

70 From the Committee on Model Criminal Jury Instructions

The Committee solicits comment on the following proposal by November 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 amending M Crim JI 3.28, the jury verdict form used for multiple counts against a defendant, because the current form fails to provide a general “not guilty” option for each charged count. See *People v Wade*, 283 Mich App 462 (2009). Deletions are in strike-through, and new language is underlined.

[AMENDED] M Crim JI 3.28 Verdict Form (Multiple Counts)

Defendant:

POSSIBLE VERDICTS:

You may return only one verdict on this charge each count. Mark only one verdict on this sheet for each count.

Not Guilty

Count 1

Not Guilty of

Guilty of

Count 2

Not Guilty of

Guilty of

The Committee on Model Criminal Jury Instructions has adopted the following new model criminal jury instructions, M Crim JI 11.39, M Crim JI 11.39a, and M Crim JI 11.39b, for violations of the “explosive substances and dangerous things” statutes, MCL 750.204, 750.204a, and 750.207, effective September 2018.

[NEW] M Crim JI 11.39 Explosives—Sending

(1) The defendant is charged with [You may also consider the lesser offense of¹] sending or delivering an explosive substance

or dangerous thing for an unlawful purpose [resulting in (property damage/death/serious impairment of a body function/injury)/occurring in or directed at a public facility].² To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [(sent/delivered) (an explosive substance/a dangerous thing)³/caused (an explosive substance/a dangerous thing) to be taken or received].

(3) Second, that when the defendant [(sent/delivered) the (explosive substance/dangerous thing)/caused (an explosive substance/a dangerous thing) to be taken or received], [he/she] intended to frighten, terrorize, intimidate, threaten, harass, injure, or kill [(name complainant)/any person], or intended to damage or destroy any real or personal property without the permission of [(name complainant)/the owner of the property/a governmental agency with authority over the public property].

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

(4) Third, that the [sending/delivery] of the [explosive substance/dangerous thing] damaged property.

(5) Third, that the [sending/delivery] of the [explosive substance/dangerous thing] caused the death of another person.

(6) Third, that the [sending/delivery] of the [explosive substance/dangerous thing] caused a serious impairment of a body function to another person.

Serious impairment of a body function⁴ 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.

(7) Third, that the [sending/delivery] of the [explosive substance/dangerous thing] caused physical injury [not amounting to serious impairment of a body function¹] to another person.

(8) Third, that the [sending/delivery] of the [explosive substance/dangerous thing] 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. 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 a “serious impairment of a body function.”

2. Select where an aggravating factor in paragraphs (4) through (8) is charged.

3. There is no statutory definition of “explosive substance” or “dangerous thing.”

4. The definitional statute, MCL 750.200h, cites MCL 257.58c.

5. MCL 750.212a.

Reference

Statutes

MCL 750.204; 750.212a

[NEW] M Crim JI 11.39a Explosives—Placing

(1) The defendant is charged with [You may also consider the lesser offense of¹]

placing an explosive substance for an unlawful purpose [resulting in (property damage/death/serious impairment of a body function/injury)/occurring in or directed at a public facility].² To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant placed an explosive substance¹ in or near any real or personal property.

(3) Second, that when the defendant placed the explosive substance, [he/she] did so to frighten, terrorize, intimidate, threaten, harass, injure, or kill any person, or intended 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 (4) through (8) where one of the following aggravating factors has been charged:]

(4) Third, that the placement of the explosive substance damaged property.

(5) Third, that the placement of the explosive substance caused the death of another person.

(6) Third, that the placement of the explosive substance caused a serious impairment of a body function to another person.

Serious impairment of a body function⁴ 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.

(7) Third, that the placement of the explosive substance caused physical injury

[not amounting to serious impairment of a body function¹] to another person.

(8) Third, that the placement of the explosive substance 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. 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 a “serious impairment of a body function.”

2. Select where an aggravating factor in paragraphs (4) through (8) is charged.

3. There is no statutory definition of “explosive substance.”

4. The definitional statute, MCL 750.200h, cites MCL 257.58c.

5. MCL 750.212a.

Reference

Statutes

MCL 750.207; 750.212a

[NEW] M Crim JI 11.39b Explosives—False Bomb

(1) The defendant is charged with possessing, delivering, or placing a device that was constructed to look like an explosive 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 [possessed/delivered/sent/transported/placed] a device.

(3) Second, that the device was [made to appear to be an explosive, an incendiary

device, or a bomb/described as being an explosive, an incendiary device, or a bomb].

(4) Third, that, when the defendant [possessed/delivered/sent/transported/placed] the device, [he/she] intended to frighten, terrorize, intimidate, threaten, harass, or annoy [(name complainant)/a person].

Use Note

MCL 750.204a(2) permits prosecution of this offense in various jurisdictions. The “venue” instruction, M Crim JI 3.10, may have to be altered to explain why the violation may be prosecuted in Michigan.

Reference

Statutes

MCL 750.204a; 750.212a

The Committee on Model Criminal Jury Instructions has adopted the following new model criminal jury instructions, M Crim JI 11.40, M Crim JI 11.40a, and M Crim JI 11.40b, for violations of the “harmful substances” statutes, MCL 750.200i, 750.200l, and 750.200j(1)(c), effective September 2018.

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

(1) The defendant is charged with [You may also consider the lesser offense of] committing an unlawful act with a harmful substance or device [resulting in (property damage/death/serious impairment of a body function/injury)/occurring in or directed at a public facility].² To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [manufactured/delivered³/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):]*⁴

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

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(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 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.

(7) 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 serious impairment of a body function to another person.

Serious impairment of a body function⁵ 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.

(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 physical injury [not amounting to serious impairment of a body function¹] to 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].⁶

Use Notes

1. 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 a “serious impairment of a body function.”

2. Select where an aggravating factor in paragraphs (5) through (9) is charged.

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

4. MCL 750.200h(f) through (j), provides the definitions.

5. The definitional statute, MCL 750.200h, cites MCL 257.58c.

6. MCL 750.212a.

Reference

Statutes

MCL 750.200i; 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/device)/chemical (substance/device)/radioactive (material/device)/electronic or electromagnetic device].

(4) Third, that 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 750.200h(f) through (l), provides the definitions.

Reference

Statutes

MCL 750.200i; 750.212a

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

(1) The defendant is charged with [You may also consider the lesser offense of] manufacturing, possessing, placing, or releasing an imitation harmful substance or device for an unlawful purpose [resulting in (property damage/death/serious impairment of a body function/injury)/occurring in or directed at a public facility].² To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [manufactured/delivered³/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 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.]⁴

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

(f) 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.

(g) 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.

(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 resulted in property damage.

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

Serious impairment of a body function⁵ 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.

(8) Fourth, that 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 body function¹] to 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].⁶

Use Notes

1. 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 a “serious impairment of a body function.”

2. Select where an aggravating factor in paragraphs (5) through (9) is charged.

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

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

5. The definitional statute, MCL 750.200h, cites MCL 257.58c.

6. MCL 750.212a.

Reference

Statutes

MCL 750.200j(1)(c); 750.212a

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