



**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, 2025. Comments may be sent in writing to Christopher M. 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 amending M Crim JI 20.6 (Aiders and Abettors – Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless) and M Crim JI 20.16 (Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless) to reflect a recent change to the statutory definition of “mentally incapacitated.” See MCL 750.520a(k), as amended by 2023 PA 65. Deletions are in ~~striketrough~~, and new language is underlined.

[AMENDED] M Crim JI 20.6 Aiders and Abettors – Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless

(1) [Second / Third], that before or during the alleged sexual act, the defendant was assisted by another person, who either did something or gave encouragement to assist the commission of the crime.

(2) [Third / Fourth], that [*name complainant*] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.

[Choose one or more of ~~(3)(a)~~, ~~(4)(b)~~, or ~~(5)(c)~~.]

~~(3)(a)~~ “Mentally incapable” means that [*name complainant*] was suffering from a mental disease or defect that made [him / her] incapable of appraising either the physical or moral nature of [his / her] conduct.

~~(4)(b)~~ “Mentally incapacitated” means that [*name complainant*] was unable to understand or control what [he / she] was doing because of [~~drugs or alcohol given to (him / her)~~ drugs / alcohol / (*identify intoxicant*) / something done to (him / her) without (his / her) consent]. [It does not matter if (*name complainant*) voluntarily consumed the (drugs / alcohol / [*identify intoxicant*]).]¹

~~(5)(c)~~ “Physically helpless” means that [*name complainant*] was unconscious, asleep, or physically unable to communicate that [he / she] did not want to take part in the alleged act.

~~(6)(3)~~ [Fourth / Fifth], that the defendant knew or should have known that [*name complainant*] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.

Use Note

Use this instruction in conjunction with M Crim JI 20.1, Criminal Sexual Conduct in the First Degree, M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, or M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

1. This sentence does not need to be read where the consumption of an intoxicating substance is not at issue.

[AMENDED] M Crim JI 20.16 Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless

(1) [Second / Third], that [*name complainant*] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.

[Choose one or more of (a), (b), or (c):]

(a) “Mentally incapable” means that [*name complainant*] was suffering from a mental disease or defect that made [him / her] incapable of appraising either the physical or moral nature of [his / her] conduct.

(b) “Mentally incapacitated” means that [*name complainant*] was unable to understand or control what [he / she] was doing because of ~~[drugs or alcohol given to (him / her)]~~ drugs / alcohol / (*identify intoxicant*) / something done to (him / her) without (his / her) consent]. [It does not matter if (*name complainant*) voluntarily consumed the (drugs / alcohol / [*identify intoxicant*)).]¹

(c) “Physically helpless” means that [*name complainant*] was unconscious, asleep, or physically unable to communicate that [he / she] did not want to take part in the alleged act.

(2) [Third / Fourth], that the defendant knew or should have known that [name complainant] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.

Use Note

Use this instruction in conjunction with M Crim JI 20.12, Criminal Sexual Conduct in the Third Degree, or M Crim JI 20.13, Criminal Sexual Conduct in the Fourth Degree.

1. This sentence does not need to be read where the consumption of an intoxicating substance is not at issue.