The Committee on Model Criminal Jury Instructions has adopted the following amended model criminal jury instructions, effective April 2015.

ADOPTED

The Committee has adopted amended instructions M Crim JI 7.9 and M Crim JI 7.11 for use in cases where the defense of insanity has been raised. Some changes accommodate statutory amendments to MCL 768.21a and MCL 330.1100b, substituting the phrase "intellectual disability" for "mental retardation." Other amendments were made to comply with existing statutory language defining an intellectual disability (formerly mental retardation). Amendments are underlined; strike-outs are deletions.

[AMENDED] M Crim JI 7.9 The Meanings of Mental Illness, ~~Mental Retardation~~ 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," "~~mental retardation~~ 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) "~~Mental retardation~~ Intellectual disability" means significantly subaverage ~~general~~ intellectual functioning ~~which originates during the developmental period and is associated with impairment of adaptive behavior~~ 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 ~~mentally retarded~~ 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 ~~mental retardation~~ 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 Notes

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 ~~mental retardation~~ intellectual disability be given. If defendant's counsel does not want the definition of ~~mental retardation~~ 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 330.110a(3), and means skills in one 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) and MCL 768.29a(1).

Caselaw

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

[AMENDED] M Crim JI 7.11 Legal Insanity; Mental Illness; ~~Mental Retardation~~ Intellectual Disability; Burden of Proof

(1) The defense of legal insanity has been raised in this case. That 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 by evidence that outweighs the evidence against it that [he/she] was legally insane when [he /she] committed the [act/acts] constituting the offense. The law excuses a person who is legally insane at the time of a crime; but it is very important for you to remember that [mental [illness/~~retardation~~ intellectual disability] and legal insanity are not the same. A person can be [mentally [ill/~~retarded~~/intellectually disabled] and still not be legally insane.

(2) Before you may consider the legal insanity defense, of course, you must be convinced beyond a reasonable doubt that the defendant committed [the alleged act/each of the alleged acts]. If you are, you should consider the defendant's claim that [he/she] was legally insane at the time.

(3) When you deliberate, you must consider separately whether the defendant was [mentally [ill/~~retarded~~/intellectually disabled] and whether [he/she] was legally insane. You must use the definitions I gave you. I will repeat those definitions and then describe what you should do.

(4) "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.

(5) "~~Mental retardation~~ Intellectual disability" means significantly subaverage ~~general~~ intellectual functioning ~~which originates during the developmental period and is associated with impairment of adaptive behavior~~ that appeared before the defendant was 18 years old and impaired two or more of [his/her] adaptive skills.[1]

(6) To be legally insane, a person must first be either mentally ill or ~~mentally retarded~~ 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 ~~mental retardation~~ 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.

(7) To decide whether the defendant was legally insane at the time of the crime, you should go through the following two steps:

(8) Step one. Are you satisfied that the defendant has established, by evidence that outweighs the evidence against it, that [he/she] was [mentally [ill/~~retarded~~/intellectually disabled] at the time of the crime? Unless you are so satisfied, [he/she] was not legally insane. On the other hand, if the defendant has proved that [he/she] was [mentally [ill/~~retarded~~/intellectually disabled] you must go on to the next step.

(9) Step two. Are you also satisfied that the defendant has established by evidence that outweighs the evidence against it that [he/she] lacked the substantial ability either to appreciate the nature and quality or the wrongness of [his/her] conduct or to conform [his/her] conduct to the requirements of the law [he/she] is charged with violating?

(10) If the defendant has proven both step one and step two, you must find [him/her] not guilty by reason of insanity. However, if [he/she] has failed to prove either or both steps, [his/her] claim of legal insanity fails.

Use Notes

When the insanity defense is claimed, eliminate the sentence in M Crim JI 1.9 and M Crim JI 3.2, "The defendant is not required to prove [his/her] innocence or to do anything."

A waiver of the definition of ~~mental retardation~~ intellectual disability may be appropriate when there is no issue of ~~retardation~~ that kind of disability, although the statute appears to mandate that such an instruction be given.

1. The court may provide the jury with a definition of "adaptive skills" where appropriate. The phrase is defined in MCL 330.110a(3), and means skills in one 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.

This instruction was modified by the committee 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.

Reference Guide

Statutes

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

Caselaw

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).

The Committee solicits comment on the following proposals by June 1, 2015. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The Committee proposes amendments to M Crim JI 11.13 and 11.14, and elimination of M Crim JI 11.15 to conform with statutory amendments to MCL 750.231a(c) and (d). The instructions are used where there is evidence of an exemption to the prohibition against carrying concealed weapons in a vehicle under MCL 750.227(2). Deletions are shown in strike-out and additions to the instructional language are underlined. M Crim JI 11.15 was deleted because its exemption is now entirely encompassed within M Crim JI 11.14.

[AMENDED] M Crim JI 11.13 Exemption—Antique Firearm

(1) This law does not apply to a person who carries an antique gun ~~while going to or coming from a [hunting or target shooting area/a function involving the exhibition, demonstration, or sale of antique guns].~~ However, the antique gun must be unloaded and be in a wrapper or container [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 some evidence relating to the antique gun exemption was admitted at trial.

[AMENDED] M Crim JI 11.14 Exemption—Licensed Pistol Carried ~~from Place of Purchase or to Place of Repair, Etc.~~ for a Lawful Purpose

(1) This law does not apply to a person who carries a licensed pistol in a vehicle ~~from the place [he/she] bought it to [his/her] home or place of business. A person may also carry a pistol to a place of repair and, of course, back from the place of repair to [his/her] home or place of business. A person may also carry a pistol in a vehicle when moving goods from [his/her] home or place of business to another home or~~

~~business of [his/hers]~~ for a lawful purpose. However, ~~this~~ the pistol must be licensed, and must be unloaded and be in a wrapper or container [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 ~~to or from _____~~ for a lawful purpose.

Use Note

This instruction is to be given when the trial court determines that some evidence relating to the carrying of a licensed pistol ~~to or from the place of purchase, place of repair, or when moving was admitted at trial~~ for a lawful purpose was introduced at trial.

[DELETED] ~~M Crim JI 11.15 Exemption—Pistol Carried En Route to Hunting or Target Shooting Area~~

~~(1) A person who is carrying a valid Michigan hunting license or proof of a valid membership in an organization having a pistol shooting range may legally carry a pistol to or from a hunting or target shooting area. However, this pistol must be unloaded and be in a wrapper or container [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 [*state the applicable exemption*].~~

The Committee solicits comment on the following proposals by June 1, 2015. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The Committee proposes amendments to M Crim JI 11.38 and 11.38a to comport with statutory amendments to MCL 750.224f, which added "ammunition" as material that could not be possessed by convicted felons under certain circumstances, and added the acts of carrying, shipping, transporting, and purchasing to the list of forbidden acts.

[AMENDED] M Crim JI 11.38 Felon Possessing Firearm: Nonspecified Felony

The defendant is charged with possession of ~~having [possessed/used/transported/sold/received]~~ [a firearm/ammunition] ~~in this state~~ 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/received/carried/ shipped/transported/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 Notes

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."

~~1~~3. The prosecutor need not prove that the firearm was "operable." *People v Peals*, 476 Mich 636, 656; 720 NW2d 196 (2006).

~~2~~4. The judge, not the jury, determines whether the charged prior felony is a "felony" as defined in subsection (5), MCL 750.224f(5), or a more serious "specified felony" as defined in subsection (6), MCL 750.224f(6). 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.

~~3~~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 (5) as felonies; under subsection (2), the five-year ban applies to crimes defined as "specified" felonies in subsection (6).

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, ~~and~~ March 2014, and _____ 2015.

[AMENDED] M Crim JI 11.38a Felon Possessing Firearm: Specified Felony

The defendant is charged with possession of ~~having [possessed/used/transported/sold/received]~~ [a firearm/ammunition] ~~in this state~~ 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/transported/sold/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 Notes

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."

~~1~~3. The prosecutor need not prove that the firearm was "operable." *People v Peals*, 476 Mich 636, 656; 720 NW2d 196 (2006).

~~2~~4. The judge, not the jury, determines whether the charged prior felony is a "felony"

as defined in subsection (5), MCL 750.224f(5), or a more serious "specified felony" as defined in subsection (6), MCL 750.224f(6). 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.

35. 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 (5) as felonies; under subsection (2), the five-year ban applies to crimes defined as "specified" felonies in subsection (6).

46. 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, ~~and~~ March 2014, and _____ 2015.

The Committee solicits comment on the following proposals by June 1, 2015. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The Committee proposes the following instructions for use where a violation of the drug manufacturing/laboratory statute, MCL 333.7401c, is charged. There are three instructions. Since they are new, they are underlined throughout.

[NEW] 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 Notes

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).

[NEW] 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 [*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] [a chemical/laboratory equipment[1]].

(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 Notes

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. 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.

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).

[NEW] 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 Notes

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).

The Committee on Model Criminal Jury Instructions has adopted the following new model criminal jury instruction, effective April 2015.

ADOPTED

The Committee has adopted a new instruction for use where a violation of the torture statute, MCL 750.85, is charged.

[NEW] 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 [*Choose 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

Statute

MCL 750.85.

The Committee on Model Criminal Jury Instructions has adopted the following amended and new model criminal jury instructions, effective April 2015.

ADOPTED

The Committee has adopted amended and new instructions for use in first-degree criminal sexual conduct cases where the prosecutor has charged the defendant with a violation under MCL 750.520b(2)(b), invoking a mandatory 25-year minimum sentence. M Crim JI 20.1 is amended; M Crim JI 20.30b is a new instruction directing the jury to make "Special Findings" where the defendant has been charged with violating the statute and it has found the defendant guilty of first-degree criminal sexual conduct; M Crim JI 3.32 is a new verdict form for reporting the verdict and Special Findings. New language is underlined.

[AMENDED] 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 n 1.

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, and .520l.

Caselaw

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.

[NEW] 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

Statute

MCL 750.520b(2)(b).

Caselaw

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.

[NEW] M Crim JI 3.32 Special Verdict Form (Single Count)

Defendant: _____

[First-degree Criminal Sexual Conduct]

POSSIBLE VERDICTS:

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

Statute

MCL 750.520b(2)(b).

Caselaw

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.

SBM MONEY JUDGMENT INTEREST RATE

MCL 600.6013 governs how to calculate the interest on a money judgment in a Michigan state court. Interest is calculated at six-month intervals on January and July of each year, from when the complaint was filed, and is compounded annually.

For a complaint filed after December 31, 1986, the rate as of January 1, 2015 is 2.678 percent. This rate includes the statutory 1 percent.

But a different rule applies for a complaint filed after June 30, 2002 that is based on a written instrument with its own specified interest rate. The rate is the lesser of:

(1) 13 percent a year, compounded annually; or

(2) the specified rate, if it is fixed—or if it is variable, the variable rate when the complaint was filed if that rate was legal.

For past rates, see http://courts.mi.gov/Administration/SCAO/Resources/Documents/other/interest.pdf.

As the application of MCL 600.6013 varies depending on the circumstances, you should review the statute carefully.