



**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 February 1, 2026. 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 20.10 (Personal Injury-Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless), M Crim JI 20.11 (Sexual Act with Mentally Incapable, Mentally Disabled, Mentally Incapacitated, or Physically Helpless Person by Relative or One in Authority), and M Crim JI 20.22 (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 20.10 Personal Injury-Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless

(1) [Second / Third], that the defendant caused personal injury to [*name complainant*].

(2) “Personal injury” means bodily injury, disfigurement, chronic pain, pregnancy, disease, loss or impairment of a sexual or reproductive organ, or mental anguish. “Mental anguish” means extreme pain, extreme distress, or extreme suffering, either at the time of the event or later as a result of it.

[(3) Here are some things you may think about in deciding whether (*name complainant*) suffered mental anguish:

(a) Was (*name complainant*) upset, crying, or hysterical during or after the event?

(b) Did (he / she) need psychological treatment?

(c) Did the incident interfere with (*name complainant*)’s ability to work or lead a normal life?

(d) Was (*name complainant*) afraid that (he / she) or someone else would be hurt or killed?

(e) Did (he / she) feel angry or humiliated?

(f) Did (he / she) need medication for anxiety, insomnia, or other symptoms?

(g) Did the emotional effects of the incident last a long time?

(h) Did (*name complainant*) feel scared afterward about the possibility of being attacked again?

(i) Was the defendant (*name complainant*)’s parent?

(4) These are not the only things you should think about. No single factor is necessary. You must think about all the facts and circumstances to decide whether (*name complainant*) suffered mental anguish.]*¹

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

[Choose one or more of (6a), (7b), or (8c):]

(6a) “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.

(7b) “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) / something done to (him / her)]~~ without [his / her] consent. [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]).]³

(8c) “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.

(96) [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 Notes

~~*Paragraphs (3) and (4) are discretionary. If used, both paragraphs must be given together. The factors listed are taken from *People v Petrella*, 424 Mich 221, 270-271; 380 NW2d 11 (1985).~~

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. Paragraphs (3) and (4) are discretionary. If used, both paragraphs must be given together. The factors listed are taken from *People v Petrella*, 424 Mich 221, 270-271; 380 NW2d 11 (1985).

2. MCL 750.520a provides the definitions of *mentally incapable*, *mentally incapacitated*, and *physically helpless*.

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

[AMENDED] M Crim JI 20.11 Sexual Act with Mentally Incapable, Mentally Disabled, Mentally Incapacitated, or Physically Helpless Person by Relative or One in Authority

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

[Choose one or more of (2a), (3b), (4c), or (5d):]

(2a) “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.

(3b) “Mentally disabled” means that [name complainant] had a mental illness, was intellectually disabled, or had a developmental disability. “Mental illness” is a substantial disorder of thought or mood that significantly impairs judgment, behavior, or the ability to recognize reality and deal with the ordinary

demands of life. “Intellectual disability” means significantly subaverage intellectual functioning that appeared before [name complainant] was ~~eighteen~~ 18 years old and impaired two or more of [his / her] adaptive skills.¹² “Developmental disability” means an impairment of general thinking or behavior that originated before the age of ~~eighteen~~ 18, had continued since it started or can be expected to continue indefinitely, was a substantial burden to [name complainant]’s ability to function in society, and was caused by [intellectual disability as described / cerebral palsy / epilepsy / autism / an impairing condition requiring treatment and services similar to those required for intellectual disability].

(4c) “Mentally incapacitated” means that [name complainant] was unable to understand or control what [he / she] was doing because of ~~[drugs, alcohol or another substance given to (him / her) / something done to (him / her)]~~ without [his / her] consent. [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]).]³

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

[Choose the appropriate option according to the charge and the evidence:]

(62) [Third / Fourth], that the defendant and [name complainant] were related to each other, either by blood or marriage, as [*state relationship, e.g., first cousins*].²⁴

(63) [Third / Fourth], that at the time of the alleged act, the defendant was in a position of authority over [name complainant], and used this authority to coerce [name complainant] to submit to the sexual acts alleged. It is for you to decide whether, under the facts and circumstances of this case, the defendant was in a position of authority.

Use Notes

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. MCL 750.520a provides the definitions of *developmental disability, intellectual disability, mental illness, mentally disabled, mentally incapable, mentally incapacitated, and physically helpless.*

42. The court may provide the jury with a definition of *adaptive skills* where appropriate. The phrase is defined in MCL 330.1100a(3), and means skills in ~~1~~one or more of the following areas:

- (a) Communication.
- (b) Self-care.
- (c) Home living.
- (~~e~~) Social skills.
- (e) Community use.
- (f) Self-direction.
- (~~g~~) Health and safety.
- (h) Functional academics.
- (i) Leisure
- (~~h~~) Work.

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

24. The following are relatives of a person to the fourth degree of consanguinity:

First degree of consanguinity:

Parents
Children

Second degree of consanguinity:

Brothers and ~~S~~sisters
Grandchildren
Grandparents

Third degree of consanguinity:

Great ~~G~~grandchildren
Great ~~G~~grandparents
Aunts and ~~U~~uncles
Nephews and ~~N~~nieces

Fourth degree of consanguinity:

Great-great ~~G~~grandchildren
Great-great ~~G~~grandparents
Grand ~~A~~aunts and ~~U~~uncles
First ~~C~~cousins
Grand ~~N~~nephews and ~~N~~nieces

**Complainant Mentally Incapable,
Mentally Incapacitated, or
Physically Helpless**

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

[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) / something done to (him / her)]~~ without [his / her] consent [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*)).]²

(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) [Sixth / Seventh], 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 Notes

Use this instruction in conjunction with M Crim JI 20.17, Assault with Intent to Commit Criminal Sexual Conduct Involving Penetration.

1. MCL 750.520a provides the definitions of *mentally incapable*, *mentally incapacitated*, and *physically helpless*.

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