

54 From the Committee on Model Criminal Jury Instructions

The Committee on Model Criminal Jury Instructions has adopted the following amended model criminal jury instruction, M Crim JI 3.8, making it easier to read and understand, and adding a footnote to clarify its use in light of many instructions that contain lesser-included offenses within the instructions themselves. The amended instruction is effective December 1, 2019.

ADOPTED**[AMENDED] M Crim JI 3.8
Less Serious Crimes**

You may also consider whether [the defendant is/the defendants are] guilty of the less serious crime of [*name lesser included charge*]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

[*Provide elements of lesser included offense(s).*]

Use Note

In some instructions, the language necessary for providing the jury with an instruction on lesser included offenses may be found within the instruction itself. In some instances, it will be necessary to use this instruction to introduce the lesser included offense(s).

The Committee on Model Criminal Jury Instructions has adopted the following new model criminal jury instructions, M Crim JI 10.10, 10.10a, 10.10b, and 10.10c, for gang-related crimes found in MCL 750.411u and 750.411v. These instructions are effective December 1, 2019.

ADOPTED**[NEW] M Crim JI 10.10
Gang-Motivated Crimes**

(1) The defendant is charged with committing a crime related to gang membership or association. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that there was a group of persons that was a gang.

To prove that the group of persons was a gang, the prosecutor must prove that it was a group of five or more persons who had a continuing relationship with each other, and identified themselves as a gang in all three of the following ways:

(a) The group had a unifying mark, manner, protocol, or method of expressing membership, which may include a common name, sign, or symbol, means of recognition, geographical or territorial sites, or boundary or location.

(b) The group had an established leadership or command structure.

(c) The group had defined membership criteria.

(3) Second, that the defendant was a member or an associate¹ of the gang.²

(4) Third, that the defendant committed or attempted to commit the felony crime of [*identify underlying charged offense*], as has previously been described to you.

(5) Fourth, that the defendant's membership in or association with the gang provided the defendant with the motive, means, or opportunity to commit the crime of [*identify underlying charged offense*].

Use Notes

1. The statute does not define the term "associate." Where the jury expresses some confusion about the term or asks for a definition, the Committee on Model Criminal Jury Instructions offers the following: an "associate" is a person who is not a member of the gang, but engages in gang-related activities with its members.

2. Where the defendant challenges whether he or she is a member or associate of a gang, it may be necessary to explain that merely being in the presence of persons who are gang members is not sufficient to establish that a person is a member or associate, but proof of engaging in activities with the gang or as part of the gang is required.

**[NEW] M Crim JI 10.10a
Encouraging Gang-Motivated Crimes**

(1) The defendant is charged with causing, encouraging, or coercing another person

to assist a gang in committing a felony. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that there was a group of persons that was a gang.

To prove that the group of persons was a gang, the prosecutor must prove that it was a group of five or more persons who had a continuing relationship with each other, and identified themselves as a gang in all three of the following ways:

(a) The group had a unifying mark, manner, protocol, or method of expressing membership, which may include a common name, sign, or symbol, means of recognition, geographical or territorial sites, or boundary or location.

(b) The group had an established leadership or command structure.

(c) The group had defined membership criteria.

(3) Second, that members of the gang committed or planned to commit the felony crime of [*identify underlying charged offense*], as has previously been described to you.

(4) Third, that the defendant caused, encouraged, or coerced [*identify other person(s)*] to join, participate in, or assist the gang in committing or attempting to commit the crime of [*identify underlying charged offense*].

**[NEW] M Crim JI 10.10b
Making Threats to Deter a Person
from Assisting Another to
Withdraw from Gang Membership**

(1) The defendant is charged with communicating a threat intending to deter a person from helping another person to withdraw from gang membership or association. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that there was a group of persons that was a gang.

To prove that the group of persons was a gang, the prosecutor must prove that it was a group of five or more persons who had a continuing relationship with each other, and identified themselves as a gang in all three of the following ways:

(a) The group had a unifying mark, manner, protocol, or method of expressing membership, which may include a common name, sign, or symbol, means of recognition, geographical or territorial sites, or boundary or location.

(b) The group had an established leadership or command structure.

(c) The group had defined membership criteria.

(3) Second, that *[identify gang member]* was a member or associate¹ of the gang.

(4) Third, that the defendant communicated a threat to *[identify complainant]* that [he/she], [his/her] relative, or someone associated with [him/her] would be injured, or that the person or property of *[identify complainant]*, [his/her] relative, or someone associated with [him/her] would be damaged if *[identify complainant]* assisted or helped *[identify gang member]* withdraw from the gang. It does not matter whether the threat directly described the injury or damage that would occur, or implied that injury or damage would occur, so long as a reasonable person would understand it to be a threat of injury or damage.

(5) Fourth, that when the defendant communicated the threat, [he/she] intended to deter or discourage *[identify complainant]* from assisting or helping *[identify gang member]* to withdraw from the gang.

Use Note

1. The statute does not define the term “associate.” Where the jury expresses some confusion about the term or asks for a definition, the Committee on Model Criminal Jury Instructions offers the following: an “associate” is a person who is not a member of the gang, but engages in gang-related activities with its members.

[NEW] M Crim JI 10.10c **Threatening a Person to Retaliate for** **Withdrawing from Gang Membership**

(1) The defendant is charged with communicating a threat intending to punish or retaliate against a person for withdrawing from gang membership. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that there was a group of persons that was a gang.

To prove that the group of persons was a gang, the prosecutor must prove that it was a group of five or more persons who had a continuing relationship with each other, and identified themselves as a gang in all three of the following ways:

(a) The group had a unifying mark, manner, protocol, or method of expressing membership, which may include a common name, sign, or symbol, means of recognition, geographical or territorial sites, or boundary or location.

(b) The group had an established leadership or command structure.

(c) The group had defined membership criteria.

(3) Second, that *[identify complainant]* was at one time a member or associate¹ of the gang.

(4) Third, that *[identify complainant]* withdrew from the gang.

(5) Fourth, that the defendant communicated a threat to *[identify complainant]* that [he/she], a relative of [his/hers], or someone

associated with [him/her] would be injured, or that the person or property of *[identify complainant]*, [his/her] relative, or someone associated with [him/her] would be damaged as punishment or retaliation against *[identify complainant]* for withdrawing from the gang. It does not matter whether the threat directly described the injury or damage that would occur, or implied that injury or damage would occur, so long as a reasonable person would understand it to be a threat of injury or damage.

(6) Fifth, that when the defendant communicated the threat, [he/she] intended to punish or retaliate against *[identify complainant]* for withdrawing from the gang.

Use Note

1. The statute does not define the term “associate.” Where the jury expresses some confusion about the term or asks for a definition, the Committee on Model Criminal Jury Instructions offers the following: an “associate” is a person who is not a member of the gang, but engages in gang-related activities with its members.



MONEY JUDGMENT INTEREST RATE

MCL 600.6013 governs how to calculate the interest on a money judgment in a Michigan state court. Interest is calculated at six-month intervals in January and July of each year, from when the complaint was filed, and is compounded annually.

For a complaint filed after December 31, 1986, the rate as of July 1, 2019 is 3.235 percent. This rate includes the statutory 1 percent.

But a different rule applies for a complaint filed after June 30, 2002 that is based on a written instrument with its own specified interest rate. The rate is the lesser of:

- (1) 13 percent a year, compounded annually; or
- (2) the specified rate, if it is fixed—or if it is variable, the variable rate when the complaint was filed if that rate was legal.

For past rates, see <http://courts.mi.gov/Administration/SCAO/Resources/Documents/other/interest.pdf>.

As the application of MCL 600.6013 varies depending on the circumstances, you should review the statute carefully.