FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS

The Committee on Model Criminal Jury Instructions has adopted the following new model criminal jury instruction, M Crim JI 17.37 (hazing), addressing offenses charged under MCL 750.411t. The instruction is effective August 1, 2020.

[NEW] M Crim JI 17.37 Hazing

(1) [The defendant is charged with / You may also consider the lesser offense of[1]] hazing [causing physical injury / causing serious impairment of a body function / causing death]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [attended / was an employee of / was a volunteer with] [*identify educational institution*].

(3) Second, that [*name complainant*] was [pledging / being initiated into / affiliating with / participating in / holding office in / maintaining membership in] [*identify organization*] or attempting to [pledge / initiate into / affiliate with / participate in / hold office in / maintain membership in] [*identify organization*].

(4) Third, that when the defendant [attended / was an employee of / was a volunteer with] [*identify educational institution*], [he / she] engaged in or participated in an act of hazing [*name complainant*].

> Hazing is an intentional, knowing or reckless act that the defendant knew or should have known would endanger the physical health or safety of [*name complainant*]. It does not matter whether the defendant acted alone or with others, and does not matter whether [*name complainant*] consented to or allowed the defendant to engage in or participate in the act.
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> Hazing includes[2] [physical brutality, such as whipping, beating, striking, branding, electronic shocking, placing of a harmful substance on the body, or similar activity / physical activity, such as sleep deprivation, exposure to the elements, confinement in a small space, or calisthenics, that would place another person at an unreasonable risk of harm or would adversely affect his or her physical health or safety / activity involving consumption of a food, liquid, alcoholic beverage, liquor, drug, or other substance that would place

another person at an unreasonable risk of harm or would adversely affect his or her physical health or safety / activity that induces, causes, or requires an individual to perform a duty or task that involves committing a crime or an act of hazing].

Hazing does not include activity that is normal and customary in an athletic program, a physical education program, military training, or a similar program that is sanctioned by [*identify educational institution*].

(5) Fourth, that the defendant committed the act of hazing for the purpose of pledging or initiating [*name complainant*] into [*identify organization*], or so that [*name complainant*] could be affiliated with, participate in, hold office in, or maintain membership in [*identify organization*].[3]

(6) Fifth, that the defendant's act of hazing caused [physical injury / serious impairment of body function / death] to [*name complainant*].

Serious impairment of a body function includes, but is not limited to, one or more of the following:[4]

(a) Loss of a limb or loss of use of a limb.

(b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.

(c) Loss of an eye or ear or loss of use of an eye or ear.

(d) Loss or substantial impairment of a bodily function.

(e) Serious visible disfigurement.

(f) A comatose state that lasts for more than 3 days.

(g) Measurable brain or mental impairment.

(h) A skull fracture or other serious bone fracture.

(i) Subdural hemorrhage or subdural hematoma.

(j) Loss of an organ.

Use Note

The Committee believes that questions of whether the institution where the defendant is employed or volunteers is an "educational institution" and whether the organization where the complainant is pledging fits within the definition provided in MCL 750.411t(7)(a) and (c) are legal matters that are not determined by the jury.

1. Use the second alternative only where the defendant has been charged with hazing causing serious impairment and the court is instructing on the lesser included offense of hazing causing physical injury.

2. The court need only provide alternatives that apply according to the charges and evidence.

3. The court may provide all of the statutory options in this paragraph or only the options that apply according to the evidence.

4. The definition of *serious impairment of a body function* is found in MCL 257.58c. It should only be provided where the court is instructing the jury on the elements of hazing causing serious impairment of a body function under MCL 750.411t(2)(b).

History

M Crim JI was adopted effective August 1, 2020

Reference Guide

Statutes

MCL 750.411t