



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

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.

PROPOSED

The Committee proposes a new jury instructions, M Crim JI 17.26 (Unlawfully Posting a Message), for offenses charged under MCL 750.411s. The instruction is entirely new.

[NEW] M Crim JI 17.26 Unlawfully Posting a Message

- (1) [The defendant is charged with unlawfully posting a message. / You may consider the lesser offense of unlawfully posting a message that (was not in violation of a court order / did not result in a credible threat / was not posted about a person less than 18 with the defendant being 5 or more years older).¹] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
- (2) First, that the defendant posted a message through any medium of communication, including on the Internet, a computer, a computer program, a computer system, a computer network, or another electronic medium of communication.²
- (3) Second, that the message was posted without [*name complainant*]'s consent.
- (4) Third, that the defendant knew or had reason to know that posting the message could cause two or more separate non-continuous acts of unconsented contact with [*name complainant*] by another person.³
- (5) Fourth, that the defendant posted the message with the intent that it would cause conduct that would make [*name complainant*] feel terrorized, frightened, intimidated, threatened, harassed, or molested.
- (6) Fifth, that the conduct arising from posting the message is the type that would cause a reasonable person to suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

- (7) Sixth, that the conduct arising from posting the message did cause [*name complainant*] to suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

[For aggravated message posting, select any that apply from the following according to the charges and the evidence:]⁴

- (8) Seventh, that the message
- (a) was posted [in violation of a restraining order of which the defendant had actual notice / in violation of an injunction / in violation of (a court order / a condition of parole)]; [or]
 - (b) resulted in a credible threat being made to [*name complainant*], a member of [his / her] family, or someone living in [his / her] household. A credible threat is a threat to kill or physically injure a person made in a manner or context that causes the person hearing or receiving it to reasonably fear for his or her safety or the safety of another person;⁵ [or]
 - (c) was posted when [*name complainant*] was less than 18 years of age and the defendant was 5 or more years older than [*name complainant*].

Use Note

MCL 750.411s(7) permits prosecution of this crime where some elements of the offense may not have occurred in the state of Michigan or in the same county. The “venue” instruction, M Crim JI 3.10 (Time and Place), may have to be modified accordingly.

1. This alternative sentence is for use as a lesser included offense where an aggravating factor is charged and the defendant challenges whether the prosecution has proven the aggravating factor.
2. Definitions for these terms can be found at MCL 750.411s(8).
3. *Unconsented contact* is defined at MCL 750.411s(8)(j) and is not limited to the forms of conduct described in that definition. If the jury requests a definition of the phrase, the court may read all of the types of contact mentioned in the statute or may select those that apply according to the charge and the evidence, or the court may describe similar conduct that it finds is included under the purview of the statute.
4. If the basis for aggravated message posting is a prior conviction, do not read this element.

5. *Credible threat* is defined at MCL 750.411s(8)(e). By this definition, a “credible threat” appears to meet the “true threat” standard of *Virginia v Black*, 538 US 343, 359 (2003).