

60 From the Committee on Model Criminal Jury Instructions

The Committee solicits comment on the following proposals by April 1, 2016. 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 amending the definition of a pistol in M Crim JI 11.3 and deletion of M Crim JI 11.6 in accord with the decision in *People v Humphrey*, ___ Mich App ___; ___ NW2d ___ (2015) (Docket No. 320353), holding that inoperability of a firearm is not a defense to firearms violations. Deletions are in strikethrough; added language is underlined.

M Crim JI 11.3 Definition of Pistol

(1) A pistol is a firearm. A firearm includes any weapon from which a dangerous object can be shot or propelled by the use of explosives, gas, or air. [A firearm does not include smooth-bore rifles or handguns designed and manufactured exclusively for shooting BBs no larger than .177 caliber by means of spring, gas, or air.]

(2) The shape of the pistol is not important as long as it is thirty inches or less in length.

(3) ~~Also, It does not matter whether or not the pistol was capable of firing a bullet, or whether it was loaded.~~

Use Note

Use bracketed material only where there is some question whether the weapon in question is a smooth-bore rifle or a handgun designed for shooting BBs no larger than .177 caliber.

M Crim JI 11.6 Defense—Firearm Inoperable

~~It is not against this law to carry 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.~~

[Deleted]

This instruction was stricken as an incorrect statement of the law. *People v Humphrey*, ___ Mich App ___; ___ NW2d ___ (2015) (Docket No. 320353).

The Committee on Model Criminal Jury Instructions has adopted the following amended model criminal jury instructions, effective February 2016.

ADOPTED

The Committee has adopted amended instructions for use in cases involving exemptions to carrying a concealed weapon charges, M Crim JI 11.13, 11.14, and 11.15, to comport with statutory amendments to MCL 750.231a.

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 re-designed 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.

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.

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.

The Committee on Model Criminal Jury Instructions has adopted the following amended model criminal jury instructions, effective February 2016.

ADOPTED

The Committee has adopted amended instructions for use in cases pertaining to violations of the short-barreled shotgun and rifle statute, and exemptions thereto, both found in MCL 750.224b. The instructions are M Crim JI 11.16 (exemptions) and 11.30 (the substantive instruction).

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.

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.

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PROPOSED

The Committee proposes amendments to the kidnapping instruction, M Crim JI 19.1, to comport with amendments to MCL 750.349 that added the intent to engage a minor in child sexually abusive activity to the statute. Deletions are in strikethrough; added language is underlined.

[AMENDED] 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, ~~by doing so when~~ the defendant did so, [he/she] ~~must have~~ 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

~~Select the alternative aggravating circumstance(s) warranted by the claims and evidence:~~

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.

The Committee on Model Criminal Jury Instructions has adopted the following amended model criminal jury instructions, effective February 2016.

ADOPTED

The Committee has adopted amended instructions for use in cases involving accessing or adding instructions to a computer system, M Crim JI 35.8 and 35.9, to correct the instructions, which previously included an erroneous “value” element, and to add a statutory presumption found in MCL 752.797(6).

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

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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.

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.