

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)
Act 175 of 1927

768.32 Indictment for offense consisting of different degrees or for offense specified in MCL 333.7401 and 333.7403; finding of jury or judge; instructions.

Sec. 32. (1) Except as provided in subsection (2), upon an indictment for an offense, consisting of different degrees, as prescribed in this chapter, the jury, or the judge in a trial without a jury, may find the accused not guilty of the offense in the degree charged in the indictment and may find the accused person guilty of a degree of that offense inferior to that charged in the indictment, or of an attempt to commit that offense.

(2) Upon an indictment for an offense specified in section 7401(2)(a)(i) or (ii) or section 7403(2)(a) (i) or (ii) of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.7401 and 333.7403 of the Michigan Compiled Laws, or conspiracy to commit 1 or more of these offenses, the jury, or judge in a trial without a jury, may find the accused not guilty of the offense in the degree charged in the indictment but may find the accused guilty of a degree of that offense inferior to that charged in the indictment only if the lesser included offense is a major controlled substance offense. A jury shall not be instructed as to other lesser included offenses involving the same controlled substance nor as to an attempt to commit either a major controlled substance offense or a lesser included offense involving the same controlled substance. The jury shall be instructed to return a verdict of not guilty of an offense involving the controlled substance at issue if it finds that the evidence does not establish the defendant's guilt as to the commission of a major controlled substance offense involving that controlled substance. A judge in a trial without a jury shall find the defendant not guilty of an offense involving the controlled substance at issue if the judge finds that the evidence does not establish the defendant's guilt as to the commission of a major controlled substance offense involving that controlled substance.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17325;—CL 1948, 768.32;—Am. 1978, Act 77, Eff. Sept. 1, 1978;—Am. 1988, Act 90, Imd. Eff. Mar. 30, 1988.

Former law: See section 16 of Ch. 161 of R.S. 1846, being CL 1857, § 5952; CL 1871, § 7818; How., § 9428; CL 1897, § 11789; and CL 1915, § 15616.