

## 54 From the Committee on Model Criminal Jury Instructions

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by August 1, 2021. 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 a new instruction, M Crim JI 25.7 [Trespassing], for the crimes delineated in MCL 750.552.

### [NEW] M Crim JI 25.7 Trespassing

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

(2) First, that [name complainant] owned or legally occupied property located at [provide property address or location].

[Select from the following three options according to the charge and the evidence:]

(3) Second, that [name complainant or agent] told the defendant [he/she] could not come onto the property.

(4) Third, that the defendant entered on the property after being forbidden to do so. [or]

(3) Second, that the defendant was on the property owned or occupied by [name complainant].

(4) Third, that [name complainant or agent] told the defendant [he/she] had to leave the property.

(5) Fourth, that the defendant remained on the property after being directed to depart.

(6) Fifth, that the defendant had no legal authority to remain on the property.<sup>1</sup>

[or]

(3) Second, that the property was farm property.

(4) Third, that the property was fenced or posted with signs that forbid entry on the property.

(5) Fourth, that the defendant entered on the property without having obtained permission from [name complainant or agent].

*[Provide the following element only when the defendant offers the defense of being a process server serving process and provides evidence in support of that defense. The paragraph numbers correspond to the respective options above:]*

(5/7/6) [Fourth/Sixth/Fifth], that the defendant was not a process server attempting to serve legal documents on an owner, occupant, or lessee of the property, or on an agent of an owner, occupant, or lessee.

### Use Note

1. Read this only when the defendant presents some evidence that he or she had a legal right to remain on the premises.

The Committee on Model Criminal Jury Instructions provides Notice of a Change in Numbering of several instructions, effective May 1, 2021. The following instructions now in Chapter 11, “Weapons,” will be renumbered and moved to new Chapter 39 entitled “Explosives and Harmful Substances:”

### Change in Numbering

- M Crim JI 11.39 (Explosives — sending) becomes M Crim JI 39.1
- M Crim JI 11.39a (Explosives — placing) becomes M Crim JI 39.1a
- M Crim JI 11.39b (Explosives — false bomb) becomes M Crim JI 39.1b
- M Crim JI 11.40 (Harmful substances — unlawful acts) becomes M Crim JI 39.2
- M Crim JI 11.40a (Harmful substances — false statement of exposure) becomes M Crim JI 39.2a
- M Crim JI 11.40b (Imitation harmful substance or device) becomes M Crim JI 39.2b
- M Crim JI 11.41 (Chemical irritants — unlawful acts) becomes M Crim JI 39.3
- M Crim JI 11.42 (Offensive or injurious substances — placement with intent to injure) becomes M Crim JI 39.4
- M Crim JI 11.42a (Offensive or injurious substances — placement with intent to annoy) becomes M Crim JI 39.4a

- 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) becomes M Crim JI 39.5
- M Crim JI 11.43a (Possessing Explosive Substance or Device in a Public Place) becomes M Crim JI 39.5a
- M Crim JI 11.44 (Manufacturing, Buying, Selling, Furnishing, or Possessing Molotov Cocktails) becomes M Crim JI 39.6
- 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) becomes M Crim JI 39.6a

The Committee on Model Criminal Jury Instructions has adopted the following new model criminal jury instructions, M Crim JI 39.7 (false report of explosive offenses) and M Crim JI 39.7a (false report of poisoning or harmful substances offenses) addressing crimes charged under MCL 750.411a(2). The instructions are effective May 1, 2021.

### [NEW] M Crim JI 39.7 False Report of Explosive Offenses

(1) The defendant is charged with making a false report that a crime involving explosives had occurred. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [communicated/caused (another person/[identify person who made report]) to communicate] with [identify recipient(s) of communication] by speech, writing, gestures, or conduct.

(3) Second, that during the course of the communication, [the defendant/the other person/[identify person who made report]] reported that

*[Choose from the following alternatives according to the charges and the evidence:]*

(a) dynamite, nitroglycerine, fulminate in bulk in dry condition, or any other explosive substance that explodes by concussion or friction had been ordered, sent, taken, transported, conveyed, or carried concealed as

freight or baggage on a passenger boat, railroad car, motor vehicle, or other vehicle used to carry passengers or articles of commerce.<sup>1</sup>

(b) a person sent, took, or carried, or attempted to order, send, take, or carry dynamite, nitroglycerine, or any other explosive substance that explodes by concussion or friction, concealed in any manner, either as freight or baggage, on a passenger boat, railroad car, motor vehicle, or other vehicle used to carry passengers.<sup>2</sup>

(c) an explosive substance or any other dangerous thing had been sent with the intent to frighten, terrorize, intimidate, threaten, harass, injure, or kill any person, or with the intent to damage or destroy any real or personal property.<sup>3</sup>

(d) a person constructed a device that appeared to be a bomb or an explosive or incendiary device with the intent to frighten, terrorize, intimidate, threaten, harass, injure, or kill any person, or with the intent to damage or destroy any real or personal property.<sup>4</sup>

(e) an explosive material was handled or being handled by an intoxicated person.<sup>5</sup>

(f) an explosive substance had been placed in or near any real or personal property with the intent to frighten, terrorize, intimidate, threaten, harass, injure, or kill any person, or with the intent to damage or destroy any real or personal property.<sup>6</sup>

(g) a person possessed an explosive substance or device in a public place with the intent to frighten or intimidate.<sup>7</sup>

(h) a person carried or possessed an explosive or combustible substance with the intent to frighten, terrorize, intimidate, threaten, harass, injure, or kill any person, or with the intent to damage or destroy any real or personal property, without the permission of the [property owner/governmental agent\*].<sup>8</sup>

(i) a person manufactured, bought, sold, furnished, or possessed a Molotov cocktail or any similar device with the intent to frighten, terrorize, intimidate, threaten, harass, injure, or kill any person, or with the intent to damage or destroy any real or personal property.<sup>9</sup>

(j) a person manufactured, bought, sold, furnished, or possessed a device designed to explode or that would explode upon impact or with the application of heat or a flame

or that is highly incendiary, with the intent to frighten, terrorize, intimidate, threaten, harass, injure, or kill any person, or with the intent to damage or destroy any real or personal property.<sup>10</sup>

(k) a person manufactured, sold, kept, or offered for sale any unbranded, unmarked, falsely branded, or falsely marked high explosive.<sup>11</sup>

(j) a death resulted from placing gun powder or any other explosive substance in, on, under, against, or near a building.<sup>12</sup>

(4) Third, that the report was false.

(5) Fourth, that when the defendant [made the report/caused the report to be made], [he/she] knew it was false.

#### Use Note

1. MCL 750.201
2. MCL 750.327
3. MCL 750.204
4. MCL 750.204a
5. MCL 750.204c
6. MCL 750.207
7. MCL 750.209a

\*use governmental agent if it is public property

8. MCL 750.210
9. MCL 750.211a(1)(a)
10. MCL 750.211a(1)(b)
11. MCL 750.212
12. MCL 750.328

#### [NEW] M Crim JI 39.7a False Report of Poisoning or Harmful Substances Offenses

(1) The defendant is charged with making a false report [of poisoning/concerning harmful substances]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [communicated/caused (another person/[*identify person who made report*]) to communicate] with [*identify recipient(s) of communication*] by speech, writing, gestures, or conduct.

(3) Second, that during the course of the communication, [the defendant/the other person/(*identify person who made report*)] reported that

[Choose from the following alternatives according to the charges and the evidence:]

(a) a person manufactured, delivered, possessed, transported, placed, used, or released [a harmful biological substance or a harmful biological device/a harmful chemical substance or a harmful chemical device/a harmful radioactive material or a harmful radioactive device/a harmful electronic or electromagnetic device].<sup>1</sup>

(b) a person manufactured, delivered, possessed, transported, placed, used, or released [a chemical irritant or a chemical irritant device/a smoke device/an imitation harmful substance or device].<sup>2</sup>

(c) a person made another individual believe that [he/she] had been exposed to a harmful biological substance, harmful biological device, harmful chemical substance, harmful chemical device, harmful radioactive material, harmful radioactive device, or harmful electronic or electromagnetic device.<sup>3</sup>

(d) a person placed an offensive or injurious substance or compound\* in or near to any real or personal property intending to wrongfully injure or coerce another person, to injure the property or business of another person, or to interfere with another person's use, management, conduct, or control of his or her business or property.<sup>4</sup>

(e) a person [placed pins, needles, razor blades, glass, or other harmful objects in any food with the intent to harm the consumer of the food/placed a harmful substance in any food with the intent to harm the consumer of the food/knowingly furnished food containing a harmful object or substance to another person].<sup>5</sup>

(f) a person willfully [mingled a poison or harmful substance with a food, drink, nonprescription medicine, or pharmaceutical product/placed a poison or harmful substance in a spring, well, reservoir, or public water supply], knowing or having reason to know that it may be consumed or used by a person and result in injury.<sup>6</sup>

(g) a person had dishonestly told another individual that a poison or harmful substance had been or would be placed in a food, drink, nonprescription medicine, pharmaceutical product, spring, well, reservoir, or public water supply, knowing that the information was false and that it would likely be disseminated to the public.<sup>7</sup>

[Provide definitions by selecting from paragraphs (i) through (ix).]<sup>8</sup>

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

(ii) 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.

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

(iv) 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.

(v) 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.

(vi) 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.

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

(viii) A “chemical irritant” means a solid, liquid, or gas that, through its chemical or physical properties, alone or in combina-

tion with one or more other substances, can be used to produce an irritant effect in humans, animals, or plants.

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

(4) Third, that the report was false.

(5) Fourth, that when the defendant [made the report/caused the report to be made], [he/she] knew it was false.

#### Use Note

1. MCL 750.200i
2. MCL 750.200j
3. MCL 750.200l
4. MCL 750.209
5. MCL 750.397a
6. MCL 750.436(1)(a)
7. MCL 750.436(1)(b)
8. MCL 750.200h

\*There is no statutory definition for an offensive or injurious substance or compound.

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