

The Committee solicits comment on the following adopted instructions by July 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.

ADOPTED PENDING PUBLIC COMMENT

Acting under MCR 2.512(D)(1), the Committee adopts amendments to the firearm instructions, M Crim JI 11.3, 11.17, 11.34, and 17.11, and adds new instructions M Crim JI 11.3a and 11.34a to the Weapons instructions in Chapter 11. The instructions are effective May 1, 2016, pending public comment. The new and amended instructions are offered to comport with legislative amendments to MCL 8.3t and 750.222(g) (adding pneumatic guns), 750.226 (carrying with unlawful intent), and 750.227b (felony-firearm), and in response to the Court of Appeals decision in *People v Humphrey* — Mich App (2015), that inoperability of a firearm is not a defense to firearms violations. Deletions are in strikethrough; added language is underlined. This publication supersedes the proposed amendment to M Crim JI 11.3 published in February 2016.

[AMENDED] 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 will, is designed to, or may readily be converted to expel a projectile by action of an explosive. ~~[A firearm does not include smoothbore 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 ~~twenty-six~~ thirty inches or less in length.

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

Use Note

Use bracketed material only where there is some question that the weapon in question

is a smoothbore rifle or a handgun designed for shooting BBs no larger than .177 caliber.

[NEW] 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.

[AMENDED] 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 Notes

1. Define term used:
M Crim JI 11.3 Pistol
M Crim JI 11.5 Dirk, Dagger, and Stiletto
M Crim JI 11.18 Knife and Razor
M Crim JI 11.3a Pneumatic Gun
M Crim JI 11.19 Dangerous Weapon
2. This is a specific intent crime.

[AMENDED] 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 gun was loaded.]

(7) A firearm includes any weapon which will, is designed to, or may readily be converted to expel a projectile by action of an explosive from which a dangerous object can be shot or propelled by the use of explosives, gas, or air.³

(8) A pistol is a firearm.]

(9) ~~A firearm does not include smoothbore rifles or handguns designed and manufactured exclusively for shooting BBs not exceeding .177 caliber by means of spring, gas, or air.]~~

Use Notes

Note that the statute states “felony” but explicitly excludes the felonies of carrying a concealed weapon, MCL 750.227, and unlawful possession of a pistol by a licensee, MCL 750.227a. 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).

**[NEW] 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 loaded.]

Use Notes

Note that the statute states “felony” but explicitly excludes the felonies of selling firearms illegally, MCL 750.223, carrying a concealed weapon, MCL 750.227, unlawful possession of a pistol by a licensee, MCL 750.227a, and illegally altering firearms, 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.).

**[AMENDED] M Crim JI 17.11
Definition of Firearm—
Gun, Revolver, Pistol**

(1) A gun [revolver/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 which is designed to or may readily be converted to expel a projectile by action of an explosive. [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.]

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(2) It does not matter whether or not the gun (revolver/pistol) was capable of firing a projectile or whether it was loaded.

Use Note

*Material in brackets is to be given where appropriate:

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PROPOSED

The Committee proposes instructions for “driving while license suspended causing death or serious injury” violations under MCL 257.904(4) and (5). The instructions, M Crim JI 15.21 and 15.22, are entirely new.

[NEW] 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.

(5) 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.

(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 must have been a direct and natural result of operating the vehicle.²

Use Notes

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. 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).

[NEW] 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 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.

(6) Fifth, that the defendant’s operation of the vehicle caused a serious impairment of a body function to [*name victim*].² 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.³

Use Notes

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 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.

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).

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PROPOSED

The Committee proposes instructions for "human trafficking" violations under MCL 750.462a through 750.462f. The instructions, M Crim JI 36.1 through 36.6, are entirely new.

[NEW] 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 threats of harm or restraint, or using a scheme intended to cause someone to think that psychological or physical harm or harm to the person's reputation would result from failing to perform an act. It also includes abusing or threatening to abuse the legal system, such as threatening to have the person arrested or deported, and it includes destroying, con-

cealing, removing, or confiscating a passport or immigration document.

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.]

[NEW] 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



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[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).

[NEW] 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 threats of harm or restraint, or using a scheme intended to cause someone to think that psychological or physical harm or harm to the person’s reputation would result from failing to perform an act. It also includes abusing or threatening to abuse the legal system, such as threatening to have the person arrested or deported, and it includes destroying, concealing, removing, or confiscating a passport or immigration document.

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).

[NEW] 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 by a person or persons less than 18 years old.

(3) Second, that the defendant knew that the enterprise was engaged in forced labor or services, debt bondage, or commercial sexual activity by a person or persons less than 18 years old.

(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 enterprise¹ 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 threats of harm or restraint, or using a scheme intended to cause someone to think that psychological or physical harm or harm to the person’s reputation would result from failing to perform an act. It also includes abusing or threatening to abuse the legal system, such as threatening to have the person arrested or deported, and it includes destroying, concealing, removing, or confiscating a passport or immigration document.

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 Notes

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.”

[NEW] 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.

[NEW] 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 purposes. Commercial sexual activity¹ 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 threats of harm or restraint, or using a scheme intended to cause someone to think that psychological or physical harm or harm to the person’s reputation would result in failing to perform an act. It also includes abusing or threatening to abuse the legal system such as threatening to have the person arrested or deported, and it includes destroying, con-

cealing, removing, or confiscating a passport or immigration document.

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 Notes

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.”



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