

56 From the Committee on Model Criminal Jury Instructions

The Committee solicits comment on the following proposals by May 1, 2018. 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 11.40, 11.40a, and 11.40b, for the “harmful substances” offenses found at MCL 750.200i, 750.200l, and 750.200j(1)(c), respectively. (Definitions are found at MCL 750.200h, and a penalty enhancement at MCL 750.212a.)

[NEW] M Crim JI 11.40 Harmful Substances—Unlawful Acts

(1) The defendant is charged with committing an unlawful act with a harmful substance or device. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [manufactured/delivered¹/possessed/transported/placed/used/released] a [substance/device].

(3) Second, that the [substance/device] that the defendant [manufactured/delivered/possessed/transported/placed/used/released] was a harmful [biological (substance/device)/chemical (substance/device)/radioactive (material/device)/electronic or electromagnetic device].

[Provide definition by selecting from paragraphs (a) through (g).]²

(a) A “harmful biological device” means a device designed or intended to release a harmful biological substance.

(b) A “harmful biological substance” means a bacteria, virus, or other microorganism or a toxic substance derived from or produced by an organism that can be used to cause death, injury, or disease in humans, animals, or plants.

(c) A “harmful chemical device” means a device that is designed or intended to release a harmful chemical substance.

(d) A “harmful chemical substance” means a solid, liquid, or gas that through its chemical or physical properties, alone or in combination with one or more other chemical substances, can be used to cause

death, injury, or disease in humans, animals, or plants.

(e) A “harmful radioactive material” means material that is radioactive and that can be used to cause death, injury, or disease in humans, animals, or growing plants by its radioactivity.

(f) A “harmful electronic or electromagnetic device” means a device designed to emit or radiate or that, as a result of its design, emits or radiates an electronic or electromagnetic pulse, current, beam, signal, or microwave that is intended to cause harm to others or cause damage to, destroy, or disrupt any electronic or telecommunications system or device, including, but not limited to, a computer, computer network, or computer system.

(g) “Harmful radioactive device” means a device that is designed or intended to release a harmful radioactive material.

(4) Third, that the defendant [manufactured/delivered/possessed/transported/placed/used/released] the harmful [substance/device] for an unlawful purpose. That is, [he/she] did so to frighten, terrorize, intimidate, threaten, harass, injure, or kill any person, or did so to damage or destroy any real or personal property without the permission of the owner or a governmental agency with authority over the property, if it is public property.

[Select from paragraphs (5) through (9) where one of the following aggravating factors has been charged.]

(5) Fourth, that the [manufacture/delivery/possession/transportation/placement/use/release] of the harmful [biological (substance/device)/chemical (substance/device)/radioactive (material/device)/electronic or electromagnetic device] resulted in property damage.

(6) Fourth, that [You may also consider whether³] the [manufacture/delivery/possession/transportation/placement/use/release] of the harmful [biological (substance/device)/chemical (substance/device)/radioactive (material/device)/electronic or electromagnetic device] resulted in physical injury [not amounting to serious impairment of a bodily function³] to another person.

(7) Fourth, that the [manufacture/delivery/possession/transportation/placement/use/release] of the harmful [biological (sub-

stance/device)/chemical (substance/device)/radioactive (material/device)/electronic or electromagnetic device] resulted in serious impairment of a bodily function to another person.⁴

(8) Fourth, that the [manufacture/delivery/possession/transportation/placement/use/release] of the harmful [biological (substance/device)/chemical (substance/device)/radioactive (material/device)/electronic or electromagnetic device] resulted in the death of another person.

(9) Fourth, that the [manufacture/delivery/possession/transportation/placement/use/release] of the harmful [substance/device] occurred in or was directed at [a child care or day care facility/a health care facility or agency/a building or structure open to the general public/a church, synagogue, mosque, or other place of religious worship/a school of any type/an institution of higher learning/a stadium/a transportation structure or facility open to the public (such as a bridge, tunnel, highway, or railroad)/an airport/a port/a natural gas refinery, storage facility, or pipeline/an electric, steam, gas, telephone, power, water, or pipeline facility/a nuclear power plant, reactor facility, or waste storage area/a petroleum refinery, storage facility, or pipeline/a vehicle, locomotive or railroad car, aircraft, or watercraft used to transport persons or goods/a government-owned building, structure, or other facility].⁵

Use Notes

1. “Delivery” is defined in MCL 750.200h.

2. MCL 750.200h(f) through (l) provides the definitions.

3. Use this language only when there is a dispute over the level of injury, and the jury is considering the lesser offense that the defendant caused a “physical injury” rather than causing a “serious impairment of a bodily function.”

4. The definitional statute, MCL 750.200h, cites MCL 257.58c, which provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

(a) Loss of a limb or loss of use of a limb.

(b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.

(c) Loss of an eye or ear or loss of use of an eye or ear.

(d) Loss or substantial impairment of a bodily function.

(e) Serious visible disfigurement.

(f) A comatose state that lasts for more than three days.

(g) Measurable brain or mental impairment.

(h) A skull fracture or other serious bone fracture.

(i) Subdural hemorrhage or subdural hematoma.

(j) Loss of an organ.

5. MCL 750.212a.

[NEW] M Crim JI 11.40a Harmful Substances— False Statement of Exposure

(1) The defendant is charged with causing another to believe that he or she was exposed to a harmful substance or device. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant did something to inform [*name complainant*] that [he/she] had been exposed to a harmful [biological (substance/device)/chemical (substance/device)/radioactive (material/device)/electronic or electromagnetic device¹].

[Provide definition by selecting from paragraphs (a) through (g).]²

(a) A “harmful biological device” means a device designed or intended to release a harmful biological substance.

(b) A “harmful biological substance” means a bacteria, virus, or other microorganism or a toxic substance derived from or produced by an organism that can be used to cause death, injury, or disease in humans, animals, or plants.

(c) A “harmful chemical device” means a device that is designed or intended to release a harmful chemical substance.

(d) A “harmful chemical substance” means a solid, liquid, or gas that through its chemical or physical properties, alone or in combination with one or more other chemical substances, can be used to cause death, injury, or disease in humans, animals, or plants.

(e) A “harmful radioactive material” means material that is radioactive and that

can be used to cause death, injury, or disease in humans, animals, or growing plants by its radioactivity.

(f) A “harmful electronic or electromagnetic device” means a device designed to emit or radiate or that, as a result of its design, emits or radiates an electronic or electromagnetic pulse, current, beam, signal, or microwave that is intended to cause harm to others or cause damage to, destroy, or disrupt any electronic or telecommunications system or device, including, but not limited to, a computer, computer network, or computer system.

(g) “Harmful radioactive device” means a device that is designed or intended to release a harmful radioactive material.

(3) Second, that [*name complainant*] had not actually been exposed to a harmful [biological substance/chemical substance/radioactive material or device/electronic or electromagnetic device].

(4) Third, the defendant knew that [*name complainant*] had not actually been exposed to a harmful [biological (substance/device)/chemical (substance/device)/radioactive (material/device)/electronic or electromagnetic device], but intended to make [him/her] believe that [he/she] had been exposed.

Use Notes

1. The instruction may have to be modified if the false statement involves an electronic or electromagnetic device and the complainant’s computer.

2. MCL 750.200(h) through (l) provides the definitions.

[NEW] M Crim JI 11.40b Imitation Harmful Substance or Device

(1) The defendant is charged with manufacturing, possessing, placing, or releasing an imitation harmful substance or device for an unlawful purpose. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [manufactured/delivered¹/possessed/transported/placed/used/released] a [substance/device].

(3) Second, that the [substance/device] that the defendant [manufactured/delivered/possessed/transported/placed/used/re-

leased] was an imitation harmful substance or device. An imitation harmful substance or device means something that is claimed to be or is designed or intended to appear to be a harmful biological, chemical, radioactive, or electromagnetic substance or device, but is not such a substance or device.

[The court may provide any of the following definitions where appropriate.]²

(a) A “harmful biological device” means a device designed or intended to release a harmful biological substance.

(b) A “harmful biological substance” means a bacteria, virus, or other microorganism or a toxic substance derived from or produced by an organism that can be used to cause death, injury, or disease in humans, animals, or plants.

(c) A “harmful chemical device” means a device that is designed or intended to release a harmful chemical substance.

(d) A “harmful chemical substance” means a solid, liquid, or gas that through its chemical or physical properties, alone or in combination with one or more other chemical substances, can be used to cause death, injury, or disease in humans, animals, or plants.

(e) A “harmful radioactive material” means material that is radioactive and that can be used to cause death, injury, or disease in humans, animals, or growing plants by its radioactivity.

(f) A “harmful electronic or electromagnetic device” means a device designed to emit or radiate or that, as a result of its design, emits or radiates an electronic or electromagnetic pulse, current, beam, signal, or microwave that is intended to cause harm to others or cause damage to, destroy, or disrupt any electronic or telecommunications system or device, including, but not limited to, a computer, computer network, or computer system.

(g) “Harmful radioactive device” means a device that is designed or intended to release a harmful radioactive material.

(4) Third, that the defendant [manufactured/delivered/possessed/transported/placed/used/released] the substance or device to frighten, terrorize, intimidate, threaten, harass, injure, or kill any person, or did so to damage or destroy any real or personal property without the permission

of the owner or a governmental agency with authority over the property, if it is public property.

[Select from paragraphs (5) through (9) where one of the following aggravating factors has been charged:]

(5) Fourth, that the [manufacture/delivery/possession/transportation/placement/use/release] of the imitation harmful substance or device directly or indirectly resulted in property damage.

(6) Fourth, that [You may also consider whether³] the [manufacture/delivery/possession/transportation/placement/use/release] of the imitation harmful substance or device directly or indirectly resulted in physical injury [not amounting to serious impairment of a bodily function³] to another person.

(7) Fourth, that the [manufacture/delivery/possession/transportation/placement/use/release] of the imitation harmful substance or device directly or indirectly resulted in serious impairment of a bodily function to another person.⁴

(8) Fourth, that the [manufacture/delivery/possession/transportation/placement/use/release] of the imitation harmful substance or device directly or indirectly resulted in the death of another person.

(9) Fourth, that the [manufacture/delivery/possession/transportation/placement/use/release] of the imitation harmful substance or device occurred in or was directed at [a child care or day care facility/a health care facility or agency/a building or structure open to the general public/a church, synagogue, mosque, or other place of religious worship/a school of any type/an institution of higher learning/a stadium/a transportation structure or facility open to the public (such as a bridge, tunnel, highway, or railroad)/an airport/a port/a natural gas refinery, storage facility, or pipeline/an electric, steam, gas, telephone, power, water, or pipeline facility/a nuclear power plant, reactor facility, or waste storage area/a petroleum refinery, storage facility, or pipeline/a vehicle, locomotive or railroad car, aircraft, or watercraft used to transport persons or goods/a government-owned building, structure, or other facility].⁵

Use Notes

1. “Delivery” is defined in MCL 750.200h.
2. MCL 750.200h(f) through (l) provides the definitions.

3. Use this language only when there is a dispute over the level of injury, and the jury is considering the lesser offense that the defendant caused a “physical injury” rather than causing a “serious impairment of a bodily function.”

4. The definitional statute, MCL 750.200h, cites MCL 257.58c, which provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

- (a) Loss of a limb or loss of use of a limb.
 - (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
 - (c) Loss of an eye or ear or loss of use of an eye or ear.
 - (d) Loss or substantial impairment of a bodily function.
 - (e) Serious visible disfigurement.
 - (f) A comatose state that lasts for more than three days.
 - (g) Measurable brain or mental impairment.
 - (h) A skull fracture or other serious bone fracture.
 - (i) Subdural hemorrhage or subdural hematoma.
 - (j) Loss of an organ.
5. MCL 750.212a.

PROPOSED

The Committee proposes a new instruction, M Crim JI 11.41, for the “chemical irritant” offenses found at MCL 750.200j. (Definitions are found at MCL 750.200h, and a penalty enhancement at MCL 750.212a.)

[NEW] M Crim JI 11.41 Chemical Irritants—Unlawful Acts

(1) The defendant is charged with committing an unlawful act with a chemical irritant or device for an unlawful purpose. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [manufactured/delivered/possessed/transported/placed/used/released] a [substance/device].

(3) Second, that the [substance/device] that the defendant [manufactured/delivered/possessed/transported/placed/used/released] was a [chemical irritant/chemical irritant device/smoke device].

[Provide definition for chemical irritants from paragraph (a) or from (b) then (a):]¹

(a) A “chemical irritant” means a solid, liquid, or gas that, through its chemical or physical properties, alone or in combination with one or more other substances, can be used to produce an irritant effect in humans, animals, or plants.

(b) A “chemical irritant device” means a device designed or intended to release a chemical irritant.

(4) Third, that the defendant [manufactured/delivered/possessed/transported/placed/used/released] the [chemical irritant/chemical irritant device/smoke device] to frighten, terrorize, intimidate, threaten, harass, injure, or kill any person, or did so to damage or destroy any real or personal property without the permission of the owner or a governmental agency with authority over the property, if it is public property.

[Select from paragraphs (5) through (9) where one of the following aggravating factors has been charged:]

(5) Fourth, that the [manufacture/delivery/possession/transportation/placement/use/release] of the [chemical irritant/chemical irritant device/smoke device] resulted in property damage.

(6) Fourth, that [You may also consider whether²] the [manufacture/delivery/possession/transportation/placement/use/release] of the [chemical irritant/chemical irritant device/smoke device] resulted in physical injury [not amounting to serious impairment of a bodily function²] to another person.

(7) Fourth, that the [manufacture/delivery/possession/transportation/placement/use/release] of the [chemical irritant/chemical irritant device/smoke device] resulted in serious impairment of a bodily function to another person.³

(8) Fourth, that the [manufacture/delivery/possession/transportation/placement/

use/release] of the [chemical irritant/chemical irritant device/smoke device] resulted in the death of another person.

(9) Fourth, that the [manufacture/delivery/possession/transportation/placement/use/release] of the [chemical irritant/chemical irritant device/smoke device] occurred in or was directed at [a child care or day care facility/a health care facility or agency/a building or structure open to the general public/a church, synagogue, mosque, or other place of religious worship/a school of any type/an institution of higher learning/a stadium/a transportation structure or facility open to the public (such as a bridge, tunnel, highway, or railroad)/an airport/a port/a natural gas refinery, storage facility, or pipeline/an electric, steam, gas, telephone, power, water, or pipeline facility/a nuclear power plant, reactor facility, or waste storage area/a petroleum refinery, storage facility, or pipeline/a vehicle, locomotive or railroad car, aircraft, or watercraft used to transport persons or goods/a government-owned building, structure, or other facility].⁴

Use Notes

1. MCL 750.200h(a) and (b) provides the definitions. The statute does not provide a definition for a smoke device.

2. Use this language only when there is a dispute over the level of injury, and the jury is considering the lesser offense that the defendant caused a “physical injury” rather than causing a “serious impairment of a bodily function.”

3. The definitional statute, MCL 750.200h, cites MCL 257.58c, which provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

- (a) Loss of a limb or loss of use of a limb.
- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than three days.

(g) Measurable brain or mental impairment.

(h) A skull fracture or other serious bone fracture.

(i) Subdural hemorrhage or subdural hematoma.

(j) Loss of an organ.

4. MCL 750.212a.

PROPOSED

The Committee proposes new instructions, M Crim JI 11.42 and 11.42a, for the “offensive or injurious substances” crimes found at MCL 750.209. (A penalty enhancement is found at MCL 750.212a.)

[NEW] M Crim JI 11.42 Offensive or Injurious Substances— Placement with Intent to Injure

(1) The defendant is charged with placing an offensive or injurious substance for an unlawful purpose. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant placed an offensive or injurious substance or compound¹ in or near to [real/personal] property.

(3) Second, that when the defendant placed the offensive or injurious substance or compound, [he/she] intended to [injure or coerce another person/injure the property or business of another person/interfere with another person’s use, management, conduct, or control of his or her property or business].

[Select from paragraphs (4) through (8) where one of the following aggravating factors has been charged:]

(4) Third, that the offensive or injurious substance or compound damaged another person’s property.

(5) Third, that [You may also consider whether²] the offensive or injurious substance or compound caused physical injury [not amounting to serious impairment of a bodily function²] to another person.

(6) Third, that the offensive or injurious substance or compound caused the serious impairment of a bodily function to another person.³

(7) Third, that the offensive or injurious substance or compound caused the death of another person.

(8) Third, that placement of the offensive or injurious substance or compound occurred in or was directed at [a child care or day care facility/a health care facility or agency/a building or structure open to the general public/a church, synagogue, mosque, or other place of religious worship/a school of any type/an institution of higher learning/a stadium/a transportation structure or facility open to the public (such as a bridge, tunnel, highway, or railroad)/an airport/a port/a natural gas refinery, storage facility, or pipeline/an electric, steam, gas, telephone, power, water, or pipeline facility/a nuclear power plant, reactor facility, or waste storage area/a petroleum refinery, storage facility, or pipeline/a vehicle, locomotive or railroad car, aircraft, or watercraft used to transport persons or goods/a government-owned building, structure, or other facility].⁴

Use Notes

1. The statute does not provide a definition for an offensive or injurious substance or compound.

2. Use this language only when there is a dispute over the level of injury, and the jury is considering the lesser offense that the defendant caused a “physical injury” rather than causing a “serious impairment of a bodily function.”

3. A definitional statute, MCL 750.200h, cites MCL 257.58c, which provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

- (a) Loss of a limb or loss of use of a limb.
- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than three days.
- (g) Measurable brain or mental impairment.

(h) A skull fracture or other serious bone fracture.

(i) Subdural hemorrhage or subdural hematoma.

(j) Loss of an organ.

4. MCL 750.212a.

[NEW] M Crim JI 11.42a **Offensive or Injurious Substances—** **Placement with Intent to Annoy**

(1) The defendant is charged with placing an offensive or injurious substance with intent to annoy or alarm. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant placed an offensive or injurious substance or compound¹ in or near to [real/personal] property.

(3) Second, that when the defendant placed the offensive or injurious substance or compound, [he/she] intended to annoy or alarm another person.

[Select from paragraphs (4) through (8) where one of the following aggravating factors has been charged:]

(4) Third, the offensive or injurious substance or compound damaged another person's property.

(5) Third, that [You may also consider whether²] the offensive or injurious substance or compound caused physical injury [not amounting to serious impairment of a bodily function²] to another person.

(6) Third, that the offensive or injurious substance or compound caused the serious impairment of a bodily function to another person.³

(7) Third, that the offensive or injurious substance or compound caused the death of another person.

(8) Third, that placement of the offensive or injurious substance or compound occurred in or was directed at [a child care or day care facility/a health care facility or

agency/a building or structure open to the general public/a church, synagogue, mosque, or other place of religious worship/a school of any type/an institution of higher learning/a stadium/a transportation structure or facility open to the public (such as a bridge, tunnel, highway, or railroad)/an airport/a port/a natural gas refinery, storage facility, or pipeline/an electric, steam, gas, telephone, power, water, or pipeline facility/a nuclear power plant, reactor facility, or waste storage area/a petroleum refinery, storage facility, or pipeline/a vehicle, locomotive or railroad car, aircraft, or watercraft used to transport persons or goods/a government-owned building, structure, or other facility].⁴

Use Notes

1. The statute does not provide a definition for an offensive or injurious substance or compound.

2. Use this language only when there is a dispute over the level of injury, and the jury is considering the lesser offense that the defendant caused a "physical injury" rather than causing a "serious impairment of a bodily function."

3. A definitional statute, MCL 750.200h, cites MCL 257.58c, which provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

(a) Loss of a limb or loss of use of a limb.

(b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.

(c) Loss of an eye or ear or loss of use of an eye or ear.

(d) Loss or substantial impairment of a bodily function.

(e) Serious visible disfigurement.

(f) A comatose state that lasts for more than three days.

(g) Measurable brain or mental impairment.

(h) A skull fracture or other serious bone fracture.

(i) Subdural hemorrhage or subdural hematoma.

(j) Loss of an organ.

4. MCL 750.212a.



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Changes submitted before January 16 will appear in the next Alphabetical Roster Edition.

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