



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

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The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by November 1, 2024. Comments may be sent in writing to Christopher M. 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](mailto:MCrimJI@courts.mi.gov).

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**PROPOSED**

The Committee proposes amendments to M Crim JI 35.1a, formerly identified as (Malicious Use of Telecommunications Service), for the offense found at MCL 750.540e. The amendments (1) refine the title and first paragraph of the instruction to include the possible intents required under the statute, (2) add language addressing the “malicious” wording in the statute that had not been included when the instruction was originally adopted, and (3) reformat the second element to make it more user friendly than the single-paragraph original format. 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.

**[AMENDED] M Crim JI 35.1a Malicious Use of a Telecommunications Service to Frighten, Threaten, Harass, or Annoy**

(1) The defendant is charged with the crime of malicious use of a telecommunications service to frighten, threaten, harass, or annoy another person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant used [*identify service provider*] to communicate with [*identify complainant*].

(3) Second, that, when communicating with [*identify complainant*], the defendant, knowing it was wrong, intended to

[threatened physical harm or damage to any person or property / made a

~~deliberately false report that a person had been injured, had suddenly taken ill, had died, or had been the victim of a crime or an accident / deliberately refused or failed to disengage a connection between telecommunications devices or between a telecommunications device and other equipment provided by a telecommunications service<sup>+</sup> or device / used vulgar, indecent, obscene, or offensive language or suggested any lewd or lascivious act in the course of the conversation or message / repeatedly initiated telephone calls and, without speaking, deliberately hung up or broke the telephone connection when or after the telephone call was answered / made an uninvited commercial telephone call soliciting business or contributions that was received between the hours of 9 p.m. and 9 a.m., whether the call was made by a person or recording device / deliberately engaged or caused to engage the use of (*identify complainant*)'s telecommunications service or device in a repetitive manner that caused interruption in the telecommunications service or prevented (*identify complainant*) from using (his / her) telecommunications service or device].~~

[Provide any of the following that apply according to the charges and evidence:]

- (a) threaten physical harm to a person or damage to property in the course of a conversation or message.
- (b) make a false report that a person had [been injured / suddenly taken ill / died / been the victim of a crime or an accident].
- (c) refuse or fail to disengage a connection between a [*identify communication device*] and another [*identify communication device*] or between a [*identify communication device*] and other equipment that sends messages through the use of a telecommunications service or device.
- (d) use vulgar, indecent, obscene, or offensive language or proposed any lewd or lascivious act during a conversation or message.
- (e) repeatedly initiate a telephone call and, without speaking, deliberately hung up or broke the telephone connection when or after the telephone call was answered.
- (f) make an unsolicited commercial telephone call between the hours of 9 p.m. and 9 a.m.

An unsolicited commercial telephone call is one made by a person or recording device, on behalf of a person, corporation, or other entity, soliciting business or contributions.

- (g) cause an interruption in [*identify complainant* / another person]'s

telecommunications service or prevented [*identify complainant* / another person] from using [his / her] telecommunications service or device by the defendant's repeated use of [his /her] telecommunications service or device.

(4) Third, that the defendant did so with the intent to terrorize, frighten, intimidate, threaten, harass, molest, annoy, or disturb the peace and quiet of [*identify complainant*].<sup>1</sup>

#### *Use Note*

This is a specific intent crime.

1. If the jury has not been provided with the definition of a *telecommunications service provider*, a *telecommunications service*, or a *telecommunications access device* and the court finds that it would be appropriate to do so, the following are suggested based on the wording of MCL 750.219a:

A *telecommunications service provider* is a person or organization providing a telecommunications service, such as a cellular, paging, or other wireless communications company, or a facility, cell site, mobile telephone switching office, or other equipment for a telecommunications service, including any fiber optic, cable television, satellite, Internet-based system, telephone, wireless, microwave, data transmission or radio distribution system, network, or facility, whether the service is provided directly by the provider or indirectly through any distribution system, network, or facility.

A *telecommunications service* is a system for transmitting information by any method, including electronic, electromagnetic, magnetic, optical, photo-optical, digital, or analog technologies.

A *telecommunications access device* is any instrument, including a computer circuit, a smart card, a computer chip, a pager, a cellular telephone, a personal communications device, a modem, or other component that can be used to receive or send information by any means through a telecommunications service.