

The Committee solicits comment on the following proposals 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 a new jury instruction, M Crim JI 5.14, to explain the presence of support persons or animals in the courtroom. See MCL 600.2163a(4) and *People v Johnson*, 315 Mich App 163 (2016). The instruction is entirely new.

[NEW] M Crim JI 5.14 Support Persons or Animals

You [are about to hear/have heard] testimony from a witness who [will be/was] accompanied by a support [person/animal]. The use of a support [person/animal] is authorized by law. You should disregard the support [person/animal]'s presence and decide the case based solely on the evidence presented. You should not consider the witness's testimony to be any more or less credible because of the [person/animal]'s presence. You must not allow the use of a support [person/animal] to influence your decision in any way.

PROPOSED

The Committee proposes a new jury instruction, M Crim JI 12.9, for a "§ 8 defense" to possession of marijuana charges in MCL 333.26428, pursuant to *People v Hartwick*, 498 Mich 192 (2015). The instruction is entirely new.

[NEW] M Crim JI 12.9 Medical Marijuana Affirmative Defense

(1) The defendant says that [he/she] is not guilty since [his/her] possession of marijuana was legal because it was permitted for medical purposes. The burden is on the defendant to show that [he/she] possessed marijuana for medical purposes.

(2) Before considering the medical marijuana defense, you must be convinced beyond a reasonable doubt that the defendant

committed the [crime/crimes] charged by the prosecutor. If you are not, your verdict should simply be not guilty of [that/those] offense[s]. If you are convinced that the defendant committed an offense, you should consider the defendant's defense that [he/she] possessed the marijuana for medical purposes.

(3) In order to establish that [his/her] possession of marijuana was legal, the defendant must prove three elements by a preponderance of the evidence. A preponderance of the evidence means that [he/she] must prove that it is more likely than not that each of the elements is true.

(4) First, that a physician provided a professional opinion stating that the defendant is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate a serious or debilitating medical condition or the symptoms of a serious or debilitating medical condition.

The term "therapeutic benefit" means tending to cure or restore to health.

The term "palliative benefit" means moderating pain or symptoms by making them easier to bear, without necessarily curing the underlying medical condition.

In order to prove that a physician provided a professional opinion, the defendant must establish both of the following conditions:

(a) that [he/she] had a bona fide physician-patient relationship with the physician who provided the professional opinion; and

(b) that the opinion was made after a full assessment of the defendant's medical history and current medical condition.

A bona fide relationship means that there was an actual and ongoing relationship between the defendant and the physician when the opinion was provided.

(5) Second, that the defendant [and (his/her) primary caregiver] possessed no more marijuana than was reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of treating or alleviating the defendant's medical condition or symptoms.

(6) Third, that the defendant [and (his/her) primary caregiver] [was/were] engaged in the [acquisition/possession/cultivation/manufacture/use/delivery/transfer/transportation] of marijuana to treat or alleviate the defendant's medical condition.

(7) You should consider these elements separately. If you find that the defendant has proved all three of these elements by a preponderance of the evidence, then you must find [him/her] not guilty because [his/her] possession was permitted for medical purposes. If the defendant has failed to prove any or all of these elements, [he/she] was not legally permitted to possess marijuana for medical purposes.

The Committee on Model Criminal Jury Instructions has adopted the following new model criminal jury instructions, effective June 2017.

ADOPTED

The Committee has adopted new instructions M Crim JI 37.3, 37.3a, 37.3b, 37.4, 37.4a, 37.4b, 37.5, 37.5a, 37.5b, 37.6, and 37.7 for use where a violation of MCL 750.122 (witness intimidation or bribery) is charged, effective June 1, 2017, following the expiration of the public comment period.

[NEW] M Crim JI 37.3 Bribing Witnesses

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

(2) First, that [*name complainant*] was an individual who was testifying, or going to testify, or going to provide information at an ongoing or future official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath.¹

(3) Second, that the defendant [gave/offered to give/promised to give] anything of value to [*name complainant*].²

(4) Third, that, when the defendant [gave/offered to give/promised to give] something of value to [*name complainant*], [he/she] intended to [discourage (*name complainant*) from attending the proceeding, testifying at the proceeding, or giving information at the proceeding/influence (*name complainant*)'s testimony at the proceeding/encourage (*name complainant*) to avoid legal process, withhold testimony, or testify falsely].

It does not matter whether the official proceeding took place, as long as the defendant knew or had reason to know that [*name complainant*] could be a witness or was going to provide information at the ongoing or future proceeding.

Use Notes

1. *Official proceeding* is further defined in MCL 750.122(12)(a) as “a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding.”

2. See MCL 750.122(5) for an attorney exemption to this statute.

[NEW] M Crim JI 37.3a Bribing Witnesses/Criminal Case, Penalty More Than 10 Years

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

(2) First, that [*name complainant*] was an individual who was testifying, or going to testify, or going to provide information at an ongoing or future official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath.¹

(3) Second, that the defendant [gave/offered to give/promised to give] anything of value to [*name complainant*].²

(4) Third, that, when the defendant [gave/offered to give/promised to give] something of value to [*name complainant*], [he/she] intended to [discourage (*name complainant*) from attending the proceeding, testifying at the proceeding, or giving information at the proceeding/influence (*name complainant*)’s testimony at the proceeding/encourage (*name complainant*) to avoid legal process, withhold testimony, or testify falsely]. It does not matter whether the official proceeding took place, as long as the defendant knew or had reason to know that [*name complainant*] could be a witness or was going to provide information at the ongoing or future proceeding.

(5) Fourth, that the official proceeding was a criminal case charging a crime with a maximum punishment of more than 10 years or life in prison.

Use Notes

1. *Official proceeding* is further defined in MCL 750.122(12)(a) as “a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding.”

2. See MCL 750.122(5) for an attorney exemption to this statute.

[NEW] M Crim JI 37.3b Bribing Witnesses— Crime/Threat to Kill

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

(2) First, that [*name complainant*] was an individual who was testifying, or going to testify, or going to provide information at an ongoing or future official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath.¹

(3) Second, that the defendant [gave/offered to give/promised to give] anything of value to [*name complainant*].²

(4) Third, that, when the defendant [gave/offered to give/promised to give] something of value to [*name complainant*], [he/she] intended to [discourage (*name complainant*) from attending the proceeding, testifying at the proceeding, or giving information at the proceeding/influence (*name complainant*)’s testimony at the proceeding/encourage (*name complainant*) to avoid legal process, withhold testimony, or testify falsely]. It does not matter whether the official proceeding took place, as long as the defendant knew or had reason to know that [*name complainant*] could be a witness or was going to provide information at the ongoing or future proceeding.

(5) Fourth, that the defendant’s actions involved [committing or attempting to com-

mit a crime/a threat to kill or injure a person/a threat to cause property damage].

Use Notes

1. *Official proceeding* is further defined in MCL 750.122(12)(a) as “a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding.”

2. See MCL 750.122(5) for an attorney exemption to this statute.

[NEW] M Crim JI 37.4 Intimidating Witnesses

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

(2) First, that [*name complainant*] was an individual who was testifying, or going to testify, or going to provide information at an ongoing or future official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath.¹

(3) Second, that the defendant [threatened/tried to intimidate] [*name complainant*]. A threat is a written or spoken statement that shows an intent to injure another person, or that person’s property or family. No particular words are necessary, and it can be said or written in vague terms that do not state exactly what injury will occur. But it must be definite enough so that a person of ordinary intelligence would understand it as a threat.

(4) Third, that, when the defendant [threatened/tried to intimidate] [*name complainant*], [he/she] intended to [discourage (*name complainant*) from attending the proceeding, testifying at the proceeding, or giving information at the proceeding/influence (*name complainant*)’s testimony at the proceeding/encourage (*name complainant*) to avoid legal process, withhold testimony, or testify falsely]. It does not matter whether the official proceeding took place, as long as the defendant knew or had reason to know that [*name complainant*] could be a witness or

was going to provide information at the ongoing or future proceeding.

Use Note

1. *Official proceeding* is further defined in MCL 750.122(12)(a) as “a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding.”

[NEW] M Crim JI 37.4a Intimidating Witnesses— Criminal Case, Penalty More Than 10 Years

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

(2) First, that [*name complainant*] was an individual who was testifying, or going to testify, or going to provide information at an ongoing or future official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath.¹

(3) Second, that the defendant [threatened/tried to intimidate] [*name complainant*]. A threat is a written or spoken statement that shows an intent to injure another person, or that person’s property or family. No particular words are necessary, and it can be said or written in vague terms that do not state exactly what injury will occur. But it must be definite enough so that a person of ordinary intelligence would understand it as a threat.

(4) Third, that, when the defendant [threatened/tried to intimidate] [*name complainant*], [he/she] intended to [discourage (*name complainant*) from attending the proceeding, testifying at the proceeding, or giving information at the proceeding/influence (*name complainant*)’s testimony at the proceeding/encourage (*name complainant*) to avoid legal process, withhold testimony, or testify falsely]. It does not matter whether the official proceeding took place, as long as the defendant knew or had reason to know that [*name complainant*] could be a witness or

was going to provide information at the ongoing or future proceeding.

(5) Fourth, that the official proceeding was a criminal case charging a crime with a maximum punishment of more than 10 years or life in prison.

Use Note

1. *Official proceeding* is further defined in MCL 750.122(12)(a) as “a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding.”

[NEW] M Crim JI 37.4b Intimidating Witnesses— Crime/Threat to Kill

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

(2) First, that [*name complainant*] was an individual who was testifying, or going to testify, or going to provide information at an ongoing or future official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath.¹

(3) Second, that the defendant [threatened/tried to intimidate] [*name complainant*]. A threat is a written or spoken statement that shows an intent to injure another person, or that person’s property or family. No particular words are necessary, and it can be said or written in vague terms that do not state exactly what injury will occur. But it must be definite enough so that a person of ordinary intelligence would understand it as a threat.

(4) Third, that, when the defendant [threatened/tried to intimidate] [*name complainant*], [he/she] intended to [discourage (*name complainant*) from attending the proceeding, testifying at the proceeding, or giving information at the proceeding/influence (*name complainant*)’s testimony at the proceeding/encourage (*name complainant*) to avoid legal process, withhold testimony, or testify falsely]. It does not matter whether

the official proceeding took place, as long as the defendant knew or had reason to know that [*name complainant*] could be a witness or was going to provide information at the ongoing or future proceeding.

(5) Fourth, that the defendant’s actions involved [committing or attempting to commit a crime/a threat to kill or injure a person/a threat to cause property damage].

Use Note

1. *Official proceeding* is further defined in MCL 750.122(12)(a) as “a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding.”

[NEW] M Crim JI 37.5 Interfering with Witnesses

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

(2) First, that [*name complainant*] was an individual who was testifying, or going to testify, or going to provide information at an ongoing or future official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath.¹

(3) Second, that the defendant impeded, interfered with, prevented, or obstructed [*name complainant*] from attending, testifying, or providing information, or tried to impede, interfere with, prevent, or obstruct [*name complainant*]. It does not matter whether the official proceeding took place, as long as the defendant knew or had reason to know that [*name complainant*] could be a witness at the proceeding.

(4) Third, that the defendant intended to impede, interfere with, prevent, or obstruct [*name complainant*] from attending, testifying at, or providing information at the official proceeding.

Use Note

1. *Official proceeding* is further defined in MCL 750.122(12)(a) as “a proceeding

heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding.”

[NEW] M Crim JI 37.5a Interfering with Witnesses— Criminal Case

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

(2) First, that [*name complainant*] was an individual who was testifying, or going to testify, or going to provide information at an ongoing or future official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath.¹

(3) Second, that the defendant impeded, interfered with, prevented, or obstructed [*name complainant*] from attending, testifying, or providing information, or tried to impede, interfere with, prevent, or obstruct [*name complainant*]. It does not matter whether the official proceeding took place, as long as the defendant knew or had reason to know that [*name complainant*] could be a witness at the proceeding.

(4) Third, that the defendant intended to impede, interfere with, prevent, or obstruct [*name complainant*] from attending, testifying at, or providing information at the official proceeding.

(5) Fourth, that the official proceeding was a criminal case charging a crime with a maximum punishment of more than 10 years or life.

Use Note

1. *Official proceeding* is further defined in MCL 750.122(12)(a) as “a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding.”

[NEW] M Crim JI 37.5b Interfering with Witnesses— Crime/Threat to Kill

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

(2) First, that [*name complainant*] was an individual who was testifying, or going to testify, or going to provide information at an ongoing or future official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath.¹

(3) Second, that the defendant impeded, interfered with, prevented, or obstructed [*name complainant*] from attending, testifying, or providing information, or tried to impede, interfere with, prevent, or obstruct [*name complainant*]. It does not matter whether the official proceeding took place, as long as the defendant knew or had reason to know that [*name complainant*] could be a witness at the proceeding.

(4) Third, that the defendant intended to impede, interfere with, prevent, or obstruct [*name complainant*] from attending, testifying at, or providing information at the official proceeding.

(5) Fourth, that the defendant’s actions involved [committing or attempting to commit a crime/a threat to kill or injure a person/a threat to cause property damage].

Use Note

1. *Official proceeding* is further defined in MCL 750.122(12)(a) as “a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding.”

[NEW] M Crim JI 37.6 Retaliating Against Witnesses

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

(2) First, that [*name complainant*] was a witness at an official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official that is authorized to hear evidence under oath.¹

(3) Second, that the defendant retaliated, attempted to retaliate, or threatened to retaliate against [*name complainant*] for having been a witness. Retaliate means to commit or attempt to commit a crime against the witness, or to threaten to kill or injure any person, or to threaten to cause property damage to the witness.

Use Note

1. *Official proceeding* is further defined in MCL 750.122(12)(a) as “a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding.”

[NEW] M Crim JI 37.7 Bribing or Intimidating Witnesses—Defenses

(1) The defendant says that [he/she] is not guilty because [his/her] conduct was lawful, and [he/she] only intended to encourage or cause [*name complainant*] to provide truthful testimony or evidence.

(2) In order to establish this defense, the defendant must prove two elements by a preponderance of the evidence. A preponderance of the evidence means that the defendant must prove that it is more likely than not that each of the elements is true.

(3) First, the defendant must prove that [his/her] conduct was otherwise lawful.

(4) Second, the defendant must prove that [his/her] intent was to encourage or cause [*name complainant*] to give truthful testimony.

(5) You should consider these elements separately. If you find that defendant has proved both of these elements, then you must find [him/her] not guilty. If the defendant has failed to prove either or both elements, the defense fails and you may find the defendant guilty if the prosecutor has proved the elements of the charge beyond a reasonable doubt.