



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 February 2016.

ADOPTED

The Committee has adopted amended instructions for use in cases involving accessing or adding instructions to a computer system, M Crim JI 35.8 and 35.9, to correct the instructions, which previously included an erroneous “value” element, and to add a statutory presumption found in MCL 752.797(6).

M Crim JI 35.8 Unlawfully Accessing a Computer System

(1) The defendant is charged with the crime of unlawfully accessing a computer system. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [accessed /caused access to be made to] a [computer / computer program / computer system / computer network].

(3) Second, that the defendant did so intentionally.

(4) Third, that the defendant did so [without / by exceeding] valid authorization.

(5) Fourth, that the defendant did so to [acquire / alter / damage / delete / destroy property / use the services of] the [computer / computer program / computer system / computer network].

(6) When deciding whether the defendant acted [without / by exceeding] valid authorization to access the [computer / computer program / computer system / computer network], you may, but you do not have to, infer that [he / she] [did not have / exceeded] authorization if the defendant accessed the computer intentionally unless:

(a) written or verbal authorization was given by the owner, the system operator, or someone acting on his or her behalf; or

(b) the computer, the computer program or the [computer / computer program / computer system / computer network] the defendant accessed had password protections that included notice that would lead a reasonable person to believe that anyone was permitted access; or

- (c) the defendant got access without using a set of instructions, a code, or a computer program that was designed to bypass or get around password protections.

The prosecutor still bears the burden of proving all of the elements beyond a reasonable doubt.

M Crim JI 35.9 Unlawfully Inserting Instructions into Computer

(1) The defendant is charged with unlawfully inserting unwanted commands in a computer. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, the defendant [inserted / attached / knowingly created the opportunity for an unknowing and unwanted insertion or attachment of] a set of instructions or a computer program into a [computer / computer program / computer system / computer network].

(3) Second, that the defendant did so intentionally.

(4) Third, that the defendant did so [without / by exceeding] valid authorization.

(5) Fourth, the instructions or program was intended to:

[Choose (a) and/or (b):]

(a) [acquire / alter / damage / delete / disrupt / destroy] property. It does not matter whether the defendant actually did [acquire / alter / damage / delete / disrupt / destroy] any property, only whether he intended to do so.

(b) use the services of a [computer / computer program / computer system / computer network]. It does not matter whether the defendant actually did use the services of a [computer / computer program / computer system / computer network], only whether he intended to do so.

(6) When deciding whether the defendant acted [without / by exceeding] valid authorization, you may, but you do not have to, infer that [he / she] [did not have / exceeded] authorization if the defendant inserted the instructions or program intentionally unless:

(a) written or verbal authorization was given by the owner, the system operator, or someone acting on his or her behalf; or

(b) the computer, the computer program or the computer system into which the defendant inserted instructions or a program had password protections that included notice that would lead a reasonable person to believe that anyone was permitted to insert or attach instructions or programs; or

- (c) the defendant inserted or attached instructions or programs without using a set of instructions, a code, or a computer program that was designed to bypass or get around password protections.

The prosecutor still bears the burden of proving all of the elements beyond a reasonable doubt.