

The Committee solicits comment on the following proposal by September 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 new instructions M Crim JI 10.8, 10.8a, and 10.8b, for violations found in MCL 750.159f, 750.159g, 750.159h, 750.159i, and 750.159j, the continuing-criminal-enterprise/racketeering statute, seeking public comment. The instructions are entirely new.

[NEW] M Crim JI 10.8 Racketeering— Conducting an Enterprise

(1) The defendant is charged with the crime of conducting a racketeering enterprise. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was an employee of, or was associated with, an enterprise. An enterprise may 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.¹

(3) Second, that the defendant knowingly conducted, or participated in, the affairs of the enterprise, directly or indirectly, through a pattern of racketeering.

An act of racketeering is committing, attempting to commit, conspiring to commit, aiding and abetting, soliciting, or coercing another to commit a listed offense for financial gain.

(a) The listed offenses that the defendant is accused of committing are [*identify specific violations from MCL 750.159g(a) through (rr)*].²

(b) [*Provide elements of identified violation(s).*]³

If you find that the defendant committed acts of racketeering, you must also determine whether [he/she] engaged in a pattern

of racketeering, which means committing at least two acts of racketeering to which all of the following characteristics apply:

(a) the acts have the same or a substantially similar purpose, result, participants, victim, or method of commission, or are otherwise interrelated by distinguishing characteristics, and are not isolated acts;

(b) the acts pose a threat of continued criminal activity; and

(c) at least one act occurred in Michigan after April 1, 1996 and the last act occurred not more than 10 years after the act before it.

It is up to you to decide whether the prosecutor has proved beyond a reasonable doubt both that the defendant committed acts of racketeering and that [he/she] engaged in a pattern of racketeering to conduct or participate in the affairs of an enterprise.

Use Notes

1. The court may choose to include whatever portions of the sentence that it finds appropriate.

2. The following offenses are listed in MCL 750.159g:

(a) tobacco tax statutes [MCL 205.428];

(b) hazardous waste statutes [MCL 324.11151];

(c) controlled substances statutes [MCL 333.7401 through 333.7461];

(d) controlled substances statutes (ephedrine or pseudoephedrine) [MCL 333.7340, 333.7340c, and 333.17766c];

(e) welfare fraud statutes [MCL 400.60];

(f) Medicaid fraud statutes [MCL 400.604, 400.605, and 400.607];

(g) gaming control statutes [MCL 432.218];

(h) liquor control statutes [MCL 436.1909];

(i) securities fraud statutes [MCL 451.2508];

(j) statutes prohibiting dissemination of pornography to minors [MCL 722.675 and 722.677];

(k) animal fighting statutes [MCL 750.49]

(l) arson statutes [MCL 750.72, 750.73, 750.74, 750.75, and 750.77];

(m) banking statutes [MCL 750.93 through 750.96];

(n) breaking and entering or home invasion statutes [MCL 750.110 and 750.110a];

(o) bribery statutes [MCL 750.117 through 750.121 and 750.124];

(p) jury tampering statutes [MCL 750.120a];

(q) child sexually abusive activity statutes [MCL 750.145c];

(r) Internet and computer crimes [MCL 750.145d];

(s) financial transaction device statutes [MCL 750.157n, 750.157p, 750.157q, 750.157r, 750.157s, 750.157t, and 750.157u];

(t) embezzlement statutes [MCL 750.174, 750.175, 750.176, 750.180, 750.181, and 750.182];

(u) bomb and explosive statutes [MCL 750.200 *et seq.*];

(v) extortion statutes [MCL 750.213];

(w) false pretenses statutes [MCL 750.218];

(x) firearms statutes [MCL 750.223(2), 750.224(1)(a), (b) or (c), 750.224b, 750.224c, 750.224e(1), 750.226, 750.227, 750.234a, 750.234b, and 750.237a];

(y) forgery and counterfeiting statutes [MCL 750.248 *et seq.*];

(z) state securities fraud statutes [MCL 750.271 through 750.274];

(aa) food stamps and coupons statutes [MCL 750.300a];

(bb) gambling statutes [MCL 750.301 through 750.305a and 750.313];

(cc) murder statutes [MCL 750.316 and 750.317];

(dd) horse racing statutes [MCL 750.330, 750.331, and 750.332];

(ee) kidnapping statutes [MCL 750.349, 750.349a, and 750.350];

(ff) larceny statutes [MCL 750.356 *et seq.*];

(gg) money laundering statutes [MCL 750.411k];

(hh) perjury statutes [MCL 750.422, 750.423, 750.424, and 750.425];

(ii) prostitution statutes [MCL 750.452, 750.455, 750.457, 750.458, and 750.459];

(jj) human trafficking statutes [MCL 750.462a *et seq.*];

(kk) robbery statutes [MCL 750.529 through 750.531];

(ll) possession of stolen property statutes [MCL 750.535 and 750.535a];

(mm) terrorism statutes [MCL 750.543a *et seq.*];

(nn) obscenity statutes [MCL 752.365];

(oo) identity theft statutes [MCL 445.61 through 445.77];

(pp) offenses committed in this or another state that constitute federal racketeering [18 USC 1961(1)];

(qq) offenses committed in this or another state in violation of federal law substantially similar to (a) through (pp);

(rr) offenses committed in another state in violation of the laws of that state that are substantially similar to (a) through (pp).

3. Do not read the first sentence of the instruction for the specific violation, which begins, “The defendant is charged with the crime of”

[NEW] M Crim JI 10.8a Acquiring Interest in Racketeering Enterprise or Property

(1) The defendant is charged with the crime of acquiring or maintaining an enterprise or property for an enterprise by racketeering. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant acquired or maintained an interest in or control of an enterprise, or acquired or maintained an interest in real or personal property used to conduct the business of an enterprise. An enterprise may 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.¹

(3) Second, that the defendant knowingly acquired or maintained an interest in or control of the enterprise or its property, directly or indirectly, through a pattern of racketeering.

An act of racketeering is committing, attempting to commit, conspiring to commit, aiding and abetting, soliciting, or coercing another person to commit a listed offense for financial gain.

(a) The listed offenses that the defendant is accused of committing are [*identify specific violations from MCL 750.159g(a) through (rr)*].²

(b) [*Provide elements of identified violation(s)*].³

If you find that the defendant committed acts of racketeering, you must also determine whether [he/she] engaged in a pattern of racketeering to acquire or maintain an interest in or control of the enterprise or its property, which means committing at

least two acts of racketeering to which all of the following characteristics apply:

(a) the acts have the same or a substantially similar purpose, result, participants, victim, or method of commission, or are otherwise interrelated by distinguishing characteristics, and are not isolated acts;

(b) the acts pose a threat of continued criminal activity; and

(c) at least one act occurred in Michigan after April 1, 1996 and the last act occurred not more than 10 years after the incident before it.

It is up to you to decide whether the prosecutor has proved beyond a reasonable doubt both that the defendant committed the acts of racketeering, and that [he/she] engaged in a pattern of racketeering to acquire or maintain an interest in or control of the enterprise or its property.

Use Notes

1. The court may choose to include whatever portions of the sentence that it finds appropriate.

2. The following offenses are listed in MCL 750.159g:

(a) tobacco tax statutes [MCL 205.428];

(b) hazardous waste statutes [MCL 324.11151];

(c) controlled substances statutes (ephedrine or pseudoephedrine) [MCL 333.7401 through 333.7461];

(d) controlled substances statutes [MCL 333.7340, 333.7340c, or 333.17766c];

(e) welfare fraud statutes [MCL 400.60];

(f) Medicaid fraud statutes [MCL 400.604, 400.605, and 400.607];

(g) gaming control statutes [MCL 432.218];

(h) liquor control statutes [MCL 436.1909];

(i) securities fraud statutes [MCL 451.2508];

(j) statutes prohibiting dissemination of pornography to minors [MCL 722.675 and 722.677];

(k) animal fighting statutes [MCL 750.49]

(l) arson statutes [MCL 750.72, 750.73, 750.74, 750.75, and 750.77];

(m) banking statutes [MCL 750.93 through 750.96];

(n) breaking and entering or home invasion statutes [MCL 750.110 and 750.110a];

(o) bribery statutes [MCL 750.117 through 750.121 and 750.124];

(p) jury tampering statutes [MCL 750.120a];

(q) child sexually abusive activity statutes [MCL 750.145c];

(r) Internet and computer crimes [MCL 750.145d];

(s) financial transaction device statutes [MCL 750.157n, 750.157p, 750.157q, 750.157r, 750.157s, 750.157t, and 750.157u];

(t) embezzlement statutes [MCL 750.174, 750.175, 750.176, 750.180, 750.181, and 750.182];

(u) bomb and explosive statutes [MCL 750.200 *et seq.*];

(v) extortion statutes [MCL 750.213];

(w) false pretenses statutes [MCL 750.218];

(x) firearms statutes [MCL 750.223(2), 750.224(1)(a), (b) or (c), 750.224b, 750.224c, 750.224e(1), 750.226, 750.227, 750.234a, 750.234b, and 750.237a];

(y) forgery and counterfeiting statutes [MCL 750.248 *et seq.*];

(z) state securities fraud statutes [MCL 750.271 through 750.274];

(aa) food stamps and coupons statutes [MCL 750.300a];

(bb) gambling statutes [MCL 750.301 through 750.305a and 750.313];

(cc) murder statutes [MCL 750.316 and 750.317];

(dd) horse racing statutes [MCL 750.330, 750.331, and 750.332];

(ee) kidnapping statutes [MCL 750.349, 750.349a, and 750.350];

(ff) larceny statutes [MCL 750.356 *et seq.*];

(gg) money laundering statutes [MCL 750.411k];

(hh) perjury statutes [MCL 750.422, 750.423, 750.424, and 750.425];

(ii) prostitution statutes [MCL 750.452, 750.455, 750.457, 750.458, and 750.459];

(jj) human trafficking statutes [MCL 750.462a *et seq.*];

(kk) robbery statutes [MCL 750.529 through 750.531];

(ll) possession of stolen property statutes [MCL 750.535 and 750.535a];

(mm) terrorism statutes [MCL 750.543a *et seq.*];

(nn) obscenity statutes [MCL 752.365];

(oo) identity theft statutes [MCL 445.61 through 445.77];

(pp) offenses committed in this or another state that constitute federal racketeering [18 USC 1961(1)];

(qq) offenses committed in this or another state in violation of federal law substantially similar to (a) through (pp);

(rr) offenses committed in another state in violation of the laws of that state that are substantially similar to (a) through (pp).

[NEW] M Crim JI 10.8b Use of Proceeds from Racketeering

(1) The defendant is charged with the crime of receiving proceeds from a pattern of racketeering and using them to establish or operate an enterprise. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant received any sort of property that was the proceeds of a pattern of racketeering.

An act of racketeering is committing, attempting to commit, conspiring to commit, aiding and abetting, soliciting, or coercing another person to commit a listed offense for financial gain.

(a) The listed offenses that the prosecutor charges were committed for financial gain are *[identify specific violations from MCL 750.159g(a) through (rr)]*¹.

(b) *[Provide elements of identified violation(s)]*²

A pattern of racketeering means at least two acts of racketeering were committed to which all of the following characteristics apply:

(a) the acts have the same or a substantially similar purpose, result, participants, victim, or method of commission, or are otherwise interrelated by distinguishing characteristics, and are not isolated acts;

(b) the acts pose a threat of continued criminal activity; and

(c) at least one act occurred in Michigan after April 1, 1996 and the last incident occurred not more than 10 years after the act before it.

It is up to you to decide whether the prosecutor has proved that the defendant received property and that the property was the proceeds of a pattern of racketeering. The prosecutor does not have to prove that the defendant was the person who committed the acts of racketeering, only that the defendant received the proceeds.

(3) Second, that the defendant knew that the property that [he/she] received was obtained through a pattern of racketeering.

(4) Third, that the defendant used or invested that property to [establish or operate an enterprise/acquire real or personal property to be used for operating an enterprise]. An enterprise may 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.³

Use Notes

1. The following offenses are listed in MCL 750.159g:

- (a) tobacco tax statutes [MCL 205.428];
- (b) hazardous waste statutes [MCL 324.11151];
- (c) controlled substances statutes [MCL 333.7401 through 333.7461];
- (d) controlled substances statutes (ephedrine or pseudoephedrine) [MCL 333.7340, 333.7340c, or 333.17766c];
- (e) welfare fraud statutes [MCL 400.60];
- (f) Medicaid fraud statutes [MCL 400.604, 400.605, and 400.607];
- (g) gaming control statutes [MCL 432.218];
- (h) liquor control statutes [MCL 436.1909];
- (i) securities fraud statutes [MCL 451.2508];
- (j) statutes prohibiting dissemination of pornography to minors [MCL 722.675 and 722.677];
- (k) animal fighting statutes [MCL 750.49];
- (l) arson statutes [MCL 750.72, 750.73, 750.74, 750.75, and 750.77];
- (m) banking statutes [MCL 750.93 through 750.96];
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- (o) bribery statutes [MCL 750.117 through 750.121 and 750.124];
- (p) jury tampering statutes [MCL 750.120a];
- (q) child sexually abusive activity statutes [MCL 750.145c];
- (r) Internet and computer crimes [MCL 750.145d];
- (s) financial transaction device statutes [MCL 750.157n, 750.157p, 750.157q, 750.157r, 750.157s, 750.157t, and 750.157u];
- (t) embezzlement statutes [MCL 750.174, 750.175, 750.176, 750.180, 750.181, and 750.182];
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(v) extortion statutes [MCL 750.213];

(w) false pretenses statutes [MCL 750.218];

(x) firearms statutes [MCL 750.223(2), 750.224(1)(a), (b) or (c), 750.224b, 750.224c, 750.224e(1), 750.226, 750.227, 750.234a, 750.234b, and 750.237a];

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(pp) offenses committed in this or another state that constitute federal racketeering [18 USC 1961(1)];

(qq) offenses committed in this or another state in violation of federal law substantially similar to (a) through (pp);

(rr) offenses committed in another state in violation of the laws of that state that are substantially similar to (a) through (pp).

2. Do not read the first sentence of the instruction for the specific violation, which begins, "The defendant is charged with the crime of..."

3. The court may choose to include whatever portions of the sentence that it finds appropriate.