



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

The Committee on Model Criminal Jury Instructions has adopted the following amended model criminal jury instruction, M Crim JI 17.2a (domestic assault/aggravated domestic assault), addressing crimes charged under MCL 750.81a, adding aggravated domestic assault to the domestic assault instruction. The instruction is effective June 1, 2021.

**[AMENDED] M Crim JI 17.2a Domestic Assault / Aggravated
Domestic Assault**

(1) [The defendant is charged with / You may also consider the less serious crime of¹] [domestic assault / aggravated domestic assault]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [assaulted / assaulted and battered]² [*name complainant*].

A battery is the forceful, violent, or offensive touching of a person or something closely connected with him or her.³

The touching must have been intended by the defendant, that is, not accidental, and it must have been against [*name complainant*]'s will.

An assault is an attempt to commit a battery or an act that would cause a reasonable person to fear or apprehend an immediate battery. The defendant must have intended either to commit a battery or to make [*name complainant*] reasonably fear an immediate battery.⁴ [An assault cannot happen by accident.] At the time of an assault, the defendant must have had the ability to commit a battery, or must have appeared to have the ability, or must have thought [he / she] had the ability.

(3) Second, that at the time [*name complainant*]: [*Select one or more of the following:*]

- (a) was the defendant's spouse
- (b) was the defendant's former spouse
- (c) had a child in common with the defendant
- (d) was a resident or former resident of the same household as the defendant
- (e) was a person with whom the defendant had or previously had a dating relationship. A "dating relationship" means frequent, intimate association primarily characterized by the expectation of affectional involvement. It does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.

[*Read (4) only when the charge is aggravated domestic assault.*]

[(4) Third, that the assault caused a serious or aggravated injury. A serious or aggravated injury is a physical injury that requires immediate medical treatment or that causes disfigurement, impairment of health, or impairment of a part of the body.⁵]

Use Note

1. Use when instructing on this crime as a lesser included offense.
2. Use either or both as warranted by the evidence.
3. If the victim's consent or nature of the touching is at issue, use of M Crim JI 17.14, Definition of Force and Violence, or M Crim JI 17.15, Definition of Touching, is recommended.
4. All assaults are specific intent crimes. *People v Johnson*, 407 Mich 196, 284 NW2d 718 (1979).
5. This definition of *serious or aggravated injury* was approved in *People v Norris*, 236 Mich App 411, 415 n 3; 600 NW2d 658 (1999).