

The Committee on Model Criminal Jury Instructions has adopted the following amended model criminal jury instructions pending public comment, effective June 2015. The public comment period expires August 1, 2015.

ADOPTED

The Committee has adopted three amended instructions, M Crim JI 7.10, M Crim JI 16.23, and M Crim JI 20.11, pending public comment, to conform with statutory amendments found in the insanity definition statute, MCL 768.21a, the definitions found in MCL 750.520a(i), and the mental health statutes, MCL 330.1100a and 330.1100b, changing the phrases “mentally retarded” and “mental retardation” to “intellectually disabled” and “intellectual disability.” The instructions were amended and adopted without prior publication under MCR 2.512(D) because they merely modified the instructions in accord with the new statutory phrasing, did not change the substance of the instruction, and “would not significantly affect the delivery of justice,” so that the notice exception of MCR 1.201(D) applied. Administrative Order 2013-13.

[AMENDED] M Crim JI 7.10 Person Under the Influence of Alcohol or Controlled Substances

(1) A person is not legally insane just because [he/she] was voluntarily intoxicated by alcohol or drugs at the time of the crime.

(2) Drug intoxication is not voluntary and may be a defense if the defendant was unexpectedly intoxicated by the use of a prescribed drug. To show that intoxication was not voluntary,

(a) the defendant did not know or have reason to know that the prescribed drug was likely to be intoxicating,

(b) the prescribed drug, not another intoxicant, must have caused the defendant's intoxication, and

(c) as a result of the intoxication, the defendant was rendered temporarily insane or lacked the mental ability to form the intent necessary to commit the crime charged.¹

(3) A person can become legally insane by the voluntary, continued use of mind-

altering substances like alcohol or drugs if their use results in a settled condition of insanity before, during, and after the alleged offense.²

(4) Of course, a mentally ill [or ~~mentally retarded~~ intellectually disabled] person can also be intoxicated, and both conditions may influence what [he/she] does. You should decide whether the defendant was mentally ill [or ~~mentally retarded~~ intellectually disabled] at the time of the crime. If [he/she] was, you should use the definitions I gave you to decide whether [he/she] was also legally insane.

[AMENDED] M Crim JI 16.23 State of Mind

(1) You have heard evidence concerning the defendant's mental condition at the time of the alleged crime.

(2) It is not enough that the defendant did an act that caused death. In addition, the defendant must have had a certain state of mind when [he/she] did that act. In deciding whether the defendant had the required state of mind you may consider such things as [the defendant's ~~History~~ history of mental problems and/the defendant's ~~mental retardation~~ intellectual disability and] all of the circumstances surrounding the alleged crime.

(3) If you have a reasonable doubt about whether the defendant had the required state of mind at the time of the alleged crime, you must find the defendant not guilty of [*state crime(s) to which defense applies*].

[AMENDED] M Crim JI 20.11 Sexual Act with Mentally Incapable, Mentally Disabled, Mentally Incapacitated, or Physically Helpless Person

(1) [Second/Third], that [*name complainant*] was [mentally incapable/mentally disabled/mentally incapacitated/physically helpless] at the time of the alleged act.

[Choose one or more of (2), (3), (4), or (5):]

(2) Mentally incapable means that [*name complainant*] was suffering from a mental disease or defect that made [him/her] incapable of appraising either the physical or moral nature of [his/her] conduct.

(3) Mentally disabled means that [*name complainant*] has a mental illness, is ~~mentally retarded~~ intellectually disabled, or has a developmental disability. “Mental illness” is a substantial disorder of thought or mood that significantly impairs judgment, behavior, or the ability to recognize reality and deal with the ordinary demands of life. “~~Mental retardation~~ Intellectual disability” means significantly ~~below average intelligence beginning before the age of eighteen that impairs behavior or the ability to deal with the ordinary demands of life~~ subaverage intellectual functioning that appeared before the defendant was 18 years old and impaired two or more of [his/her] adaptive skills.¹ “Developmental disability” means an impairment of general thinking or behavior that originated before the age of 18, has continued since it started or can be expected to continue indefinitely, is a substantial burden to [*name complainant*]’s ability to function in society, and is caused by a condition requiring treatment and services similar to those required for ~~mental retardation~~ intellectual disability.

(4) Mentally incapacitated means that [*name complainant*] was unable to understand or control what [he/she] was doing because of [drugs or alcohol given to (him/her)/something done to (him/her)] without [his/her] consent.

(5) Physically helpless means that [*name complainant*] was unconscious, asleep, or physically unable to communicate that [he/she] did not want to take part in the alleged act.

(6) [Third/Fourth], that the defendant knew or should have known that [*name complainant*] was [mentally incapable/mentally incapacitated/physically helpless] at the time of the alleged act.

[Choose (7) or (8):]

(7) [Fourth/Fifth], that the defendant and [*name complainant*] were related to each other, either by blood or marriage, as [*state relationship, e.g., first cousins*].

(8) [Fourth/Fifth], that at the time of the alleged act the defendant was in a position of authority over [*name complainant*], and used this authority to coerce [*name complainant*] to submit to the sexual acts alleged. It is for you to decide whether, under

the facts and circumstances of this case, the defendant was in a position of authority.

Use Notes

Use this instruction in conjunction with M Crim JI 20.1, Criminal Sexual Conduct in the First Degree; M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree; or M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

1. The court may provide the jury with a definition of *adaptive skills* where appropriate. The phrase is defined in MCL 330.1100a(3) and means skills in one or more of the following areas:

- (a) Communication.
- (b) Self-care.
- (c) Home living.
- (d) Social skills.
- (e) Community use.
- (f) Self-direction.
- (g) Health and safety.
- (h) Functional academics.
- (i) Leisure.
- (j) Work.

The Committee on Model Criminal Jury Instructions has adopted the following new model criminal jury instructions, effective June 2015.

ADOPTED

The Committee adopted the following new instructions for use in cases where the defendant has been charged with misleading the police under MCL 750.479c.

[NEW] M Crim JI 13.20 **Concealing Facts or Misleading the Police**

(1) The defendant is charged with the crime of [concealing a material fact/making a false or misleading statement/providing a false or misleading document] to a peace officer in a criminal investigation. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [name complainant] was a peace officer who was conducting an investigation of a criminal offense.¹

(3) Second, that the crime being investigated by [name complainant] was [identify criminal offense].

(4) Third, that [name complainant] informed the defendant that [he/she] was conducting a criminal investigation.

(5) Fourth, that the defendant [Choose from the following:]

(a) concealed information relating to that investigation from the officer by some trick, scheme, or device. Using a trick, scheme, or device means acting in a way intended to deceive others.

(b) provided false information regarding that investigation to the peace officer in a [statement/document] that the defendant knew was false or misleading.

(6) Fifth, that the defendant acted knowingly and willfully. That is, the defendant [concealed the information/provided the false information] voluntarily and intentionally with the intent to deceive, and not because of mistake or some other innocent reason.

(7) Sixth, that the [information allegedly concealed/allegedly false information provided] involved a material fact. A material fact is information that a reasonable person would use to decide whether to do or not do something. A fact is material if it has the capacity or natural tendency to influence an officer's decision how to proceed with an investigation.

[Use (8) and/or (9) in appropriate cases:]

(8) You may consider whether the officer relied on the information in deciding whether it was a material fact. However, it is not a defense to the charge that the officer did not rely on the information if you determine beyond a reasonable doubt that the defendant intended to [conceal the information from the officer by trick, scheme, or device/provide false information].

(9) It is not a defense to the charge that the officer was able to obtain the information from another source or by different means if you determine beyond a reasonable doubt that the defendant intended to [conceal the information from the officer by trick, scheme, or device/provide false information].

Use Notes

1. If there is a contest as to whether the investigating individual was a peace offi-

cer, an instruction on the appropriate definition involved should be given. See MCL 750.479c(5)(b).

M Crim JI 13.20a should be given where the defendant claims to have been the victim of the crime being investigated, acted out of duress, or remained silent or otherwise exercised Fifth Amendment rights.

History

M Crim JI 13.20 was adopted in June 2015.

Reference Guide

MCL 750.479c(1), (2), and (5); MCL 780.811(a)

Staff Comments

The baseline of the offense is a "serious" misdemeanor, MCL 780.811. The statute does not apply to investigations of other misdemeanors, and a violation is punishable by 93 days in jail and /or a fine of \$500. The penalty is then aggravated depending on the offense under investigation, the greatest penalty being a four-year felony. Because the maximum possible penalty is enhanced depending on the offense that was under investigation, the offense for which the investigation was being conducted must be found by the jury beyond a reasonable doubt. *Blakely v Washington*, 542 US 196; 124 S Ct 2531; 159 L Ed 2d 403 (2004). On conviction, MCL 750.479c(2) must be consulted to ascertain into which group of offenses being investigated the conviction falls for sentencing purposes.

[NEW] M Crim JI 13.20a **Misleading the Police; Defenses**

(1) The defendant says that [he/she] has a legal defense to the charge.

[Choose (2) or (3):]

(2) The defendant says that the statute does not apply because

[Choose appropriate provision(s):]

(a) the defendant was the alleged victim of the crime being investigated.

(b) the defendant's action was done under duress because the defendant had a reasonable fear that [he/she/(name other person)] was in danger of physical harm from

[Select appropriate relationship:]

(i) the defendant's [spouse/former spouse].

(ii) a person with whom the defendant had a dating relationship.¹

(iii) a person with whom the defendant has a child in common.

(iv) a [resident/former resident] of a household with the defendant.

(3) The defendant says that, when [he/she] was informed by a peace officer that the officer was conducting a criminal investigation, the defendant

[Choose appropriate provision(s):]

(a) told the officer that [he/she] was exercising [his/her] Fifth Amendment rights.

(b) simply refused to answer.

(4) If you find that the evidence raises a reasonable doubt as to whether

[Choose (a) or (b):]

(a) the statute applies,

(b) the defendant exercised [Fifth Amendment rights/simplely refused to answer], then you must find the defendant not guilty.

Use Note

1. “Dating relationship” means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between two persons in a business or social context.

History

M Crim JI 13.20a was adopted in June 2015.

Reference Guide

MCL 750.479c(3) and (4).

The Committee solicits comment on the following proposals by August 1, 2015. 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 MCrMJ@courts.mi.gov.

PROPOSED

The Committee proposes an instruction for use where the defendant has been charged with occupying a dwelling without consent (squatting) in violation of MCL 750.553. This instruction is entirely new.

[NEW] M Crim JI 25.6 Occupying a Dwelling Without Consent (Squatting)

(1) The defendant is charged with occupying a dwelling without consent. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant occupied a one-family dwelling, or at least one unit of a

two-family dwelling. A dwelling is a building designed as a place for people to live.

(3) Second, that the dwelling was owned by [name complainant].

(4) Third, that the defendant did not have [name complainant]’s consent to occupy the dwelling.

(5) Fourth, that the defendant occupied the dwelling without an agreement for payment of money to [name complainant] or for an exchange of something else of value with [name complainant] during the time that the defendant occupied the dwelling.

[Use the following paragraph where there is evidence that the defendant was a guest or family member under MCL 750.553(2)]

(6) [The defendant is not guilty if [he/she] is a guest or family member of [name complainant] or a guest or family member of a tenant of [name complainant].]

Use Note

“[O]wner” means the owner, lessor, or licensor or an agent thereof.” MCL 600.2918(9), which was tie-barred to passage of the statute that applies here, MCL 750.553.

Reference Guide

Statutes

MCL 750.553; MCL 600.2918(9).



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