



**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 December 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](mailto:MCrimJI@courts.mi.gov) .

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**PROPOSED**

The Committee proposes amending the Domestic Assault instruction, M Crim JI 17.2a, to add the offense of Aggravated Domestic Assault for which there was no instruction previously.

**[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 of<sup>1</sup>] [domestic assault / aggravated domestic assault<sup>1</sup>]. 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]<sup>2</sup> [*name complainant*].

A battery is the forceful, violent, or offensive touching of a person or something closely connected with him or her.<sup>23</sup>

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.<sup>34</sup> [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.

[(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.<sup>1</sup>]

*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 Joeseype Johnson*, 407 Mich 196, 284 NW2d 718 (1979).