

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

ADOPTED PENDING PUBLIC COMMENT

The Committee has adopted amendments to M Crim JI 12.1a and 12.1c for use where a violation of MCL 333.7401c (the statute for manufacturing controlled substances; limitation of structures) is charged, pending public comment per MCR 2.512(D) and MCR 1.201(D), effective July 1, 2017. The period for public comment expires on October 1, 2017.

[AMENDED] M Crim JI 12.1a Owning, Possessing or Using Vehicles, Buildings, Structures or Areas Used for Manufacturing Controlled Substances

(1) The defendant is charged with the crime of owning, possessing, or using [a vehicle/a building/a structure/an area/a place] as a location for manufacturing a controlled substance. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [owned/possessed/used] [*describe property*], [a vehicle/a building/a structure/an area/a place].

[*Select (3) where methamphetamine is the controlled substance, and do not instruct from (4) or (5). Select (4) where some other controlled substance is involved, and (5) where appropriate.*]

(3) Second, that the defendant knew or had reason to know that the property was going to be used to manufacture¹ methamphetamine.²

or

(4) Second, that the defendant knew or had reason to know that the property was going to be used to manufacture a controlled substance.¹

(5) Third, that [*Select that which has been charged.*]³

(a) a person less than 18 years old was present at the time.⁴

(b) hazardous waste⁵ was [generated/treated/stored/disposed].⁶

(c) the alleged violation occurred within 500 feet of [a residence/a business/a church/school property].⁹

(d) the alleged violation involved the [possession/placement/use] of a [firearm/device designed or intended to injure a person].¹⁰

Use Notes

Where the charged offense involves methamphetamine and paragraph (3) is used, do not instruct on paragraphs (4) or (5).

1. The jury may be instructed on the definition of “manufacture,” which may be found in MCL 333.7401c(7)(c).

2. MCL 333.7401c(2)(f).

3. Knowingly owning, possessing, or using the described vehicle, building, or structure is a 10-year offense. MCL 333.7401c(2)(a). Various aggravating factors increase the maximum term of imprisonment. *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), requires that factors that increase a maximum sentence be charged and proved beyond a reasonable doubt. If there are multiple aggravating factors, they will be charged in separate counts. Where applicable, provide the appropriate instruction for the charged offense in each count.

4. MCL 333.7401c(2)(b).

5. If appropriate, the jury should be instructed on the definition of “hazardous waste,” as provided in MCL 333.7401c(7)(a), which incorporates the definition found in MCL 324.11103.

6. MCL 333.7401c(2)(c).

7. The statute references “or other house of worship” in MCL 333.7401c(2)(d); appropriate terminology may be substituted.

8. MCL 333.7401c(7)(f) incorporates MCL 333.7410 for the definition of “school property.”

9. MCL 333.7401c(2)(d).

10. MCL 333.7401c(2)(e).

[AMENDED] M Crim JI 12.1c Providing Chemicals or Laboratory Equipment for Manufacturing Controlled Substances

(1) The defendant is charged with the crime of providing [chemicals/laboratory equipment] to another person for use in manufacturing a controlled substance. To

prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant provided [a chemical/laboratory equipment¹] to another person.

[*Select (3) where methamphetamine is the controlled substance, and do not instruct from (4) or (5). Select (4) where some other controlled substance is involved, and (5) where appropriate.*]

(3) Second, that the defendant knew or had reason to know that the [chemical/laboratory equipment] was going to be used to manufacture² methamphetamine.³

or

(4) Second, that the defendant knew or had reason to know that the [chemical/laboratory equipment] was going to be used to manufacture a controlled substance.²

(5) Third, that [*Select that which has been charged.*]⁴

(a) a person less than 18 years old was present at the time.⁵

(b) hazardous waste⁶ was [generated/treated/stored/disposed].⁷

(c) the alleged violation occurred within 500 feet of [a residence/a business/a church/school property].¹⁰

(d) the alleged violation involved the [possession/placement/use] of a [firearm/device designed or intended to injure a person].¹¹

Use Notes

Where the charged offense involves methamphetamine and paragraph (3) is used, do not instruct on paragraphs (4) or (5).

1. “Laboratory equipment” is defined in MCL 333.7401c(7)(b).

2. The jury may be instructed on the definition of “manufacture,” which may be found in MCL 333.7401c(7)(c).

3. MCL 333.7401c(2)(f).

4. Knowingly providing the described chemicals or equipment is a 10-year offense. MCL 333.7401c(2)(a). Various aggravating factors increase the maximum term of imprisonment. *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), requires that factors that increase a maximum sentence be charged and proved beyond a reasonable doubt. If there are multiple aggravating factors, they will be charged

in separate counts. Where applicable, provide the appropriate instruction for the charged offense in each count.

5. MCL 333.7401c(2)(b).

6. If appropriate, the jury should be instructed on the definition of “hazardous waste,” as provided in MCL 333.7401c(7)(a), which incorporates the definition found in MCL 324.11103.

7. MCL 333.7401c(2)(c).

8. The statute references “or other house of worship” in MCL 333.7401c(2)(d); appropriate terminology may be substituted.

9. MCL 333.7401c(7)(f) incorporates MCL 333.7410 for the definition of “school property.”

10. MCL 333.7401c(2)(d).

11. MCL 333.7401c(2)(e).

ADOPTED

The Committee has adopted an amendment to M Crim JI 12.1b for use where a violation of MCL 333.7401c (manufacturing controlled substances; limitation on structures) is charged, effective July 1, 2017.

[AMENDED] M Crim JI 12.1b Owning or Possessing Chemicals or Laboratory Equipment for Manufacturing Controlled Substances

(1) The defendant is charged with the crime of owning or possessing [chemicals/laboratory equipment] for use in manufacturing a controlled substance. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [owned/possessed] [a chemical/laboratory equipment¹].

[Select (3) where methamphetamine is the controlled substance, and do not instruct from (4) or (5). Select (4) where some other controlled substance is involved, and (5) where appropriate.]

(3) Second, that the defendant knew or had reason to know that the [chemical/laboratory equipment] was going to be used to manufacture² methamphetamine.³

or

(4) Second, that the defendant knew or had reason to know that the [chemical/laboratory equipment] was going to be used to manufacture a controlled substance.²

(5) Third, that *[Select that which has been charged:]*⁴

(a) a person less than 18 years old was present at the time.⁵

(b) hazardous waste⁶ was [generated/treated/stored/disposed].⁷

(c) the alleged violation occurred within 500 feet of [a residence/a business/a church⁸/school property⁹].¹⁰

(d) the alleged violation involved the [possession/placement/use] of a [firearm/device designed or intended to injure a person].¹¹

Use Notes

Where the charged offense involves methamphetamine and paragraph (3) is used, do not instruct on paragraphs (4) or (5).

1. “Laboratory equipment” is defined in MCL 333.7401c(7)(b).

2. The jury may be instructed on the definition of “manufacture,” which may be found in MCL 333.7401c(7)(c).

3. MCL 333.7401c(2)(f).

4. Knowingly owning or possessing the described chemicals or equipment is a 10-year offense. MCL 333.7401c(2)(a). Various aggravating factors increase the maximum term of imprisonment. *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), requires that factors that increase a maximum sentence be charged and proved beyond a reasonable doubt. If there are multiple aggravating factors, they will be charged in separate counts. Where applicable, provide the appropriate instruction for the charged offense in each count.

5. MCL 333.7401c(2)(b).

6. If appropriate, the jury should be instructed on the definition of “hazardous waste,” as provided in MCL 333.7401c(7)(a), which incorporates the definition found in MCL 324.11103.

7. MCL 333.7401c(2)(c).

8. The statute references “or other house of worship” in MCL 333.7401c(2)(d); appropriate terminology may be substituted.

9. MCL 333.7401c(7)(f) incorporates MCL 333.7410 for the definition of “school property.”

10. MCL 333.7401c(2)(d).

11. MCL 333.7401c(2)(e).

ADOPTED

The Committee has adopted amendments to M Crim JI 27.3 for use where a violation of MCL 750.175 (the statute for embezzlement by public officials) is charged, effective July 1, 2017.

[AMENDED] M Crim JI 27.3 Embezzlement by a Public Official

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

(2) First, that the defendant either held public office or was the agent or employee¹ of a public official.²

(3) Second, that the defendant received [money/property] in [his/her] official capacity or employment.

(4) Third, that the defendant knew that the [money/property] was received by [him/her] in [his/her] official capacity or employment, and was not received for [his/her] personal use.

(5) Fourth, that the defendant used the [money/property] for [himself/herself] or provided it to any other person for [his/her] use.

(6) Fifth, that [the property was worth \$50 or more/more than \$50 was involved].

Use Notes

1. The statute makes reference to a “servant” of a public official. That term is no longer commonly used, so the word “employee” has been substituted.

2. The terms “agent” and “public official” are defined in M Crim JI 22.5 and 22.19, respectively.



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