



**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 March 1, 2025. 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 amending two jury instructions, M Crim JI 20.31 (Gross Indecency) and M Crim 20.33 (Indecent Exposure), to add an alternative element that would apply when the defendant is charged with being a sexually delinquent person under MCL 750.10a. The Committee also proposes deleting M Crim JI 20.32 (Sodomy) as being incompatible with the holding in *Lawrence v Texas*, 539 US 558 (2003). Deletions are in ~~strike-through~~, and new language is underlined.

**[AMENDED]      M Crim JI 20.31      Gross Indecency**

- (1) The defendant is charged with the crime of committing an act of gross indecency. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
- (2) First, that the defendant engaged in a sexual act that involved one or more of the following:<sup>1</sup>

[Choose (a), (b), (c), (d), (e), or (f):]

- (a) entry into another person's [vagina / anus] by the defendant's [penis / finger / tongue / *(name object)*]. Any entry, no matter how slight, is enough. It does not matter whether the sexual act was completed or whether semen was ejaculated.

or

(b) entry into another person's mouth by the defendant's penis. Any entry, no matter how slight, is enough. It does not matter whether the sexual act was completed or whether semen was ejaculated.

or

(c) touching of another person's [genital openings / genital organs] with the defendant's mouth or tongue.

or

(d) entry by [any part of one person's body / some object] into the genital or anal opening of another person's body. Any entry, no matter how slight, is enough. It is alleged in this case that a sexual act was committed by [*state alleged act*]. It does not matter whether the sexual act was completed or whether semen was ejaculated.

or

(e) masturbation of oneself or another.

or

(f) masturbation in the presence of a minor, whether in a public place or private place.

*[Add (3) unless only (2)(f) is being given.]*

(3) Second, that the sexual act was committed in a public place. A place is public when a member of the public, who is in a place the public is generally invited or allowed to be, could have been exposed to or viewed the act.<sup>2</sup>

*[Use the following paragraph only if the defendant is also charged with being a sexually delinquent person under MCL 750.10a.]*

[(4) Third, that the defendant was a sexually delinquent person. A person is sexually delinquent when his or her behavior is characterized by repetitive or compulsive acts that show (a disregard of consequences or the recognized rights of others / the use of force on another person in attempting sexual relations of any nature / the commission of sexual aggressions against children under the age of 16<sup>3</sup>).]

*Use Note*

<sup>1</sup> This list of acts is not intended to be exhaustive. *See People v Drake*, 246 Mich App 637; 633 NW2d 469 (2001).

<sup>2</sup> If necessary, the court may add that if the sexual act is committed in a public place, the consent of the participants or the acquiescence of any observer is not a defense.

3. Read any that apply according to the charges and evidence.

**M Crim JI 20.32          Sodomy**

**DELETED as being incompatible with the holding in *Lawrence v Texas*, 539 US 558 (2003).**

**[AMENDED]          M Crim JI 20.33          Indecent Exposure**

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

(2) First, that the defendant exposed [his / her] [*state part of body*].

(3) Second, that the defendant knew that [he / she] was exposing [his / her] [*state part of body*].

[*Use the following paragraph only if a violation of MCL 750.335a(2)(b) is charged.*]

(4) Third, that the defendant was fondling [his / her] [genitals / pubic area / buttocks / breasts\*].

(5) [Third / Fourth], that the defendant did this in a place under circumstances in which another person might reasonably have been expected to observe it and which created a substantial risk that someone

might be offended or in a place where such exposure is likely to be an offense against your community's generally accepted standards of decency and morality. In determining this, you must think about the nature of the act and all of the circumstances surrounding the act. [*State any other relevant factors, e.g., the age and experience of the persons who observed the act, the purpose of the act, etc.*]

[Use the following paragraph only if the defendant is also charged with being a sexually delinquent person under MCL 750.10a.]

[(6) (Third / Fourth / Fifth), that the defendant was a sexually delinquent person. A person is sexually delinquent when his or her behavior is characterized by repetitive or compulsive acts that show (a disregard of consequences or the recognized rights of others / the use of force on another person in attempting sexual relations of any nature / the commission of sexual aggressions against children under the age of 16).<sup>1</sup>]

*Use Note*

- \* Female defendants only.
- 1. Read any that apply according to the charges and evidence.