

74 From the Committee on Model Criminal Jury Instructions

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

ADOPTED

The Committee has adopted a new instruction for use in cases where accosting a minor for immoral purposes, MCL 750.145a, is charged: M Crim JI 20.40.

[NEW] 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 solicited¹/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 Notes

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 solic-

ited” 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 caselaw 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).

Reference Guide**Statutes**

MCL 750.145a.

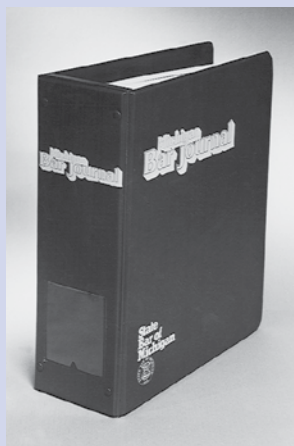
Caselaw

People v Kowalski, 489 Mich 488; 803 NW2d 200 (2011); *People v Gaines*, 306 Mich App 289; 856 NW2d 222 (2014).

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