



**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 September 1, 2020. Comments may be sent in writing to Samuel R. 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 .

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PROPOSED

The Committee proposes instructions M Crim JI 37.8, 37.8a, 37.8b, 37.9, 37.9a, 37.10, 37.11 and 37.11a, where the prosecutor has charged an offense found in MCL 750. 483a, which addresses withholding evidence, preventing the report of a crime, retaliating for reporting a crime, influencing a crime report, defenses, or evidence tampering. The instructions are entirely new.

[NEW] M Crim JI 37.8 Withholding Evidence

(1) The defendant is charged with withholding or refusing to produce court-ordered testimony, information, documents, or things. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the [*identify court*] held a hearing on [*identify court date*].

(3) Second, that at that hearing or following that hearing, the court ordered the defendant either on the record or in writing to [testify / provide (*identify information, documents, or things ordered*)].

(4) Third, that the defendant refused to [testify / provide (*identify information, documents, or things ordered*)]. To “refuse” means that the defendant knew or was aware that the order was made, and intentionally failed to comply.

Statute

MCL 750.483a(1)(a)

[NEW] M Crim JI 37.8a Preventing Crime Report

(1) [The defendant is charged with / You may also consider the less serious offense of¹] preventing or attempting to prevent a person from reporting a crime committed by another person [not involving (the commission or attempted commission of another crime / a threat to kill or injure any person / a threat to cause property damage)]¹. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant prevented or attempted to prevent [*name complainant*] from reporting that [*defendant / identify other person*] [*describe conduct to be reported*].²

(4) Third, that the defendant used physical force against [*name complainant*] when preventing or attempting to prevent [him / her] from reporting that [*describe conduct to be reported*].

[(5) Fourth, that the defendant's use of force involved [committing or attempting to commit the crime of (*identify other crime that the defendant committed*) as I have previously described to you / a threat to kill or injure any person / a threat to cause property damage].]³

Use Note

1. Use this bracketed language when there is a dispute whether the charge involved the aggravating factor found in MCL 750.483a(2)(b) and the court is instructing the jury on the necessarily lesser included offense that does not require proof of the aggravating factor.

2. The committee believes that the question whether the conduct that was attempted to be reported amounted to a criminal act is a question of law for the court to determine, and that the elements of a crime attempted to be reported do not have to be proven. See *People v Holley*, 480 Mich 222; 747 NW2d 856 (2008).

3. Use this paragraph where the aggravating element has been charged. Where the complementary crime in this element has also been charged, the court should instruct on that other charge before instructing for this offense.

Statute

MCL 750.483a(1)(b)

[NEW] M Crim JI 37.8b Retaliating for Crime Report

(1) The defendant is charged with retaliating or attempting to retaliate against a person for reporting criminal conduct. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name complainant*] reported or attempted to report that [*defendant / identify other person*] [*describe conduct to be reported*].¹

(4) Second, that the defendant [committed or attempted to commit the crime of (*identify other crime that the defendant is alleged to have committed*) as I have previously described to you² against (*name complainant*) / threatened to kill or injure any person / threatened to cause property damage].

(5) Fourth, that when the defendant [committed or attempted to commit the crime of (*identify other crime that the defendant committed*) against (*name complainant*) / threatened to kill or injure any person / threatened to cause property damage], [he / she] did so as retaliation for [*name complainant*]'s having reported or attempting to report the crime of [*identify crime*].

Use Note

1. The committee believes that the question whether the conduct that was attempted to be reported amounted to a criminal act is a question of law for the court to determine, and that the elements of a crime attempted to be reported do not have to be proven. See *People v Holley*, 480 Mich 222; 747 NW2d 856 (2008).

2. Where the complementary crime in this element has also been charged, the court should instruct on that other charge before instructing for this offense.

Statute

MCL 750.483a(1)(c)

[NEW] M Crim JI 37.9 Influencing Statements to Investigators by Gift

(1) [The defendant is charged with / You may also consider the less serious offense of¹] giving or promising something of value to influence another person's statement or presentation of evidence to a police investigator [not involving the commission or attempted commission of another crime¹]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant gave or promised to give something of value [*identify thing given or promised*] to [*name witness / another person*].

(3) Second, that when the defendant gave or promised the [*identify thing given or promised*], [he / she] was attempting to influence what [*name witness / another person*] would tell [a police investigator / Officer (*name complainant*)] or whether [*name witness / another person*] would give some evidence to [a police investigator / Officer (*name complainant*)] who [may be / was] conducting a lawful investigation of the crime of [*identify crime*].

[(4) Third, that when giving or promising something to [*name witness / another person*], the defendant [committed or attempted to commit the crime of (*identify other crime that the defendant committed*) as I have previously described to you.]²

Use Note

1. Use this language when there is a dispute whether the charge involved the aggravating factor found in MCL 750.483a(4)(b) and the court is instructing the jury on the necessarily lesser included offense that does not require proof of the aggravating factor.

2. Use this paragraph where the aggravating element has been charged. Where the complementary crime in this element has also been charged, the court should instruct on that other charge before instructing for this offense.

Statute

MCL 750.483a(3)(a)

[NEW] M Crim JI 37.9a Influencing Statements to Investigators by Threat or Intimidation

(1) [The defendant is charged with / You may also consider the less serious offense of¹] threatening or intimidating a person in order to influence that person's statement or presentation of evidence to a police investigator [not involving the commission or attempted commission of another crime / a threat to kill or injure any person / a threat to cause property damage¹]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant made a threat or said or did something to intimidate [*name witness*].

(3) Second, that when the defendant made the threat or used intimidating words or conduct, [he / she] was attempting to influence what [*name witness*] would tell [a police investigator / Officer (*name complainant*)] or whether [*name witness*] would give some evidence to [a police investigator / Officer (*name complainant*)] who [may be / was] conducting a lawful investigation of the crime of [*identify crime*].

[(4) Third, that when threatening or intimidating [*name witness*], the defendant [committed or attempted to commit the crime of (*identify other crime that the defendant committed*) as I have previously described to you / threatened to kill or injure any person / threatened to cause property damage.]²

Use Note

1. Use this language when there is a dispute whether the charge involved the aggravating factor found in MCL 750.483a(4)(b) and the court is instructing the jury on the necessarily lesser included offense that does not require proof of the aggravating factor.

2. Use this paragraph where the aggravating element has been charged. Where the complementary crime in this element has also been charged, the court should instruct on that other charge before instructing for this offense.

Statute

MCL 750.483a(3)(b)

[NEW] M Crim JI 37.10 Influencing Statements to Investigators by Gift or Intimidation – Defenses

(1) The defendant says that [he / she] is not guilty of this charge because [his / her] conduct was lawful, and [his / her] sole intent was to induce, encourage, or cause [*name complainant*] to provide truthful statements or evidence.

(2) In order to establish this defense, the defendant must prove the following two elements by a preponderance of the evidence. “A preponderance of the evidence” means that it is more likely than not that each of the elements is true.

(3) First, that the defendant’s conduct was otherwise lawful.

(4) Second, that the defendant’s sole intent was to induce, encourage, or cause [*name complainant*] to give truthful testimony or evidence.

(5) You should consider these elements separately. If you find that defendant has proved both of these elements by a preponderance of the evidence, then you must find [him / her] not guilty. If the defendant has failed to prove either or both elements, the defense fails and you may find the defendant guilty if the prosecutor has proved the elements of the charge beyond a reasonable doubt.

Statute

MCL 750.483a(7)

[NEW] M Crim JI 37.11 Removing, Destroying or Tampering with Evidence

(1) [The defendant is charged with / You may also consider the less serious offense of¹] intentionally removing, altering, concealing, destroying, or tampering with evidence to be offered at an official proceeding [not involving a criminal case where (*identify crime where the punishment was more than 10 years*) was charged¹]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that there was some evidence to be offered in a present or future official proceeding.

An official proceeding is a hearing held before a legislative, judicial, administrative, or other governmental agency, or a hearing before an official authorized to hear evidence under oath, including a referee, a prosecuting attorney, a hearing examiner, a commissioner, a notary or another person taking testimony in a proceeding.

(3) Second, that the defendant removed, altered, concealed, destroyed, or otherwise tampered with that evidence.

(4) Third, that when the defendant removed, altered, concealed, destroyed, or otherwise tampered with that evidence, [he / she] did so on purpose and not by accident.

[(5) Fourth, that the evidence that the defendant removed, altered, concealed, destroyed, or otherwise tampered with was used or intended to be used in a criminal case where (*identify crime where the punishment was more than 10 years*) was charged.]²

Use Note

1. Use this language when there is a dispute whether the charge involved the aggravating factor found in MCL 750.483a(6)(b) and the court is instructing the jury on the necessarily lesser included offense that does not require proof of the aggravating factor.

2. Use this paragraph where the aggravating element has been charged.

Statute

MCL 750.483a(5)(a)

[NEW] M Crim JI 37.11a Offering False Evidence at an Official Proceeding

(1) [The defendant is charged with / You may also consider the less serious offense of¹] offering false evidence at an official proceeding with reckless disregard to its falsity [not involving a criminal case where (*identify crime where the punishment was more than 10 years*) was charged.¹]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant offered [*describe evidence*] into evidence during an official proceeding.

An official proceeding is a hearing held before a legislative, judicial, administrative, or other governmental agency, or a hearing before an official authorized to hear evidence under oath, including a referee, a prosecuting attorney, a hearing examiner, a commissioner, a notary or another person taking testimony in a proceeding.

(3) Second, that the [*describe evidence*] that defendant offered into evidence was false.

(4) Third, that when the defendant offered the false evidence, [he / she] acted with reckless disregard whether or not it was false.

[(5) Fourth, that the false evidence that the defendant offered was used or would have been used in a criminal case where (*identify crime where the punishment was more than 10 years*) was charged.]²

Use Note

1. Use this language when there is a dispute whether the charge involved the aggravating factor found in MCL 750.483a(6)(b) and the court is instructing the jury on the necessarily lesser included offense that does not require proof of the aggravating factor.

2. Use this paragraph where the aggravating element has been charged.

Statute

MCL 750.483a(5)(b)