

The Committee solicits comments on the following proposals by November 1, 2018. 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.

PROPOSED

The Committee proposes amending M Crim JI 11.1 and adding a new instruction, M Crim JI 11.1a, to separate the distinct offenses found in MCL 750.227: carrying a concealed pistol, and carrying a pistol in a vehicle. The proposal aims to eliminate juror confusion created when the “concealed” language in M Crim JI 11.1 is read where the offense involves carrying a pistol in an automobile. Deletions are in strike-through, and new language is underlined.

[AMENDED] M Crim JI 11.1 Carrying a Concealed Weapon—Pistol

(1) The defendant is charged with the crime of carrying a concealed pistol.¹ To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

~~*Use the following if defendant is charged with carrying a pistol concealed on person.**~~

(2) First, that the defendant knowingly carried a pistol. It does not matter why the defendant was carrying the pistol, but to be guilty of this crime the defendant must have known that [he/she] was carrying a pistol.*²

(3) Second, that this pistol was concealed on or about the person of the defendant. Complete invisibility is not required. A pistol is concealed if it cannot easily be seen by those who come into ordinary contact with the defendant.

~~*Use the following if defendant is charged with carrying a pistol carried in vehicle.**~~

(4) First, that a pistol was in a vehicle that the defendant was in.*

(5) Second, that the defendant knew the pistol was there.

(6) Third, that the defendant took part in carrying or keeping the pistol in the vehicle.

Use Notes

1. Use this instruction only when the defendant has been charged under MCL 750.227(2) with carrying a pistol concealed on his or her person. Where the charge is that defendant carried a pistol in a vehicle, use M Crim JI 11.1a.

2. The definition of pistol, M Crim JI 11.3, should be included in the instructions only where there is some question of whether or not the article being is a pistol.

See M Crim JI 11.10–11.15 for exemptions.

[NEW] M Crim JI 11.1a Carrying a Pistol in a Vehicle

(1) The defendant is charged with the crime of carrying a pistol in a vehicle.¹ To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that a pistol was in a vehicle that the defendant was in.²

(3) Second, that the defendant knew the pistol was there.

(4) Third, that the defendant took part in carrying or keeping the pistol in the vehicle.

Use Notes

1. Use this instruction only when the defendant has been charged under MCL 750.227(2) with carrying a pistol in a vehicle. Where the charge is that defendant carried a concealed pistol on his or her person, use M Crim JI 11.1.

2. The definition of pistol, M Crim JI 11.3, should be included in the instructions only where there is some question whether or not the article is a pistol.

See M Crim JI 11.10–11.15 for exemptions.

The Committee proposes amending M Crim JI 12.2a, the instruction for delivery of a controlled substance causing death. The proposal adds causation language to the instruction and eliminates a Use Note to the effect that M Crim JI 16.15 applies to causation under MCL 750.317a, because the statute provides that the controlled substance must cause the death at issue, not the act of the defendant. Deletions are in strike-through, and new language is underlined.

[AMENDED] M Crim JI 12.2a Delivery of a Controlled Substance Causing Death

(1) The defendant is charged with the crime of delivery of a controlled substance¹ causing death. To prove this charge, the prosecution must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant delivered a controlled substance to another person. “Delivery” means that the defendant transferred the substance to another person knowing that it was a controlled substance and intending to transfer it to that person.

(3) Second, that the substance delivered was a controlled substance.

(4) Third, that the defendant knew [he/she] was delivering a controlled substance.

(5) Fourth, that the controlled substance was consumed by [state name of person who consumed].²

(6) Fifth, that consuming the controlled substance caused the death of [state victim’s name].

There may be more than one cause of death. The controlled substance delivered by the defendant does not need to be the sole cause of [state victim’s name]’s death. The prosecutor is only required to prove that the controlled substance was a contributing cause that was a substantial factor in the death of [state victim’s name]. It does not matter if there was another contributing cause to the death.

Use Note

1. The controlled substance must be a schedule 1 or 2 controlled substance other than marijuana, MCL 750.317a.

~~2. Concerning causation, see M Crim JI 16.15, Act of Defendant Must Be Cause of Death.~~

The Committee proposes amending M Crim JI 17.9, assault with a dangerous weapon, and M Crim JI 17.10, definition of dangerous weapon. The proposal aims to correct the language in paragraph (4) of M Crim JI 17.9 that removed from jury consideration the element whether the object charged as being a dangerous weapon was, in fact, a dangerous weapon as determined

by the jury. Language was added to that instruction to define a dangerous weapon for the jury's consideration. M Crim JI 17.10 was amended to conform to the added definition provided in M Crim JI 17.9. Deletions are in strike-through, and new language is underlined.

[AMENDED] M Crim JI 17.9 Assault with a Dangerous Weapon

(1) [The defendant is charged with the crime of/You may also consider the lesser charge of¹] felonious assault with a dangerous weapon. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant either attempted to commit a battery on [*name complainant*] or did an act that would cause a reasonable person to fear or apprehend an immediate battery. A battery is a forceful or violent touching of the person or something closely connected with the person.²

(3) Second, that the defendant intended either to injure [*name complainant*] or to make [*name complainant*] reasonably fear an immediate battery.

(4) Third, that at the time, the defendant had the ability to commit a battery, appeared to have the ability, or thought [he/she] had the ability.

(5) Fourth, that the defendant committed the assault with a [~~state dangerous weapon alleged~~].³ dangerous weapon.

A dangerous weapon is any object that is used in a way that is likely to cause serious physical injury or death.

Some objects, such as guns or bombs, are dangerous because they are specifically designed to be dangerous. Other objects are designed for peaceful purposes but may be used as dangerous weapons. The way an object is used or intended to be used in an assault determines whether or not it is a dangerous weapon. If the defendant threatens to use an object or uses an object in a way that is likely to cause serious physical injury or death, it is a dangerous weapon.

You must decide from all of the facts and circumstances whether the prosecutor has proved that the [*state object alleged to be a*

dangerous weapon] in question here was a dangerous weapon.

Use Notes

1. Use when instructing on this crime as a lesser included offense.

2. 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.

~~3. Where necessary, define term used:~~

~~M Crim JI 17.10—Definition of Dangerous Weapon;~~

~~M Crim JI 17.11—Definition of Firearm—Gun, Revolver, Pistol;~~

~~M Crim JI 17.12—Definition of Brass Knuckles.~~

M Crim JI 17.10 Definition of Dangerous Weapon

(1) A dangerous weapon is any object that is used in a way that is likely to cause serious physical injury or death.

(2) Some objects, such as guns or bombs, are dangerous because they are specifically designed to be dangerous. Other objects are designed for peaceful purposes but may be used as dangerous weapons. The way an object is used or intended to be used in an assault determines whether or not it is a dangerous weapon. If the defendant threatens to use an object or uses an object if an object is used in a way that is likely to cause serious physical injury or death, it is a dangerous weapon.

(3) You must decide from all of the facts and circumstances whether the evidence shows that the _____ [*state object alleged to be a dangerous weapon*] in question here was a dangerous weapon.

The Committee proposes new instructions M Crim JI 37.1, 37.1a, 37.2, and 37.2a for the bribery statutes found at MCL 750.117 through 750.120.

[NEW] M Crim JI 37.1 Offering Bribes—Public Officer, Agent, Servant, or Employee

(1) The defendant is charged with offering a bribe to a public [officer/agent/servant/employee]. To prove this charge, the

prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [gave/offered/promised] any gift or anything of value to [*name of public officer, agent, servant, or employee*].

(3) Second, that at the time the defendant [gave/offered/promised] the gift or thing of value to [*name of public officer, agent, servant, or employee*], [he/she] had been [elected/chosen or appointed] to [his/her] public position as [*identify public position held*].¹ It does not matter whether [*name of public officer, agent, servant, or employee*] had actually taken [his/her] position or had been qualified to take [his/her] position as long as the public [officer/agent/servant/employee] had already been [elected/chosen or appointed].

(4) Third, that the defendant corruptly [gave/offered/promised] the gift or thing of value with the intent to influence [(*name of public officer, agent, servant, or employee*)'s act, vote, opinion, decision, or judgment/action on any matter, question, cause, or proceeding that was pending or that may be brought/any act or omission] relating to any of [*name of public officer, agent, servant, or employee*]’s public capacity or duties.

The defendant corruptly [gave/offered/promised] the gift or thing of value to [*name of public officer, agent, servant, or employee*] if [he/she] intended it to influence the [(vote/opinion/judgment) of (*name of public officer, agent, servant, or employee*)/(nomination/appointment) made by (*name of public officer, agent, servant, or employee*)], in a way that was dishonest, inconsistent with the public interests, or inconsistent with the duties of [his/her] public position as [*identify public position held*].²

Use Notes

1. *People v Coutu*, 459 Mich 348, 353; 589 NW2d 458 (1999), holds that the determination whether any particular office or position is a “public office” is a question of law to be decided by the court. Whether the person being bribed held (or was about to hold) public office when the bribe was allegedly offered is a question of fact.

2. “[C]orrupt intent can be shown where there is intentional or purposeful misbehavior

or wrongful conduct pertaining to the requirements and duties of office by an officer.” *People v Coutu*, 235 Mich App 695, 706; 599 NW2d 556 (1999). It does not encompass erroneous acts done by officials in good faith or honest mistakes committed by the official in the discharge of his duties. *Id.* See also *People v Waterstone*, 296 Mich App 121, 137; 818 NW2d 432 (2012).

[NEW] M Crim JI 37.1a
Offering Bribes—Juror, Appraiser, Receiver, Trustee, Administrator, Executor, Commissioner, Auditor, Arbitrator, or Referee

(1) The defendant is charged with offering a bribe to [a juror/an appraiser/a receiver/a trustee/an administrator/an executor/a commissioner/an auditor/an arbitrator/a referee]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [gave/offered/promised] any gift or anything of value to [name of juror, appraiser, receiver, trustee, administrator, executor, commissioner, auditor, arbitrator, or referee].

(3) Second, that [name of juror, appraiser, receiver, trustee, administrator, executor, commissioner, auditor, arbitrator, or referee] was [a juror/an appraiser/a receiver/a trustee/an administrator/an executor/a commissioner/an auditor/an arbitrator/a referee].¹

(4) Third, that at the time the defendant [gave/offered/promised] the gift or thing of value to [name of juror, appraiser, receiver, trustee, administrator, executor, commissioner, auditor, arbitrator, or referee], the defendant corruptly intended to [influence the decision that (name of juror, appraiser, receiver, trustee, administrator, executor, commissioner, auditor, arbitrator, or referee) was appointed or chosen to make/influence (name of juror, appraiser, receiver, trustee, administrator, executor, commissioner, auditor, arbitrator, or referee)’s decision on any matter pending (in a court/before an inquest)].

The defendant corruptly [gave/offered/promised] the gift or thing of value if [he/she] intended it to [influence the decision that (name of juror, appraiser, receiver, trustee, administrator, executor, commissioner, auditor, arbitrator, or referee) was

appointed or chosen to make/influence (name of juror, appraiser, receiver, trustee, administrator, executor, commissioner, auditor, arbitrator, or referee)’s decision on any matter pending (in a court/before an inquest)], in a way that was dishonest, inconsistent with the public interests, or inconsistent with the duties that (name of juror, appraiser, receiver, trustee, administrator, executor, commissioner, auditor, arbitrator, or referee) was appointed or chosen to perform.²

(5) Fourth, that the decision in court that the defendant was trying to influence was being made in a criminal case [carrying a punishment of (more than 10 years/life or any term of years)].³

Use Notes

1. The court may provide a definition of these roles. The following may be helpful:

(a) A juror is a person summoned to decide a civil or criminal case in court.

(b) An appraiser is a person chosen or appointed by an executive, legislative, or judicial officer or body, or by a corporation to make an impartial estimate of the value of any sort of property.

(c) A receiver is a person chosen or appointed by an executive, legislative, or judicial officer or body, or by a corporation to protect or collect property where different persons or groups have claims for the ownership of the property.

(d) A trustee is a person chosen or appointed by an executive, legislative, or judicial officer or body, or by a corporation to hold property for the benefit of others.

(e) An administrator is a person chosen or appointed by an executive, legislative, or judicial officer or body, or by a corporation to lead a business, public office, or agency.

(f) An executor is a person chosen or appointed to perform some act, often in relation to administering the estate of a deceased person.

(g) A commissioner is a person chosen or appointed by an executive, legislative, or judicial officer or body, or by a corporation to direct an organization authorized to perform public services.

(h) An auditor is a person chosen or appointed by an executive, legislative, or judicial officer or body, or by a corporation to

examine the financial records of a person, corporation, or public body.

(i) An arbitrator is a person chosen or appointed by an executive, legislative, or judicial officer or body, or by a corporation to act as a neutral person to decide disputes between persons or organizations.

(j) A referee is a person chosen or appointed by an executive, legislative, or judicial officer or body or by a corporation to control the conduct of others in the performance of their duties.

2. “Corrupt intent can be shown where there is intentional or purposeful misbehavior of wrongful conduct pertaining to the requirements and duties of office by the officer.” *People v Coutu*, 235 Mich App 695, 706; 599 NW2d 556, 562 (1999). It does not encompass erroneous act done by officials in good faith or honest mistakes committed by the official in the discharge of his duties. *Id.* See also *People v Waterstone*, 296 Mich App 121, 137; 818 NW2d 432, 440 (2012).

3. Use (5) only when the decision was being made in a criminal case, and bracketed portion where appropriate to reflect the charged offense.

[NEW] M Crim JI 37.2
Accepting Bribes—Executive, Legislative, or Judicial Officer

(1) The defendant is charged with accepting a bribe as [an executive/a legislative/a judicial] officer. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that another person [gave a gift/promised to give a gift/promised to do any act that was beneficial] to the defendant.

(3) Second, that defendant was [an executive/a legislative/a judicial] officer when [he/she] [accepted the gift/received the promise].

(4) Third, that defendant corruptly [accepted the gift/received the promise] under an agreement or with an understanding that [he/she]

[Select (a) or (b):]

(a) would [vote/render an opinion/exercise judgment] on a particular side of any question, cause, or proceeding that is or may be brought before [him/her] in [his/her] official capacity.

(b) would make a particular [nomination/appointment] in [his/her] official capacity.

The defendant corruptly [accepted the gift/received the promise] if [he/she] intended that it would influence [defendant's (vote/opinion/judgment)/a (nomination/appointment) made by defendant], in a way that was dishonest, inconsistent with the public interests, or inconsistent with the duties of [his/her] public position as [*identify public position held*].¹

Use Note

1. “[C]orrupt intent can be shown where there is intentional or purposeful misbehavior or wrongful conduct pertaining to the requirements and duties of office by an officer.” *People v Coutu*, 235 Mich App 695, 706; 599 NW2d 556 (1999). It does not encompass erroneous acts done by officials in good faith or honest mistakes committed by the official in the discharge of his duties. *Id.* See also *People v Waterstone*, 296 Mich App 121, 137; 818 NW2d 432 (2012).

[NEW] M Crim JI 37.2a Accepting Bribes—Juror, Appraiser, Receiver, Trustee, Administrator, Executor, Commissioner, Auditor, Arbitrator, or Referee

(1) The defendant is charged with accepting a bribe as [a juror/an appraiser/a receiver/a trustee/an administrator/an executor/a commissioner/an auditor/an arbitrator/a referee]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was [summoned as a juror/chosen or appointed as (an appraiser/a receiver/a trustee/an administrator/an executor/a commissioner/an auditor/an arbitrator/a referee)].¹

(3) Second, that defendant corruptly accepted a gift or anything of value from a person who was a party to any suit, cause, or proceeding.

(4) Third, that when the defendant accepted the gift or anything of value, the defendant knew that the person was trying to influence

[*Select (a) or (b):*]

(a) the trial for which the juror was summoned or the decision that the juror would make.

(b) the hearing or determination for which the [appraiser/receiver/trustee/administrator/executor/commissioner/auditor/arbitrator] was chosen or appointed.

The defendant corruptly accepted the gift or thing of value if [he/she] intended it to [influence the decision that the defendant was appointed or chosen to make/influence the defendant's decision on any matter pending (in a court/before an inquest)], such as in a way that was dishonest, inconsistent with the public interests, or inconsistent with the duties that the defendant performed as [a juror/an appraiser/a receiver/a trustee/an administrator/an executor/a commissioner/an auditor/an arbitrator/a referee].²

Use Notes

1. The court may provide a definition of these roles. The following may be helpful:

(a) A juror is a person summoned to decide a civil or criminal case in court.

(b) An appraiser is a person chosen or appointed by an executive, legislative, or judicial officer or body, or by a corporation to make an impartial estimate of the value of any sort of property.

(c) A receiver is a person chosen or appointed by an executive, legislative, or judicial officer or body, or by a corporation to protect or collect property where different persons or groups have claims for the ownership of the property.

(d) A trustee is a person chosen or appointed by an executive, legislative, or judicial officer or body, or by a corporation to hold property for the benefit of others.

(e) An administrator is a person chosen or appointed by an executive, legislative, or

judicial officer or body, or by a corporation to lead a business, public office, or agency.

(f) An executor is a person chosen or appointed to perform some act, often in relation to administering the estate of a deceased person.

(g) A commissioner is a person chosen or appointed by an executive, legislative, or judicial officer or body, or by a corporation to direct an organization authorized to perform public services.

(h) An auditor is a person chosen or appointed by an executive, legislative, or judicial officer or body, or by a corporation to examine the financial records of a person, corporation, or public body.

(i) An arbitrator is a person chosen or appointed by an executive, legislative, or judicial officer or body, or by a corporation to act as a neutral person to decide disputes between persons or organizations.

(j) A referee is a person chosen or appointed by an executive, legislative, or judicial officer or body or by a corporation to control the conduct of others in the performance of their duties.

2. “Corrupt intent can be shown where there is intentional or purposeful misbehavior of wrongful conduct pertaining to the requirements and duties of office by the officer.” *People v Coutu*, 235 Mich App 695, 706; 599 NW2d 556, 562 (1999). It does not encompass erroneous acts done by officials in good faith or honest mistakes committed by the official in the discharge of his duties. *Id.* See also *People v Waterstone*, 296 Mich App 121, 137; 818 NW2d 432, 440 (2012).



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