



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

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The Committee on Model Criminal Jury Instructions solicits comment on the following proposals by April 1, 2021. 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 new instructions, M Crim JI 39.8 and 39.8a, for the crimes found in MCL 750.411a(2)(b): threatening to commit an offense involving explosives (M Crim JI 39.8), or threatening to commit an offense involving of harmful substances or poisons (M Crim JI 39.8a).

**[NEW] M Crim JI 39.8 Threat to Commit an Offense Involving
Explosives**

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

(2) First, that the defendant [communicated / caused (another person / *identify person who made report*) to communicate] with [*identify recipient(s) of communication*] by speech, writing, gestures, or conduct.

(3) Second, that during the course of the communication, [the defendant / the other person / *identify person who made report*] threatened to:

[*Choose from the following alternatives according to the charges and the evidence:*]

(a) order, send, take, transport, convey, or carry concealed as freight or baggage dynamite, nitroglycerine fulminate in bulk in dry condition, or any other explosive substance that explodes by concussion or friction on a

passenger boat, railroad car, motor vehicle or other vehicle used to carry passengers or articles of commerce¹

(b) Order, send, take or carry, or attempt to order, send, take or carry dynamite, nitroglycerine or any other explosive substance that explodes by concussion or friction, concealed in any manner, either as freight or baggage, on a passenger boat, railroad car, motor vehicle, or other vehicle used to carry passengers or articles of commerce²

(c) send an explosive substance or any other dangerous thing with the intent to frighten, terrorize, intimidate, threaten, harass, injure, or kill any person, or with the intent to damage or destroy any real or personal property³

(d) construct a device that appeared to be a bomb or an explosive or incendiary device⁴

(e) handle an explosive material while intoxicated⁵

(f) place an explosive substance in or near any real or personal property with the intent to frighten, terrorize, intimidate, threaten, harass, injure, or kill any person, or with the intent to damage or destroy any real or personal property⁶

(g) possess an explosive substance or device in a public place to terrorize, frighten, intimidate, threaten, harass, or annoy another person⁷

(h) carry or possess an explosive or combustible substance with intent to frighten, terrorize, intimidate, threaten, harass, injure, or kill any person, or with the intent to damage or destroy any real or personal property without the permission of the property owner or, if the property is public property, without the permission of the governmental agency having authority over that property⁸

(i) manufacture, buy, sell, furnish, or possess a Molotov cocktail or any similar device with the intent to frighten, terrorize, intimidate, threaten, harass, injure, or kill any person, or with the intent to damage or destroy any real or personal property⁹

(j) manufacture, buy, sell, furnish, or possess a device designed to explode or that would explode upon impact or with the application of heat or a flame or that is highly incendiary, with the intent to frighten, terrorize, intimidate, threaten, harass, injure, or kill any person, or with the intent to damage or destroy any real or personal property¹⁰

(k) manufacture, sell, keep or offer for sale any unbranded or unmarked or falsely branded or marked high explosive¹¹

(l) kill a person by placing gun powder or any other explosive substance in, on, under, against, or near a building¹².

(4) Third, that the communication was made or caused [for the purpose of making a threat/knowing the communication would be viewed as a threat].

A threat does not have to be stated in any particular terms but must express a warning of danger or harm. Further, it must have been a true threat, not merely idle talk, or a statement made in jest, or solely a political comment. It must have been made under circumstances where a reasonable person would take the threat seriously as an expression of an intent to inflict harm or damage.

It does not matter whether the defendant or some other person actually could commit the act or actually intended to commit the act, but only whether the defendant threatened to commit the act or have some other person commit the act.

Use Note

1. MCL 750.201
2. MCL 750.327
3. MCL 750.204
4. MCL 750.204a
5. MCL 750.204c
6. MCL 750.207
7. MCL 750.209a
8. MCL 750.210
9. MCL 750.211a(1)(a)
10. MCL 750.211a(1)(b)
11. MCL 750.212
12. MCL 750.328

[NEW] M Crim JI 39.8a Threatening to Poison or Commit a Harmful Substance Offense

(1) The defendant is charged with threatening to commit a crime involving poison or harmful substances. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [communicated / caused (another person / *identify person who made report*) to communicate] with [*identify recipient(s) of communication*] by speech, writing, gestures, or conduct.

(3) Second, that during the course of the communication, [the defendant / the other person / *identify person who made report*] threatened to:

[Choose from the following alternatives according to the charges and the evidence:]

(a) manufacture, deliver, possess, transport, place, use, or release [a harmful biological substance or a harmful biological device / a harmful chemical substance or a harmful chemical device / a harmful radioactive material or a harmful radioactive device / a harmful electronic or electromagnetic device]¹

(b) manufacture, deliver, possess, transport, place, use, or release [a chemical irritant or a chemical irritant device / a smoke device / an imitation harmful substance or device]²

(c) cause another individual to believe that [he / she] had been exposed to a harmful biological substance, harmful biological device, harmful chemical substance, harmful chemical device, harmful radioactive material, harmful radioactive device, or harmful electronic or electromagnetic device when it was untrue that the individual had been exposed to such a substance or device³

(d) place an offensive or injurious substance or compound* in or near to any real or personal property intending to wrongfully injure or coerce another person or to injure the property or business of another person, or to interfere with another person's use, management, conduct, or control of his or her business or property⁴

(e) [place pins, needles, razor blades, glass, or other harmful objects in any food with intent to harm the consumer of the food / place a harmful substance in any food with intent to harm the consumer of the food / knowingly furnish any food containing a harmful object or substance to another person]⁵

(f) [mingle a poison or harmful substance with a food, drink, nonprescription medicine, or pharmaceutical product / place a poison or harmful substance in a spring, well, reservoir, or public water supply, knowing or having reason to know that it may be consumed or used by a person and result in injury]⁶

(g) dishonestly tell another individual that a poison or harmful substance had been or would be placed in a food, drink, nonprescription medicine, pharmaceutical product, spring, well, reservoir, or public water supply, knowing that the information was false and that it would likely be disseminated to the public.⁷

*[Provide a definition by selecting from paragraphs (i) through (ix):]*⁸

(i) A “harmful biological device” means a device designed or intended to release a harmful biological substance.

(ii) A “harmful biological substance” means a bacteria, virus, or other microorganism or a toxic substance derived from or produced by an organism that can be used to cause death, injury, or disease in humans, animals, or plants.

(iii) A “harmful chemical device” means a device that is designed or intended to release a harmful chemical substance.

(iv) A “harmful chemical substance” means a solid, liquid, or gas that through its chemical or physical properties, alone or in combination with 1 or more other chemical substances, can be used to cause death, injury, or disease in humans, animals, or plants.

(v) A “harmful radioactive material” means material that is radioactive and that can be used to cause death, injury, or disease in humans, animals, or growing plants by its radioactivity.

(vi) A “harmful electronic or electromagnetic device” means a device designed to emit or radiate or that, as a result of its design, emits or radiates an electronic or electromagnetic pulse, current, beam, signal, or microwave that is intended to cause harm to others or cause damage to, destroy, or disrupt any electronic or telecommunications system or device, including, but not limited to, a computer, computer network, or computer system.

(vii) “Harmful radioactive device” means a device that is designed or intended to release a harmful radioactive material.

(viii) A “chemical irritant” means a solid, liquid, or gas that, through its chemical or physical properties, alone or in combination with one or more other substances, can be used to produce an irritant effect in humans, animals, or plants.

(ix) A “chemical irritant device” means a device designed or intended to release a chemical irritant.

(4) Third, that the communication was made or caused [for the purpose of making a threat / knowing the communication would be viewed as a threat].

A threat does not have to be stated in any particular terms but must express a warning of danger or harm. Further, it must have been a true threat, not merely idle talk, or a statement made in jest, or solely a political comment. It must have been made under circumstances where a reasonable person would take the threat seriously as an expression of an intent to inflict harm or damage.

It does not matter whether the defendant or some other person actually could commit the act or actually intended to commit the act, but only whether the defendant threatened to commit the act or have some other person commit the act.

Use Note

1. MCL 750.200i
 2. MCL 750.200j
 3. MCL 750.200l
 4. MCL 750.209
 5. MCL 750.397a
 6. MCL 750.436(1)(a)
 7. MCL 750.436(1)(b)
 8. See MCL 750.200h for definitions.
- * There is no statutory definition for an offensive or injurious substance or compound.