



PROPOSED

[AMENDED] M Crim JI 20.38 Child Sexually Abusive Activity Material—Causing or Allowing

(a) sexual intercourse, which is genital-genital, oral-genital, anal-genital, or oral-anal penetration, whether the intercourse is real or simulated, and whether it is between persons of the same or

opposite sex, or between a person and an animal, or with an artificial genital, [and / or]

- (b) erotic fondling, which is the touching of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for the purpose of sexual gratification or stimulation of any person involved, but does not include other types of touching, even if affectionate, [and / or]
- (c) sadomasochistic abuse, which is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation, [and / or]
- (d) masturbation, which is stimulation by hand or by an object of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for sexual gratification or stimulation, [and / or]
- (e) passive sexual involvement, which is watching, drawing attention to, or exposing someone to persons who are performing real or simulated sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, sexual excitement, or erotic nudity for the purpose of sexual gratification or stimulation of any person involved, [and / or]
- (f) sexual excitement, which is the display of someone's genitals in a state of stimulation or arousal, [and / or]
- (g) erotic nudity, which is showing the genital, pubic, or rectal area of someone in a way that tends to produce lewd or lustful emotions.

(4) Second, that the defendant caused or allowed the person to engage in child sexually abusive activity for the purpose of producing or making child sexually abusive material. Child sexually abusive materials are pictures, movies, or illustrations, made or produced by any means,² of [a person under 18 years old / the representation of a person under 18 years old] engaged in sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, and/or erotic nudity.²

(5) Third, that the defendant knew or reasonably should have known that the person was less than 18 years old², or failed to take reasonable precautions to determine whether the person was less than 18 years old.³

[Add the following paragraph if appropriate:]⁴

(6) Fourth, that the child sexually abusive activity or the child sexually abusive material involved

[Choose any of the following that apply:]

- (a) a child who has not yet reached puberty, or
- (b) sadomasochistic abuse, which [I have already defined / is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation], or
- (c) sexual acts between a person and an animal,⁵ or
- (d) a video or more than 100 images of child sexually abusive material.

Use Notes

1. The statute prohibits both real and simulated sexual acts. Where the acts are simulated, or simulated acts are included, the instructions should be modified accordingly.

2. The statute, MCL 750.145c(1)(o), provides a list of forms that child sexually abusive materials can take:

...any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image,

computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.

The Committee on Model Criminal Jury Instructions believes that the phrase, “pictures, movies, or illustrations, made or produced by any means,” will generally suffice to describe such materials. However, the court may prefer to select a more specific term or phrase from the statutory list.

3. The statute lists several alternatives for this element of the offense in MCL 750.145c(2), (3), and (4):

. . . if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

Generally, the language of the instruction will suffice. However, in appropriate cases, the court may select some or all of the other statutory language for this element.

4. Paragraph (6) applies when the prosecution seeks the enhanced sentence set forth in MCL 750.145c(2)(b). It need not be given when sadomasochistic abuse is the only type of child sexually abusive activity being alleged because, in that scenario, the jury will have already found the facts pertaining to the sentence enhancement.

5. MCL 750.145c uses the term *bestiality* but does not define it. In *People v Carrier*, 74 Mich App 161, 165-166; 254 NW2d 35 (1977), the Court of Appeals indicated that bestiality encompasses sexual acts between a man or woman and an animal. These acts are not limited to anal copulation.

[AMENDED]

M Crim JI 20.38a

**Child Sexually Abusive Activity
Material – Producing**

(1) The defendant is charged with the crime of producing child sexually abusive material. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [arranged for / produced / made¹ / copied / reproduced / financed / (attempted / prepared / conspired) to (arrange for / produce / make / copy / reproduce / finance)] child sexually abusive [activity / material].

(3) Child sexually abusive materials are pictures, movies, or illustrations, made or produced by any means,² of [a person under 18 years old / the representation of a person under 18 years old] engaged in one or more of the following sexual acts:

*[Choose any of the following that apply:]*³

- (a) sexual intercourse, which is genital-genital, oral-genital, anal-genital, or oral-anal penetration, whether the intercourse is real or simulated, and whether it is between persons of the same or opposite sex, or between a person and an animal, or with an artificial genital, [and / or]
- (b) erotic fondling, which is the touching of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for the purpose of sexual gratification or stimulation of any person involved, but does not include other types of touching, even if affectionate, [and / or]
- (c) sadomasochistic abuse, which is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation, [and / or]
- (d) masturbation, which is stimulation by hand or by an object of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for sexual gratification or stimulation, [and / or]
- (e) passive sexual involvement, which is watching, drawing attention to, or exposing someone to persons who are performing

real or simulated sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, sexual excitement, or erotic nudity for the purpose of sexual gratification or stimulation of any person involved, [and / or]

- (f) sexual excitement, which is the display of someone's genitals in a state of stimulation or arousal, [and / or]
- (g) erotic nudity, which is showing the genital, pubic, or rectal area of someone in a way that tends to produce lewd or lustful emotions.

[Choose either (4) or (5), depending on whether the depiction is an actual person or is a created representation of a person under the age of 18:]

(4) Second, that the defendant knew or should reasonably have known that the person shown in the sexually abusive material was less than 18 years old, or failed to take reasonable precautions to determine whether the person was less than 18 years old.⁴

(5) Second, that the defendant produced a portrayal of a person appearing to be less than 18 years old, knowing that the person portrayed appeared to be less than 18 years old, and all of the following conditions apply:⁴

- (a) An average person, applying current community standards, would find that the material appealed to an unhealthy or shameful interest in nudity, sex, or excretion.⁵
- (b) A reasonable person would not find any serious literary, artistic, political, or scientific value in the material.
- (c) The material shows or describes sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity, as previously described for you.

*[Add the following paragraph if appropriate:]*⁶

(6) Third, that the child sexually abusive activity or the child sexually abusive material involved

[Choose any of the following that apply:]

- (a) a child who has not yet reached puberty, or
- (b) sadomasochistic abuse, which [I have already defined / is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation], or
- (c) sexual acts between a person and an animal,⁷ or
- (d) a video or more than 100 images of child sexually abusive material.

Use Notes

1. *Make* is defined in MCL 750.145c(1)(j) as:

... to bring into existence by copying, shaping, changing, or combining material, and specifically includes, but is not limited to, intentionally creating a reproduction, copy, or print of child sexually abusive material, in whole or part. Make does not include the creation of an identical reproduction or copy of child sexually abusive material within the same digital storage device or the same piece of digital storage media.

2. The statute, MCL 750.145c(1)(o), provides a list of forms that child sexually abusive materials can take:

... any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image, computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic

visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.

The Committee on Model Criminal Jury Instructions believes that the phrase, “pictures, movies, or illustrations, made or produced by any means,” will generally suffice to describe such materials. However, the court may prefer to select a more specific term or phrase from the statutory list.

3. The statute prohibits both real and simulated sexual acts. Where the acts are simulated, the instructions should be modified accordingly.

4. The statute lists several alternatives for this element of the offense in MCL 750.145c(2), (3), and (4):

. . . if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

Generally, the language of the instruction will suffice. However, in appropriate cases, the court may select some or all of the other statutory language for this element.

5. If necessary, *excretion* may be defined as the act or product of urinating or defecating.

6. Paragraph (6) applies when the prosecution seeks the enhanced sentence set forth in MCL 750.145c(2)(b). It need not be given when sadomasochistic abuse is the only type of child sexually abusive material being alleged because, in that scenario, the jury will have already found the facts pertaining to the sentence enhancement.

7. MCL 750.145c uses the term *bestiality* but does not define it. In *People v Carrier*, 74 Mich App 161, 165-166; 254 NW2d 35 (1977), the Court of Appeals indicated that bestiality encompasses sexual acts between a man or woman and an animal. These acts are not limited to anal copulation.

[AMENDED]

M Crim JI 20.38b

**Child Sexually Abusive Activity
Material – Distributing**

(1) The defendant is charged with the crime of distributing child sexually abusive material. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [distributed / promoted / financed the (distribution / promotion) of / received for the purpose of (distributing / promoting) / (conspired / attempted / prepared) to (distribute / receive / finance / promote)] child sexually abusive [material / activity].

(3) Child sexually abusive materials are pictures, movies, or illustrations¹ of [a person under 18 years old / the representation of a person under 18 years old] engaged in one or more of the following sexual acts:

*[Choose any of the following that apply:]*²

- (a) sexual intercourse, which is genital-genital, oral-genital, anal-genital, or oral-anal penetration, whether the intercourse is real or simulated, and whether it is between persons of the same or opposite sex, or between a person and an animal, or with an artificial genital, [and / or]
- (b) erotic fondling, which is the touching of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for the purpose of sexual gratification or stimulation of any person involved, but does not include other types of touching, even if affectionate, [and / or]
- (c) sadomasochistic abuse, which is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation, [and / or]
- (d) masturbation, which is stimulation by hand or by an object of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for sexual gratification or stimulation, [and / or]

- (e) passive sexual involvement, which is watching, drawing attention to, or exposing someone to persons who are performing real or simulated sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, sexual excitement, or erotic nudity for the purpose of sexual gratification or stimulation of any person involved, [and / or]
- (f) sexual excitement, which is the display of someone's genitals in a state of stimulation or arousal, [and / or]
- (g) erotic nudity, which is showing the genital, pubic, or rectal area of someone in a way that tends to produce lewd or lustful emotions.

[Choose either (4) or (5), depending on whether the depiction is an actual person or is a created representation of a person under the age of 18:]

(4) Second, that the defendant knew or should reasonably have known³ that the person shown in the sexually abusive material was less than 18 years old; or failed to take reasonable precautions to determine whether the person was less than 18 years old.

(5) Second, that the defendant distributed a portrayal of a person appearing to be less than 18 years old, knowing that the person portrayed appeared to be less than 18 years old, and all of the following conditions apply:

- (a) An average person, applying current community standards, would find that the material appealed to an unhealthy or shameful interest in nudity, sex, or excretion.⁴
- (b) A reasonable person would not find any serious literary, artistic, political, or scientific value in the material.
- (c) The material shows or describes sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity, as previously described for you.

*[Add the following paragraph if appropriate:]*⁵

(6) Third, that the child sexually abusive activity or the child sexually abusive material involved

[Choose any of the following that apply:]

- (a) a child who has not yet reached puberty, or
- (b) sadomasochistic abuse, which [I have already defined / is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation], or
- (c) sexual acts between a person and an animal,⁶ or
- (d) a video or more than 100 images of child sexually abusive material.

Use Notes

1. The statute, MCL 750.145c(1)(o), provides a list of forms that child sexually abusive materials can take:

...any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image, computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.

The Committee on Model Criminal Jury Instructions believes that the phrase, “pictures, movies, or illustrations, made or produced by any means,” will generally suffice to describe such materials. However, the court may prefer to select a more specific term or phrase from the statutory list.

2. The statute prohibits both real and simulated sexual acts. Where the acts are simulated, the instructions should be modified accordingly.

3. The statute lists several alternatives for this element of the offense in MCL 750.145c(2), (3), and (4):

. . . if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

Generally, the language of the instruction will suffice. However, in appropriate cases, the court may select some or all of the other statutory language for this element.

4. If necessary, *excretion* may be defined as the act or product of urinating or defecating.

5. Paragraph (6) applies when the prosecution seeks the enhanced sentence set forth in MCL 750.145c(3)(b). It need not be given when sadomasochistic abuse is the only type of child sexually abusive material being alleged because, in that scenario, the jury will have already found the facts pertaining to the sentence enhancement.

6. MCL 750.145c uses the term *bestiality* but does not define it. In *People v Carrier*, 74 Mich App 161, 165-166; 254 NW2d 35 (1977), the Court of Appeals indicated that bestiality encompasses sexual acts between a man or woman and an animal. These acts are not limited to anal copulation.

(1) The defendant is charged with the crime of possessing or accessing child sexually abusive material. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [possessed child sexually abusive material / intentionally looked for child sexually abusive material to view it, or to cause it to be sent to or seen by another person].

(3) Child sexually abusive materials are pictures, movies, or illustrations¹ of [a person under 18 years old / the representation of a person under 18 years old] engaged in one or more of the following sexual acts:

*[Choose any of the following that apply:]*²

- (a) sexual intercourse, which is genital-genital, oral-genital, anal-genital, or oral-anal penetration, whether the intercourse is real or simulated, and whether it is between persons of the same or opposite sex, or between a person and an animal, or with an artificial genital, [and / or]
- (b) erotic fondling, which is the touching of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for the purpose of sexual gratification or stimulation of any person involved, but does not include other types of touching, even if affectionate, [and / or]
- (c) sadomasochistic abuse, which is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation, [and / or]
- (d) masturbation, which is stimulation by hand or by an object of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for sexual gratification or stimulation, [and / or]
- (e) passive sexual involvement, which is watching, drawing attention to, or exposing someone to persons who are performing

real or simulated sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, sexual excitement, or erotic nudity for the purpose of sexual gratification or stimulation of any person involved, [and / or]

- (f) sexual excitement, which is the display of someone's genitals in a state of stimulation or arousal, [and / or]
- (g) erotic nudity, which is showing the genital, pubic, or rectal area of someone in a way that tends to produce lewd or lustful emotions.

[Choose either (4) or (5), depending on whether the depiction is an actual person or is a created representation of a person under the age of 18:]

(4) Second, that the defendant knew or should reasonably have known that the person shown in the sexually abusive material was less than 18 years old, or failed to take reasonable precautions to determine whether the person was less than 18 years old.³

(5) Second, that the defendant produced a portrayal of a person appearing to be less than 18 years old, knowing that the person portrayed appeared to be less than 18 years old, and all of the following conditions apply:

- (a) An average person, applying current community standards, would find that the material appealed to an unhealthy or shameful interest in nudity, sex, or excretion.⁴
- (b) A reasonable person would not find any serious literary, artistic, political, or scientific value in the material.
- (c) The material shows or describes sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity, as previously described for you.

(6) Third, that the defendant [knew that (he / she) possessed / knowingly looked for] the material.

*[Add the following paragraph if appropriate:]*⁵

(7) Fourth, that the child sexually abusive activity or the child sexually abusive material involved

[Choose any of the following that apply:]

- (a) a child who has not yet reached puberty, or
- (b) sadomasochistic abuse, which [I have already defined / is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation], or
- (c) sexual acts between a person and an animal,⁶ or
- (d) a video or more than 100 images of child sexually abusive material.

Use Notes

1. The statute, MCL 750.145c(1)(o), provides a list of forms that child sexually abusive materials can take:

...any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image, computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.

The Committee on Model Criminal Jury Instructions believes that the phrase, “pictures, movies, or illustrations, made or produced by any means,” will generally

suffice to describe such materials. However, the court may prefer to select a more specific term or phrase from the statutory list.

2. The statute prohibits both real and simulated sexual acts. Where the acts are simulated, the instructions should be modified accordingly.

3. The statute lists several alternatives for this element of the offense in MCL 750.145c(2), (3), and (4):

. . . if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

Generally, the language of the instruction will suffice. However, in appropriate cases, the court may select some or all of the other statutory language for this element.

4. If necessary, *excretion* may be defined as the act or product of urinating or defecating.

5. Paragraph (7) applies when the prosecution seeks the enhanced sentence set forth in MCL 750.145c(4)(b). It need not be given when sadomasochistic abuse is the only type of child sexually abusive material being alleged because, in that scenario, the jury will have already found the facts pertaining to the sentence enhancement.

6. MCL 750.145c uses the term *bestiality* but does not define it. In *People v Carrier*, 74 Mich App 161, 165-166; 254 NW2d 35 (1977), the Court of Appeals indicated that bestiality encompasses sexual acts between a man or woman and an animal. These acts are not limited to anal copulation.