

The Committee solicits comment on the following proposal by April 1, 2017. 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 several of the arson instructions, M Crim JI 31.4, M Crim JI 31.5, M Crim JI 31.6, M Crim JI 31.7, M Crim JI 31.8, M Crim JI 31.9, M Crim JI 31.10, for violations of MCL 750.74, *et seq.* The amendments are intended to conform the instructions to the statutes, which include destruction by explosion (in addition to burning), and to provide “plain language” substitutes for the legal terms “curtilage” and “appurtenant” found in the current instructions. Deletions are in strikethrough; new language is underlined.

### [AMENDED] 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, damaging, or destroying, the property that was burned, damaged, or destroyed 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 on the grounds around 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, damaged, or destroyed the dwelling or any of its contents, [he/she] intended to burn, damage, or destroy the dwelling or its contents or intentionally committed an act that created a very high risk of burning, damaging, or destroying the dwelling or its contents and that, while committing the act, the defendant knew of that risk and disregarded it.

### [AMENDED] 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, damaging, or destroying, 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 on the grounds around that building or structure or that is appurtenant to or connected to that building or structure.] [It does not 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, damaged, or destroyed the building or any of its contents, [he/she] intended to burn, damage, or destroy the building or contents or intentionally committed an act that created a very high risk of burning, damaging, or destroying the building or contents and that, while committing the act, the defendant knew of that risk and disregarded it.

### [AMENDED] 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, damaging, or destroying, the property that was burned, damaged, or destroyed 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, damaged, or destroyed 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, damaged, or destroyed the property, [he/she] intended to burn, damage, or destroy or intentionally committed an act that created a very high risk of burning, damaging, or destroying the building or contents and that, while committing the act, the defendant knew of that risk and disregarded it.

### **[AMENDED] 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, damaging, or destroying, 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, damaged, or destroyed 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, damaged, or destroyed the property, [he/she] intended to burn, damage, or destroy the property, or intentionally committed an act that created a very high risk of burning, damaging, or destroying the property and that, while committing the act, the defendant knew of that risk and disregarded it.

### **[AMENDED] 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~~ on the grounds around 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, damaging, or destroying, 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, damaging, or destroying, the defendant knew that the property was insured against loss or damage by fire or explosion.

(6) Fifth, that when the defendant burned, damaged, or destroyed 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.

### **[AMENDED] 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, damaging, or destroying, 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, damaging, or destroying, the defendant knew that the property was insured against loss or damage by fire or explosion.

(6) Fifth, that when the defendant burned, damaged, or destroyed 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.

### **[AMENDED] 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, damaging, or destroying, the property was insured against loss or damage by fire or explosion.

(5) Fourth, that at the time of the burning, damaging, or destroying, the defendant knew that the property was insured against loss or damage by fire or explosion.

(6) Fifth, that when the defendant burned, damaged, or destroyed 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.

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