



**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 August 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 37.11 (Removing, Destroying or Tampering with Evidence) to add a missing *mens rea* element. MCL 750.483a(5)(a) makes it a crime to “[k]nowingly and intentionally remove, alter, conceal, destroy, or otherwise tamper with evidence to be offered in a present or future official proceeding.” While the current instruction addresses the requirement that the defendant act “intentionally,” it does not address the requirement that the defendant act “knowingly.” The Court of Appeals has indicated that “the word ‘knowingly’ in the statute likely includes knowledge of an official proceeding.” *People v Walker*, 330 Mich App 378, 388 (2019). The proposed amendment would add that element and make other stylistic changes. Deletions are in ~~striketrough~~, and new language is underlined.

[AMENDED] M Crim JI 37.11 Removing, Destroying, or Tampering with Evidence

(1) [The defendant is charged with / You may also consider the less serious offense of¹] intentionally removing, altering, concealing, destroying, or tampering with evidence to be offered at an official proceeding [not involving a criminal case where (*identify crime where the punishment was more than 10 years*) was charged¹]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that there was some evidence to be offered in a present or future official proceeding.

An official proceeding is a hearing held before a legislative, judicial, administrative, or other governmental agency, or a hearing before an

official authorized to hear evidence under oath, including a referee, a prosecuting attorney, a hearing examiner, a commissioner, a notary, or another person taking testimony in a proceeding.

(3) Second, that the defendant removed, altered, concealed, destroyed, or otherwise tampered with that evidence.

(4) Third, that when the defendant removed, altered, concealed, destroyed, or otherwise tampered with that evidence, [he / she] did so on purpose and not by accident.

(5) Fourth, that the defendant knew that the evidence would be offered in a present or future official proceeding at the time [he / she] removed, altered, concealed, destroyed, or otherwise tampered with it.²

~~[(56) Fourth-Fifth, that the evidence that the defendant removed, altered, concealed, destroyed, or otherwise tampered with would be offered was used or intended to be used in a criminal case where (identify crime where the punishment was more than 10 years) was charged.]~~²³

Use Notes

1. Use this language when there is a dispute whether the charge involved the aggravating factor found in MCL 750.483a(6)(b) and the court is instructing the jury on the necessarily lesser included offense that does not require proof of the aggravating factor.

2. The Michigan Court of Appeals has assumed without deciding “that the word ‘knowingly’ in the statute likely includes knowledge of an official proceeding.” *People v Walker*, 330 Mich App 378, 388; 948 NW2d 122 (2019). The Michigan Court of Appeals has also indicated that this element “may be proved with [m]inimal circumstantial evidence.” *Id.* (quoting *People v Ortiz*, 249 Mich App 297, 301; 642 NW2d 417 (2001)).

23. Use this paragraph where the aggravating element has been charged.