

The Committee on Model Criminal Jury Instructions has adopted the following amended model criminal jury instruction, M Crim JI 7.16a (rebuttable presumption regarding self-defense under MCL 780.951), to make the instruction easier to understand and in accord with the statutory language, effective December 1, 2018.

**[AMENDED] M Crim JI 7.16a  
Rebuttable Presumption Regarding  
Fear of Death, Great Bodily Harm,  
or Sexual Assault**

(1) If you find both that—

(a) the deceased was in the process of breaking and entering a business or dwelling, or committing home invasion, or had broken into a business or dwelling, or committed home invasion and was still present in the business or dwelling, or was unlawfully attempting to remove a person from a dwelling, business, or vehicle against the person's will,

and

(b) the defendant honestly and reasonably believed the deceased was engaged in any of the conduct just described

—it is presumed that the defendant had an honest and reasonable belief that imminent [death/great bodily harm/sexual assault] would occur. The prosecutor can overcome this presumption by proving beyond a reasonable doubt that the defendant did not have an honest and reasonable belief that [death/great bodily harm/sexual assault] was imminent.

(2) This presumption does not apply if—

[Use the appropriate paragraph below based on the claims of the parties and the evidence admitted.]

(a) the deceased had the legal right to be in the dwelling, business, or vehicle and there was not a “no contact” [court order/pretrial supervision order/probation order/parole order] against the deceased, or

(b) the individual being removed was a child or grandchild or otherwise in the lawful custody of the deceased victim, or

(c) the defendant was engaged in the commission of a crime or using the dwelling, business premises, or vehicle to further the commission of a crime, or

(d) the deceased was a peace officer who was entering or attempting to enter

the premises or vehicle in the performance of his or her duties, or

(e) the deceased was [the spouse of the defendant/the former spouse of the defendant/a person with whom the defendant had or previously had a dating relationship/a person with whom the defendant had a child in common/a resident or former resident of the defendant's household], and the defendant had a prior history of domestic violence<sup>1</sup> as the aggressor.

**Use Note**

1. For the definition of “domestic violence,” see MCL 400.1501(1)(d).

The Committee on Model Criminal Jury Instructions has adopted the following amended model criminal jury instructions, M Crim JI 11.37a and M Crim JI 11.37b, for violations of the statute that prohibits discharging a firearm at or in a building, MCL 750.234b, effective December 1, 2018. The amendments remove an element of “physical injury” to prove the underlying crime, since physical injury is only an aggravating element.

**[AMENDED] M Crim JI 11.37a  
Discharge of a Firearm at a Building**

(1) The defendant is charged with intentionally discharging a firearm at a dwelling or potentially occupied structure. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant discharged a firearm.<sup>1</sup>

(3) Second, that [he/she] did so intentionally, that is, on purpose.

(4) Third, that [he/she] discharged the firearm at a building that [he/she] had reason to believe was either a dwelling or a potentially occupied structure.

A dwelling is a building where people usually live. It does not matter whether or not someone was actually in the building at the time.

A potentially occupied structure is a building that a reasonable person knows or should know was likely to be occupied by one or more persons due to its nature, function, or location. It does not matter

whether a person was actually present in the structure.

[Select from paragraphs (5) through (7) where one of the following aggravating factors has been charged:]

(5) Fourth, that when the defendant discharged the firearm [he/she] caused the death of [name complainant].

(6) Fourth, that when the defendant discharged the firearm [he/she] caused serious impairment of a body function to [name complainant].

Serious impairment<sup>2</sup> 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.

(7) Fourth, that, when the defendant discharged the firearm, [he/she] caused physical injury to [name complainant] [not amounting to serious impairment of a body function<sup>3</sup>].

**Use Notes**

1. *Firearm* is defined in MCL 28.421(1)(c) and MCL 750.222(e).

2. MCL 750.234b(10)(d) references MCL 257.58c for the definition of *serious impairment of a body function*.

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 a “serious impairment of a body function.”

This charge does not apply to a peace officer in the performance of his or her duties. MCL 750.234b(6).

Self-defense or defense of others is a defense to this charge. MCL 750.234b(7). Appropriate instructions from M Crim JI 7.15 through 7.24 must be given where such a defense is raised.

### **[AMENDED] M Crim JI 11.37b Discharge of a Firearm in a Building**

(1) The defendant is charged with intentionally discharging a firearm in a dwelling or potentially occupied structure. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant discharged a firearm.<sup>1</sup>

(3) Second, that [he/she] did so intentionally, that is, on purpose.

(4) Third, that [he/she] discharged the firearm in a building that [he/she] had reason to believe was either a dwelling or a potentially occupied structure.

A dwelling is a building where people usually live. It does not matter whether or not someone was actually in the building at the time.

A potentially occupied structure is a building that a reasonable person knows or should know was likely to be occupied by one or more persons due to its nature, function, or location. It does not matter whether a person was actually present in the structure.

(5) Fourth, that the defendant acted with reckless disregard for the safety of other persons.

[Select from paragraphs (6) through (8) where one of the following aggravating factors has been charged:]

(6) Fifth, that when the defendant discharged the firearm [he/she] caused the death of [name complainant].

(7) Fifth, that when the defendant discharged the firearm [he/she] caused serious impairment of a body function to [name complainant].

Serious impairment<sup>2</sup> 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.

(8) Fifth, that when the defendant discharged the firearm, [he/she] caused physical injury to [name complainant] [not amounting to serious impairment of a body function<sup>3</sup>].

### **Use Notes**

1. *Firearm* is defined in MCL 28.421(1)(c) and MCL 750.222(e).

2. MCL 750.234b(10)(d) references MCL 257.58c for the definition of *serious impairment of a body function*.

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 a “serious impairment of a body function.”

This charge does not apply to a peace officer in the performance of his or her duties. MCL 750.234b(6).

Self-defense or defense of others is a defense to this charge. MCL 750.234b(7). Appropriate instructions from M Crim JI 7.15 through 7.24 must be given where such a defense is raised.

The Committee on Model Criminal Jury Instructions has adopted the following new model criminal jury instructions, M Crim JI 11.43 and M Crim JI 11.43a, for violations of the explosive-or-combustible substances statutes, MCL 750.209a and 750.210, that prohibit possessing or carrying such substances with the intent to terrorize, injure, or kill in a public place, effective December 1, 2018.

### **[NEW] M Crim JI 11.43 Carrying or Possessing Explosive or Combustible Substances with Intent to Damage Property or to Frighten, Injure, or Kill a Person**

(1) [The defendant is charged with/You may also consider the lesser offense of<sup>1</sup>] possessing or carrying an explosive or combustible substance with intent to damage property or to frighten, injure, or kill a person [resulting in (property damage/death/serious impairment of a body function/injury)/occurring in or directed at a public facility]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant possessed [(an explosive or combustible substance or compound/a substance or compound that will become an explosive or combustible substance or compound when combined with another substance or compound)/an article containing (an explosive or combustible substance or compound/a substance or compound that will become an explosive or combustible substance or compound when combined with another substance or compound)].<sup>2</sup>

(3) Second, that the defendant knew that the substance or compound that [he/she] possessed was explosive or combustible, or would become an explosive or combustible substance or compound when combined with another substance or compound.

(4) Third, that when the defendant possessed the explosive or combustible substance or compound, [he/she] intended to [frighten, terrorize, intimidate, threaten, harass, injure, or kill another person/damage or destroy (any real or personal property without permission from the owner/any public property without permission from the governmental agency having authority over the property<sup>3</sup>)].

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

(5) Fourth, that the explosive or combustible substance or compound damaged another person's property.

(6) Fourth, that the explosive or combustible substance or compound caused the death of another person.

(7) Fourth, that the explosive or combustible substance or compound caused the serious impairment of a body function to another person.

Serious impairment of a body function<sup>4</sup> 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 explosive or combustible substance or compound caused physical injury [not amounting to serious impairment of a body function<sup>4</sup>] to another person.
- (9) Fourth, that the explosive or combustible substance or compound was possessed 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].<sup>5</sup>

#### 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. There is no statutory definition for explosive or combustible substances or compounds.

3. Use the second alternative only where the property is public property.

4. A definitional statute, MCL 750.200h, cites MCL 257.58c for the meaning of “serious impairment of a body function.”

5. MCL 750.212a.

#### [NEW] M Crim JI 11.43a Possessing Explosive Substance or Device in a Public Place

(1) The defendant is charged with possessing an explosive substance or device in a public place with unlawful intent. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant possessed an explosive substance or device.<sup>1</sup>

(3) Second, that the defendant knew that the substance or device that [he/she] possessed was explosive.

(4) Third, that the defendant possessed the explosive substance or device in a public place.<sup>1</sup>

(5) Fourth, that when the defendant possessed the explosive substance or device, [he/she] intended to frighten, terrorize, intimidate, threaten, harass, or annoy another person.

*[Provide paragraph (6) where the aggravating factor has been charged.]*

(6) Fifth, that the explosive substance or device was possessed in [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].<sup>2</sup>

#### Use Notes

1. There is no statutory definition for explosive substance or device.

2. MCL 750.212a.

The Committee on Model Criminal Jury Instructions has adopted the following new model criminal jury instructions, M Crim JI 11.44 and M Crim JI 11.44a, for violations of the statute that prohibits making, selling, buying, furnishing, or possessing a Molotov cocktail, or making, selling, buying, furnishing, or possessing an incendiary explosive device with intent to terrorize, injure, or kill in a public place, MCL 750.211a(1)(a) and 750.211a(1)(b), effective December 1, 2018.

#### [NEW] M Crim JI 11.44 Manufacturing, Buying, Selling, Furnishing, or Possessing Molotov Cocktails

(1) The defendant is charged with manufacturing, selling, furnishing, buying, or possessing a Molotov cocktail. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [manufactured/sold/furnished/bought/possessed] a Molotov cocktail or similar device.

A Molotov cocktail is an improvised incendiary device that is constructed from a bottle or other container filled with a flammable or combustible material or substance and that has a wick, a fuse, or other device that is designed or intended to ignite the contents of the bottle or container when it is thrown or placed near a target.

(3) Second, that when the defendant [manufactured/sold/furnished/bought/possessed] it, [he/she] knew that it was a Molotov cocktail or similar incendiary device.

[(4) Third, that the device was manufactured, sold, furnished, bought, or possessed 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].<sup>1</sup> ]<sup>2</sup>

#### Use Notes

1. MCL 750.212a.

2. Use this paragraph only when this aggravating factor has been charged.

#### **[NEW] M Crim JI 11.44a Manufacturing, Buying, Selling, Furnishing, or Possessing an Incendiary Explosive Device with Intent to Damage Property or to Frighten, Injure, or Kill a Person**

(1) [The defendant is charged with/You may also consider the lesser offense of<sup>1</sup>] manufacturing, selling, furnishing, buying, or possessing an incendiary device with intent to damage property or to frighten, injure, or kill a person [resulting in (property damage/death/serious impairment of a body function/injury)/occurring in or directed at a public facility]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [manufactured/sold/furnished/bought/possessed] a device that [would explode on impact/would explode with the application of heat or a flame/was highly incendiary].

(3) Second, that when the defendant [manufactured/sold/furnished/bought/possessed] the device, [he/she] knew that it [would explode on impact/would explode with the application of heat or a flame/was highly incendiary].

(4) Third, that when the defendant [manufactured/sold/furnished/bought/possessed] the device, [he/she] intended to frighten, terrorize, intimidate, threaten, harass, injure, or kill another person or intended to [damage or destroy any real or personal property without permission from the owner/damage or destroy any public property without permission from the gov-

ernmental agency with authority over the public property<sup>2</sup>].

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

(5) Fourth, that the device damaged [another person's property without permission from the owner/public property without permission from the governmental agency with authority over the property<sup>2</sup>].

(6) Fourth, that the device caused the death of another person.

(7) Fourth, that the device caused the serious impairment of a body function to another person.

Serious impairment of a body function<sup>3</sup> 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 device caused physical injury [not amounting to serious im-

pairment of a body function<sup>1</sup>] to another person.

(9) Fourth, that the device was manufactured, sold, furnished, bought, or possessed 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].<sup>4</sup>

#### 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. Use the second alternative only where the property is public property.

3. A definitional statute, MCL 750.200h, cites MCL 257.58c for the definition of serious impairment of a body function.

4. MCL 750.212a.

## UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN

### NOTICE OF AMENDMENTS AND PROPOSED AMENDMENTS TO LOCAL RULES

The United States District Court for the Eastern District of Michigan publishes proposed amendments and approved amendments to its Local Rules on its website at [www.mied.uscourts.gov](http://www.mied.uscourts.gov). Attorneys are encouraged to visit the court's website frequently for up-to-date information. A printer-friendly version of the Local Rules, which includes appendices approved by the court, can also be found on the website.