



**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 May 1, 2024. 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 three jury instructions, M Crim JI 41.3 (placing eavesdropping devices), 41.3a (placing eavesdropping devices for a lewd or lascivious purpose), and 41.3b (disseminating images obtained by eavesdropping devices) for the crimes found in an eavesdropping and surveillance statute: MCL 750.539d. These instructions are entirely new.

**[NEW] M Crim JI 41.3 Placing Eavesdropping or Surveillance Devices**

(1) The defendant is charged with the crime of placing an eavesdropping or surveillance device. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [installed / placed / used] a device for observing, recording, transmitting, photographing, or eavesdropping on the sounds or events<sup>1</sup> of others<sup>2</sup> at or in a private place.<sup>3</sup>

A private place is one where a person could reasonably expect to be safe from casual or unwanted intrusion or surveillance. It does not include a place where the public or a substantial group of the public has access.

(3) Second, that the defendant did not have the permission or consent of [(*identify complainant(s) if possible*) / the person or persons entitled to privacy at (*provide location of device*)] to be observed, recorded, transmitted, photographed, or eavesdropped on.<sup>3</sup>

*Use Note*

Use M Crim JI 41.3a in cases where the defendant is the owner or principal occupant of the premises where an eavesdropping device was alleged to have been placed. Questions regarding whether a defendant has status as an “owner or principal occupant” appear to be legal questions decided by the court.

1. MCL 750.539d(1)(a).
2. The Committee on Model Criminal Jury Instructions believes that the statute does not encompass recording conversations or events under MCL 750.539a(2) where the person recording them is a participant because Michigan appears to be a one-party consent state. *See Sullivan v Gray*, 117 Mich App 476; 324 NW2d 58 (1982), cited in *Lewis v LeGrow*, 258 Mich App 175; 670 NW2d 675 (2003), and *Fisher v Perron*, 30 F4th 289 (6th Cir 2022).
3. *Private place* is defined in MCL 750.539a(1).

**[NEW] M Crim JI 41.3a Placing Eavesdropping or Surveillance  
Devices for a Lewd or Lascivious Purpose**

(1) The defendant is charged with the crime of placing an eavesdropping or surveillance device for a lewd or lascivious purpose. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [installed / placed / used] a device for observing, recording, transmitting, photographing, or eavesdropping on the sounds or events in a residence.

(3) Second, that the location that the device could observe, record, photograph, or eavesdrop was a private place in or around the residence.<sup>1</sup>

A private place is one where a person could reasonably expect to be safe from casual or unwanted intrusion or surveillance.

(4) Third, that the defendant did not have the permission or consent of [(*identify complainant(s) if possible*) / the person or persons entitled to privacy at (*provide location of device*)] to be observed, recorded, photographed, or eavesdropped on.

(5) Fourth, that the defendant installed, placed, or used the device for a lewd or lascivious purpose.

A lewd or lascivious purpose means that the device was placed to observe or record [(*identify complainant*) / a person] under indecent or sexually provocative circumstances.

*Use Note*

This instruction should only be given when the defendant is the owner or principal occupant of the residence where an eavesdropping device was alleged to have been placed. Questions regarding whether a defendant has status as an “owner or principal occupant” appear to be legal questions decided by the court.

1. *Private place* is defined in MCL 750.539a(1).

**[NEW] M Crim JI 41.3b Transmitting Images or Recordings  
Obtained by Surveillance or  
Eavesdropping Devices**

(1) The defendant is charged with the crime of transmitting images or recordings obtained by surveillance or eavesdropping devices. To prove this charge, the prosecutor must prove both of the following elements beyond a reasonable doubt:

(2) First, that the defendant intentionally distributed, disseminated, or transmitted a recording, photograph, or visual image of [*identify person or complainant*] so that the recording or visual image could be accessed by other persons.

(3) Second, that the defendant knew or had reason to know the recording or visual image of [*identify person or complainant*] that [he / she] transmitted was obtained using a device for eavesdropping<sup>1</sup> that had been placed or used where a person would have a reasonable expectation of privacy that was safe from casual or unwanted intrusion or surveillance.<sup>2</sup>

*Use Note*

1. MCL 750.539d(1)(a) describes these devices as “any device for observing, recording, transmitting, photographing, or eavesdropping upon the sounds or events in that place.”

2. *Private place* and *surveillance* are defined in MCL 750.539a(1) and (3).