



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

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The Committee on Model Criminal Jury Instructions has adopted the following new model criminal jury instructions, M Crim JI 38.1 (committing an act of terrorism), 38.4 (making a terrorist threat) and 38.4a (making a false report of terrorism), addressing offenses charged under MCL 750.543f (M Crim JI 38.1) and 750.543m (M Crim JI 38.4 and 38.4a). These instructions are effective August 1, 2020.

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**[NEW] M Crim JI 38.1 Committing an Act of Terrorism**

(1) The defendant is charged with the crime of committing a knowing and premeditated act of terrorism. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant committed the crime of [*state felony*].<sup>1</sup> For the crime of [*state felony*], the prosecutor must prove each of the following elements beyond a reasonable doubt: [*state elements of felony*].

(3) Second, that the defendant acted deliberately when committing the crime of [*state felony*], which means that the defendant considered the pros and cons of committing the crime and thought about it and chose [his / her] actions before [he / she] did it. There must have been real and substantial reflection for long enough to give a reasonable person a chance to think twice about committing the crime. The law does not say how much time is needed. It is for you to decide if enough time passed under the circumstances of this case, but committing the crime cannot have been the result of a sudden impulse without thought or reflection.

(4) Third, that the defendant knew or had reason to know that committing the felony was dangerous to human life, meaning that committing the felony would cause a substantial likelihood of death or serious injury, or that the felony involved a kidnapping.<sup>2</sup>

(5) Fourth, that, when committing the felony, the defendant intended to intimidate or coerce a civilian population, or influence or affect the conduct of government or a unit of government through intimidation or coercion.

[Use the following paragraph where it is charged that a death resulted from the defendant's actions]

(6) Fifth, that the commission of the felony caused the death of [*identify victim*].

#### *Use Note*

1. Under MCL 750.543b(a)(i), an act of terrorism requires that the defendant must have committed a “violent felony.” The definitional statute provides in MCL 750.543b(h) that a “violent felony” is one that has an element of the use, attempted use, or threatened use of physical force against an individual, or of the use, attempted use, or threatened use of a harmful biological substance, a harmful biological device, a harmful chemical substance, a harmful chemical device, a harmful radioactive substance, a harmful radioactive device, an explosive device, or an incendiary device.
2. The definition of “dangerous to human life” is found at MCL 750.543b(b).

#### *History*

M Crim JI was adopted effective August 1, 2020

#### *Reference Guide*

##### *Statutes*

MCL 750.543f

**[NEW] M Crim JI 38.4 Making a Terrorist Threat**

(1) The defendant is charged with the crime of making a threat to commit an act of terrorism. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant communicated with [*identify recipient(s) of communication*] by speech, writing, gestures, or conduct.

(3) Second, that during the course of the communication, the defendant threatened to commit an act of terrorism. A threat does not have to be stated in any particular terms but must express a warning of danger or harm.<sup>1</sup> Further, it must have been a true threat, and not have been something like idle talk, or a statement made in jest, or a political comment. It must have been made under circumstances where a reasonable person would think that others may take the threat seriously as expressing an intent to inflict harm or damage.

To prove that the defendant threatened to commit an act of terrorism, the prosecutor must prove:

(A) that the defendant communicated that [he / she] would commit the felony crime of [*state felony*];<sup>2</sup>

(B) that the defendant knew or had reason to know that committing the felony would be dangerous to human life, meaning that committing the felony would cause a substantial likelihood of death or serious injury, or the felony involved a kidnapping;<sup>3</sup>

(C) that, by committing the felony, the defendant would intend to intimidate, frighten, or coerce a civilian population, or influence or affect the conduct of government or a unit of government through intimidation or coercion.

It does not matter whether the defendant actually could commit the felony or actually intended to commit the felony, but only whether the defendant threatened to commit the felony as an act of terrorism.

*Use Note*

1. Drawn from M Crim JI 21.3 and dictionary definitions.

2. Under MCL 750.543b(a)(i), an act of terrorism requires a “violent felony.” The definitional statute provides in MCL 750.543b(h) that a “violent felony” is one that has an element of the use, attempted use, or threatened use of physical force

against an individual, or of the use, attempted use, or threatened use of a harmful biological substance, a harmful biological device, a harmful chemical substance, a harmful chemical device, a harmful radioactive substance, a harmful radioactive device, an explosive device, or an incendiary device.

3. The definition of “dangerous to human life” is found at MCL 750.543b(b).

### *History*

M Crim JI was adopted effective August 1, 2020

### *Reference Guide*

#### *Statutes*

MCL 750.543m

#### *Case Law*

*People v Osantowski*, 274 Mich App 593 (2007), rev in part on other grounds, 481 Mich 103 (2008).

**[NEW] M Crim JI 38.4a Communicating a False Report of Terrorism**

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

(2) First, that the defendant communicated with [*identify recipient(s) of communication*] by speech, writing, gestures, or conduct.

(3) Second, that during the course of the communication, the defendant reported that an act of terrorism had occurred, was occurring, or would occur.

An act of terrorism<sup>1</sup> means committing the felony crime of [*state felony described in threat*], knowing that it would be dangerous to human life,<sup>2</sup> with the intent to intimidate, frighten, or coerce a civilian population, or influence or affect the conduct of government or a unit of government through intimidation or coercion.

(4) Third, that the report was false.

(5) Fourth, that the defendant knew that it was false.

*Use Note*

1. The definition of an “act of terrorism” is found at MCL 750.543b(a).
2. The definition of “dangerous to human life” is found at MCL 750.543b(b).

*History*

M Crim JI was adopted effective August 1, 2020

*Reference Guide*

*Statutes*

MCL 750.543m

*Case Law*

*People v Osantowski*, 274 Mich App 593 (2007), rev in part on other grounds, 481 Mich 103 (2008).

