



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by August 1, 2024. 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 jury instruction M Crim JI 7.6 (Duress) to comport with discussions of the defense in *People v Reichard*, 505 Mich 81, 96 n 32 (2020), and *People v Lemons* 454 Mich 234, 248 n 21 (1997). A question remains which party bears the burden of proof relative to the defense of duress, so alternative paragraphs are provided. Deletions are in ~~strike-through~~, and new language is underlined. A “clean copy” without the struck language but including the added language is also provided (without the Use Note).

[AMENDED] M Crim JI 7.6 Duress

- (1) The defendant says that [he / she] is not guilty because someone else’s threatening behavior made [him / her] act as [he / she] did. This is called the defense of duress.
- (2) The defendant is not guilty if [he / she] committed the crime while acting under duress. ~~Under the law, there was duress~~ The defendant acted under duress if {four/~~five~~} things were true:
 - (a) One, the threatening or forceful behavior would have made a reasonable person fear that he or she was facing immediate death or serious bodily harm;
 - (b) Two, the defendant actually was afraid of death or serious bodily harm;
 - ~~(c) Three, the defendant had this fear~~ at the time [he / she] acted;

~~(d) Four (c) Three~~, the defendant committed the act to avoid the threatened harm;₂

~~[(e) Five (d) Four~~, the situation did not arise because of the defendant's fault or negligence.]¹

(3) The defendant has forfeited the defense of duress if you find [he / she] did not take advantage of a reasonable opportunity to escape, without being exposed to death or serious bodily injury, or if [he / she] continued [his / her] conduct after the duress ended.

(4) In deciding whether duress made the defendant act as [he / she] did, think carefully about all the circumstances as shown by the evidence.

Think about the nature of any force or threats. Think about the background and character of the person who made the threats or used force. Think about the defendant's situation when [he / she] committed the alleged act. Could [he / she] have avoided the harm [he / she] feared in some other way than by committing the act? Think about how reasonable these other means would have seemed to a person in the defendant's situation at the time of the alleged act.¹

[(5) The prosecutor must prove beyond a reasonable doubt that the defendant was not acting under duress. If [he / she] fails to do so, you must find the defendant not guilty.

Or

(5) You should consider the elements of duress separately. If you find that the defendant has proved all of these elements by a preponderance of the evidence, you must find [him / her] not guilty. If the defendant has failed to prove all of these elements or has forfeited the defense, [he / she] was not acting under duress.]²

Use Note

This instruction should be used only when there is some evidence of the essential elements of duress.

~~1 Use (e) only where there is some evidence that the defendant found himself in the position of having to commit the crime through his own fault or negligence. Michigan law is unclear on whether a defendant can claim duress only where the defendant is completely free of fault.~~

- 2 1. In escape cases, the special factors listed in M Crim JI 7.7 should also be given if they are supported by competent evidence.
2. The question whether the burden is on the defendant to establish duress by a preponderance of the evidence, or on the prosecutor to disprove duress beyond a reasonable doubt, was avoided by the Michigan Supreme Court in both *People v Reichard*, 505 Mich 81, 96 n32; 949 NW2d 64 (2020), and *People v Lemons* 454 Mich 234, 248 n21; 562 NW2d 447 (1997). Another affirmative defense – self-defense – places the burden of proof on the prosecutor to disprove the defense once evidence of self-defense has been introduced. The burden being on the defendant to establish an insanity defense is statutorily determined, but there is no statute relative to the duress defense. The Committee on Model Criminal Jury Instructions takes no position on the question of who has the burden of proof, but provides alternative paragraphs (5).

Clean copy:

[AMENDED] M Crim JI 7.6 Duress

- (1) The defendant says that [he / she] is not guilty because someone else's threatening behavior made [him / her] act as [he / she] did. This is called the defense of duress.
- (2) The defendant is not guilty if [he / she] committed the crime while acting under duress. The defendant acted under duress if four things were true:
 - (a) One, the threatening or forceful behavior would have made a reasonable person fear that he or she was facing immediate death or serious bodily harm;
 - (b) Two, the defendant actually was afraid of death or serious bodily harm at the time [he / she] acted.
 - (c) Three, the defendant committed the act to avoid the threatened harm.
 - (d) Four, the situation did not arise because of the defendant's fault or negligence.

- (3) The defendant has forfeited the defense of duress if you find [he / she] did not take advantage of a reasonable opportunity to escape, without being exposed to death or serious bodily injury, or if [he / she] continued [his / her] conduct after the duress ended.
- (4) In deciding whether duress made the defendant act as [he / she] did, think carefully about all the circumstances as shown by the evidence.

Think about the nature of any force or threats. Think about the background and character of the person who made the threats or used force. Think about the defendant's situation when [he / she] committed the alleged act. Could [he / she] have avoided the harm [he / she] feared in some other way than by committing the act? Think about how reasonable these other means would have seemed to a person in the defendant's situation at the time of the alleged act.¹

- [(5) The prosecutor must prove beyond a reasonable doubt that the defendant was not acting under duress. If [he / she] fails to do so, you must find the defendant not guilty.

Or

- (5) You should consider the elements of duress separately. If you find that the defendant has proved all of these elements by a preponderance of the evidence, you must find [him / her] not guilty. If the defendant has failed to prove all of these elements or has forfeited the defense, [he / she] was not acting under duress.]²