



FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

The Committee on Model Criminal Jury Instructions has adopted the following amended model criminal jury instructions, effective March 2016.

ADOPTED

The Committee has adopted new and amended instructions for use in cases where the discharge of firearms is charged under MCL 750.234a, 750.234b and 750.234c, as amended. They include an amended instruction M Crim JI 11.37, and new instructions M Crim JI 11.37a, 11.37b and 11.37c. M Crim JI 11.26 and 11.26b, which formerly addressed some of these offenses, have been eliminated under the revised format.

M Crim JI 11.37 Discharge of a Firearm from Motor Vehicle

(1) The defendant is charged with intentionally discharging a firearm from a motor vehicle. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant discharged a firearm.¹

(3) Second, that [he / she] did so intentionally, that is, on purpose.

(4) Third, that [he / she] did so from a [motor vehicle / snowmobile / off-road vehicle].²

(5) Fourth, that [he / she] discharged the firearm in a way that [endangered someone else / caused physical injury to (*name complainant*) / caused serious impairment of a body function to (*name complainant*) / caused the death of (*name complainant*)].

[Use (6) where it is alleged that the complainant suffered serious impairment of a body function:]³

(6) Serious impairment of a body function includes, but is not limited to, one or more of the following:

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

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

(c) Loss of an eye or ear or loss of the 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

¹ *Firearm* is defined in MCL 28.421(1)(c) and MCL 750.222(e).

² The definition of *motor vehicle* may be found at MCL 257.33.

³ MCL 750.234a(5)(b) references MCL 257.58c for the definition of *serious impairment of a body function*.

This charge does not apply to a peace officer in the performance of the officer's duties, whether the officer was on or off his or her scheduled work shift. MCL 750.234a(2)(a).

Self-defense or defense of others is a defense to this charge. MCL 750.234a(2)(b). Appropriate instructions from M Crim JI 7.15 through 7.24 must be given where such a defense is raised.

History

M Crim JI 11.37 (formerly CJI2d 11.37) new June, 1991. Amended March 2016

Reference Guide

Statutes

MCL 750.234a-234c.

M Crim JI 11.37a Discharge of a Firearm at a Building

(1) The defendant is charged with intentionally discharging a firearm at a dwelling or potentially occupied structure. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant discharged a firearm.¹

(3) Second, that [he / she] did so intentionally, that is, on purpose.

(4) Third, that [he / she] discharged the firearm at a building that [he / she] had reason to believe was either a dwelling or a potentially occupied structure.

A dwelling is a building where people usually live. It does not matter whether or not someone was actually in the building at the time.

A potentially occupied structure is a building that a reasonable person knows or should know was likely to be occupied by one or more persons due to its nature, function or location. It does not matter whether a person was actually present in the structure.

(5) Fourth, that when the defendant discharged the firearm [he / she] [caused physical injury to / caused serious body injury to / caused the death of] (*name complainant*).

[Use (6) where it is alleged that the complainant suffered serious body injury:]²

(6) *Serious* impairment of a body function includes, but is not limited to, one or more of the following:

- (a) Loss of a limb or loss of use of a limb.
- (b) Loss of a foot, hand, finger, or thumb or loss of the use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of the 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

¹ *Firearm* is defined in MCL 28.421(1)(c) and MCL 750.222(e).

² MCL 750.234a(10)(b) references MCL 257.58c for the definition of *serious impairment of a body function*.

This charge does not apply to a peace officer in the performance of his or her duties. MCL 750.234b(6).

Self-defense or defense of others is a defense to this charge. MCL 750.234b(7). Appropriate instructions from M Crim JI 7.15 through 7.24 must be given where such a defense is raised.

History

M Crim JI 11.37a new March 2016.

Reference Guide

Statutes

MCL 750.234a-.234c.

M Crim JI 11.37b Discharge of a Firearm in a Building

(1) The defendant is charged with intentionally discharging a firearm in a dwelling or potentially occupied structure. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant discharged a firearm.¹

(3) Second, that [he / she] did so intentionally, that is, on purpose.

(4) Third, that [he / she] discharged the firearm in a building that [he / she] had reason to believe was either a dwelling or a potentially occupied structure.

A dwelling is a building where people usually live. It does not matter whether or not someone was actually in the building at the time.

A potentially occupied structure is a building that a reasonable person knows or should know was likely to be occupied by one or more persons due to its nature, function or location. It does not matter whether a person was actually present in the structure.

(5) Fourth, that the defendant acted with reckless disregard for the safety of other persons

(6) Fifth, that when the defendant discharged the firearm, [he / she] [caused physical injury to / caused serious body injury to / caused the death of] (*name complainant*).

[Use (7) where it is alleged that the complainant suffered serious body injury:]²

(7) Serious impairment of a body function includes, but is not limited to, one or more of the following:

- (a) Loss of a limb or loss of use of a limb.
- (b) Loss of a foot, hand, finger, or thumb or loss of the use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of the 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

¹ *Firearm* is defined in MCL 28.421(1)(c) and MCL 750.222(e).

² MCL 750.234a(10)(b) references MCL 257.58c for the definition of *serious impairment of a body function*.

This charge does not apply to a peace officer in the performance of his or her duties. MCL 750.234b(6).

Self-defense or defense of others is a defense to this charge. MCL 750.234b(7). Appropriate instructions from M Crim JI 7.15 through 7.24 must be given where such a defense is raised.

History

M Crim JI 11.37a new March 2016.

Reference Guide

Statutes

MCL 750.234a-.234c.

M Crim JI 11.37c Discharge of a Firearm at a Police or Emergency Vehicle

(1) The defendant is charged with intentionally discharging a firearm at an emergency or law enforcement vehicle. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant discharged a firearm.¹

(3) Second, that [he / she] did so intentionally, that is, on purpose.

(4) Third, that [he / she] discharged the firearm at a motor vehicle that [he / she] knew or had reason to believe was an emergency or law enforcement vehicle.²

Use Note

¹ *Firearm* is defined in MCL 28.421(1)(c) and MCL 750.222(e).

² The definition of *emergency or law enforcement vehicle* can be found in MCL 750.234c(2).

History

M Crim JI 11.37a new March 2016.

Reference Guide

Statutes

MCL 750.234a-.234c.