24.4 Distinction Between UDAA and Use of an Automobile Without Authority

The difference between these two offenses is this: to be guilty of unlawfully driving away a vehicle, the defendant must have taken possession of the vehicle unlawfully in the first place. Unlawful use of a vehicle, on the other hand, is a lesser offense that applies if the defendant got possession of the vehicle lawfully in the first place but then used it in a way [he / she] knew was unauthorized.

History

M Crim JI 24.4 (formerly CJI2d 24.4) was CJI 24:2:04.

Reference Guide

Case Law

People v Hayward, 127 Mich App 50, 61, 338 NW2d 549 (1983).

M Crim JI 24.5 Tampering with a Motor Vehicle

(1) [The defendant is charged with the crime of / You may also consider the lesser charge of] tampering with a motor vehicle. To prove this charge, the prosecutor must prove beyond a reasonable doubt that without the owner's permission, the defendant:

[*Choose one or more of the following:*]

(2) intentionally damaged a part of the vehicle.

(3) started the vehicle [or caused it to be started] or maliciously shifted the gears or the position of the ignition.

(4) released the brake of the vehicle while it was stopped, making it move, or released the brake, intending to damage the vehicle.

History

CJI2d 24.5 (formerly CJI2d 24.5) was CJI 24:3:01-24:3:03.

Reference Guide

Statutes

MCL 750.416.

M Crim JI 24.6 Possession of a Stolen Automobile with Intent to Pass Title

(1) The defendant is charged with the crime of knowingly possessing a stolen motor vehicle with intent to transfer title. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the vehicle was stolen.

(3) Second, that the defendant [received / transferred] possession of the vehicle.

(4) Third, that at the time the defendant [received / transferred] possession of the vehicle, [he / she] knew or had reason to believe that the vehicle was stolen.

(5) Fourth, that this was done with the intent to [receive / transfer] title to the stolen vehicle.*

Use Note

Depending on the circumstances, either M Crim JI 24.6 or 24.7, or both, may be given.

*This is a specific intent crime.

History

M Crim JI 24.6 (formerly CJI2d 24.6) was CJI 24:4:01.

Reference Guide

Statutes

MCL 257.33, .254.

Case Law

People v Morton, 384 Mich 38, 40-41, 179 NW2d 379 (1970); *People v Ross*, 204 Mich App 310, 514 NW2d 253 (1994); *People v Harbour*, 76 Mich App 552, 257 NW2d 165 (1977).

M Crim JI 24.7 False Statement About Title to a Motor Vehicle

(1) The defendant is charged with the crime of making a false statement about the title to a motor vehicle. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant applied for a [certificate / assignment] of title to a motor vehicle.

(3) Second, that in doing this, the defendant made a false statement of a material fact. A material fact is an essential matter required for a valid transfer.

(4) Third, that the defendant knew the statement was false when [he / she] made it.

Use Note

Depending on the circumstances, either M Crim JI 24.6 or 24.7, or both, may be given.

History

M Crim JI 24.7 (formerly CJI2d 24.7) was CJI 24:4:02 and was amended by the committee in September, 1995 to add the requirement of materiality as an element to be decided by the jury. See *United States v Gaudin*, 515 US 506 (1995), holding that the federal trial court's refusal to submit the issue of materiality of false statements made to HUD abridged the defendant's right to trial by jury on each element of the offense charged.

Reference Guide

Statutes

MCL 257.254.

Case Law

United States v Gaudin, 515 US 506 (1995); *People v Jensen*, 162 Mich App 171, 181, 412 NW2d 681 (1987); *People v Noble*, 152 Mich App 319, 326, 393 NW2d 619 (1986); *People v Ciatti*, 17 Mich App 4, 168 NW2d 902 (1969).

M Crim JI 24.8 Altering Identification of a Motor Vehicle with Intent to Mislead

(1) The defendant is charged with the crime of altering the identification of a motor vehicle. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant hid or misrepresented the identity of a motor vehicle [or of a mechanical device].

[*Choose (3) or (4):*]

(3) Second, that the defendant did this by removing or damaging the [manufacturer's serial number / engine or motor number] on the motor vehicle.

(4) Second, that the defendant did this by replacing the part of the vehicle [or mechanical device] that had the [manufacturer's serial number / engine or motor number] on it with a new part that did not have the correct number on it.

(5) Third, that [he / she] did this with the intent of misleading someone else about the identity of the vehicle.*

Use Note

*This is a specific intent crime.

History

M Crim JI 24.8 (formerly CJI2d 24.8) was CJI 24:5:01.

Reference Guide

Statutes

MCL 750.415.

M Crim JI 24.9 Lesser Included Offense—Altering Identification of a Motor Vehicle Without Intent to Mislead

If you find that the defendant did the acts I have mentioned, but that [he / she] did them without intending to mislead anyone, you may find [him / her] guilty of the lesser offense of altering the identification of a motor vehicle without intent to mislead.

History

M Crim JI 24.9 (formerly CJI2d 24.9) was CJI 24:5:02.

Reference Guide

Statutes

MCL 750.415(1).

CHAPTER 25 *Breaking and Entering*

M Crim JI 25.1 Breaking and Entering 25-2
M Crim JI 25.2 Breaking and Entering Occupied Dwelling 25-4
M Crim JI 25.2a Home Invasion, First Degree—Breaking and Entering 25-5
M Crim JI 25.2b Home Invasion, Second Degree—Breaking and Entering 25-7
M Crim JI 25.2c Home Invasion, First Degree—Entering Without Permission 25-8
M Crim JI 25.2d Home Invasion, Second Degree—Entering Without Permission 25-9
M Crim JI 25.2e Home Invasion, Third Degree—Committing or Intending to Commit Misdemeanor 25-10
M Crim JI 25.2f Home Invasion, Third Degree—Violation of Order to Protect Person 25-11
M Crim JI 25.3 Entering Without Breaking 25-12
M Crim JI 25.4 Entering Without Owner's Permission 25-13
M Crim JI 25.5 Possession of Burglar's Tools 25-14
M Crim JI 25.6 Occupying a Dwelling Without Consent (Squatting) 25-15

M Crim JI 25.1 Breaking and Entering

(1) The defendant is charged with the crime of breaking and entering. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant broke into a building.[1] It does not matter whether anything was actually broken; however, some force must have been used. Opening a door, raising a window, and taking off a screen are all examples of enough force to count as a breaking.[2] Entering a building through an already open door or window without using any force does not count as a breaking.

(3) Second, that the defendant entered the building. It does not matter whether the defendant got [his / her] entire body inside. If the defendant put any part of [his / her] body into the building after the breaking, that is enough to count as an entry.

(4) Third, that when the defendant broke and entered the building, [he / she] intended[3] to commit [*state offense*].[4]

Use Note

[1] Alternatively, specify type of building as found in MCL 750.110: structure / boat / ship / shipping container / railroad car / tent / hotel / office / store / shop / warehouse / barn / granary / factory.

[2] Opening further a partly open door or window is enough to establish a breaking. *People v Finney*, 113 Mich App 638, 318 NW2d 519 (1982).

[3] This is a specific intent crime.

[4] The elements of the offense intended should be given.

History

M Crim JI 25.1 (formerly CJI2d 25.1) was CJI 25:1:01.

Reference Guide

Statutes

MCL 750.110, .111.

Case Law

People v Jacques, 456 Mich 352, 572 NW2d 195 (1998); *People v Westerberg*, 274 Mich 647, 265 NW 489 (1936); *People v Toole*, 227 Mich App 656, 576 NW2d 441 (1998); *People v Uhl*, 169 Mich App 217, 425 NW2d 519 (1988); *People v Cannoy*, 136 Mich App 451, 357 NW2d 67 (1984); *People v Wise*, 134 Mich App 82, 351 NW2d 255 (1984); *People v*

Cook, 131 Mich App 796, 347 NW2d 720 (1984); *People v Noel*, 123 Mich App 478, 332 NW2d 578 (1983); *People v Finney*, 113 Mich App 638, 318 NW2d 519 (1982); *People v Gillman*, 66 Mich App 419, 239 NW2d 396 (1976); *People v Erskin*, 16 Mich App 645, 168 NW2d 440 (1969).

M Crim JI 25.2 Breaking and Entering Occupied Dwelling

(1) The defendant is charged with the crime of breaking and entering an occupied dwelling. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant broke into a building. It does not matter whether anything was actually broken; however, some force must have been used. Opening a door, raising a window, and taking off a screen are all examples of enough force to count as a breaking.[1] Entering a building through an already open door or window without using any force does not count as a breaking.

(3) Second, that the defendant entered the building. It does not matter whether the defendant got [his / her] entire body inside. If the defendant put any part of [his / her] body into the building after the breaking, that is enough to count as an entry.

(4) Third, that when the defendant broke and entered the building, [he / she] intended[2] to commit [*state offense*].[3]

(5) Fourth, the building involved must have been occupied as a place to live at the time of the breaking and entering. It does not matter whether the people who lived there were at home at the time.

Use Note

[1] Opening further a partly open door or window is enough to establish a breaking. *People v Finney,* 113 Mich App 638, 318 NW2d 519 (1982).

[2] This is a specific intent crime.

[3] The elements of the offense intended should be given.

History

M Crim JI 25.2 (formerly CJI2d 25.2) was CJI 25:2:01.

Reference Guide

Statutes

MCL 710.110a.

Case Law

People v Hider, 135 Mich App 147, 351 NW2d 905 (1984); *People v Noel*, 123 Mich App 478, 332 NW2d 578 (1983); *People v Finney*, 113 Mich App 638, 318 NW2d 519 (1982); *People v Winhoven*, 65 Mich App 522, 237 NW2d 540 (1975).

M Crim JI 25.2a Home Invasion, First Degree—Breaking and Entering

(1) The defendant is charged with home invasion in the first degree.[1] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant broke into a dwelling. It does not matter whether anything was actually broken; however, some force must have been used. Opening a door, raising a window, and taking off a screen are all examples of enough force to count as a breaking. Entering a dwelling through an already open door or window without using any force does not count as a breaking.

(3) Second, that the defendant entered the dwelling. It does not matter whether the defendant got [his / her] entire body inside. If the defendant put any part of [his / her] body into the dwelling after the breaking, that is enough to count as an entry.

[*Choose (4)(a) or (4)(b) as appropriate.*]

(4) Third,

(a) that when the defendant broke and entered the dwelling, [his / her] intended[2] to commit [*state offense*][3]

(b) that when the defendant entered, was present in, or was leaving the dwelling, [he/she] committed the offense of [*state offense*][3]

(5) Fourth, that when the defendant entered, was present in, or was leaving the dwelling, either of the following circumstances existed:

(a) [he/she] was armed with a dangerous weapon, and/or

(b) another person was lawfully present in the dwelling.

Use Notes

[1] This instruction is intended to specify the elements of home invasion in the first degree committed by means of breaking and entering, MCL 750.110a. M Crim JI 25.2c is a separate instruction intended to apply when first-degree home invasion is committed by means of entering without permission. Home invasion in the first degree is a 20-year felony. The jury may return guilty verdicts based on multiple theories, but the trial court may impose only one judgment of sentence for home invasion in the first degree. *People v Baker*, *288 Mich App 378*, 792 NW2d 420 (2010). Home invasion in the third degree is a lesser included offense of home invasion in the first degree only if it is supported by the evidence. *People v Wilder*, 485 Mich 35, 780 NW2d 265 (2010).

[2] This is a specific intent crime.

[3] The elements of the offense intended should be given.

History

M Crim JI 25.2a (formerly CJI2d 25.2a) was adopted by the committee in March, 1995 to reflect the elements of the new offense of home invasion created by 1994 PA 270, MCL 750.110a, effective October 1, 1994. This instruction was last amended by the committee in October, 2002.

Reference Guide

Statutes

MCL 750.110a.

Case Law

People v Wilder, 485 Mich 35, 780 NW2d 265 (2010); *People v Baker*, 288 Mich App 378, 792 NW2d 420 (2010); *People v Sands*, 261 Mich App 158, 680 NW2d 500 (2004).

M Crim JI 25.2b Home Invasion, Second Degree—Breaking and Entering

(1) [The defendant is charged with / You may also consider the lesser offense of] home invasion in the second degree.[1] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant broke into a dwelling. It does not matter whether anything was actually broken; however, some force must have been used. Opening a door, raising a window, and taking off a screen are all examples of enough force to count as a breaking.

(3) Second, that the defendant entered the dwelling. It does not matter whether the defendant got [his / her] entire body inside. If the defendant put any part of [his / her] body into the dwelling after the breaking, that is enough to count as an entry.

[*Choose (4)(a) or (4)(b) as appropriate.*]

(4) Third,

(a) that when the defendant broke and entered the dwelling, [he / she] intended[2] to commit [*state offense*][3]

(b) that when the defendant entered, was present in, or was leaving the dwelling, [he / she] committed the offense of [*state offense*][3]

Use Notes

[1] This instruction is intended to specify the elements of home invasion in the second degree committed by means of breaking and entering, MCL 750.110a. M Crim JI 25.2d is a separate instruction intended to apply when second-degree home invasion is committed by means of entering without permission. Home invasion in the second degree is a 15-year felony.

[2] This is a specific intent crime.

[3] The elements of the offense intended should be given.

History

M Crim JI 25.2b (formerly CJI2d 25.2b) was adopted by the committee in March, 1995 to reflect the elements of the new offense of home invasion created by 1994 PA 270, MCL 750.110a, effective October 1, 1994. This instruction was last amended by the committee in October, 2002.

Reference Guide

Statutes

MCL 750.110a.

M Crim JI 25.2c Home Invasion, First Degree—Entering Without Permission

(1) The defendant is charged with home invasion in the first degree.[1] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant entered a dwelling without permission. It does not matter whether the defendant got [his / her] entire body inside. If the defendant put any part of [his / her] body into the dwelling without permission, that is enough to count as an entry.

[*Choose (3)(a) or (3)(b) as appropriate.*]

(3) Second,

(a) that when the defendant entered the dwelling, [he / she] intended[2] to commit [*state offense*][3]

(b) that when the defendant entered, was present in, or was leaving the dwelling, [he / she] committed the offense of [*state offense*][3]

(4) Third, that when the defendant entered, was present in, or was leaving the dwelling, either of the following circumstances existed:

(a) [he / she] was armed with a dangerous weapon, and / or

(b) another person was lawfully present in the dwelling.

Use Notes

[1] This instruction is intended to specify the elements of home invasion in the first degree committed by means of entering without permission, MCL 750.110a. M Crim JI 25.2a is a separate instruction intended to apply when first-degree home invasion is committed by means of breaking and entering. Home invasion in the first degree is a 20-year felony.

[2] This is a specific intent crime.

[3] The elements of the offense intended should be given.

History

M Crim JI 25.2c (formerly CJI2d 25.2c) was adopted by the committee in March, 1995 to reflect the elements of the new offense of home invasion created by 1994 PA 270, MCL 750.110a, effective October 1, 1994. This instruction was last amended by the committee in October, 2002.

Reference Guide

Statutes

MCL 750.110a.

M Crim JI 25.2d Home Invasion, Second Degree—Entering Without Permission

(1) [The defendant is charged with / You may also consider the lesser offense of] home invasion in the second degree.[1] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant entered a dwelling without permission. It does not matter whether the defendant got [his / her] entire body inside. If the defendant put any part of [his / her] body into the dwelling without permission, that is enough to count as an entry.

[*Choose (3)(a) or (3)(b) as appropriate.*]

(3) Second,

(a) that when the defendant entered the dwelling, [he / she] intended[2] to commit [*state offense*][3]

(b) that when the defendant entered, was present in, or was leaving the dwelling, [he / she] committed the offense of [*state offense*][3]

Use Notes

[1] This instruction is intended to specify the elements of home invasion in the second degree committed by means of entering without permission, MCL 750.110a. M Crim JI 25.2b is a separate instruction intended to apply when second-degree home invasion is committed by means of breaking and entering. Home invasion in the second degree is a 15-year felony.

[2] This is a specific intent crime.

[3] The elements of the offense intended should be given.

History

M Crim JI 25.2d (formerly CJI2d 25.2d) was adopted by the committee in March, 1995 to reflect the elements of the new offense of home invasion created by 1994 PA 270, MCL 750.110a, effective October 1, 1994. This instruction was last amended by the committee in October, 2002.

Reference Guide

Statutes

MCL 750.110a.

M Crim JI 25.2e Home Invasion, Third Degree—Committing or Intending to Commit Misdemeanor

(1) [The defendant is charged with / You may also consider the lesser offense of] home invasion in the third degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [broke and entered / entered without permission] a dwelling. [It does not matter whether anything was actually broken; however, some force must have been used. Opening a door, raising a window, and taking off a screen are all examples of enough force to count as a breaking.] [For an entry, it does not matter whether the defendant got (his / her) entire body inside. If the defendant put any part of (his / her) body into the dwelling, that is enough to count as an entry.]

[*Choose (3)(a) or (3)(b) as appropriate:*]

(3) Second,

(a) that at the time of the [breaking and entering / entering without permission] the defendant intended to commit a misdemeanor.[1]

(b) that when the defendant entered, was present in, or was leaving the dwelling, [he / she] committed a misdemeanor.[2]

Use Notes

[1] This theory is a specific intent crime.

[2] The elements of the misdemeanor intended or committed should be given.

History

M Crim JI 25.2e (formerly CJI2d 25.2e) was adopted by the committee in September, 1999, to specify the elements of the offense created by 1999 PA 44, MCL 750.110a, effective October 1, 1999.

Reference Guide

Statutes

MCL 750.110a.

M Crim JI 25.2f Home Invasion, Third Degree—Violation of Order to Protect Person

(1) [The defendant is charged with / You may also consider the lesser offense of] home invasion in the third degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [broke and entered / entered without permission] a dwelling. [It does not matter whether anything was actually broken; however, some force must have been used. Opening a door, raising a window, and taking off a screen are all examples of enough force to count as a breaking.] [For an entry, it does not matter whether the defendant got (his / her) entire body inside. If the defendant put any part of (his / her) body into the dwelling, that is enough to count as an entry.]

(3) Second, that when the defendant entered, was present in, or was leaving the dwelling, [he / she] violated a term or condition of [probation / parole / a personal protection order / a bond or pretrial release].

(4) Third, that the term or condition the defendant violated was ordered to protect a named person or persons.

History

M Crim JI 25.2f (formerly CJI2d 25.2f) was adopted by the committee in September, 1999, to specify the elements of the offense created by 1999 PA 44, MCL 750.110a, effective October 1, 1999.

Reference Guide

Statutes

MCL 750.110a.

M Crim JI 25.3 Entering Without Breaking

(1) [The defendant is charged with the crime of / You may also consider the lesser charge of][1] entering without breaking. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant entered a building[2] [without breaking]. It does not matter whether the defendant got [his / her] entire body inside. If the defendant put any part of [his / her] body into the building, that is enough to count as an entry.

(3) Second, that when the defendant entered the building, [he / she] intended[3] to commit [*state offense*].[4]

Use Note

[1] Use when instructing on the crime as a lesser included offense.

[2] Alternatively, specify type of building. See MCL 750.111.

[3] This is a specific intent crime.

[4] The elements of the offense intended should be given.

History

M Crim JI 25.3 (formerly CJI2d 25.3) was CJI 25:3:01.

Reference Guide

Statutes

MCL 750.111.

Case Law

People v Jacques, 456 Mich 352, 572 NW2d 195 (1998); *People v Williams*, 368 Mich 494, 497-498, 118 NW2d 391 (1962); *People v Heft*, 299 Mich App 69, 829 NW2d 266 (2012); *People v Matusik*, 63 Mich App 347, 350 n2, 234 NW2d 517 (1975).

M Crim JI 25.4 Entering Without Owner's Permission

(1) [The defendant is charged with the crime of / You may also consider the lesser charge of] entering a building without the owner's permission. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant entered a building.* It does not matter whether the defendant got [his / her] entire body inside. If the defendant put any part of [his / her] body into the building, that is enough to count as an entry.

(3) Second, that the defendant did this without first getting permission to enter from someone who had authority to give permission.

Use Note

*Alternatively, specify type of building. See MCL 750.115.

History

M Crim JI 25.4 (formerly CJI2d 25.4) was CJI 25:4:01.

Reference Guide

Statutes

MCL 750.115.

Case Law

People v Hardiman, 132 Mich App 382, 347 NW2d 460 (1984); *People v Coffey*, 61 Mich App 110, 119, 232 NW2d 320 (1975).

M Crim JI 25.5 Possession of Burglar's Tools

(1) The defendant is charged with the crime of possession of burglary tools. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the instruments involved were burglary tools. A burglary tool is any tool or instrument [or chemical, explosive, or other substance][1] adapted and designed for breaking and entering. "Adapted and designed" means that the tools are not only capable of being used for a breaking and entering but are also designed or expressly planned to be used for this purpose.

(3) Second, that the defendant knowingly possessed burglary tools.

(4) Third, that when [he / she] possessed the tools, [he / she] intended[2] to use them to break and enter a _____.[3]

Use Note

[1] Use bracketed material if the tools alleged include an explosive or chemical.

[2] This is a specific intent crime.

[3] The statute lists "building, room, vault, safe or other depository." See MCL 750.116.

In *People v Smith*, 36 Mich App 180, 193 NW2d 397 (1971), the court interpreted the phrase *other depository* to include a car trunk, even though the phrase predated cars. In *People v Osby*, 291 Mich App 412, 804 NW2d 903 (2011), the court of appeals expanded the concept and held that the term *depository* is a catch-all term that includes motor vehicles.

History

M Crim JI 25.5 (formerly CJI2d 25.5) was CJI 25:5:01.

Reference Guide

Statutes

MCL 750.116.

Case Law

People v Dorrington, 221 Mich 571, 191 NW 831 (1923); *People v Osby*, 291 Mich App 412, 804 NW2d 903 (2011); *People v Gross*, 118 Mich App 161, 324 NW2d 557 (1982); *People v Rigsby*, 92 Mich App 95, 284 NW2d 499 (1979); *People v Ross*, 39 Mich App 697, 198 NW2d 439 (1972); *People v Smith*, 36 Mich App 180, 193 NW2d 397 (1971).

M Crim JI 25.6 Occupying a Dwelling Without Consent (Squatting)

(1) The defendant is charged with occupying a dwelling without consent. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant occupied a one-family dwelling, or at least one unit of a two-family dwelling. A dwelling is a building designed as a place for people to live.

(3) Second, that the dwelling was owned by [*name complainant*].

(4) Third, that the defendant did not have [*name complainant*]'s consent to occupy the dwelling.

(5) Fourth, that the defendant occupied the dwelling without an agreement for payment of money to [*name complainant*] or for an exchange of something else of value with [*name complainant*] during the time that the defendant occupied the dwelling.

[*Use the following paragraph where there is evidence that the defendant was a guest or family member under MCL 750.553(2):*]

(6) [The defendant is not guilty if [he / she] is a guest or family member of [*name complainant*] or of a tenant.]

Use Note

"'[O]wner' means the owner, lessor, or licensor or an agent thereof." MCL 600.2918(9), which was tie-barred to passage of the statute that applies here, MCL 750.553.

History

Adopted January 2016.

Reference Guide

Statutes

MCL 750.553; 600.2918(9).

CHAPTER 26

Receiving or Concealing Stolen Property

M Crim JI 26.1 Receiving and Concealing Stolen Property 26-2

M Crim JI 26.2 Definitions of Buy, Receive, Possess, and Conceal 26-4

M Crim JI 26.3 Knowledge by Defendant That Property Was Stolen 26-5

M Crim JI 26.4 No Obligation of State to Prove Conviction for Theft 26-6

M Crim JI 26.5 Honest Buying or Receiving [deleted] 26-7

M Crim JI 26.6 Dealer or Collector 26-8

M Crim JI 26.1 Receiving and Concealing Stolen Property

(1) [The defendant is charged with the crime of / You may also consider the lesser charge of] knowingly [buying / receiving / possessing / concealing / aiding in the concealment of] stolen[1] property. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that some property was stolen [or explicitly represented to the defendant as being stolen / embezzled / converted property].[1]

(3) Second, that the defendant [bought / received / possessed / concealed / aided in the concealment of] that property.[2]

(4) Third, that the defendant knew or had reason to know or reason to believe that the property was stolen when [he / she] [bought / received / possessed / concealed / aided in the concealment of] it.[3]

[*Choose (5) or (6) as applicable:*]

(5) Fourth, that the property was a motor vehicle.

(6) Fourth, that the property had a fair market value when it was [bought / received / possessed / concealed] of:[4]

[*Choose only one of the following unless instructing on lesser offenses:*]

(a) $20,000 or more.

(b) $1,000 or more, but less than $20,000.

(c) $200 or more, but less than $1,000.

(d) some amount less than $200.

[*Use the following paragraph only if applicable:*]

(7) [You may add together the value of property [bought / received / possessed / concealed] in separate incidents if part of a scheme or course of conduct within a 12-month period when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

[1] Where appropriate, substitute “embezzled” or “converted” for “stolen.”

[2] The definition of buy, receive, possess, or conceal (whichever is alleged), CJI2d 26.2, should be given where appropriate.

[3] If the crime is receiving or concealing a stolen firearm, MCL 750.535b, Michigan law requires actual notice rather

than constructive notice that the firearm was stolen. *People v Granderson*, No 297838, 2011 Mich App LEXIS 1527 (Aug 25, 2011) (unpublished).

[4] The Fair Market Value Test, CJI2d 22.1, should be given where applicable.

History

M Crim JI 26.1 (formerly CJI2d 26.1) was CJI 26:1:01; amended September, 1999, to reflect changes made by 1998 PA 311, eff. January 1, 1999; amended May, 2007, to reflect changes made to MCL 750.535 by 2006 PA 374, eff. October 1, 2006; amended May, 2008.

Reference Guide

Statutes

MCL 750.535, .535b.

Case Law

People v Kamin, 405 Mich 482, 275 NW2d 777 (1979); *People v Allay*, 171 Mich App 602, 608, 430 NW2d 794 (1988); *People v Toodle*, 155 Mich App 539, 400 NW2d 670 (1986); *People v Fortuin*, 143 Mich App 279, 372 NW2d 530 (1985).

M Crim JI 26.2 Definitions of Buy, Receive, Possess, and Conceal

(1) To buy means to purchase property, either with money or in exchange for something else of value.

(2) To receive means to accept possession of property.

(3) To possess means to knowingly have or hold property under your control.

(4) To conceal means to intentionally hide, disguise, get rid of, or do any other act to keep the property from being discovered.

Use Note

If the crime is receiving or concealing a stolen firearm, MCL 750.535b, Michigan law requires actual notice rather than constructive notice that the firearm was stolen. *People v Granderson,* No 297838, 2011 Mich App LEXIS 1527 (Aug 25, 2011) (unpublished).

History

M Crim JI 26.2 (formerly CJI2d 26.2) was CJI 26:1:03.

Reference Guide

Statutes

MCL 750.535, .535b.

Case Law

People v Reynolds, 2 Mich 422 (1852); *People v Botzen*, 151 Mich App 561, 563, 391 NW2d 410 (1986); *People v Holguin*, 141 Mich App 268, 273, 367 NW2d 846 (1985); *People v Randall*, 42 Mich App 187, 201 NW2d 292 (1972); *People v Granderson*, No 297838, 2011 Mich App LEXIS 1527 (Aug 25, 2011) (unpublished).

M Crim JI 26.3 Knowledge by Defendant That Property Was Stolen

(1) It is up to you to determine whether, at the time [he / she] [bought / received / possessed / concealed] the property, the defendant knew, or had reason to know or reason to believe, that the property was stolen.

(2) In making this determination, you may consider the following evidence:

(a) the circumstances surrounding the taking of the property

(b) the way the defendant acted

[(c) what the defendant said about the property]*

[(d) the price that was paid for the property]*

(e) how much time there was between when the property was taken and when it was found in the defendant's possession

(f) any other facts from which you can determine whether the defendant knew, or had reason to know or reason to believe, that the property was stolen.

(3) You may not infer that the defendant knew, or had reason to know or reason to believe, that the property was stolen just from the fact that [he / she] possessed it. There must be other facts and circumstances shown by the evidence in this case that would justify an inference beyond a reasonable doubt that the defendant knew, or had reason to know or reason to believe, that the property was stolen when [he / she] [bought / received / possessed / concealed] it.

Use Note

*Use bracketed material when some evidence as to those matters has been introduced at trial.

History

M Crim JI 26.3 (formerly CJI2d 26.3) was CJI 26:1:04; amended May, 2007, to reflect changes made to MCL 750.535 by 2006 PA 374, eff. October 1, 2006.

Reference Guide

Statutes

MCL 750.535.

Case Law

People v Pratt, 254 Mich App 425, 428, 656 NW2d 866 (2002); *People v Watts*, 133 Mich App 80, 348 NW2d 39 (1984); *People v Salata*, 79 Mich App 415, 421-422, 262 NW2d 844 (1977).

M Crim JI 26.4 No Obligation of State to Prove Conviction for Theft

The property in question in this case must be shown to have been stolen. However, it is not necessary to show that anyone was convicted of stealing that property.

History

M Crim JI 26.4 (formerly CJI2d 26.4) was CJI 26:1:05.

Reference Guide

Case Law

People v Green, 246 Mich 65, 224 NW 383 (1929); *People v Gross*, 123 Mich App 467, 332 NW2d 576 (1983).

M Crim JI 26.5 Honest Buying or Receiving [*deleted*]

Note. This instruction was deleted by the committee in September, 2008, because, as to the defendant's state of mind, the earlier subjective good faith test has been replaced by the objective test explained in M Crim JI 26.3.

M Crim JI 26.6 Dealer or Collector

(1) The defendant is charged with the crime of [buying / receiving] stolen* property as [the agent, employee, or representative of] a dealer or collector of merchandise. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was [the agent, employee, or representative of] a dealer or collector of merchandise.

(3) Second, that the defendant [bought / received] stolen property and that [he / she] knew, or had reason to know or reason to believe, that the property was stolen.

[*Choose (4) or (5):*]

(4) Third, that the defendant did not make a reasonable inquiry into whether the person who was selling or delivering the property to the dealer or collector had a legal right to do so. If the defendant failed to inquire into this, that is a circumstance from which you may infer that the defendant [bought / received] the property knowing, or having reason to know or reason to believe, that it was stolen. However, you do not have to make this inference.

(5) Third, that the property had on its outside surface a clearly visible identifying number that had been altered or erased. If there was an altered or erased number, that is a circumstance from which you may infer that the defendant [bought / received] the property knowing, or having reason to know or reason to believe, that it was stolen. However, you do not have to make this inference.

Use Note

*Where appropriate, substitute “embezzled” or “converted” for “stolen.”

This instruction supplements the basic receiving or concealing instructions in cases involving dealers or collectors.

History

M Crim JI 26.6 (formerly CJI2d 26.6) was CJI 26:1:07; amended May, 2007, to reflect changes made to MCL 750.535 by 2006 PA 374, eff. October 1, 2006.

Reference Guide

Statutes

MCL 750.535.

Case Law

People v Gallagher, 404 Mich 429, 273 NW2d 440 (1979); *People v Barnes*, 146 Mich App 37, 379 NW2d 464 (1985).

CHAPTER 27 *Embezzlement*

M Crim JI 27.1 Embezzlement by Agent or Servant 27-2

M Crim JI 27.2 Prima Facie Proof of Intent (Embezzlement by Agent or Servant) 27-4

M Crim JI 27.3 Embezzlement by a Public Official 27-5

M Crim JI 27.4 Prima Facie Proof of Intent (Embezzlement by a Public Official) 27-6

M Crim JI 27.5 Embezzlement of Mortgaged Property 27-7

M Crim JI 27.6 Definition of Mortgage and Mortgagee 27-8

M Crim JI 27.7 Safekeeping of Public Moneys 27-9

M Crim JI 27.1 Embezzlement by Agent or Servant

(1) The defendant is charged with the crime of embezzlement. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the [money / property] belongs to [*name principal*].[1]

(3) Second, that the defendant had a relationship of trust with [*name principal*] because the defendant was [*define relationship*].[2]

(4) Third, that the defendant obtained possession or control of the [money / property] because of this relationship.

(5) Fourth, that the defendant

[*Choose (a), (b), or (c):*]

(a) dishonestly disposed of the [money / property].

(b) converted the [money / property] to [his / her] own use.

(c) took or hid the [money / property] with the intent to convert it to [his / her] own use without consent of [*name principal*].

(6) Fifth, that at the time the defendant did this, [he / she] intended to defraud or cheat [*name principal*] of some property.[3]

(7) Sixth, that the fair market value of the property or amount of money embezzled was:[4]

[*Choose only one of the following unless instructing on lesser offenses:*]

(a) $20,000 or more.

(b) $1,000 or more, but less than $20,000.

(c) $200 or more, but less than $1,000.

(d) some amount less than $200.

[*Use the following paragraph only if applicable:*]

(8) [You may add together the value of property or money embezzled in separate incidents if part of a scheme or course of conduct (within a 12-month period)[5] when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

[1] The principal must be someone other than the defendant.

[2] The statute lists agent, servant, employee, trustee, bailee, or custodian. See the table of contents to chapter 22 for a list of definitions that may be used.

[3] This is a specific intent crime. The defendant's intent to return or replace the money at a later time does not provide a defense. *People v Butts*, 128 Mich 208, 87 NW 224 (1901).

[4] The Fair Market Value Test, M Crim JI 22.1, should be given when applicable.

[5] The 12-month time limit does not apply if the embezzlement scheme or course of conduct was directed against only one legal entity. In those cases, with one victim, do not include the parenthetical phrase referring to the 12-month period.

History

M Crim JI 27.1 (formerly CJI2d 27.1) was CJI 27:1:01; amended September, 1999, to reflect changes made by 1998 PA 312, eff. January 1, 1999.

Reference Guide

Statutes

MCL 750.174, .181.

Case Law

People v Kurrle, 335 Mich 180, 55 NW2d 787 (1952); *People v Bergman*, 246 Mich 68, 71, 224 NW 375 (1929); *People v Burns*, 242 Mich 345, 348, 218 NW 704 (1928); *People v Butts*, 128 Mich 208, 87 NW 224 (1901); *People v Collins*, 239 Mich App 125, 130-131, 607 NW2d 760 (1999); *People v Gadient*, 185 Mich App 280, 286, 460 NW2d 896 (1990); *People v Wood*, 182 Mich App 50, 53, 451 NW2d 563 (1990).

M Crim JI 27.2 Prima Facie Proof of Intent (Embezzlement by Agent or Servant)

If you determine beyond a reasonable doubt that the defendant was a[n] [agent / servant / trustee / bailee / custodian] of [*name principal*]; that the defendant had [money / property] entrusted to [his / her] care because of this relationship; that the defendant was asked to [pay / refund / deliver] the [money / property] to [*name principal*] and did not do so; then these facts, if not explained, are circumstances from which you may infer that the defendant intended to embezzle the [money / property]. However, you do not have to make this inference.

History

M Crim JI 27.2 (formerly CJI2d 27.2) was CJI 27:1:02.

Reference Guide

Statutes

MCL 750.174.

Case Law

People v Zunno, 384 Mich 151, 180 NW2d 17 (1970); *People v Butts*, 128 Mich 208, 87 NW 224 (1901); *People v Phillips*, 170 Mich App 675, 428 NW2d 739 (1988).

M Crim JI 27.3 Embezzlement by a Public Official

(1) The defendant is charged with the crime of embezzlement by a public official. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant either held public office or was the agent or employee[1] of a public official.[2]

(3) Second, that the defendant received [money / property] in [his / her] official capacity or employment.

(4) Third, that the defendant knew that the [money / property] was received by [him / her] in [his / her] official capacity or employment, and was not received for [his / her] personal use.

(5) Fourth, that the defendant used the [money / property] for [himself / herself] or provided it to any other person for [his / her] use.

(6) Fifth, that [the property was worth $50 or more / more than $50 was involved].

Use Note

[1] The statute makes reference to a "servant" of a public official. That term is no longer commonly used, so the word "employee" has been substituted.

[2] The terms "agent" and "public official" are defined in M Crim JI 22.5 and 22.19, respectively.

History

M Crim JI 27.3 (formerly CJI2d 27.3) was CJI 27:2:01.; M Crim JI 27.3 amended July 2017.

Reference Guide

Statutes

MCL 750.175.

Case Law

People v Hopper, 274 Mich 418, 264 NW 849 (1936); *People v Glazier*, 159 Mich 528, 546, 124 NW 582 (1910); *People v Warren*, 122 Mich 504, 521-522, 81 NW 360 (1899); *People v Jones*, 182 Mich App 668, 453 NW2d 293 (1990); *People v Kalbfleisch*, 46 Mich App 25, 26-27, 207 NW2d 428 (1973).

M Crim JI 27.4 Prima Facie Proof of Intent (Embezzlement by a Public Official)

If you determine beyond a reasonable doubt that the defendant was [the agent or servant of] a public official; that the defendant received [property worth] $50 or more in [his / her] official position; and that the defendant did not deliver all of the [money / property] the defendant received as a public official to [his / her] successor; then these facts, if not explained, are circumstances from which you may infer that the defendant intended to embezzle the [money / property]. However, you do not have to make this inference.

History

M Crim JI 27.4 (formerly CJI2d 27.4) was CJI 27:2:02.

Reference Guide

Statutes

MCL 750.175.

Case Law

People v Hopper, 274 Mich 418, 264 NW 849 (1936); *People v Warren*, 122 Mich 504, 521, 81 NW 360 (1899); *People v Seely*, 117 Mich 263, 265, 75 NW 609 (1898); *People v Bringard*, 39 Mich 22 (1878).

M Crim JI 27.5 Embezzlement of Mortgaged Property

(1) The defendant is charged with the crime of dishonestly [embezzling / removing / hiding / transferring] mortgaged property. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the property in question here, [*identify property*], had a [*identify encumbrance*] on it.

(3) Second, that [the defendant / someone else] held this property.

(4) Third, that the defendant [embezzled / removed / hid / transferred] the property.[1]

(5) Fourth, that when the defendant did this [he / she] knew that the property had a [*identify encumbrance*] on it.

(6) Fifth, that when the defendant did this, [he / she] intended to defraud or cheat [*name complainant*].[2]

[*Use (7) for felonies:*]

(7) Sixth, that the fair market value of the property involved is over $100.[3]

[*Use (8) for misdemeanors:*]

(8) Sixth, that the property involved is worth something.

Use Note

[1] Define terms used. See the table of contents to chapter 22 for a list of definitions.

[2] This is a specific intent crime.

[3] The Fair Market Value Test, M Crim JI 22.1, should be given when applicable.

History

M Crim JI 27.5 (formerly CJI2d 27.5) was CJI 27:3:01, 27:3:02.

Reference Guide

Statutes

MCL 750.177, .178.

Case Law

Bowen v Borland, 257 Mich 306, 241 NW 201 (1932); *People v Robinson*, 241 Mich 497, 217 NW 902 (1928); *People v Blanchard*, 239 Mich 283, 214 NW 98 (1927); *People v Schultz*, 85 Mich 114, 48 NW 293 (1891).

M Crim JI 27.6 Definition of Mortgage and Mortgagee

(1) A mortgage guarantees payment of a debt by transferring an interest in property, called a security interest, to the person to whom the debt is owed. That person holds the security interest until the debt is paid. For instance, collateral for a loan is a type of security interest.

(2) A mortgagee is the person to whom the debt is owed and who takes the security interest.

History

M Crim JI 27.6 (formerly CJI2d 27.6) was CJI 27:3:04, 27:3:05, 27:3:09.

Reference Guide

Statutes

MCL 750.177, .178.

M Crim JI 27.7 Safekeeping of Public Moneys

(1) The defendant is charged with the crime of failing to keep public money safe. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was either an officer of the [*identify public entity*] or was the agent or servant of an officer.

(3) Second, that this [*identify public entity*] is in the state of Michigan.

(4) Third, that this public officer was authorized by law to receive public money.

(5) Fourth, that the defendant did the following:

[*Choose one or more of the following:*]

(a) failed to keep the public money separate from [his / her] own money or from the money of another.

(b) used the money, or allowed it to be used, for a purpose not authorized by law.

(c) used the money for [his / her] own private use.

(d) loaned the money to another person or business without having the legal authority to do so.

(e) received money or something valuable from someone in return for depositing the public money with a particular bank, person, or business.

(f) made out a [warrant / order / certificate] for a payment of the money that was either more than the amount authorized by law or for a purpose not authorized by law, and that the defendant made this [warrant / order / certificate] intentionally, knowing that it was wrong, and with the intent to get money or some other advantage.

History

M Crim JI 27.7 (formerly CJI2d 27.7) was CJI 27:4:01, 27:4:02, 27:4:03.

Reference Guide

Statutes

MCL 750.490.

Case Law

Pokorny v Wayne County, 322 Mich 10, 13-15, 33 NW2d 641 (1948); *Board of Fire & Water Comm'rs of Marquette v Wilkinson*, 119 Mich 655, 78 NW 893 (1899).

CHAPTER 28

Forgery, Uttering and Publishing

M Crim JI 28.1 Forgery 28-2

M Crim JI 28.2 Uttering and Publishing 28-3

M Crim JI 28.3 Acceptance or Loss Not Necessary 28-4

M Crim JI 28.4 Forger Need Not Be Identified 28-5

M Crim JI 28.1 Forgery

(1) The defendant is charged with the crime of forgery. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the document in question in this case, [*identify document*], was [falsely made / altered / forged / counterfeited], in that [*state prosecution's claim*].[1]

(3) Second, that the defendant [falsely made / altered / forged / counterfeited] this document. [Forgery includes any act which falsely makes an instrument appear what it is not.]

(4) Third, that when the defendant did this, [he / she] intended to defraud or cheat someone.[2]

Use Note

[1] See the table of contents to chapter 22 for a list of definitions. See MCL 750.248.

[2] This is a specific intent crime.

History

M Crim JI 28.1 (formerly CJI2d 28.1) was CJI 28:1:01, 28:1:02; amended October, 1993.

Reference Guide

Statutes

MCL 750.248.

Case Law

People v Susalla, 392 Mich 387, 220 NW2d 405 (1974); *In re Stout*, 371 Mich 438, 124 NW2d 277 (1963); *People v Larson*, 225 Mich 355, 196 NW 412 (1923); *Watrous v Allen*, 57 Mich 362, 24 NW 104 (1885); *People v Van Horn*, 127 Mich App 489, 339 NW2d 475 (1983); *People v Grable*, 95 Mich App 20, 24, 289 NW2d 871 (1980); *People v Worden*, 91 Mich App 666, 284 NW2d 159 (1979); *People v Gill*, 8 Mich App 89, 153 NW2d 678 (1967).

M Crim JI 28.2 Uttering and Publishing

(1) The defendant is charged with the crime of uttering and publishing. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the document in question in this case, [*identify document*],[1] was [false / altered / forged / counterfeited],[2] in that [*state prosecution's claim*].

(3) Second, that the defendant represented, either by words or actions or both, that the document was genuine or true and [exhibited / offered / presented] it.[3]

(4) Third, that when the defendant did this, [he / she] knew that the document was [false / altered / forged / counterfeit].

(5) Fourth, that when the defendant did this, [he / she] intended to defraud or cheat someone.[4]

Use Note

[1] *Caution*: The instrument must be one of the instruments in the statute. See MCL 750.249.

[2] See the table of contents to chapter 22 for a list of definitions.

[3] Give M Crim JI 28.3, Acceptance or Loss Not Necessary, if needed.

[4] This is a specific intent crime.

History

M Crim JI 28.2 (formerly CJI2d 28.2) was CJI 28:2:01.

Reference Guide

Statutes

MCL 750.249.

Case Law

People v Rogers, 411 Mich 202, 305 NW2d 857 (1981); *People v Cassadime*, 258 Mich App 395, 399, 671 NW2d 559 (2003); *People v Aguwa*, 245 Mich App 1, 626 NW2d 176 (2001); *People v Hogan*, 225 Mich App 431, 571 NW2d 737 (1997); *People v Hammond*, 161 Mich App 719, 411 NW2d 837 (1987); *People v Buchanan*, 107 Mich App 648, 309 NW2d 691 (1981); *People v Berry*, 84 Mich App 604, 269 NW2d 694 (1978); *People v Fudge*, 66 Mich App 625, 239 NW2d 686 (1976).

M Crim JI 28.3 Acceptance or Loss Not Necessary

It does not matter whether the document was actually accepted as genuine by the person the defendant allegedly tried to cheat. It also does not matter whether the person actually suffered a loss [or whether the defendant actually gave anyone the document]. It is enough if the defendant offered the document, directly or indirectly, by words or actions, as genuine.

History

M Crim JI 28.3 (formerly CJI2d 28.3) was CJI 28:2:02.

Reference Guide

Case Law

People v Brandon, 46 Mich App 484, 208 NW2d 214 (1973); *People v Hester*, 24 Mich App 475, 180 NW2d 360 (1970).

M Crim JI 28.4 Forger Need Not Be Identified

It does not matter whether the defendant knew who made the [falsification / alteration / forgery / counterfeiting] of the document.

History

M Crim JI 28.4 (formerly CJI2d 28.4) was CJI 28:2:03.

Reference Guide

Case Law

People v Marion, 29 Mich 31 (1874); *People v McDaniel*, 47 Mich App 661, 668, 209 NW2d 836 (1973).

CHAPTER 29 *Checks*

M Crim JI 29.1 Definition of Credit 29-2
M Crim JI 29.2 Reasonable Expectation of Payment Negates Fraud 29-3
M Crim JI 29.3 Mistake 29-4
M Crim JI 29.4 Not Necessary to Show Loss 29-5
M Crim JI 29.5 Prima Facie Proof of Intent to Defraud 29-6
M Crim JI 29.6 Prima Facie Proof of Intent—Notice 29-7
M Crim JI 29.7 Drawing Check on Bank Without Account 29-8
M Crim JI 29.8 Three Insufficient Fund Checks Within Ten Days 29-9
M Crim JI 29.9 Checks Without Sufficient Funds 29-10

M Crim JI 29.1 Definition of Credit

Credit means an arrangement or understanding with a bank that the bank will pay a check, draft, or money order when it is presented for payment.

Use Note

The statute includes "depository."

History

M Crim JI 29.1 (formerly CJI2d 29.1) was CJI 29:1:01.

Reference Guide

Statutes

MCL 750.134.

M Crim JI 29.2 Reasonable Expectation of Payment Negates Fraud

If the defendant knew when [he / she] wrote the [check / draft / money order] that [he / she] did not have enough money in the bank to cover it at the time, but had good reason to believe that the [check / draft / money order] would be paid when it was presented for payment, then the defendant did not have the intent to defraud or cheat anyone and you must find [him / her] not guilty.

History

M Crim JI 29.2 (formerly CJI2d 29.2) was CJI 29:1:02.

Reference Guide

Case Law

People v Cimini, 33 Mich App 461, 190 NW2d 323 (1971).

M Crim JI 29.3 Mistake

If the defendant wrote the [check / draft / money order] when [he / she] did not have enough money in the bank to cover it because [he / she] had made an honest mistake about how much money [he / she] had in [his / her] account, then the defendant did not have the intent to defraud or cheat anyone and you must find [him / her] not guilty.

History

M Crim JI 29.3 (formerly CJI2d 29.3) was CJI 29:1:03.

Reference Guide

Case Law

People v Reynolds, 122 Mich App 238, 332 NW2d 451 (1982).

M Crim JI 29.4 Not Necessary to Show Loss

The prosecutor must prove that the [check / draft / money order] was presented for payment, but it does not matter whether anyone actually suffered a loss.

History

M Crim JI 29.4 (formerly CJI2d 29.4) was CJI 29:1:04.

Reference Guide

Case Law

People v Henson, 18 Mich App 259, 171 NW2d 26 (1969).

M Crim JI 29.5 Prima Facie Proof of Intent to Defraud

If you determine beyond a reasonable doubt that the defendant wrote or caused the [check / draft / money order] to be written and that [he / she] signed it; that this [check / draft / money order] was presented in the usual course of business and that the bank refused to cash it because the defendant had insufficient funds in [his / her] account; that the defendant received notice of nonpayment; and that the defendant did not pay the amount due on the [check / draft / money order] and all costs and fees within five days after [he / she] received notice of nonpayment; then these facts, if not explained, are circumstances from which you may infer that the defendant intended to defraud or cheat someone. However, you do not have to make this inference.

History

M Crim JI 29.5 (formerly CJI2d 29.5) was CJI 29:1:05.

Reference Guide

Statutes

MCL 750.132.

M Crim JI 29.6 Prima Facie Proof of Intent—Notice

If you determine beyond a reasonable doubt that the defendant wrote or caused the [check / draft / money order] to be written and that [he / she] signed it; that the bank refused to cash this [check / draft / money order] because the defendant had insufficient funds in [his / her] account, then these facts, if not explained, are circumstances from which you may infer that the defendant knew that [he / she] had insufficient funds and that [he / she] intended to defraud or cheat someone. However, you do not have to make this inference.

History

M Crim JI 29.6 (formerly CJI2d 29.6) was CJI 29:1:06.

Reference Guide

Statutes

MCL 750.133.

M Crim JI 29.7 Drawing Check on Bank Without Account

(1) The defendant is charged with the crime of writing or delivering a [check / draft / money order] on a bank without having an account or credit with that bank. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that on [*date*], the defendant wrote or delivered a [check / draft / money order] in the amount of $_____, payable to _____.

(3) Second, that this [check / draft / money order] was drawn on [*identify bank*].

(4) Third, that when [he / she] did this, the defendant did not have an account or credit with that bank.

(5) Fourth, that when [he / she] wrote or delivered this [check / draft / money order], the defendant intended to defraud or cheat someone.*

(6) Fifth, that this [check / draft / money order] was presented for payment.

Use Note

*This is a specific intent crime. See M Crim JI 29.5, Prima Facie Proof of Intent to Defraud, and M Crim JI 29.6, Prima Facie Proof of Intent—Notice.

History

M Crim JI 29.7 (formerly CJI2d 29.7) was CJI 29:2:01, 29:2:02.

Reference Guide

Statutes

MCL 750.131a.

Case Law

People v Susalla, 392 Mich 387, 393, 220 NW2d 405, 408 (1974); *People v Peach*, 174 Mich App 419, 423, 437 NW2d 9 (1989); *People v Reynolds*, 122 Mich App 238, 332 NW2d 451 (1982); *People v Finley*, 54 Mich App 259, 220 NW2d 741 (1974); *People v Henson*, 18 Mich App 259, 171 NW2d 26 (1969).

M Crim JI 29.8 Three Insufficient Fund Checks Within Ten Days

(1)The defendant is charged with the crime of writing or delivering three or more [checks / drafts / money orders] within ten days, knowing that [he / she] did not have enough money or credit with the bank to pay any of them in full. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that on [*dates*], the defendant wrote or delivered three [checks / drafts / money orders], in the amounts of $_____, $_____, and $_____.

(3)Second, that when [he / she] did this, the defendant did not have enough money or credit with the bank to pay any of the [checks / drafts / money orders] in full.

(4)Third, that when [he / she] did this, the defendant knew that [he / she] did not have enough money or credit to pay any of them in full.

(5)Fourth, that when [he / she] wrote or delivered each of these three [checks / drafts / money orders], the defendant intended to defraud or cheat someone.*

Use Note

*This is a specific intent crime.

See M Crim JI 29.5, Prima Facie Proof of Intent to Defraud, and M Crim JI 29.6, Prima Facie Proof of Intent—Notice.

History

M Crim JI 29.8 (formerly CJI2d 29.8) was CJI 29:2:03, 29:2:04.

Reference Guide

Statutes

MCL 750.131a.

M Crim JI 29.9 Checks Without Sufficient Funds

(1)The defendant is charged with the crime of writing or delivering a [check / draft / money order] without having sufficient funds to pay it. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant wrote or delivered a [check / draft / money order] in the amount of $_____, payable to _____.[1]

(3)Second, that this check was drawn on [identify bank or depository].

(4)Third, that the [check / draft / money order] was [signed / endorsed] by _____.

[*Choose (5) or (6):*]

(5)Fourth, that the defendant knew when [he / she] wrote or delivered the [check / draft / money order] that [he / she] did not have enough money or credit with [*identify bank or depository*] to pay it in full.

(6)Fourth, that when the [check / draft / money order] was presented for payment, there were not sufficient funds at [*identify bank or depository*] to pay it in full and the defendant knew when [he / she] wrote the [check / draft / money order] that there would not be enough money or credit to pay it in full when it was presented.

(7)Fifth, that when [he / she] wrote or delivered this [check / draft / money order], the defendant intended to defraud or cheat someone.[2] [If the defendant reasonably expected that the (check / draft / money order) would be paid by the bank, then there was no intent to defraud or cheat.]

(8)Sixth, that the amount was:

[*Choose only one of the following unless instructing on lesser offenses:*]

(a)$500 or more.

(b)$100 or more, but less than $500.

(c)some amount less than $100.

Use Note

[1] See the table of contents to chapter 22 for a list of definitions.

[2] This is a specific intent crime.

See M Crim JI 29.5, Prima Facie Proof of Interest to Defraud, and M Crim JI 29.6, Prima Facie Proof of Intent—Notice.

History

M Crim JI 29.9 (formerly CJI2d 29.9) was CJI 29:3:01, 29:3:02; amended September, 1999, to reflect changes made by 1998 PA 312, eff. January 1, 1999.

Reference Guide

Statutes

MCL 750.131-.133.

Case Law

People v Jacobson, 248 Mich 639, 642, 227 NW 781 (1929); *People v Chappelle*, 114 Mich App 364, 370, 319 NW2d 584 (1982); *People v Cimini*, 33 Mich App 461, 190 NW2d 323 (1971); *People v Henson*, 18 Mich App 259, 171 NW2d 26 (1969); OAG 1949-1950, No 930, pp 226-227 (May 31, 1949).

CHAPTER 30 *Financial Transaction Devices*

M Crim JI 30.1 Definition of Device holder 30-2

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M Crim JI 30.3 Stealing, Removing, or Hiding Another's Financial Transaction Device Without Consent 30-4

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M Crim JI 30.13 Possession, Use, etc. of Instrument for Making False Financial Transaction Device 30-16

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M Crim JI 30.16 Misrepresenting/Withholding/Concealing Identity to Use the Victim's Information to Obtain Credit, Goods, Services, Money, Property, Information, or Employment 30-19

M Crim JI 30.17 Misrepresenting/Withholding/Concealing Identity to Use the Victim's Information to Commit an Illegal Act 30-20

M Crim JI 30.18 Misrepresenting/Withholding/Concealing Identity to Use Victim's Information to Obtain Credit, Goods, Services, Money, Property, Information, or Employment—Defense That Defendant Acted Lawfully 30-21

M Crim JI 30.19 Definitions of Person and Personal Identifying Information 30-22

M Crim JI 30.1 Definition of Device holder

"Deviceholder" means a person [or organization] who asks for and is issued a [*name financial transaction device*]. ["Deviceholder" also means a person (or organization) who uses or accepts a (*name device*), whether or not the (*name device*) was asked for.]

Use Note

The definitions are taken from the statute, MCL 750.157m(d). See "Statutes" at the end of this chapter. The committee recommends that this instruction be given only on request where there is an issue as to whether the complainant is a deviceholder under the statute.

History

M Crim JI 30.1 (formerly CJI2d 30.1) was CJI 30:1:01.

Reference Guide

Statutes

MCL 750.157m(d), .157q.

Case Law

People v Hilliard, 160 Mich App 484, 408 NW2d 482 (1987); *People v Collins*, 158 Mich App 508, 405 NW2d 182 (1987). M Crim JI 30.2Definition of Financial Transaction Device MCL 750.157m(f); *People v Kotesky*, 190 Mich App 330, 475 NW2d 473 (1991).

M Crim JI 30.2 Definition of Financial Transaction Device

(1) A financial transaction device means any of the following:

(2) An electronic funds transfer card, such as an automatic teller machine card.

(3) A credit card.*

(4) A debit card.

(5) A point-of-sale card.

(6) Any instrument, code number, personal identification number, means of access to a credit or deposit account, or a driver's license or identification card [other than a piece of paper] that can be used, either alone or with another device, to

(a)obtain money, cash, credit, goods, services, or anything else of value;

(b)certify or guarantee that the deviceholder has available funds on deposit to honor a draft or check; or

(c)provide the deviceholder with access to an account in order to deposit, withdraw, or transfer funds or obtain information about a deposit account.

Use Note

The definitions are taken from the statute, MCL 750.157m. See "Statutes" at the end of this chapter. The committee recommends that this instruction be given only on request where there is a dispute as to whether the item in question is a financial transaction device; only those portions of the definition germane to the dispute should be given.

*Under the statute, health insurance cards are included in the definition of credit cards.

History

M Crim JI 30.2 (formerly CJI2d 30.2) was CJI 30:1:02.

Reference Guide

Statutes

MCL 750.157m(f).

Case Law

People v Kotesky, 190 Mich App 330, 475 NW2d 473 (1991).

M Crim JI 30.3 Stealing, Removing, or Hiding Another's Financial Transaction Device Without Consent

(1) The defendant is charged with the crime of [taking / stealing / removing / retaining / hiding / possessing / using] someone else's [*name financial transaction device*] without that person's consent. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [obtained possession of / retained / hid / used] [*name device*].

(3) Second, that the defendant did this knowingly.

(4) Third, that the defendant did this without [*name deviceholder*]'s consent.

(5) Fourth, that the defendant intended to defraud or cheat someone.

Use Note

Use appropriate bracketed sections as per the facts of the case. The committee recommends that the court name the financial transaction device in question, unless there is a bona fide dispute as to whether the device is indeed a financial transaction device under the statute.

History

M Crim JI 30.3 (formerly CJI2d 30.3) was CJI 30:2:01.

Reference Guide

Statutes

MCL 750.157n.

Case Law

People v Ainsworth, 197 Mich App 321, 325, 495 NW2d 177 (1992).

M Crim JI 30.4 Possession of Fraudulent or Altered Financial Transaction Device

(1) The defendant is charged with the crime of possessing a fraudulent or altered [*name financial transaction device*]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant possessed the [*name device*], which was either fraudulently issued or was altered in some way so that it was different than when it was originally issued.

(3) Second, that the defendant did this knowingly.

(4) Third, that the defendant intended to defraud or cheat someone.

Use Note

The committee recommends that the court name the financial transaction device in question, unless there is a bona fide dispute as to whether the device is indeed a financial transaction device under the statute.

History

M Crim JI 30.4 (formerly CJI2d 30.4) was CJI 30:2:01A.

Reference Guide

Statutes

MCL 750.157m(f), .157r.

M Crim JI 30.5 Possession of Another's Financial Transaction Device with Intent to Use, Deliver, Circulate, or Sell

(1) The defendant is charged with the crime of possessing someone else's [*name financial transaction device*] with the intent to use, deliver, circulate, or sell it. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant had the [*name device*] in [his / her] possession or under [his / her] control [or that the defendant received this (*name device*) from another person].

(3) Second, that at the time, the defendant knew that [he / she] was [possessing / controlling / receiving] the [*name device*] without [*name deviceholder*]'s consent.

(4) Third, that the defendant intended to [(permit / cause) someone to] use, deliver, circulate, or sell this device.

(5) Fourth, that when [he / she] did this, the defendant intended to defraud or cheat someone.

Use Note

Use appropriate bracketed sections as per the facts of the case. The committee recommends that the court name the financial transaction device in question, unless there is a bona fide dispute as to whether the device is indeed a financial transaction device under the statute.

History

M Crim JI 30.5 (formerly CJI2d 30.5) was CJI 30:3:01.

Reference Guide

Statutes

MCL 750.157m(f), .157p.

M Crim JI 30.6 Financial Transaction Device Fraud, Forgery, Material Alteration, Counterfeiting

(1) The defendant is charged with the crime of [forging / materially altering / counterfeiting / duplicating] a [*name financial transaction device*]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the [*name device*] was [falsely made / materially altered / forged / counterfeited / duplicated], in that [*state prosecution's claim*].[1]

(3) Second, that it was the defendant who [falsely made / materially altered / forged / counterfeited / duplicated] the [*name device*].

(4) Third, that when [he / she] did this, the defendant intended to defraud or cheat someone.[2]

Use Note

[1] Use the definitions in chapter 22 (see the table of contents on page 22-1) to define the instrument and the method of forgery used.

[2] This is a specific intent crime.

History

M Crim JI 30.6 (formerly CJI2d 30.6) was CJI 30:5:01.

Reference Guide

Statutes

MCL 750.157m(f), .157r.

M Crim JI 30.7 Use of Revoked or Canceled Financial Transaction Device with Intent to Defraud

(1) The defendant is charged with the crime of using a revoked or canceled [*name financial transaction device*] for the purpose of obtaining goods, services, or anything else of value. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the [*name device*] had been revoked or canceled.[1]

(3) Second, that the [*name device*] had been issued by [*identify issuer*] to [*identify issuee*] and had been revoked or canceled by [*identify issuer*].

(4) Third, that on [*date*], the defendant received notice of the revocation or cancellation through [*list means of notice*].[2]

(5) Fourth, that on [*date*], after receiving the notice, the defendant used the [*name device*] at [*name business*] for the purpose of obtaining [*state goods, property, services, or other things of value*].

(6) Fifth, that the defendant knew when [he / she] used [*name device*] that it had been revoked or canceled.

(7) Sixth, that when the defendant used the [*name device*], [he / she] intended to defraud or cheat someone.[3]

(8) Seventh, that the fair market value of the property involved is:[4]

[*Choose only one of the following unless instructing on lesser offenses:*]

(a)$500 or more.

(b)$100 or more, but less than $500.

(c)some amount less than $100.

[*Use the following paragraph only if applicable:*]

(9)[You may add together the fair market value of property obtained in separate incidents if part of a scheme or course of conduct within a 12-month period when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

[1] Use M Crim JI 30.2, Definition of Financial Transaction Device, where this issue is in dispute.

An expired card is not a revoked or canceled card.

[2] Notice must be given by personal service or by registered or certified mail with return receipt.

[3] This is a specific intent crime.

[4] The Fair Market Value Test, M Crim JI 22.1, should be given when applicable.

History

M Crim JI 30.7 (formerly CJI2d 30.7) was CJI 30:6:01, 30:6:02; amended September, 1999, to reflect changes made by 1998 PA 312, eff. January 1, 1999.

Reference Guide

Statutes

MCL 750.157m(f), .157s.

M Crim JI 30.8 Sales to or Services Performed for Violators

(1) The defendant is charged with the crime of selling or delivering goods or services to a person the defendant knew was violating the financial transaction device laws. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant sold or delivered goods or services to [*name violator*].

(3) Second, that these goods or services had some value.

(4) Third, that in doing this, the defendant used or aided someone else in using a [*name financial transaction device*].[1]

(5) Fourth, that the [*name device*] had been [*state violation alleged*].

(6) Fifth, that the defendant knew at the time that the [*name device*] had been [*state violation alleged*].

(7) Sixth, that when the defendant did this, [he / she] intended to defraud or cheat someone or aid in defrauding or cheating someone.[2]

Use Note

[1] See M Crim JI 30.2, Definition of Financial Transaction Device, and M Crim JI 30.1, Definition of Deviceholder, if these instructions are requested.

[2] This is a specific intent crime.

History

M Crim JI 30.8 (formerly CJI2d 30.8) was CJI 30:7:01.

Reference Guide

Statutes

MCL 750.157m(f), .157t.

M Crim JI 30.9 Causing Deviceholder to Be Overcharged

(1) The defendant is charged with the crime of causing a deviceholder to be wrongly charged with an unauthorized purchase or transaction, or to be overcharged, or to suffer some other financial loss. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name financial transaction device*] had been issued to [*name deviceholder*] by [*identify issuer*].

(3) Second, that [*name deviceholder*] had requested or used the [*name device*].

(4) Third, that on [*date*], [*name deviceholder*] presented the [*name device*] to obtain goods, services, or anything of value [or for anything the (*name device*) may be used for].

(5) Fourth, that the defendant forged [*name deviceholder*]'s signature or aided someone in forging the signature by [*state prosecution's claim*] [or filled out an application or form supplied by (*name issuer*)].

(6) Fifth, that by doing this, the defendant caused [*name deviceholder*] [to be overcharged / to be charged for an unauthorized purchase / to suffer a financial loss].

(7) Sixth, that when [he / she] did this, the defendant intended to defraud or cheat someone.

Use Note

Use appropriate bracketed sections as per the facts of the case. The committee recommends that the court name the financial transaction device in question, unless there is a bona fide dispute as to whether the device is indeed a financial transaction device under the statute.

History

M Crim JI 30.9 (formerly CJI2d 30.9) was CJI 30:8:01.

Reference Guide

Statutes

MCL 750.157m, .157u.

M Crim JI 30.10 False Statement for Purpose of Obtaining Financial Transaction Device

(1) The defendant is charged with the crime of making a false statement to obtain a [*name financial transaction device*]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant made, or had someone else make, a false statement in writing about [his / her] or someone else's identity.

(3) Second, that this false statement was made to obtain a [*name device*].

(4) Third, that the defendant knew that this statement was false.

(5) Fourth, that the defendant intended to defraud or cheat someone.*

Use Note

The committee recommends that the court name the financial transaction device in question, unless there is a bona fide dispute as to whether the device is indeed a financial transaction device under the statute.

*This is a specific intent crime.

History

M Crim JI 30.10 (formerly CJI2d 30.10) was CJI 30:9:01.

Reference Guide

Statutes

MCL 750.157m(f), .157v.

M Crim JI 30.11 Use of Financial Transaction Device to Defraud

(1) The defendant is charged with the crime of fraudulently using a [*name financial transaction device*] to withdraw [more money than the defendant had on deposit / more money than the defendant was allowed to / money more often than the defendant was allowed to]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant used a [*name device*] to withdraw or transfer money.

(3) Second, that the defendant withdrew [more money than the defendant had on deposit / more money than the defendant was allowed to / money more often than the defendant was allowed to].

(4) Third, that the defendant did this knowingly.

(5) Fourth, that the defendant intended to defraud or cheat someone.*

(6) Fifth, that the defendant obtained:

[*Choose only one of the following unless instructing on lesser offenses:*]

(a) $20,000 or more.

(b) $1,000 or more, but less than $20,000.

(c) $200 or more, but less than $1,000.

(d) some amount less than $200.

[*Use the following paragraph only if applicable:*]

(7) [You may add together the amounts of money obtained in separate incidents if part of a scheme or course of conduct within a 12-month period when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

The committee recommends that the court name the financial transaction device in question, unless there is a bona fide dispute as to whether the device is indeed a financial transaction device under the statute.

*This is a specific intent crime.

History

M Crim JI 30.11 (formerly CJI2d 30.11) was CJI 30:10:01; amended September, 1999, to reflect changes made by

1998 PA 312, eff. January 1, 1999.

Reference Guide

Statutes

MCL 750.157m(f), .157w.

M Crim JI 30.12 Uttering and Publishing a Financial Transaction Device

(1) The defendant is charged with the crime of uttering and publishing a [false / forged / altered / counterfeit] [*name financial transaction device*]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the [*name device*] was [false / forged / altered / counterfeit].[1]

(3) Second, that the defendant [exhibited / offered / presented] the [*name device*].

(4) Third, that the defendant, by [his / her] words, acts, or both, represented the [*name device*] as valid.

(5) Fourth, that the defendant knew when [he / she] did this that the [*name device*] was [false / forged / altered / counterfeit].

(6) Fifth, that when [he / she] did this, the defendant intended to defraud or cheat someone.[2]

Use Note

See Use Notes after M Crim JI 28.2, Uttering and Publishing.

[1] Use appropriate bracketed sections as per the facts of the case. The committee recommends that the court name the financial transaction device in question, unless there is a bona fide dispute as to whether the device is indeed a financial transaction device under the statute.

[2] This is a specific intent crime.

History

M Crim JI 30.12 (formerly CJI2d 30.12) was CJI 30:11:01.

Reference Guide

Statutes

MCL 750.157m(f), .248a.

M Crim JI 30.13 Possession, Use, etc. of Instrument for Making False Financial Transaction Device

(1) The defendant is charged with the crime of making or knowingly possessing a [*name instrument*], which was designed or adapted to make, alter, or counterfeit a [*name financial transaction device*]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant made or knowingly possessed a [*name instrument*].

(3) Second, that the [*name instrument*] was designed or adapted to make, alter, or counterfeit a [*name device*].

(4) Third, that the defendant intended to use or have someone else use the [*name instrument*] to make, alter, or counterfeit a [*name device*].*

Use Note

See *Use Note*s after M Crim JI 28.2, Uttering and Publishing.

The committee recommends that the court name the financial transaction device in question, unless there is a bona fide dispute as to whether the device is indeed a financial transaction device under the statute. The committee also recommends naming the instrument that the defendant is charged with making or possessing. This instruction does not name each and every possibility under this broadly worded statute.

*This is a specific intent crime.

History

M Crim JI 30.13 (formerly CJI2d 30.13) was CJI 30:11:02.

Reference Guide

Statutes

MCL 750.157m(f), .249a.

M Crim JI 30.14 Use of the Victim's Information to Obtain Credit, Goods, Services, Money, Property, Information, or Employment with the Intent to Defraud

(1) The defendant is charged with the crime of [using / attempting to use] the personal identifying information of another person to obtain [credit / goods / services / money / property / a vital record / a confidential telephone record / medical records or information / employment]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [used / attempted to use] the personal identifying information of [*name complainant*].

(3) Second, that the defendant did this with the intent to obtain [credit / goods / services / money / property / a vital record / a confidential telephone record / medical records or information / employment].

(4) Third, that the defendant did this with the intent to defraud.

Use Note

This instruction is based on MCL 445.65(1)(a)(i).

History

M Crim JI 30.14 (formerly CJI2d 30.14) was adopted in September, 2013. The previous version of this instruction was adopted in September, 1997, and renumbered as M Crim JI 35.7 in September, 2010.

Reference Guide

Statutes

MCL 445.65(1)(a)(i).

M Crim JI 30.15 Use of the Victim's Information to Commit an Illegal Act

(1) The defendant is charged with the crime of [using / attempting to use] the personal identifying information of another person to commit an illegal act. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [used / attempted to use] the personal identifying information of [*name complainant*].

(3) Second, that the defendant did this with the intent to commit the illegal act of [*state illegal act*].

Use Note

This instruction is based on MCL 445.65(1)(a)(ii).

History

M Crim JI 30.15 (formerly CJI2d 30.15) was adopted in September, 2013. The previous version of this instruction was adopted in September, 1997, and renumbered as M Crim JI 35.8 in September, 2010.

Reference Guide

Statutes

MCL 445.65(1)(a)(ii).

M Crim JI 30.16 Misrepresenting/Withholding/Concealing Identity to Use the Victim's Information to Obtain Credit, Goods, Services, Money, Property, Information, or Employment

(1) The defendant is charged with the crime of [concealing / withholding / misrepresenting] [his / her] identity to [use / attempt to use] the personal identifying information of [*name complainant*] to obtain [credit / goods / services / money / property / a vital record / a confidential telephone record / medical records or information / employment]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [concealed / withheld / misrepresented] [his / her] identity.

(3) Second, that the defendant [used / attempted to use] the personal identifying information of [*name complainant*].

(4) Third, that the defendant did this with the intent to obtain [credit / goods / services / money / property / a vital record / a confidential telephone record / medical records or information / employment].

Use Note

This instruction is based on MCL 445.65(1)(b)(i).

History

M Crim JI 30.16 was adopted in September, 2013. The previous version of this instruction was adopted in September, 1997, and renumbered as M Crim JI 35.9 in September, 2010.

Reference Guide

Statutes

MCL 445.65(1)(b)(i).

M Crim JI 30.17 Misrepresenting/Withholding/Concealing Identity to Use the Victim's Information to Commit an Illegal Act

(1) The defendant is charged with the crime of [concealing / withholding / misrepresenting] [his / her] identity to [use / attempt to use] the personal identifying information of [*name complainant*] to commit an illegal act. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [concealed / withheld / misrepresented] [his / her] identity.

(3) Second, that the defendant [used / attempted to use] the personal identifying information of [*name complainant*].

(4) Third, that the defendant did this with the intent to commit the illegal act of [*state illegal act*].

Use Note

This instruction is based on MCL 445.65(1)(b)(ii).

History

M Crim JI 30.17 was adopted in September, 2013. The previous version of this instruction was adopted in September, 1997, and renumbered as M Crim JI 35.2 in September, 2010.

Reference Guide

Statutes

MCL 445.65(1)(b)(ii).

M Crim JI 30.18 Misrepresenting/Withholding/Concealing Identity to Use Victim's Information to Obtain Credit, Goods, Services, Money, Property, Information, or Employment—Defense That Defendant Acted Lawfully

One of the defenses that will be raised in this case is that the defendant acted lawfully when [he / she] [concealed / withheld / misrepresented] [his / her] identity when [using / attempting to use] [*name complainant*]'s personal identifying information to obtain [credit / goods / services / money / property / a vital record / a confidential telephone record / medical records or information / employment]. The law allows a person to [conceal / withhold / misrepresent] [his / her] identity when [using / attempting to use] another person's personal identifying information to obtain [credit / goods / services / money / property / a vital record / a confidential telephone record / medical records or information / employment] if defendant's use of the [*name complainant*]'s personal identifying information was [used in the lawful pursuit or enforcement of the (*name complainant*)'s rights / authorized by state or federal law / used with the (*name complainant*)'s consent, unless the (*name complainant*) knew that the information was used to commit an unlawful act].

This is an affirmative defense that the defendant has the burden of proving by a preponderance of the evidence. That means the defendant must satisfy you with evidence that outweighs the evidence against the defendant that [his / her] use of the [*name complainant*]'s personal identifying information to obtain [credit / goods / services / money / property / a vital record / a confidential telephone record / medical records or information / employment] was [in the lawful pursuit or enforcement of the (*name complainant*)'s rights/authorized by state or federal law / used with the (*name complainant*)'s consent, unless the (*name complainant*) knew that the information was used to commit an unlawful act].

Use Note

This instruction is based on MCL 445.65(1)(b)(i), (2).

History

M Crim JI 30.18 was adopted in September, 2013. The previous version of this instruction was adopted in September, 1997, and renumbered as M Crim JI 35.3 in September, 2010.

Reference Guide

Statutes

MCL 445.65(1)(b)(i), (2).

M Crim JI 30.19 Definitions of Person and Personal Identifying Information

(1) The term person means an individual or a legal entity, such as a partnership, a corporation, a limited liability company, or an association.

(2) The term *personal identifying information* means a name, number, or other information that is used for the purpose of identifying a specific person or providing access to a person's financial accounts, including, but not limited to, a person's [*choose appropriate term(s):*] [name / address / telephone number / driver license or state personal identification card number / social security number / place of employment / employee identification number / employer or taxpayer identification number / government passport number / health insurance identification number / mother's maiden name / demand deposit account number / savings account number / financial transaction device account number, account password, or any other account password in combination with sufficient information to identify and access the account / automated or electronic signature / biometrics / stock or other security certificate or account number / credit card number / vital record / medical records or information].

Use Note

This instruction is based on MCL 445.63(p), (q).

History

M Crim JI 30.19 was adopted in September, 2013. The previous version of this instruction was adopted in September, 1997, and renumbered as M Crim JI 35.4 in September, 2010.

Note

CJI2d 30.14 through CJI2d 30.21 were moved to chapter 35, Telecommunications and Computer Offenses, when that chapter was added in September, 2010, and were renumbered as follows:

CJI2d Number Title	Title	New M Crim JI Number
CJI2d 30.14	Accessing Computer with Intent to Defraud	M Crim JI 35.7
CJI2d 30.15	Unlawful Use of a Computer System	M Crim JI 35.8
CJI2d 30.16	Unlawfully Inserting Instructions into Computer	M Crim JI 35.9
CJI2d 30.17	Unlawful Use of Telecommunications Services by Agent or Employee	M Crim JI 35.2
CJI2d 30.18	Unlawful Possession, Delivery, or Manufacturing of Telecommunications Device	M Crim JI 35.3

CJI2d 30.19	Unlawfully Delivering or Advertising Plans for Telecommunications Device	M Crim JI 35.4
CJI2d 30.20	Unlawfully Obtaining Telecommunications Service	M Crim JI 35.5
CJI2d 30.21	Unlawfully Publishing a Telecommunications Access Device	M Crim JI 35.6

Reference Guide

Statutes

MCL 445.63(p), (q).

CHAPTER 31 *Arson*

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M Crim JI 31.1 Arson—Implication That Fire Had Natural Causes

When there is a fire, the law assumes that it had natural or accidental causes. The prosecutor must overcome this assumption and prove beyond a reasonable doubt that the fire was intentionally set.

Use Note

This is a general instruction for use in any arson case. It is adapted from Iowa, 2 Uniform Jury Instructions Annot §502.4 (1970), whose law on this matter is the same as that of Michigan.

History

M Crim JI 31.1 (formerly CJI2d 31.1) was CJI 31:0:01.

Reference Guide

Case Law

People v Lee, 231 Mich 607, 611-612, 204 NW 742, 744 (1925); *People v Barr*, 156 Mich App 450, 402 NW2d 489 (1986); *People v Williams*, 114 Mich App 186, 318 NW2d 671 (1982).

M Crim JI 31.2 Arson in the First Degree—Multiunit Building

(1) The defendant is charged with the crime of arson in the first degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*]. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3) Second, that the property that was burned, damaged, or destroyed was a multiunit building or structure in which one or more units of the building were dwellings. It does not matter whether any of the units were occupied, unoccupied, or vacant at the time of the fire or explosion.*

[*Building* includes any structure regardless of class or character and any building or structure that is within the curtilage of that building or structure or that is appurtenant to or connected to that building or structure.]

[*Dwelling* includes, but is not limited to, any building, structure, vehicle, watercraft, or trailer adapted for human habitation that was actually lived in or reasonably could have been lived in at the time of the fire or explosion and any building or structure that is within the curtilage of that dwelling or that is appurtenant to or connected to that dwelling.]

[It does not matter whether the defendant owned the property or its contents.]

(4) Third, that when the defendant burned, damaged, or destroyed the property or any of its contents, [he / she] intended to burn, damage, or destroy the property or its contents or intentionally committed an act that created a very high risk of burning the property or its contents and that, while committing the act, the defendant knew of that risk and disregarded it.

Use Note

*If the alleged arson occurs at a mine, substitute “a mine” for “a multiunit building or structure in which one or more units of the building were dwellings.”

Use bracketed material when applicable. Provide a “curtilage” or “appurtenance” instruction if necessary.

History

M Crim JI 31.2 was adopted in May, 2013. The previous version of M Crim JI 31.2, Burning Dwelling House [Use for Act(s) Occurring Before April 3, 2013], was renumbered as M Crim JI 31.15 in May, 2013.

Reference Guide

Statutes

MCL 750.71, .72(1)(a).

Case Law

People v Losinger, 331 Mich 490, 503, 50 NW2d 137 (1951).

M Crim JI 31.3 Arson in the First Degree—Building and Physical Injury

(1) The defendant is charged with the crime of arson in the first degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*]. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3) Second, that the property that was burned, damaged, or destroyed was a building, structure, or other real property or any of its contents. [It does not matter whether the defendant owned or used the property.] [Building includes any structure regardless of class or character and any building or structure that is within the curtilage of that building or structure or that is appurtenant to or connected to that building or structure.]

(4) Third, that when the defendant burned, damaged, or destroyed the property or any of its contents, [he / she] intended to burn, damage, or destroy the property or its contents or intentionally committed an act that created a very high risk of burning the property or its contents and that, while committing the act, the defendant knew of that risk and disregarded it.

(5) Fourth, that as a result of the fire or explosion, an individual was physically injured.

[*Physical injury* means an injury that includes, but is not limited to, the loss of a limb or use of a limb; loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb; loss of an eye or ear or loss of use of an eye or ear; loss or substantial impairment of a bodily function; serious, visible disfigurement; a comatose state that lasts for more than three days; measurable brain or mental impairment; a skull fracture or other serious bone fracture; subdural hemorrhage or subdural hematoma; loss of an organ; heart attack; heat stroke; heat exhaustion; smoke inhalation; a burn including a chemical burn; or poisoning.]

[*Individual* means any person and includes, but is not limited to, a firefighter, a law enforcement officer, or other emergency responder, whether paid or volunteer, performing his or her duties in relation to a violation of this chapter or performing an investigation.]

Use Note

Use bracketed material when applicable. Provide a “curtilage” or “appurtenance” instruction if necessary.

History

M Crim JI 31.3 was adopted in May, 2013. The previous version of M Crim JI 31.3, Burning Other Real Property [Use for Act(s) Occurring Before April 3, 2013], was renumbered as M Crim JI 31.16 in May, 2013.

Reference Guide

Statutes

MCL 750.71, .72(1)(b)

Case Law

People v Nowack, 462 Mich 392, 614 NW2d 78 (2000); *People v Losinger*, 331 Mich 490, 503, 50 NW2d 137 (1951).

M Crim JI 31.4 Arson in the Second Degree

(1) [The defendant is charged with the crime of / You may also consider the lesser charge of] arson in the second degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*]. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3) Second, that at the time of the burning the property that was damaged was a dwelling or any of its contents.

[*Dwelling* includes, but is not limited to, any building, structure, vehicle, watercraft, or trailer adapted for human habitation that was actually lived in or reasonably could have been lived in at the time of the fire or explosion and any building or structure that is within the curtilage of that dwelling or that is appurtenant to or connected to that dwelling.]

[A business that is located very close to and used in connection with a dwelling may be considered to be a dwelling.] [It does not matter whether the defendant owned or used the dwelling.]

(4) Third, that when the defendant burned the dwelling or any of its contents, [he / she] intended to burn the dwelling or its contents or intentionally committed an act that created a very high risk of burning the dwelling or its contents and that, while committing the act, the defendant knew of that risk and disregarded it.

Use Note

Use bracketed material when applicable. Provide a "curtilage" or "appurtenance" instruction if necessary.

History

M Crim JI 31.4 was adopted in May, 2013. The previous version of M Crim JI 31.4, Burning Personal Property [Use for Act(s) Occurring Before April 3, 2013], was renumbered as M Crim JI 31.17 in May, 2013.

Reference Guide

Statutes

MCL 750.71, .73.

Case Law

People v Mendoza, 468 Mich 527, 664 NW2d 685 (2003); *People v Cornell*, 466 Mich 335, 646 NW2d 127 (2002); *People v Nowack*, 462 Mich 392, 614 NW2d 78 (2000); *People v Losinger*, 331 Mich 490, 503, 50 NW2d 137 (1951).

M Crim JI 31.5 Arson in the Third Degree—Building/Structure/Real Property

(1) [The defendant is charged with the crime of / You may also consider the lesser charge of] arson in the third degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt.

(2) First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*]. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3) Second, that at the time of the burning the property was a building, structure, or other real property or its contents.

[*Building* includes any structure regardless of class or character and any building or structure that is within the curtilage of that building or structure or that is appurtenant to or connected to that building or structure.] [It doesn't matter whether the building was occupied, unoccupied, or vacant at the time of the fire or explosion.] [It does not matter whether the defendant owned or used the building.]

(4) Third, that when the defendant burned the building or any of its contents, [he / she] intended to burn the building or contents or intentionally committed an act that created a very high risk of burning the building or contents and that, while committing the act, the defendant knew of that risk and disregarded it.

Use Note

Use bracketed material when applicable. Provide a definition of real property if appropriate. Provide a "curtilage" or "appurtenance" instruction if necessary.

History

M Crim JI 31.5 was adopted in May, 2013. The previous version of M Crim JI 31.5, Burning Insured Property [Use for Act(s) Occurring Before April 3, 2013], was renumbered as M Crim JI 31.18 in May, 2013.

Reference Guide

Statutes

MCL 750.71, .74(1)(a).

Case Law

People v Mendoza, 468 Mich 527, 664 NW2d 685 (2003); *People v Cornell*, 466 Mich 335, 646 NW2d 127 (2002); *People v Nowack*, 462 Mich 392, 614 NW2d 78 (2000); *People v Losinger*, 331 Mich 490, 503, 50 NW2d 137 (1951).

M Crim JI 31.6 Arson in the Third Degree—Personal Property

(1) [The defendant is charged with the crime of / You may also consider the lesser charge of] arson in the third degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*]. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3) Second, that at the time of the burning the property that was damaged was any personal property. [Personal property in this case means any personally owned property regardless of class or character.] [It does not matter whether the defendant owned the property.]

(4) Third, that when the defendant burned it, the property had a fair market value of:

[*Choose one:*]

(a)$20,000 or more.

(b)$1,000 or more.*

(5) Fourth, that when the defendant burned the property, [he / she] intended to burn or intentionally committed an act that created a very high risk of burning the building or contents and that, while committing the act, the defendant knew of that risk and disregarded it.

Use Note

Use bracketed material when applicable.

*Choose (b) if the defendant has one or more prior convictions.

History

M Crim JI 31.6 was adopted in May, 2013. The previous version of M Crim JI 31.6, Preparation to Burn [Use for Act(s) Occurring Before April 3, 2013], was renumbered as M Crim JI 31.19 in May, 2013.

Reference Guide

Statutes

MCL 750.71, .74(1)(b)(i), (ii).

Case Law

People v Mendoza, 468 Mich 527, 664 NW2d 685 (2003); *People v Cornell*, 466 Mich 335, 646 NW2d 127 (2002); *People v Nowack*, 462 Mich 392, 614 NW2d 78 (2000); *People v Losinger*, 331 Mich 490, 503, 50 NW2d 137 (1951).

M Crim JI 31.7 Arson in the Fourth Degree—Personal Property

(1) The defendant is charged with the crime of / You may also consider the lesser charge of] arson in the fourth degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*]. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3) Second, that at the time of the burning the property was personal property.

[*Personal property* means any personally owned property regardless of class or character.] [It does not matter whether the defendant owned the property.]

(4) Third, that when the defendant burned the property, it had a fair market value of:

[*Choose one:*]

(a)$1,000 or more but less than $20,000.

(b)$200 or more.*

(5) Fourth, that when the defendant burned the property, [he / she] intended to burn or intentionally committed an act that created a very high risk of burning the property and that, while committing the act, the defendant knew of that risk and disregarded it.

Use Note

Use bracketed material when applicable.

*Choose (b) if the defendant has one or more prior convictions.

History

M Crim JI 31.7 was adopted in May, 2013.

Reference Guide

Statutes

MCL 750.71, .75(1)(a)(i), (ii).

Case Law

People v Mendoza, 468 Mich 527, 664 NW2d 685 (2003); *People v Cornell*, 466 Mich 335, 646 NW2d 127 (2002); *People v Nowack*, 462 Mich 392, 614 NW2d 78 (2000); *People v Losinger*, 331 Mich 490, 503, 50 NW2d 137 (1951).

M Crim JI 31.8 Arson of Insured Property—Dwelling

(1) The defendant is charged with the crime of arson of insured property. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*]. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3) Second, that the property burned, damaged, or destroyed by fire or explosive was a dwelling or any of its contents.

[*Dwelling* includes, but is not limited to, any building, structure, vehicle, watercraft, or trailer adapted for human habitation that was actually lived in or reasonably could have been lived in at the time of the fire or explosion and any building or structure that is within the curtilage of that dwelling or that is appurtenant to or connected to that dwelling.]

[A business that is located very close to and used in connection with a dwelling may be considered to be a dwelling.][It does not matter whether the defendant owned or used the dwelling.]

(4) Third, that at the time of the burning, the property was insured against loss or damage by fire or explosion. [It does not matter whether this was the defendant's property or someone else's.]

(5) Fourth, that at the time of the burning, the defendant knew that the property was insured against loss or damage by fire or explosion.

(6) Fifth, that when the defendant burned the property, [he / she] intended to set a fire or explosion, knowing that this would cause injury or damage to another person or to property, and that the defendant did it without just cause or excuse.

(7) Sixth, that when the defendant burned the property, [he / she] intended to defraud or cheat the insurer.

Use Note

Use bracketed material when applicable. Provide an instruction on "curtilage" or "appurtenance" if appropriate.

History

M Crim JI 31.8 was adopted in May, 2013.

Reference Guide

Statutes

MCL 750.76.

Case Law

People v Dorrikas, 354 Mich 303, 92 NW2d 305 (1958); *People v Potter*, 213 Mich 301, 307, 182 NW 144 (1921); *People v Biossat*, 206 Mich 334, 172 NW 933 (1919); *People v Stewart*, 163 Mich 1, 127 NW 816 (1910); *People v Mix*, 149 Mich 260, 262, 112 NW 907 (1907); *People v Gotshall*, 123 Mich 474, 82 NW 274 (1900); *Meister v People*, 31 Mich 99, 108 (1875).

M Crim JI 31.9 Arson of Insured Property—Building/Real Property

(1) The defendant is charged with the crime of arson of insured property. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*]. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3) Second, that the property burned, damaged, or destroyed by fire or explosive was a structure, building, or other real property or its contents. [It does not matter whether the defendant owned or used the property.]

(4) Third, that at the time of the burning, the property was insured against loss or damage by fire or explosion. [It does not matter whether this was the defendant's property or someone else's.]

(5) Fourth, that at the time of the burning, the defendant knew that the property was insured against loss or damage by fire or explosion.

(6) Fifth, that when the defendant burned the property, [he / she] intended to set a fire or explosion, knowing that this would cause injury or damage to another person or to property, and that the defendant did it without just cause or excuse.

(7) Sixth, that when the defendant burned the property, [he / she] intended to defraud or cheat the insurer.

Use Note

Use bracketed material when applicable. Provide a definition of real property if appropriate.

History

M Crim JI 31.9 was adopted in May, 2013.

Reference Guide

Statutes

MCL 750.76.

Case Law

People v Dorrikas, 354 Mich 303, 92 NW2d 305 (1958); *People v Potter*, 213 Mich 301, 307, 182 NW 144 (1921); *People v Biossat*, 206 Mich 334, 172 NW 933 (1919); *People v Stewart*, 163 Mich 1, 127 NW 816 (1910); *People v Mix*, 149 Mich 260, 262, 112 NW 907 (1907); *People v Gotshall*, 123 Mich 474, 82 NW 274 (1900); *Meister v People*, 31 Mich 99, 108 (1875).

M Crim JI 31.10 Arson of Insured Property—Personal Property

(1) The defendant is charged with the crime of arson of insured property. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*]. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3) Second, that the property burned, damaged, or destroyed by fire or explosive was personal property.

[*Personal property* means any personally owned property regardless of class, character, or value.] [It does not matter whether the defendant owned or used the property.]

(4) Third, that at the time of the burning, the property was insured against loss or damage by fire or explosion.

(5) Fourth, that at the time of the burning, the defendant knew that the property was insured against loss or damage by fire or explosion.

(6) Fifth, that when the defendant burned the property, [he / she] intended to set a fire or explosion, knowing that this would cause injury or damage to another person or to property, and that the defendant did it without just cause or excuse.

(7) Sixth, that when the defendant burned, damaged, or destroyed the property, [he / she] intended to defraud or cheat the insurer.

Use Note

Use bracketed material when applicable.

History

M Crim JI 31.10 was adopted in May, 2013.

Reference Guide

Statutes

MCL 750.76.

Case Law

People v Dorrikas, 354 Mich 303, 92 NW2d 305 (1958); *People v Potter*, 213 Mich 301, 307, 182 NW 144 (1921); *People v Biossat*, 206 Mich 334, 172 NW 933 (1919); *People v Stewart*, 163 Mich 1, 127 NW 816 (1910); *People v Mix*, 149 Mich 260, 262, 112 NW 907 (1907); *People v Gotshall*, 123 Mich 474, 82 NW 274 (1900); *Meister v People*, 31 Mich 99, 108 (1875).

M Crim JI 31.11 Preparation to Burn Personal Property

(1) The defendant is charged with the crime of placing a flammable or explosive substance near property with intent to commit arson. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant put some kind of flammable, combustible, or explosive material, liquid, substance, or device in or near [*describe property alleged*] [or aided, counseled, induced, persuaded, or procured another person to do so].

(3) Second, that when the defendant did this, [he / she] intended to burn, damage, or destroy by fire or explosive [*describe property alleged*].

(4) Third, that the property had a fair market value when the defendant [intended to burn / burned] it of:*

[*Choose only one of the following unless instructing on lesser offenses:*]

(a) The property had some value.

(b) The property had a combined value of $200 or more [but less than $1,000].

(c) The property had a combined value of $1,000 or more [but less than $20,000].

(d) The property had a combined value of $20,000 or more.

[*Use the following paragraph only if applicable:*]

(5) [If part of a scheme or course of conduct within a 12-month period, you may add together the values of property intended to be burned in separate incidents when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

*The Fair Market Value Test, M Crim JI 22.1, should be given when applicable.

Use bracketed material when applicable. The bracketed material in (4)(b) and (c) should be used if the instruction is for a lesser included offense.

History

M Crim JI 31.11 was adopted in May, 2013.

Reference Guide

Statutes

MCL 750.79.

M Crim JI 31.12 Preparation to Burn Personal Property with Fraudulent Intent

(1) The defendant is charged with the crime of placing a flammable or explosive substance near property with intent to commit arson. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant put some kind of flammable, combustible, or explosive material, liquid, substance, or device in or near [*describe property alleged*] [or aided, counseled, induced, persuaded, or procured another person to do so].

(3) Second, that when the defendant did this, [he / she] intended to burn, damage, or destroy by fire or explosive [*describe property alleged*].

(4) Third, the property had a fair market value of $2,000 or more.

(5) Fourth, that at the time the defendant did this, the property was insured against loss or damage by fire or explosion. [It does not matter whether this was the defendant's property or someone else's.]

(6) Fifth, that at the time the defendant did this, [he / she] knew that the property was insured against loss or damage by fire or explosion.

(7) Sixth, that when the defendant did this, [he / she] intended to set a fire or explosion, knowing that this could cause injury or damage to another person or to property, and that the defendant did it without just cause or excuse.

(8) Seventh, that the defendant intended to defraud or cheat the insurer.

Use Note

Use bracketed material when applicable. It is not required that any fire or damage actually occurred.

History

M Crim JI 31.12 was adopted in May, 2013.

Reference Guide

Statutes

MCL 750.79.

M Crim JI 31.13 Preparation to Burn Dwelling—No Aggravating Circumstances

(1) The defendant is charged with the crime of placing a flammable or explosive substance near property with intent to commit arson. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant put some kind of flammable, combustible, or explosive material, liquid, substance, or device in or near [*describe property alleged*] [or aided, counseled, induced, persuaded, or procured another person to do so].

(3) Second, that when the defendant did this, [he / she] intended to burn, damage, or destroy by fire or explosive [*describe property alleged*].

(4) Third, the property was a dwelling.

[*Dwelling* includes, but is not limited to, any building, structure, vehicle, watercraft, or trailer adapted for human habitation that was actually lived in or reasonably could have been lived in at the time of the fire or explosion and any building or structure that is within the curtilage of that dwelling or that is appurtenant to or connected to that dwelling.]

Use Note

Use bracketed material when applicable. It is not required that any fire or damage actually occurred. Provide a "curtilage" or "appurtenance" instruction if necessary.

History

M Crim JI 31.13 was adopted in May, 2013.

Reference Guide

Statutes

MCL 750.79.

M Crim JI 31.14 Preparation to Burn Building—No Aggravating Circumstances

(1) The defendant is charged with the crime of placing a flammable or explosive substance near property with intent to commit arson. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant put some kind of flammable, combustible, or explosive material, liquid, substance, or device in or near [*describe property alleged*] [or aided, counseled, induced, persuaded, or procured another person to do so].

(3) Second, that when the defendant did this, [he / she] intended to burn, damage, or destroy by fire or explosive [*describe property alleged*].

(4) Third, that the property was a building, structure, or other real property.

[*Building* includes any structure regardless of class or character and any building or structure that is within the curtilage of that building or structure or that is appurtenant to or connected to that building or structure.]

[It doesn't matter whether the defendant owned the building, structure, or other real property.]

Use Note

Use bracketed material when applicable. It is not required that any fire or damage actually occurred.

History

M Crim JI 31.14 was adopted in May, 2013.

Reference Guide

Statutes

MCL 750.79.

M Crim JI 31.15 Burning Dwelling House [Use for Act(s) Occurring Before April 3, 2013]

(1) The defendant is charged with the crime of burning a dwelling house or any of its contents. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant burned [*describe property alleged*]. The term "burn" in this case means setting fire to or doing anything that results in the starting of a fire, or helping or persuading someone else to set a fire. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

(3) Second, that at the time of the burning the building was a dwelling house. A dwelling house is a structure that was actually being lived in or that reasonably could have been lived in at the time of the fire. [A business that is located very close to and used in connection with a dwelling may be considered to be a dwelling.] [It does not matter whether the defendant owned or used the building.]

(4) Third, that when the defendant burned the dwelling or any of its contents, [he / she] intended to burn the dwelling or contents or intentionally committed an act that created a very high risk of burning the dwelling or contents and that, while committing the act, the defendant knew of that risk and disregarded it.

Use Note

Use bracketed material when applicable.

History

M Crim JI 31.15 (formerly CJI2d 31.15) was CJI 31:1:01; amended in September, 2000; renumbered from M Crim JI 31.2 in May, 2013.

Reference Guide

Statutes

MCL 750.71, .72.

Case Law

People v Nowack, 462 Mich 392, 614 NW2d 78 (2000); *People v Reeves*, 448 Mich 1, 528 NW2d 160 (1995); *People v Losinger*, 331 Mich 490, 503, 50 NW2d 137 (1951); *People v Lee*, 231 Mich 607, 204 NW 742 (1925); *People v Handley*, 93 Mich 46, 48, 52 NW 1032 (1892); *People v Williams*, 114 Mich App 186, 318 NW2d 671 (1982); *People v Foster*, 103 Mich App 311, 302 NW2d 862 (1981); *People v Reed*, 13 Mich App 75, 163 NW2d 704 (1968).

M Crim JI 31.16 Burning Other Real Property [Use for Act(s) Occurring Before April 3, 2013]

(1) [The defendant is charged with the crime of / You may also consider the lesser charge of] burning a building or any of its contents. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant burned [*describe property alleged*]. The term "burn" in this case means setting fire to or doing anything that results in the starting of a fire, or helping or persuading someone else to set a fire. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

(3) Second, that the property that was burned was a building or any of its contents. [It does not matter whether the defendant owned or used the building.]

(4) Third, that when the defendant burned the building or its contents, [he / she] intended to burn the building or contents or intentionally committed an act that created a very high risk of burning the building or contents and that, while committing the act, the defendant knew of that risk and disregarded it.

Use Note

Use bracketed material when applicable.

History

M Crim JI 31.16 (formerly CJI2d 31.16) was CJI 31:2:01; amended September, 2006; September, 2009; renumbered from M Crim JI 31.3 in May, 2013.

Reference Guide

Statutes

MCL 750.71, .73.

Case Law

People v Antonelli, 64 Mich App 620, 238 NW2d 363, rev'd on other grounds, 66 Mich App 138, 238 NW2d 551 (1975).

M Crim JI 31.17 Burning Personal Property [Use for Act(s) Occurring Before April 3, 2013]

(1) [The defendant is charged with the crime of / You may also consider the lesser charge of] burning personal property. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant burned [*describe property alleged*]. The term "burn" in this case means setting fire to or doing anything that results in the starting of a fire, or helping or persuading someone else to set a fire. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

(3) Second, that the property that was burned was personal property. Personal property in this case means any property that is not a building or permanently attached to a building. [It does not matter whether the defendant owned or used the property.]

(4) Third, that when the defendant burned the property, [he / she] intended to burn the property or intentionally committed an act that created a very high risk of burning the property and that, while committing the act, the defendant knew of that risk and disregarded it.

(5) Fourth, that the property had a fair market value when the defendant burned it of:*

[*Choose only one of the following unless instructing on lesser offenses:*]

(a) $20,000 or more.

(b) $1,000 or more, but less than $20,000.

(c) $200 or more, but less than $1,000.

(d) some amount less than $200.

[*Use the following paragraph only if applicable:*]

[(6) You may add together the values of personal property burned in separate incidents if part of a scheme or course of conduct within a 12-month period when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

*The Fair Market Value Test, M Crim JI 22.1, should be given when applicable.

Use bracketed material when applicable.

History

M Crim JI 31.17 (formerly CJI2d 31.17) was CJI 31:3:01; amended September, 1999; September, 2006; renumbered from M Crim JI 31.4 in May, 2013.

Reference Guide

Statutes

MCL 750.74.

M Crim JI 31.18 Burning Insured Property [Use for Act(s) Occurring Before April 3, 2013]

(1) The defendant is charged with the crime of burning insured property. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant burned [*describe property alleged*]. The term "burn" in this case means setting fire to or doing anything that results in the starting of a fire, or helping or persuading someone else to set a fire. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

(3) Second, that at the time of the burning, this property was insured against loss or damage by fire. [It does not matter whether this was the defendant's property or someone else's.]

(4) Third, that at the time of the burning, the defendant knew that the property was insured.

(5) Fourth, that when the defendant burned the property, [he / she] intended to set a fire, knowing that this would cause injury or damage to another person or to property, and that the defendant did it without just cause or excuse.*

(6) Fifth, that when the defendant burned the property, [he / she] intended to defraud or cheat the insurer.*

Use Note

*This is a specific intent crime.

History

M Crim JI 31.18 (formerly CJI2d 31.18) was CJI 31:4:01; renumbered from M Crim JI 31.5 in May, 2013.

Reference Guide

Statutes

MCL 750.71, .75.

Case Law

People v Dorrikas, 354 Mich 303, 92 NW2d 305 (1958); *People v Rabin*, 317 Mich 654, 27 NW2d 126, cert den, 332 US 759 (1947); *People v Potter*, 213 Mich 301, 307, 182 NW 144 (1921); *People v Biossat*, 206 Mich 334, 172 NW 933 (1919); *People v Stewart*, 163 Mich 1, 127 NW 816 (1910); *People v Mix*, 149 Mich 260, 262, 112 NW 907 (1907); *People v Gotshall*, 123 Mich 474, 82 NW 274 (1900*); Meister v People*, 31 Mich 99, 108 (1875).

M Crim JI 31.19 Preparation to Burn [Use for Act(s) Occurring Before April 3, 2013]

(1) The defendant is charged with the crime of making preparations to burn property. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant put in or around [*describe property alleged*] some kind of flammable or explosive material or device.

(3) Second, that when the defendant did this, [he / she] intended to set a fire, knowing that this would cause injury or damage to another person or to property, and that the defendant did it without just cause or excuse.[1]

(4) Third, that the property had a fair market value when the defendant [intended to burn / burned] it of:[2]

[*Choose only one of the following unless instructing on lesser offenses:*]

(a) $20,000 or more.

(b) $1,000 or more, but less than $20,000.

(c) $200 or more, but less than $1,000.

(d) some amount less than $200.

[*Use the following paragraph only if applicable:*]

(5) [You may add together the values of property intended to be burned in separate incidents if part of a scheme or course of conduct within a 12-month period when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

[1] This is a specific intent crime.

[2] The Fair Market Value Test, M Crim JI 22.1, should be given when applicable.

History

M Crim JI 31.19 (formerly CJI2d 31.19) was CJI 31:5:01; amended September, 1999, to reflect changes made by 1998 PA 312, eff. January 1, 1999; renumbered from M Crim JI 31.6 in May, 2013.

Reference Guide

Statutes

MCL 750.77.

Case Law

People v Frank Davis, 24 Mich App 304, 305, 180 NW2d 285 (1970).

CHAPTER 32

Malicious Destruction of Property

M Crim JI 32.1 Fair Market Value Test—Malicious Destruction of Property 32-2
M Crim JI 32.2 Malicious Destruction of Personal Property 32-3
M Crim JI 32.3 Malicious Destruction of a Building or Appurtenance 32-5

M Crim JI 32.1 Fair Market Value Test—Malicious Destruction of Property

(1) The test for the extent of damage is the reasonable and fair market value of repairing the damage or of replacing the property destroyed.

(2) Fair market value is defined as the value at the time and in the place where the damage occurred.

History

M Crim JI 32.1 (formerly CJI2d 32.1) was CJI 32:1:04.

Reference Guide

Case Law

People v Hamblin, 224 Mich App 87, 568 NW2d 339 (1997).

M Crim JI 32.2 Malicious Destruction of Personal Property

(1) The defendant is charged with the crime of malicious destruction of personal property. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the property belonged to someone else.

(3) Second, that the defendant destroyed or damaged that property.

(4) Third, that the defendant did this knowing that it was wrong, [without just cause or excuse,][1] and with the intent to damage or destroy the property.[2]

(5) Fourth, that the extent of the damage was:[3]

[*Choose only one of the following unless instructing on lesser offenses:*]

(a) $20,000 or more.

(b) $1,000 or more, but less than $20,000.

(c) $200 or more, but less than $1,000.

(d) some amount less than $200.

[*Use the following paragraph only if applicable:*]

(6) [You may add together damages caused in separate incidents if part of a scheme or course of conduct within a 12-month period when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

Caveat: The statute expressly excludes acts under MCL 750.377 with the words, "by any means not particularly mentioned or described in the preceding section."?The subject matter of MCL 750.377 is killing, maiming, disfiguring, or poisoning animals.

[1] Use only where evidence supports a legally recognized defense that the destruction was done with just cause or is legally excused.

[2] This is a specific intent crime.

[3] The Fair Market Value Test, M Crim JI 32.1, should be given when applicable.

History

M Crim JI 32.2 (formerly CJI2d 32.2) was CJI 32:2:01; amended September, 1999, to reflect changes made by 1998 PA 311, eff. January 1, 1999.

Reference Guide

Statutes

MCL 750.377a, .377b.

Case Law

People v Jones, 120 Mich 283, 79 NW 177 (1899); *People v Fox (After Remand)*, 232 Mich App 541, 591 NW2d 384 (1998); *People v Ewing*, 127 Mich App 582, 339 NW2d 228 (1983); *People v Richardson*, 118 Mich App 492, 496-497, 325 NW2d 419 (1982); *People v Beaudin*, 110 Mich App 147, 312 NW2d 187 (1981), rev'd on other grounds, 417 Mich 570, 339 NW2d 461 (1983); *People v Culp*, 108 Mich App 452, 310 NW2d 421 (1981); *People v McKnight*, 102 Mich App 581, 585, 302 NW2d 241 (1980); *People v Iehl*, 100 Mich App 277, 280-281, 299 NW2d 46 (1980).

M Crim JI 32.3 Malicious Destruction of a Building or Appurtenance

(1) The defendant is charged with the crime of malicious destruction of a building [or anything permanently attached to it]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the building [or anything permanently attached to it] belonged to someone else.

(3) Second, that the defendant destroyed or damaged that building [or anything permanently attached to it].

(4) Third, that the defendant did this knowing that it was wrong, [without just cause or excuse,][1] and with the intent to damage or destroy the property.[2]

(5) Fourth, that the extent of the damage was:[3]

[*Choose only one of the following unless instructing on lesser offenses:*]

(a) $20,000 or more.

(b) $1,000 or more, but less than $20,000.

(c) $200 or more, but less than $1,000.

(d) some amount less than $200.

[*Use the following paragraph only if applicable:*]

(6) [You may add together damages caused in separate incidents if part of a scheme or course of conduct within a 12-month period when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

[1] Use only where evidence supports a legally recognized defense that the destruction was done with just cause or is legally excused.

[2] This is a specific intent crime.

[3] The Fair Market Value Test, M Crim JI 32.1, should be given when applicable.

History

M Crim JI 32.3 (formerly CJI2d 32.3) was CJI 32:3:01; amended September, 1999, to reflect changes made by 1998 PA 311, eff. January 1, 1999.

Reference Guide

Statutes

MCL 750.380.

Case Law

People v Burkhardt, 72 Mich 172, 40 NW 240 (1888); *People v LaBelle*, 231 Mich App 37, 38, 585 NW2d 756 (1998).

CHAPTER 34

Welfare Fraud and Felony Nonsupport

M Crim JI 34.1 Fraudulent Receipt of Public Assistance Benefits 34-2

M Crim JI 34.2 Authorization or Recommendation of Benefits to Ineligible Person 34-4

M Crim JI 34.3 Refusal or Neglect to Provide Information to Welfare Department 34-5

M Crim JI 34.4 Criminal Nonsupport 34-7

M Crim JI 34.5 Impossibility As a Defense to Felony Nonsupport 34-8

M Crim JI 34.1 Fraudulent Receipt of Public Assistance Benefits

(1) The defendant is charged with the crime of public assistance fraud. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant made a false statement or representation to the [*identify appropriate agency*].

(3) Second, that the defendant knew when [he / she] made the statement or representation that it was false.

(4) Third, that when [he / she] made the false statement or representation, the defendant intended to defraud or cheat the [*identify agency*].*

(5) Fourth, that the [*identify agency*] employee relied on the defendant's false statement or representation.

(6) Fifth, that as a result of the false statement or representation, the defendant [would have] received [public assistance benefits (he / she) was not entitled to / a larger amount of benefits than (he / she) was entitled to].

[*Use (7) for felonies:*]

(7) Sixth, that because of this, the defendant fraudulently received [or attempted to receive] more than $500 in public assistance benefits.

[*Use (8) for misdemeanors:*]

(8) Sixth, that because of this, the defendant fraudulently received [or attempted to receive] $500 or less in public assistance benefits.

(9) To determine how much [was / would have been] fraudulently received, you must subtract the amount the defendant was entitled to receive from the amount [he / she] [actually / would have] received.

Use Note

*This is a specific intent crime.

When factually appropriate or requested, include attempt language in paragraphs (6), (7), and (8), as well as the basic attempt definition in chapter 9.

History

M Crim JI 34.1 (formerly CJI2d 34.1) was CJI 34:1:01.

Reference Guide

Statutes

MCL 400.60.

Case Law

People v Vargo, 139 Mich App 573, 362 NW2d 840 (1984); *People v Evans*, 128 Mich App 311, 340 NW2d 291 (1983); *People v De Groot*, 116 Mich App 516, 323 NW2d 465 (1982); *People v Robinson*, 97 Mich App 542, 296 NW2d 99 (1980); *People v Raymond Smith*, 84 Mich App 376, 379, 269 NW2d 469 (1978).

M Crim JI 34.2 Authorization or Recommendation of Benefits to Ineligible Person

(1) The defendant is charged with the crime of public assistance fraud. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was an employee of the [*identify appropriate agency*].

(3) Second, that the defendant [authorized / recommended] payment of public assistance benefits to another person.

(4) Third, that when [he / she] made the [authorization / recommendation], the defendant knew that the person was ineligible for those benefits.*

[*Use (5) for felonies:*]

(5) Fourth, that the amount of public assistance benefits the defendant fraudulently [authorized / recommended] was more than $500.

[*Use (6) for misdemeanors:*]

(6) Fourth, that the amount of public assistance benefits the defendant fraudulently [authorized / recommended] was $500 or less.

(7) To determine how much was fraudulently [authorized / recommended], you must subtract the amount the person was entitled to receive from the amount that person actually received.

Use Note

*This is a specific intent crime.

History

M Crim JI 34.2 (formerly CJI2d 34.2) was CJI 34:1:02.

Reference Guide

Statutes

MCL 400.60.

Case Law

People v De Groot, 116 Mich App 516, 519, 323 NW2d 465 (1982).

M Crim JI 34.3 Refusal or Neglect to Provide Information to Welfare Department

(1) The defendant is charged with the crime of [refusing / neglecting] to provide certain information to the [*identify appropriate agency*]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was receiving public assistance benefits.

(3) Second, that the defendant [personally applied for those benefits / knew that (he / she) was included in another person's application].

(4) Third, that the defendant [refused / neglected] to provide certain information to the [*identify agency*]. [To refuse means to intentionally not do an act. To neglect means to carelessly fail to do an act.]*

(5) Fourth, that the unreported information was information that the defendant had a duty to continue to provide to the welfare department. In this case, it is charged that the defendant [refused / neglected] to report

[*Choose appropriate subsections:*]

(a) the complete circumstances of income from employment or any other source;

(b) the existence of income, if the defendant knew about it, of other people who were receiving benefits through the same application;

(c) information about every job offer the defendant received;

(d) information about every job offer other people who were receiving benefits through the same application received;

(e) information about changes in the defendant's circumstances;

(f) information about changes in the circumstances of other people who were receiving benefits through the same application;

(g) the circumstances or whereabouts, if the defendant knew them, of relatives who were legally responsible for [his / her] support or the support of other people who were receiving benefits through the same application, if changes in the circumstances could affect the amount of assistance available from those relatives or their legal ability to pay support.

(6) Fifth, that the defendant knew that [he / she] had a duty to provide the information.

[*Use (7) for felonies:*]

(7) Sixth, that the amount of public assistance benefits received as a result of the [refusal / neglect] to provide information was more than $500.

[*Use (8) for misdemeanors:*]

(8) Sixth, that the amount of public assistance benefits received as a result of the [refusal / neglect] to provide information was $500 or less.

(9) To determine how much was received as a result of the [refusal / neglect] to provide information, you must subtract the amount the defendant was entitled to receive from the amount [he / she] actually received.

Use Note

*Bracketed language is optional. The definitions are taken from *People v Akerley*, 73 Mich App 321, 325, 251 NW2d 309 (1977).

History

M Crim JI 34.3 (formerly CJI2d 34.3) was CJI 34:1:03.

Reference Guide

Statutes

MCL 400.60.

Case Law

People v Foley, 59 Mich 553, 26 NW 699 (1886); *People v Raymond Smith*, 84 Mich App 376, 378, 269 NW2d 469 (1978); *People v Killingsworth*, 80 Mich App 45, 263 NW2d 278 (1977); *People v Akerley*, 73 Mich App 321, 325, 251 NW2d 309 (1977); *People v Sharon Brown*, 35 Mich App 330, 192 NW2d 671 (1971).

M Crim JI 34.4 Criminal Nonsupport

(1) The defendant is charged with the crime of failing to pay support for [his / her] [former spouse / current spouse / child(ren)]. Defendant pleads not guilty to this charge. To establish this charge, the prosecution must prove each of the following elements beyond a reasonable doubt:

(2) First, that there is a court order that requires the defendant to pay support for [his / her] [former spouse / current spouse / child(ren)] [*insert name(s) of spouse or child(ren*)].

(3) Second, that the defendant [appeared in / was personally served with notice of] the action in which the support order was issued.

(4) Third, that the defendant failed to pay support in the amount or at the time stated in the order.

Use Note

This instruction is based on MCL 750.165.

History

M Crim JI 34.4 was adopted in September, 2008.

Reference Guide

Case Law

People v Herrick, 277 Mich App 255, 257, 744 NW2d 370 (2007); *People v Monaco*, 262 Mich App 596, 606, 686 NW2d 790 (2004) (Monaco I), aff'd in part and rev'd in part on other grounds, 474 Mich 48, 710 NW2d 46 (2006).

M Crim JI 34.5 Impossibility As a Defense to Felony Nonsupport

(1) The defense of impossibility has been raised by the defendant. This is an affirmative defense, and the defendant has the burden of proving this defense by a preponderance of the evidence. This means that the defendant must satisfy you that it was more likely than not that it was truly impossible to comply with the family court order.

(2) In order to prove this defense, the defendant must establish that [he / she] did everything reasonably possible to provide for [his / her] child/children and to have arranged [his / her] finances in such a way that prioritized [his / her] parental responsibility and that, despite those efforts, it was truly impossible for the defendant to comply with the family court order. The defendant must explore and eliminate all the reasonably possible and lawful avenues of obtaining the revenue to comply with the support order.

(3) In determining whether the defendant has established the defense of impossibility, you should consider whether the defendant has diligently sought employment; whether [he / she] could have secured additional employment; whether [he / she] had investments that could have been liquidated; whether [he / she] received gifts or an inheritance; whether [he / she] had a home that could have been sold or refinanced; whether [he / she] had assets that could have been sold or used as loan collateral; whether [he / she] prioritized the payment of child support over the purchase of nonessential items; and whether [he / she] took reasonable precautions to guard against financial misfortune and arranged [his / her] financial affairs with future contingencies in mind, in accordance with one's parental responsibility to one's child.

(4) You may consider the defendant's conduct and responses in the family court in determining the possibility of compliance with the support order and to evaluate the defendant's good-faith efforts.

(5) If you find that the defendant has proved the defense of impossibility by a preponderance of the evidence, then you must find the defendant not guilty. If, however, [he / she] has failed to prove impossibility, then [his / her] impossibility defense fails.

History

M Crim JI 34.5 was adopted in February, 2013.

Reference Guide

Case Law

People v Likine, 492 Mich 367, 404, 823 NW2d 50 (2012).

CHAPTER 35

Telecommunications and Computer Offenses

M Crim JI 35.1 Telephone Interference 35-2

M Crim JI 35.2 Unlawful Use of Telecommunications Services by Agent or Employee 35-3

M Crim JI 35.3 Unlawful Possession, Delivery, or Manufacturing of Telecommunications Device 35-5

M Crim JI 35.4 Unlawfully Delivering or Advertising Plans for Telecommunications Device 35-6

M Crim JI 35.5 Unlawfully Obtaining Telecommunications Service 35-7

M Crim JI 35.6 Unlawfully Publishing a Telecommunications Access Device 35-9

M Crim JI 35.7 Accessing Computer with Intent to Defraud 35-10

M Crim JI 35.8 Unlawfully Accessing a Computer System 35-12

M Crim JI 35.9 Unlawfully Inserting Instructions into Computer 35-14

M Crim JI 35.10 Use of a Computer to Commit Specified Crimes 35-16

M Crim JI 35.1 Telephone Interference

The defendant is charged with the crime of interfering with an electronic communication. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(1) First, that the defendant prevented, obstructed, or delayed, by any means, the sending of an authorized communication through [a telephone line or any electronic medium of communication / the Internet / a computer, a computer program, a computer system, or a computer network / any electronic medium of communication]. [It does not matter whether the communication was actually sent or received.]

(2) Second, that the defendant did this willfully and maliciously. This means that the defendant did the act on purpose and with the intent to prevent, obstruct, or delay the communication.

[*Use the following paragraph only if applicable.*]

(3) Third, that the incident to be communicated by [*name complainant*] results in [injury / death] to any person.

History

M Crim JI 35.1 was added by the committee in September, 2010.

Reference Guide

Statutes

MCL 750.540(4).

M Crim JI 35.2 Unlawful Use of Telecommunications Services by Agent or Employee

(1) The defendant is charged with the crime of [using / diverting] telecommunications services for [(his / her) own / another's] benefit. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was an [agent / employee / officer / shareholder / partner / independent contractor] of a telecommunications provider.

(3) Second, that the defendant [used / diverted] telecommunications services of [his / her] [employer / principal] for [(his / her) own / another's] benefit.

(4) Third, that the defendant did so knowingly and without authority.

(5) Fourth, that the defendant's acts directly or indirectly caused an aggregate loss of

[*Choose one of the following:*]

(a) $20,000 or more.

or

(b) $1,000 or more, but less than $20,000.

or

(c) $200 or more, but less than $1,000.

or

(d) some amount less than $200.

Use Note

If the aggregate amount of loss is disputed and lesser offenses are requested, the court may instruct the jury to consider the appropriate statutory amounts and use a special verdict form to specify the finding.

Pertinent statutory definitions can be found as follows:

"Counterfeit telecommunications device"—MCL 750.540c(6)(a);
"Deliver"—MCL 750.540c(6)(b);
"Telecommunications"—MCL 750.540c(6)(c);
"Telecommunications device"—MCL 750.540c(6)(d);
"Telecommunications service"—MCL 750.540c(6)(e);
"Unauthorized receipt of a telecommunications service"—MCL 750.540c(6)(f)

History

M Crim JI 35.2 (formerly CJI2d 35.2) was adopted by the committee in September, 1997, to reflect the elements of the offense created by 1996 PA 328, MCL 750.540g. Renumbered from CJI2d 30.17 to CJI2d 35.2 in September, 2010.

Reference Guide

Statutes

MCL 750.540c, .540g.

M Crim JI 35.3 Unlawful Possession, Delivery, or Manufacturing of Telecommunications Device

(1) The defendant is charged with unlawfully [possessing / delivering / offering to deliver / advertising / manufacturing] a telecommunications device. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [possessed / delivered / offered to deliver / advertised / manufactured] a telecommunications device.

[*Choose (3) or (4) below:*]

(3) Second, that the device was a counterfeit telecommunications device.

or

(4) Second, that the defendant intended to use or allow another to use the device or knew or had reason to know that another intended to use the device to

(a) obtain or attempt to obtain telecommunications services without paying for them or

(b) conceal the existence, origin, or destination of telecommunications service.

Use Note

For references to pertinent statutory definitions, see the *Use Note* for M Crim JI 35.2.

History

M Crim JI 35.3 (formerly CJI2d 35.3) was adopted by the committee in September, 1997, to reflect the elements of the offense created by subsection (3)(1) of 1996 PA 329, MCL 750.540c(1). Renumbered from CJI2d 30.18 to CJI2d 35.3 in September, 2010.

Reference Guide

Statutes

MCL 750.540c(1).

M Crim JI 35.4 Unlawfully Delivering or Advertising Plans for Telecommunications Device

(1) The defendant is charged with unlawfully [delivering / offering to deliver / advertising] the [plans / instructions / materials] for a telecommunications device. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [delivered / offered to deliver / advertised] the [plans / instructions / materials] for a telecommunications device.

[*Choose either (3) or (4) below:*]

(3) Second, that the device was a counterfeit telecommunications device.

or

(4) Second, that the defendant intended to use or to allow another to use the device or knew or had reason to know that another would use the device to

(a) obtain or attempt to obtain telecommunications services without paying for them or

(b) conceal the existence, origin, or destination of telecommunications service.

Use Note

For references to pertinent statutory definitions, see the *Use Note* for M Crim JI 35.2.

History

M Crim JI 35.4 (formerly CJI2d 35.4) was adopted by the committee in September, 1997, to reflect the elements of the offense created by subsection (3)(2) of 1996 PA 329, MCL 750.540c(2). Renumbered from CJI2d 30.19 to CJI2d 35.4 in September, 2010.

Reference Guide

Statutes

MCL 750.540c(2).

M Crim JI 35.5 Unlawfully Obtaining Telecommunications Service

(1) The defendant is charged with the crime of unlawfully [obtaining / attempting to obtain] telecommunications service. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [obtained / attempted to obtain] telecommunications services.

(3) Second, that the defendant did so with the intent to avoid or cause another person to avoid paying for the service.

(4) Third, that the defendant did so by using

[*Choose one or more of the following:*]

(a) a telecommunications access device without the authority of the lawful holder, [or]

(b) a counterfeit telecommunications access device, [or]

(c) a fraudulent or deceptive scheme or pretense, [or]

(d) a telecommunications device or counterfeit telecommunications device.

(5) Fourth, that the total value of the telecommunications service the defendant [obtained / attempted to obtain] was

[*Choose one of the following:*]

(a) $20,000 or more.

or

(b) $1,000 or more, but less than $20,000.

or

(c) $200 or more, but less than $1,000.

or

(d) some amount less than $200.

Use Note

If the total amount of loss is disputed and lesser offenses are requested, the court may instruct the jury to consider the appropriate statutory amounts and use a special verdict form to specify the finding.

Pertinent statutory definitions can be found as follows:

"Counterfeit telecommunications access device"—MCL 750.219a(5)(a);
"Counterfeit telecommunications device"—MCL 750.219a(5)(b);
"Telecommunications"—MCL 750.219a(5)(c);
"Telecommunications access device"—MCL 750.219a(5)(d);
"Telecommunications device"—MCL 750.219a(5)(e);
"Telecommunications service"—MCL 750.219a(5)(f);
"Value of the telecommunications service obtained or attempted to be obtained"—MCL 750.219a(5)(g)

History

M Crim JI 35.5 (formerly CJI2d 35.5) was adopted by the committee in September, 1997, to reflect the elements of the offense created by section 219a(1) of 1996 PA 330, MCL 750.219a(1). Renumbered from CJI2d 30.20 to CJI2d 35.5 in September, 2010.

Reference Guide

Statutes

MCL 750.219a(1), (5).

M Crim JI 35.6 Unlawfully Publishing a Telecommunications Access Device

(1) The defendant is charged with unlawfully publishing a [counterfeit] telecommunications access device. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant knowingly or intentionally published a [counterfeit] telecommunications access device.

(3) Second, that the defendant intended or knew or had reason to know that it was likely the device would be used to acquire telecommunications service without payment by the user of such device.

Use Note

For references to pertinent statutory definitions, see the Use Note for M Crim JI 35.2.

History

M Crim JI 35.6 (formerly CJI2d 35.6) was adopted by the committee in September, 1997, to reflect the elements of the offense created by section 540f(1) of 1996 PA 333, MCL 750.540f(1). Renumbered from CJI2d 30.21 to CJI2d 35.6 in September, 2010.

Reference Guide

Statutes

MCL 750.540f(1).

M Crim JI 35.7 Accessing Computer with Intent to Defraud

(1) The defendant is charged with the crime of accessing a computer with the intent to defraud. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant accessed a [computer / computer program / computer system / computer network].

(3) Second, that the defendant did so intentionally.

(4) Third, that the defendant did so for the purpose of devising or executing a scheme or plan to obtain [money / property / service] by a false or fraudulent [pretense / representation / promise].

(5) Fourth, that the defendant's acts directly or indirectly caused an aggregate loss of

[*Choose one of the following:*]

(a) $20,000 or more.

or

(b) $1,000 or more, but less than $20,000.

or

(c) $200 or more, but less than $1,000.

or

(d) some amount less than $200.

Use Note

If the aggregate amount of loss is disputed and lesser offenses are requested, the court may instruct the jury to consider the appropriate statutory amounts and use a special verdict form to specify the finding.

Pertinent statutory definitions can be found as follows:

"Access"—MCL 752.792(1);
"Aggregate amount"—MCL 752.792(2);
"Computer"—MCL 752.792(3);
"Computer network"—MCL 752.792(4);
"Computer program"—MCL 752.792(5);
"Computer system"—MCL 752.792(6);
"Device"—MCL 752.792(7);
"Property"—MCL 752.793(1);

"Services"—MCL 752.793(2)

History

M Crim JI 35.7 (formerly CJI2d 35.7) was adopted by the committee in September, 1997, to reflect the elements of the offense created by section (4) of 1996 PA 326, MCL 752.794. Renumbered from CJI2d 30.14 to CJI2d 35.7 in September, 2010.

Reference Guide

Statutes

MCL 752.792, .794.

M Crim JI 35.8 Unlawfully Accessing a Computer System

(1) The defendant is charged with the crime of unlawfully accessing a computer system. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [accessed /caused access to be made to] a [computer / computer program / computer system / computer network].

(3) Second, that the defendant did so intentionally.

(4) Third, that the defendant did so [without / by exceeding] valid authorization.

(5) Fourth, that the defendant did so to [acquire / alter / damage / delete / destroy property / use the services of] the [computer / computer program / computer system / computer network].

(6) When deciding whether the defendant acted [without / by exceeding] valid authorization to access the [computer / computer program / computer system / computer network], you may, but you do not have to, infer that [he / she] [did not have / exceeded] authorization if the defendant accessed the computer intentionally unless:

(a) written or verbal authorization was given by the owner, the system operator, or someone acting on his or her behalf; or

(b) the computer, the computer program or the [computer / computer program / computer system / computer network] the defendant accessed had password protections that included notice that would lead a reasonable person to believe that anyone was permitted access; or

(c) the defendant got access without using a set of instructions, a code, or a computer program that was designed to bypass or get around password protections.

The prosecutor still bears the burden of proving all of the elements beyond a reasonable doubt.

Use Note

If the aggregate amount of loss is disputed and lesser offenses are requested, the court may instruct the jury to consider the appropriate statutory amounts and use a special verdict form to specify the finding.

For references to pertinent statutory definitions, see the *Use Note* for M Crim JI 35.7.

History

M Crim JI 35.8 (formerly CJI2d 35.8) is intended to reflect the elements of the offense created by section (5)(a) of 1996 PA 326, MCL 752.795(a). Renumbered from CJI2d 30.15 to CJI2d 35.8 in September, 2010. Amended February 2016.

Reference Guide

Statutes

MCL 752.795(a).

M Crim JI 35.9 Unlawfully Inserting Instructions into Computer

(1) The defendant is charged with unlawfully inserting unwanted commands in a computer. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, the defendant [inserted / attached / knowingly created the opportunity for an unknowing and unwanted insertion or attachment of] a set of instructions or a computer program into a [computer / computer program / computer system / computer network].

(3) Second, that the defendant did so intentionally.

(4) Third, that the defendant did so [without / by exceeding] valid authorization.

(5) Fourth, the instructions or program was intended to:

[*Choose (a) and/or (b)*:]

(a) [acquire / alter / damage / delete / disrupt / destroy] property. It does not matter whether the defendant actually did [acquire / alter / damage / delete / disrupt / destroy] any property, only whether he intended to do so.

(b) use the services of a [computer / computer program / computer system / computer network]. It does not matter whether the defendant actually did use the services of a [computer / computer program / computer system / computer network], only whether he intended to do so.

(6) When deciding whether the defendant acted [without / by exceeding] valid authorization, you may, but you do not have to, infer that [he / she] [did not have / exceeded] authorization if the defendant inserted the instructions or program intentionally unless:

(a) written or verbal authorization was given by the owner, the system operator, or someone acting on his or her behalf; or

(b) the computer, the computer program or the computer system into which the defendant inserted instructions or a program had password protections that included notice that would lead a reasonable person to believe that anyone was permitted to insert or attach instructions or programs; or

(c) the defendant inserted or attached instructions or programs without using a set of instructions, a code, or a computer program that was designed to bypass or get around password protections.

The prosecutor still bears the burden of proving all of the elements beyond a reasonable doubt.

Use Note

If the aggregate amount of loss is disputed and lesser offenses are requested, the court may instruct the jury to consider the appropriate statutory amounts and use a special verdict form to specify the finding.

For references to pertinent statutory definitions, see the *Use Note* for M Crim JI 35.7.

History

M Crim JI 35.9 (formerly CJI2d 35.9) was adopted by the committee in September, 1997, to reflect the elements of the offense created by section (5)(b) of 1996 PA 326, MCL 752.795(b). Renumbered from CJI2d 30.16 to CJI2d 35.9 in September, 2010. Amended February 2016.

Reference Guide

Statutes

MCL 752.795(b).

M Crim JI 35.10 Use of a Computer to Commit Specified Crimes

(1) The defendant is charged with using a computer to [commit / attempt to commit / conspire to commit / solicit another to commit] the offense of [*state underlying offense*][1] [against a minor].[2] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant used [the Internet / a computer / a computer program / a computer network / a computer system][3] to communicate with any person.

(3) Second, that the communication was done for the purpose of [committing / attempting to commit / conspiring to commit / soliciting another to commit] the offense of [*state underlying offense*].

[*Use the following paragraph only if the underlying offense appears in Part A of the underlying offense list in Use Note 1.*]

(4) Third, that the [*state name of victim or intended victim of the underlying offense, if available*] was a minor or the defendant believed [he / she] was a minor.

(5) The elements of [*state underlying offense*] are [*state elements of underlying offense*]. It does not matter whether the defendant or anyone else has been convicted of [*state underlying offense*].

Use Note

[1] The statute lists the following underlying offenses:

Part A

MCL 750.145—accosting a child for immoral purposes
MCL 750.145c—child sexually abusive activity
MCL 750.349—kidnapping
MCL 750.350—enticing away child under 14
MCL 750.520b—criminal sexual conduct in the first degree
MCL 750.520c—criminal sexual conduct in the second degree
MCL 750.520d—criminal sexual conduct in the third degree
MCL 750.520e—criminal sexual conduct in the fourth degree
MCL 750.520g—assault with intent to commit criminal sexual conduct
MCL 722.675(5)—disseminating sexually explicit material to a minor
MCL 750.327a—sale of explosives to minors
MCL 750.157c—inducing minor to commit felony

Part B

MCL 750.411h—stalking
MCL 750.411i—aggravated stalking
MCL 750.327—causing death with explosives in vehicle
MCL 750.328—causing death with explosives placed to destroy building

MCL 750.411a(2)—false report of explosives crime or threatening to commit such a crime

[2] Underlying offenses in Part B of *Use Note* 1 need not involve a minor. Use the bracketed phrase only where the underlying offense is found in Part A of *Use Note* 1.

[3] "Computer" and the related terms "computer network," "computer program," and "computer system" are defined in subsection (9) of the statute. MCL 750.145d(9).

History

M Crim JI 20.37 (formerly CJI2d 20.37) was adopted by the committee in October, 2004, to set forth the elements of MCL 750.145d as last amended by 2000 PA 185, effective September 18, 2000.

Reference Guide

Statutes

MCL 750.145d.

CHAPTER 36 *Human Trafficking*

M Crim JI 36.1 Obtaining a Person for Forced Labor or Services 36-2
M Crim JI 36.2 Holding a Person in Debt Bondage 36-3
M Crim JI 36.3 Knowingly Subjecting a Person to Forced Labor or Debt Bondage 36-4
M Crim JI 36.4 Participating in a Forced Labor, Debt Bondage or Commercial Sex Enterprise for Financial Gain 36-6
M Crim JI 36.4a Participating in a Forced Labor or Commercial Sex Enterprise for Financial Gain or for Anything of Value with a Minor 36-8
M Crim JI 36.5 Aggravating Factors 36-10
M Crim JI 36.6 Using Minors for Commercial Sexual Activity or for Forced Labor or Services 36-11

M Crim JI 36.1 Obtaining a Person for Forced Labor or Services

(1) The defendant is charged with the crime of obtaining a person for forced labor or services. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant recruited, enticed, harbored, transported, provided or obtained [*name complainant*] to perform forced labor or services.

(3) Second, that when the defendant recruited, enticed, harbored, transported, provided or obtained [*name complainant*], defendant knew that it was for the purpose of having [*name complainant*] perform forced labor or services, whether or not such labor or service was actually provided.

(4) "Forced labor or services" are labor or services obtained or maintained by force, fraud, or coercion.

[*Provide any or all of the following definitions, according to the evidence:*]

(a) Force includes physical violence, restraint or confinement, or threats of physical violence, restraint, or confinement.

(b) Fraud includes false or deceptive offers of employment or marriage.

(c) Coercion includes [*Select any that apply*]:

(i) threats of harm or restraint to any person.

(ii) using a [scheme / plan / pattern] intended to cause someone to think that [psychological harm / physical harm / harm to the person's reputation] would result from failing to perform an act.

(iii) abusing or threatening to abuse the legal system by threatening to have the person [arrested / deported], regardless of whether the person could be [arrested / deported].

(iv) [destroying / concealing / removing / confiscating] a [passport / immigration document / government identification document] from any person, even if the document was fraudulently obtained.

These are examples of [force / fraud / coercion] and not an exhaustive list.

[This crime is a 10-year offense that may be increased by aggravating factors. If the prosecution has charged one of those factors, the jury must be instructed under M Crim JI 36.5.]

History

This instruction was adopted December 2016.

Reference

MCL 750.462a, MCL 750.462b, MCL 750.462f(1).

M Crim JI 36.2 Holding a Person in Debt Bondage

(1) The defendant is charged with the crime of holding a person in debt bondage. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant recruited, enticed, harbored, transported, provided, or obtained [*name complainant*] to hold [him / her] in debt bondage.

(3) Second, that when the defendant recruited, enticed, harbored, transported, provided or obtained [*name complainant*], the defendant knew that it was for the purpose of holding [*name complainant*] in debt bondage.

(4) "Debt bondage" includes, but is not limited to, a promise by [*name complainant or person who had control over complainant*] that [*name complainant*] would perform services to pay back a debt where the value of the services, or the nature of the services and the time that they are to be performed, is not spelled out or defined, or the value of the services is not applied to reduction of the debt. This is not an exhaustive list of the types of debt bondage.[1]

[This crime is a 10-year offense that may be increased by aggravating factors. If the prosecution has charged one of those factors, the jury must be instructed under M Crim JI 36.5.]

Use Note

[1] Debt bondage is defined in MCL 750.462a(d).

History

This instruction was adopted December 2016.

Reference

MCL 750.462a, MCL 750.462c, MCL 750.462f(1).

M Crim JI 36.3 Knowingly Subjecting a Person to Forced Labor or Debt Bondage

(1) The defendant is charged with the crime of knowingly subjecting a person to [forced labor or services / debt bondage]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant purposefully recruited, enticed, harbored, transported, provided, or obtained [*name complainant*] by any means.

(3) Second, that when the defendant recruited, enticed, harbored, transported, provided, or obtained [*name complainant*], the defendant knew that [*name complainant*] would be subjected to [perform forced labor or services / debt bondage].

[*Provide appropriate definitions*]

(4) "Forced labor or services" are labor or services obtained or maintained by force, fraud, or coercion.

[*Provide any or all of the following definitions, according to the evidence:*]

(a) Force includes physical violence, restraint, or confinement, or threats of physical violence, restraint, or confinement.

(b) Fraud includes false or deceptive offers of employment or marriage.

(c) Coercion includes [*Select any that apply*]:

(i) threats of harm or restraint to any person.

(ii) using a [scheme / plan / pattern] intended to cause someone to think that [psychological harm / physical harm / harm to the person's reputation] would result from failing to perform an act.

(iii) abusing or threatening to abuse the legal system by threatening to have the person [arrested / deported], regardless of whether the person could be [arrested / deported].

(iv) [destroying / concealing / removing / confiscating] a [passport / immigration document / government identification document] from any person, even if the document was fraudulently obtained.

These are examples of [force / fraud / coercion] and not an exhaustive list.

(5) "Debt bondage" includes, but is not limited to, a promise by [*name complainant or person who had control over complainant*] that [*name complainant*] would perform services to pay back a debt where the value of the services, or the nature of the services and the time that they are to be performed, is not spelled out or defined, or the value of the services is not applied to reduction of the debt. This is not an exhaustive list of the types of debt bondage.[1]

[This crime is a 10-year offense that may be increased by aggravating factors. If the prosecution has charged one of those factors, the jury must be instructed under M Crim JI 36.5.]

Use Note

[1] *Debt bondage* is defined in MCL 750.462a(d).

History

This instruction was adopted December 2016.

Reference

MCL 750.462a, MCL 750.462d, MCL 750.462f(1).

M Crim JI 36.4 Participating in a Forced Labor, Debt Bondage or Commercial Sex Enterprise for Financial Gain

(1) The defendant is charged with the crime of participating in an enterprise involving forced labor, debt bondage, or commercial sex for financial gain. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant participated in an enterprise that engaged in forced labor or services, debt bondage, or commercial sexual activity.

(3) Second, that the defendant knew that the enterprise was engaged in forced labor or services, debt bondage, or commercial sexual activity.

(4) Third, that the defendant benefited financially or received anything of value from [his / her] participation in the enterprise.

(5) I will now define some of the legal terminology that was used in this instruction.

[*Provide appropriate definitions*]

(a) An enterprise[1] is an organization for conducting business and can be an individual person, a sole proprietorship, a partnership, a corporation, a limited liability company, a trust, a union, an association, a governmental unit, any other legal entity, or any legal or illegal association of persons.

(b) "Forced labor or services"[2] are labor or services obtained or maintained by force, fraud, or coercion.

[*Provide any or all of the following definitions, according to the evidence:*]

(i) Force includes physical violence, restraint, or confinement, or threats of physical violence, restraint, or confinement.

(ii) Fraud includes false or deceptive offers of employment or marriage.

(iii) Coercion includes [*Select any that apply*]:

(A) threats of harm or restraint to any person.

(B) using a [scheme / plan / pattern] intended to cause someone to think that [psychological harm / physical harm / harm to the person's reputation] would result from failing to perform an act.

(C) abusing or threatening to abuse the legal system by threatening to have the person [arrested / deported], regardless of whether the person could be [arrested / deported].

(D) [destroying / concealing / removing / confiscating] a [passport / immigration document / government identification document] from any person, even if the document was fraudulently obtained.

These are examples of [force / fraud / coercion] and not an exhaustive list.

(c) "Debt bondage" includes, but is not limited to, a promise by [*name complainant or person who had control over complainant*] that [*name complainant*] would perform services to pay back a debt where the value of the services, or the nature of the services and the time that they are to be performed, is not spelled out or defined, or the value of the services is not applied to reduction of the debt. This is not an exhaustive list of the types of debt bondage.[2]

(d) "Commercial sexual activity"[3] means performing acts of sexual penetration or contact,[4] child sexually abusive activity,[5] or a sexually explicit performance.[6]

[This crime is a 10-year offense that may be increased by aggravating factors. If the prosecution has charged one of those factors, the jury must be instructed under M Crim JI 36.5.]

Use Note

[1] *Enterprise* is defined in MCL 750.159f(a).

[2] *Debt bondage* is defined in MCL 750.462a(d).

[3] Definitions of *commercial sexual activity* are found in MCL 750.462a.

[4] Definitions of *sexual penetration* and *sexual contact* are found in MCL 750.520a.

[5] *Child sexually abusive activity* is defined in MCL 750.145c(1)(n) as a child engaging in a "listed sexual act." *Listed sexual act* is defined in MCL 750.145c(1)(i) as "sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity." Those terms, in turn, are each defined in MCL 750.145c(1), and the court may provide definitions where appropriate.

[6] *Sexually explicit performance* is defined in MCL 722.673(g) as "a motion picture, video game, exhibition, show, representation, or other presentation that, in whole or in part, depicts nudity, sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse."

History

This instruction was adopted December 2016.

Reference

MCL 750.462a, MCL 750.462d, MCL 750.462f(1).

M Crim JI 36.4a Participating in a Forced Labor or Commercial Sex Enterprise for Financial Gain or for Anything of Value with a Minor

(1) The defendant is charged with the crime of participating in an enterprise involving forced labor or services or commercial sexual activity with a minor for financial gain or for anything of value. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant participated in an enterprise that engaged in forced labor or services or commercial sexual activity involving a person or persons less than 18 years old. It does not matter whether defendant knew the age of the person or persons.

(3) Second, that the defendant knew that the enterprise was engaged in forced labor or services or commercial sexual activity with this person or persons.

(4) Third, that the defendant benefited financially or received anything of value from [his / her] participation in the enterprise.

(5) I will now define some of the legal terminology that was used in this instruction.

[*Provide appropriate definitions*]

(a) An enterprise[1] is an organization for conducting business and can be an individual person, a sole proprietorship, a partnership, a corporation, a limited liability company, a trust, a union, an association, a governmental unit, any other legal entity, or any legal or illegal association of persons.

(b) "Forced labor or services"[2] are labor or services obtained or maintained by force, fraud, or coercion.

[*Provide any or all of the following definitions, according to the evidence:*]

(i) Force includes physical violence, restraint, or confinement, or threats of physical violence, restraint, or confinement.

(ii) Fraud includes false or deceptive offers of employment or marriage.

(iii) Coercion includes [*Select any that apply*]:

(A) threats of harm or restraint to any person.

(B) using a [scheme / plan / pattern] intended to cause someone to think that [psychological harm / physical harm / harm to the person's reputation] would result from failing to perform an act.

(C) abusing or threatening to abuse the legal system by threatening to have the person [arrested / deported], regardless of whether the person could be [arrested / deported].

(D) [destroying / concealing / removing / confiscating] a [passport / immigration document / government identification document] from any person, even if the document was fraudulently obtained.

These are examples of [force / fraud / coercion] and not an exhaustive list.

(c) "Commercial sexual activity"[3] means performing acts of sexual penetration or contact,[4] child sexually abusive activity,[5] or a sexually explicit performance.[6]

Use Note

This crime is a 20-year offense, and is not increased by other aggravating factors.

[1] *Enterprise* is defined in MCL 750.159f(a).

[2] *Debt bondage* is defined in MCL 750.462a(d).

[3] Definitions of *commercial sexual activity* are found in MCL 750.462a.

[4] Definitions of *sexual penetration* and *sexual contact* are found in MCL 750.520a.

[5] *Child sexually abusive activity* is defined in MCL 750.145c(1)(n) as a child engaging in a "listed sexual act." *Listed sexual act* is defined in MCL 750.145c(1)(i) as "sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity." Those terms, in turn, are each defined in MCL 750.145c(1), and the court may provide definitions where appropriate.

[6] *Sexually explicit performance* is defined in MCL 722.673(g) as "a motion picture, video game, exhibition, show, representation, or other presentation that, in whole or in part, depicts nudity, sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse."

History

This instruction was adopted December 2016.

Reference

MCL 750.462a, MCL 750.462d(b), MCL 750.462f(2).

M Crim JI 36.5 Aggravating Factors

(1) If you find that the defendant is guilty of [obtaining a person for forced labor or services / holding a person in debt bondage / knowingly subjecting a person to forced labor or services or debt bondage / participating in an enterprise involving forced labor, debt bondage or commercial sex for financial gain], then you must decide whether the prosecutor has proved the following aggravating element[s] beyond a reasonable doubt:

[*Select from the following. Proving a bodily injury under (4) below may be a lesser offense where serious bodily injury has been charged under (3).*]

(2) That the violation involved

[*Select one or more as warranted by the evidence:*]

(a) kidnapping or attempted kidnapping of [*name complainant*]. Kidnapping means restraining someone for ransom, to use as a shield, to engage in criminal sexual conduct, to take out of the state, or to hold in involuntary servitude.

(b) first-degree criminal sexual conduct or attempted first-degree criminal sexual conduct of [*name complainant*]. First-degree criminal sexual conduct is sexual penetration of a person [provide particular elements that may apply from M Crim JI 20.3 through 20.11].

(c) an attempt to kill [*name complainant*].

(d) the death of [*name complainant*].

(3) That the violation resulted in serious bodily injury to [*name complainant*]. A serious bodily injury is any physical injury that requires medical treatment. It does not matter whether [*name complainant*] tried to get medical treatment.

(4) [That the violation / You may also consider the less serious offense that the violation] resulted in bodily injury to [*name complainant*]. Bodily injury is any physical injury.

History

This instruction was adopted December 2016.

Reference

MCL 750.462b, MCL 750.462c, MCL 750.462d, MCL 750.462f(1)(a), (b), (c), (d).

M Crim JI 36.6 Using Minors for Commercial Sexual Activity or for Forced Labor or Services

(1) The defendant is charged with the crime of engaging a minor for [commercial sexual activity / forced labor or services]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

[*Select (2) according to the charged conduct:*]

(2) First, that the defendant recruited, enticed, harbored, transported, provided, or obtained [*name complainant*] for commercial sexual activity. Commercial sexual activity[1] means performing acts of sexual penetration or contact,[2] child sexually abusive activity,[3] or a sexually explicit performance.[4]

(2) First, that the defendant recruited, enticed, harbored, transported, provided, or obtained [*name complainant*] to perform forced labor or services. "Forced labor or services" are labor or services obtained or maintained by force, fraud, or coercion.

[*Provide any or all of the following definitions, as applicable:*]

(a) Force includes physical violence, restraint, or confinement, or threats of physical violence, restraint, or confinement.

(b) Fraud includes false or deceptive offers of employment or marriage.

(c) Coercion includes [*Select any that apply*]:

(i) threats of harm or restraint to any person.

(ii) using a [scheme / plan / pattern] intended to cause someone to think that [psychological harm / physical harm / harm to the person's reputation] would result from failing to perform an act.

(iii) abusing or threatening to abuse the legal system by threatening to have the person [arrested / deported], regardless of whether the person could be [arrested / deported].

(iv) [destroying / concealing / removing / confiscating] a [passport / immigration document / government identification document] from any person, even if the document was fraudulently obtained.

These are examples of [force / fraud / coercion], and not an exclusive list.

(3) Second, that when the defendant recruited, enticed, harbored, transported, provided, or obtained [*name complainant*], [for commercial sexual purposes / to perform forced labor or services], [*name complainant*] was less than 18 years old, regardless of whether the defendant knew [he / she] was less than 18 years old.

(4) Third, that when the defendant recruited, enticed, harbored, transported, provided or obtained [*name complainant*], the defendant intended that [name complainant] would perform [commercial sexual activity / forced labor or services], whether or not [commercial sexual activity / forced labor or service] was actually provided.

Use Note

[1] *Commercial sexual activity* is defined in MCL 750.462a.

[2] *Sexual penetration* and *sexual contact* are found in MCL 750.520a.

[3] *Child sexually abusive activity* is defined in MCL 750.145c(1)(n) as a child engaging in a "listed sexual act." *Listed sexual act* is defined in MCL 750.145c(1)(i) as "sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity." Those terms, in turn, are each defined in MCL 750.145c(1), and the court may provide definitions where appropriate.

[4] *Sexually explicit performance* is defined in MCL 722.673(g) as "a motion picture, video game, exhibition, show, representation, or other presentation that, in whole or in part, depicts nudity, sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse."

History

This instruction was adopted December 2016.

Reference

MCL 750.462a, MCL 750.462e, MCL 750.462f(2).

CHAPTER 37 *Witness Intimidation/Bribery*

M Crim JI 37.3 Bribing Witnesses 37-2

M Crim JI 37.3a Bribing Witnesses/Criminal Case, Penalty More Than Ten Years 37-3

M Crim JI 37.3b Bribing Witnesses – Crime/Threat to Kill 37-4

M Crim JI 37.4 Intimidating Witnesses 37-5

M Crim JI 37.4a Intimidating Witnesses – Criminal Case, Penalty More Than Ten Years 37-6

M Crim JI 37.4b Intimidating Witnesses – Crime/Threat to Kill 37-7

M Crim JI 37.5a Interfering with Witnesses – Criminal Case 37-9

M Crim JI 37.5b Interfering with Witnesses – Crime/Threat to Kill 37-10

M Crim JI 37.6 Retaliating Against Witnesses 37-11

M Crim JI 37.7 Bribing or Intimidating Witnesses – Defenses 37-12

M Crim JI 37.3 Bribing Witnesses

(1) The defendant is charged with the crime of witness bribery. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name complainant*] was an individual who was testifying, or going to testify, or going to provide information at an ongoing or future official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath.[1]

(3) Second, that the defendant [gave / offered to give / promised to give] anything of value to [*name complainant*].[2]

(4) Third, that, when the defendant [gave / offered to give / promised to give] something of value to [*name complainant*], [he / she] intended to [discourage (*name complainant*) from attending the proceeding, testifying at the proceeding, or giving information at the proceeding / influence (*name complainant*)'s testimony at the proceeding / encourage (*name complainant*) to avoid legal process, withhold testimony, or testify falsely]. It does not matter whether the official proceeding took place, as long as the defendant knew or had reason to know that [*name complainant*] could be a witness or was going to provide information at the ongoing or future proceeding.

Use Note

[1] *Official proceeding* is further defined in MCL 750.122(12)(a) as "a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding."

[2] See MCL 750.122(5) for an attorney exemption to this statute.

History

M Crim JI 37.3 was adopted June 2017.

Reference

Statutes: MCL 750.122

M Crim JI 37.3a Bribing Witnesses/Criminal Case, Penalty More Than Ten Years

(1) The defendant is charged with the crime of witness bribery. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name complainant*] was an individual who was testifying, or going to testify, or going to provide information at an ongoing or future official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath.[1]

(3) Second, that the defendant [gave / offered to give / promised to give] anything of value to [*name complainant*].[2]

(4) Third, that, when the defendant [gave / offered to give / promised to give] something of value to [*name complainant*], [he / she] intended to [discourage (*name complainant*) from attending the proceeding, testifying at the proceeding, or giving information at the proceeding / influence (*name complainant*)'s testimony at the proceeding / encourage (*name complainant*) to avoid legal process, withhold testimony, or testify falsely]. It does not matter whether the official proceeding took place, as long as the defendant knew or had reason to know that [*name complainant*] could be a witness or was going to provide information at the ongoing or future proceeding.

(5) Fourth, that the official proceeding was a criminal case charging a crime with a maximum punishment of more than ten years or life in prison.

Use Note

[1] *Official proceeding* is further defined in MCL 750.122(12)(a) as "a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding."

[2] See MCL 750.122(5) for an attorney exemption to this statute.

History

M Crim JI 37.3a was adopted June 2017.

Reference

Statutes: MCL 750.122

M Crim JI 37.3b Bribing Witnesses – Crime/Threat to Kill

(1) The defendant is charged with the crime of witness bribery. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name complainant*] was an individual who was testifying, or going to testify, or going to provide information at an ongoing or future official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath.[1]

(3) Second, that the defendant [gave / offered to give / promised to give] anything of value to [*name complainant*].[2]

(4) Third, that, when the defendant [gave / offered to give / promised to give] something of value to [*name complainant*], [he / she] intended to [discourage (*name complainant*) from attending the proceeding, testifying at the proceeding, or giving information at the proceeding / influence (*name complainant*)'s testimony at the proceeding / encourage (*name complainant*) to avoid legal process, withhold testimony, or testify falsely]. It does not matter whether the official proceeding took place, as long as the defendant knew or had reason to know that [*name complainant*] could be a witness or was going to provide information at the ongoing or future proceeding.

(5) Fourth, that the defendant's actions involved [committing or attempting to commit a crime / a threat to kill or injure a person / a threat to cause property damage].

Use Note

[1] *Official proceeding* is further defined in MCL 750.122(12)(a) as "a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding."

[2] See MCL 750.122(5) for an attorney exemption to this statute.

History

M Crim JI 37.3b was adopted June 2017.

Reference

Statutes: MCL 750.122.

M Crim JI 37.4 Intimidating Witnesses

(1) The defendant is charged with the crime of witness intimidation. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name complainant*] was an individual who was testifying, or going to testify, or going to provide information at an ongoing or future official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath.[1]

(3) Second, that the defendant [threatened / tried to intimidate] [*name complainant*]. A threat is a written or spoken statement that shows an intent to injure another person, or that person's property or family. No particular words are necessary, and it can be said or written in vague terms that do not state exactly what injury will occur. But it must be definite enough so that a person of ordinary intelligence would understand it as a threat.

(4) Third, that, when the defendant [threatened / tried to intimidate] [*name complainant*], [he / she] intended to [discourage (*name complainant*) from attending the proceeding, testifying at the proceeding, or giving information at the proceeding / influence (*name complainant*)'s testimony at the proceeding / encourage (*name complainant*) to avoid legal process, withhold testimony, or testify falsely]. It does not matter whether the official proceeding took place, as long as the defendant knew or had reason to know that [*name complainant*] could be a witness or was going to provide information at the ongoing or future proceeding.

Use Note

[1] *Official proceeding* is further defined in MCL 750.122(12)(a) as "a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding."

History

M Crim JI 37.4 was adopted June 2017.

Reference

Statutes: MCL 750.122

M Crim JI 37.4a Intimidating Witnesses – Criminal Case, Penalty More Than Ten Years

(1) The defendant is charged with the crime of witness intimidation. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name complainant*] was an individual who was testifying, or going to testify, or going to provide information at an ongoing or future official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath.[1]

(3) Second, that the defendant [threatened / tried to intimidate] [*name complainant*]. A threat is a written or spoken statement that shows an intent to injure another person, or that person's property or family. No particular words are necessary, and it can be said or written in vague terms that do not state exactly what injury will occur. But it must be definite enough so that a person of ordinary intelligence would understand it as a threat.

(4) Third, that, when the defendant [threatened / tried to intimidate] [*name complainant*], [he / she] intended to [discourage (*name complainant*) from attending the proceeding, testifying at the proceeding, or giving information at the proceeding / influence (*name complainant*)'s testimony at the proceeding / encourage (*name complainant*) to avoid legal process, withhold testimony, or testify falsely]. It does not matter whether the official proceeding took place, as long as the defendant knew or had reason to know that [*name complainant*] could be a witness or was going to provide information at the ongoing or future proceeding.

(5) Fourth, that the official proceeding was a criminal case charging a crime with a maximum punishment of more than ten years or life in prison.

Use Note

[1] Official proceeding is further defined in MCL 750.122(12)(a) as "a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding."

History

M Crim JI 37.4a was adopted June 2017.

Reference

Statutes: MCL 750.122.

M Crim JI 37.4b Intimidating Witnesses – Crime/Threat to Kill

(1) The defendant is charged with the crime of witness intimidation. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name complainant*] was an individual who was testifying, or going to testify, or going to provide information at an ongoing or future official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath.[1]

(3) Second, that the defendant [threatened / tried to intimidate] [*name complainant*]. A threat is a written or spoken statement ~~of~~ that shows an intent to injure another person, or that person's property or family. No particular words are necessary, and it can be said or written in vague terms that do not state exactly what injury will occur. But it must be definite enough so that a person of ordinary intelligence would understand it as a threat.

(4) Third, that, when the defendant [threatened / tried to intimidate] [*name complainant*], [he / she] intended to [discourage (*name complainant*) from attending the proceeding, testifying at the proceeding, or giving information at the proceeding / influence (*name complainant*)'s testimony at the proceeding / encourage (*name complainant*) to avoid legal process, withhold testimony, or testify falsely]. It does not matter whether the official proceeding took place, as long as the defendant knew or had reason to know that [*name complainant*] could be a witness or was going to provide information at the ongoing or future proceeding.

(5) Fourth, that the defendant's actions involved [committing or attempting to commit a crime / a threat to kill or injure a person / a threat to cause property damage].

Use Note

[1] Official proceeding is further defined in MCL 750.122(12)(a) as "a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding."

History

M Crim JI 37.4b was adopted June 2017.

Reference

Statutes: MCL 750.122

M Crim JI 37.5 Interfering with Witnesses

(1) The defendant is charged with the crime of witness interference. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name complainant*] was an individual who was testifying, or going to testify, or going to provide information at an ongoing or future official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath.[1]

(3) Second, that the defendant impeded, interfered with, prevented, or obstructed [*name complainant*] from attending, testifying, or providing information, or tried to impede, interfere with, prevent, or obstruct [*name complainant*]. It does not matter whether the official proceeding took place, as long as the defendant knew or had reason to know that [*name complainant*] could be a witness at the proceeding.

(4) Third, that the defendant intended to impede, interfere with, prevent or obstruct [*name complainant*] from attending, testifying at, or providing information at the official proceeding.

Use Note

[1] Official proceeding is further defined in MCL 750.122(12)(a) as "a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding."

History

M Crim JI 37.5 was adopted June 2017.

Reference

Statutes: MCL 750.122

M Crim JI 37.5a Interfering with Witnesses – Criminal Case

(1) The defendant is charged with the crime of witness interference. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name complainant*] was an individual who was testifying, or going to testify, or going to provide information at an ongoing or future official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath.[1]

(3) Second, that the defendant impeded, interfered with, prevented, or obstructed [name complainant] from attending, testifying, or providing information, or tried to impede, interfere with, prevent, or obstruct [*name complainant*]. It does not matter whether the official proceeding took place, as long as the defendant knew or had reason to know that [*name complainant*] could be a witness at the proceeding.

(4) Third, that the defendant intended to impede, interfere with, prevent or obstruct [*name complainant*] from attending, testifying at, or providing information at the official proceeding.

(5) Fourth, that the official proceeding was a criminal case charging a crime with a maximum punishment of more than 10 years or life.

Use Note

[1] Official proceeding is further defined in MCL 750.122(12)(a) as "a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding."

History

M Crim JI 37.5a was adopted June 2017.

Reference

Statutes: MCL 750.122

M Crim JI 37.5b Interfering with Witnesses – Crime/Threat to Kill

(1) The defendant is charged with the crime of witness interference. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name complainant*] was an individual who was testifying, or going to testify, or going to provide information at an ongoing or future official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath.[1]

(3) Second, that the defendant impeded, interfered with, prevented, or obstructed [*name complainant*] from attending, testifying, or providing information, or tried to impede, interfere with, prevent, or obstruct [*name complainant*]. It does not matter whether the official proceeding took place, as long as the defendant knew or had reason to know that [*name complainant*] could be a witness at the proceeding.

(4) Third, that the defendant intended to impede, interfere with, prevent, or obstruct [*name complainant*] from attending, testifying at or providing information at the official proceeding.

(5) Fourth, that the defendant's actions involved [committing or attempting to commit a crime / a threat to kill or injure a person / a threat to cause property damage].

Use Note

[1] Official proceeding is further defined in MCL 750.122(12)(a) as "a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding."

History

M Crim JI 37.5b was adopted June 2017.

Reference

Statutes: MCL 750.122

M Crim JI 37.6 Retaliating Against Witnesses

(1) The defendant is charged with the crime of witness retaliation. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name complainant*] was a witness at an official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official that is authorized to hear evidence under oath.[1]

(3) Second, that the defendant retaliated, attempted to retaliate, or threatened to retaliate against [*name complainant*] for having been a witness. Retaliate means to commit or attempt to commit a crime against the witness, or to threaten to kill or injure any person, or to threaten to cause property damage to the witness.

Use Note

[1] Official proceeding is further defined in MCL 750.122(12)(a) as "a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding."

History

M Crim JI 37.6 was adopted June 2017.

Reference

Statutes: MCL 750.122

M Crim JI 37.7 Bribing or Intimidating Witnesses – Defenses

(1) The defendant says that [he / she] is not guilty because [his / her] conduct was lawful, and [he / she] only intended to encourage or cause [*name complainant*] to provide truthful testimony or evidence.

(2) In order to establish this defense, the defendant must prove two elements by a preponderance of the evidence. A preponderance of the evidence means that the defendant must prove that it is more likely than not that each of the elements is true.

(3) First, the defendant must prove that [his / her] conduct was otherwise lawful.

(4) Second, the defendant must prove that [his / her] intent was to encourage or cause [*name complainant*] to give truthful testimony.

(5) You should consider these elements separately. If you find that defendant has proved both of these elements, then you must find [him / her] not guilty. If the defendant has failed to prove either or both elements, the defense fails and you may find the defendant guilty if the prosecutor has proved the elements of the charge beyond a reasonable doubt.

History

M Crim JI 37.7 was adopted June 2017.

References

Statutes: MCL 750.122