



Board of Commissioners

Agenda and Materials

September 16, 2020

**STATE BAR OF MICHIGAN
BOARD OF COMMISSIONERS
WEDNESDAY, SEPTEMBER 16, 2020
10:00 a.m.
VIRTUAL MEETING
AGENDA**

State Bar of Michigan Statement of Purpose

“...The State Bar of Michigan shall aid in promoting improvements in the administration of justice and advancements in jurisprudence, in improving relations between the legal profession and the public, and in promoting the interests of the legal profession in this state.”

Rule 1 of the Supreme Court Rules Concerning the State Bar of Michigan

- I. Call to Order..... Dennis M. Barnes President

CONSENT AGENDA

- II. **Minutes**
A. July 24, 2020 Board of Commissioners meeting*
B. August 21, 2020 Board of Commissioners meeting*
B. July 14, 2020 Executive Committee meeting*
C. August 11, 2020 Executive Committee meeting*
- III. **President’s Activities**..... Dennis M. Barnes, President
A. Recent Activities*
- IV. **Executive Director’s Activities**..... Janet K. Welch, Executive Director
A. Recent Activities*
- V. **Finance**..... Daniel D. Quick, Chairperson
A. FY 2020 Financial Reports through July 2020*
- VI. **Professional Standards** James W. Heath, Chairperson
A. Client Protection Fund Claims*
B. Unauthorized Practice of Law Claims**
- VII. **Public Policy** Robert J. Buchanan, Chairperson
A. Model Criminal Jury Instructions*

LEADERSHIP REPORTS

- VIII. **President’s and Executive Director’s Report** Dennis M. Barnes, President
Janet K. Welch, Executive Director
- IX. **Representative Assembly Report** Aaron V. Burrell, Chairperson
- XX. **Young Lawyers Section Report** Ryan Zemke, Chairperson

COMMISSIONER COMMITTEES

- XI. **Finance**.....Daniel D. Quick, Chairperson
A. FY 2020 Financial Update
- XII. **Audit**.....Daniel D. Quick Chairperson
A. FY 2020 Annual Audit Update
- XIII. **Professional Standards** James W. Heath, Chairperson
- XIV. **Communications and Member Services**Dana M. Warnez, Chairperson
- XV. **Public Policy**..... Robert J. Buchanan, Chairperson
A. Court Rules**

SPECIAL PRESENTATIONS

- XVI. **Recognition of Retiring Board Members** Dennis M. Barnes, President
 - A. Joseph J. Baumann written and presented by David C. Anderson
 - B. Aaron V. Burrell written and presented by Chelsea M. Rebeck
 - C. Hon. Shauna L. Dunning written and presented by Hon. Clinton Canady III
 - D. Kara R. Hart-Negrich written and presented by Ryan Zemke
 - E. Gregory L. Ulrich written and presented by James W. Low
- XVII. **Recognition of President Dennis M. Barnes**.....Robert J. Buchanan, President-Elect

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

- XVIII. **Comments or questions from Commissioners**
- XIX. **Comments or questions from the public**
- XX. **Executive Session**
- XXI. **Adjournment**

*Materials included with agenda

**Materials delivered or to be delivered under separate cover or handed out

**STATE BAR OF MICHIGAN
BOARD OF COMMISSIONERS MEETING MINUTES**

President Barnes called the meeting to order at 9:34 a.m. on Friday, July 24, 2020 via videoconference.

Commissioners present:

Danielle Mason Anderson
David C. Anderson
Dennis M. Barnes, President
Joseph J. Baumann
Robert J. Buchanan, President-Elect
Aaron V. Burrell
Erika L. Butler
Hon. Clinton Canady III
B.D. "Chris" Christenson
Josephine A. DeLorenzo
Hon. Shauna L. Dunning
Thomas H. Howlett
Lisa J. Hamameh
Kara R. Hart-Negrich
James W. Heath, Secretary
Sarah E. Kuchon
Suzanne C. Larsen

James W. Low
E. Thomas McCarthy Jr.
Joseph P. McGill
Valerie R. Newman
Nicholas M. Ohanesian
Samantha J. Orvis
Hon. David A. Perkins
Barry R. Powers
Daniel D. Quick, Treasurer
Chelsea M. Rebeck
Thomas G. Sinas
Gregory L. Ulrich
Dana M. Warnez, Vice President
Erane C. Washington
Mark A. Wisniewski
Ryan Zemke

Commissioners Absent:

State Bar staff present:

Janet Welch, Executive Director
Margaret Bossenbery, Executive Coordinator
Peter Cunningham, Assistant Executive Director and Director, Governmental Relations
Michelle Erskine, Research Assistant & Event Specialist
Kathryn Hennessey, General Counsel
Carrie Sharlow, Administrative Assistant
Janna Sheppard, Administrative Assistant

State Bar staff in waiting room:

Elizabeth Couch, Director of Communications
Nicola Davis, Finance Specialist
Robin Eagleson, Ethics Counsel
Liz Goebel, Public Policy Counsel
Tatiana Goodkin, Chief Financial Officer
Rob Mathis, Pro Bono Service & Justice Initiatives Counsel
Molly Ranns, Program Director, LJAP
Kari Thrush, Lawyer Services Program Director
Becky Weaver, Financial Services Manager

Consent Agenda

The Board received the minutes from the June 12, 2020 Board meeting.

The Board received the minutes from the June 2, 2020 Executive Committee meeting.
The Board received the recent activities of the president.
The Board received the recent activities of the executive director.
The Board received the FY 2020 Financial Reports through May 2020.
The Board received some Model Criminal Jury Instructions.

Mr. Barnes asked the Board if any items needed to be removed from the consent agenda. There were none.

A motion was offered to approve the consent agenda. The motion was seconded and approved.

Board Officer Elections

Mr. Barnes informed the Board two candidates submitted their names for consideration for the position of treasurer: Mr. Howlett and Mr. McGill.

Mr. Barnes asked if there were any nominations from the floor; hearing none, a motion was made to close the nominations. The motion was seconded and approved.

Mr. Barnes asked for a motion that the vote for the position of treasurer be by secret ballot, and to only disclose the number of votes received to the candidates, upon the candidate's request. The motion was made, seconded, and approved.

Mr. Barnes stated that tellers would not be used this year because an electronic vote was taking place. He stated that Ms. Hennessey will view the election results once they are tabulated, confirm them, and let him know the results.

Per Board policy each candidate is given five minutes to address the Board followed by a minimum 15-minute question-and-answer session. Mr. Barnes stated that Mr. McGill would address the Board first followed by Mr. Howlett. Mr. Howlett would then be the first to respond to questions.

When the Q and A was finished, Mr. Barnes announced that a poll vote via Zoom would be taken. Mr. Barnes reported that Mr. McGill was elected treasurer of the 2020/21 Board of Commissioners.

Mr. Barnes announced that Mr. Buchanan would succeed him as president of the State Bar of Michigan for the 2020/21 Bar year.

Mr. Barnes announced that Ms. Warnez would succeed Mr. Buchanan as president-elect of the State Bar of Michigan for the 2020/21 Bar year.

A motion was offered to elect Mr. Heath as vice president of the State Bar of Michigan for the 2020/21 Bar year. The motion was seconded and approved.

A motion was offered to elect Mr. Quick as secretary of the State Bar of Michigan for the 2020/21 Bar year. The motion was seconded and approved.

LEADERSHIP REPORTS

President and Executive Director's Report: Dennis M. Barnes, President and Janet K. Welch, Executive Director

Mr. Barnes and Ms. Welch reported:

- The Strategic Planning Committee has four items ready for Board consideration:
 1. Giving notice that a bylaw amendment, changing the due dates for committee annual reports, will be brought before the Board at its August 21 meeting.
 2. A motion was offered to renew the Strategic Plan through FY 2023 with annual reviews. The motion was seconded and approved.
 3. A motion was offered to make technological competency one priority for the Strategic Plan. The motion was seconded and approved.
 4. A motion was offered to approve the 2020/21 Committee Resolution with the recommendations for the Justice Initiatives and Social Media and Website committees. The motion was seconded and approved.
- The Apportionment/Redistricting Work Group has completed its work and had three items for Board consideration:
 1. Giving notice that a bylaw amendment to amend Bylaw Article 111, to move one seat from District H and add one seat to District I, will be brought before the Board at its August 21 meeting for action.
 2. Giving notice that a bylaw amendment to amend Bylaw Article III, to remove Barry County from District E and move it to District F, will be brought before the Board at its August 21 meeting for action.
 3. A motion was offered to approve a change to Rule 7 of the Rules Governing the State Bar of Michigan to include the secretary and treasurer in the grandfathering provision and send the proposed rule change to the Michigan Supreme Court for its consideration. The motion was seconded and approved with one abstention.
- Due to the pandemic, the contracts in place for an in-person gathering in Grand Rapids for the 2020 Annual Meeting have been cancelled. If conditions allow, some smaller in-person meetings might take place, but planning is proceeding to allow all the required events to be accomplished virtually.
- The FY 2021 Preliminary Budget Assumptions reviewed by the Executive Committee and Finance Committee and provided to the Board will be used to develop the FY 2021 budget, which the Board will act upon at its August meeting.
- The practicing member Pandemic Impact Survey has been closed and had a high level of participation. Ms. Vrooman reviewed the topline results. An email will be sent to Board members with a link to the survey results and Ms. Vrooman's Power Point presentation.
- Three new staff members have joined the bar, replacing vacancies. Mr. Cunningham introduced Ms. Tatiana Goodkin, chief financial officer, and Ms. Nicola Davis, finance specialist. Ms. Hennessey introduced Ms. Robin Eagleson, ethics counsel. Ms. Welch recognized Ms. Tish Vincent on her retirement and welcomed SBM staff member Ms. Molly Ranns, as the new interim director of LJAP.

Representative Assembly (RA) Report: Aaron V. Burrell, Chairperson

Mr. Burrell reported:

- Based on the results of a survey sent to the RA membership for their input on how the September meeting should be held, the September RA meeting will be a virtual event. Mr. Burrell stated that the feedback regarding the April virtual meeting was very positive.
- He has empaneled a RA Diversity Committee.
- The Special Issues Committee will prepare a report for the September meeting on COVID-19.
- There will be a contested election for the RA clerk position.
- The deadline for submission of proposals for the September meeting is August 6.

Young Lawyers Section (YLS) Report: Ryan Zemke, Chairperson

Mr. Zemke reported:

- The YLS v Board Trivia Challenge took place on Wednesday, July 22 and that the YLS succeeded in winning this year.
- The council is planning for a virtual annual meeting.

COMMISSIONER COMMITTEES

Finance: Daniel M. Quick, Chairperson

Mr. Quick reviewed the FY 2020 financial results through May 2020.

Mr. Quick reported that the Finance Committee will meet early in August to review the proposed budget in detail; that the committee continues to look at various cost reduction ideas; and that with Mr. Burrell's permission he will speak to the RA members at their meeting in September in preparation for the RA's expected consideration of a fee increase proposal at its April meeting.

Audit: Daniel M. Quick, Chairperson

Mr. Quick stated that the Finance staff will meet with the auditing firm in August to establish testing dates.

Professional Standards: James W. Heath, Chairperson

Mr. Heath moved to approve the appointment of Mr. Terrence Quinn to the ICLE Executive Committee. The motion was seconded and approved. Mr. Heath recognized the distinguished service of the incumbent, Mr. Howard Spence, who has completed two terms as an SBM appointee to the ICLE Executive Committee.

Mr. Heath moved to appoint the Honorable Allie Greenleaf Maldonado and Sean Cahill to the Michigan Indian Legal Services Board of Trustees. The motion was seconded and approved. Mr. Heath recognized the distinguished service of Mr. John Runyan, who has served on the MILS board for over two decades.

Communications and Member Services (CAMS): Dana M. Warnez, Chairperson

Ms. Warnez explained the Support of Lawyers/Legal Personnel—All Concern Encouraged (SOLACE) Program to the Board and its potential for enhancing help for Michigan lawyers and strengthening collaboration with local and affinity bars.

Ms. Warnez offered a motion to approve the SOLACE Program as a new benefit to Michigan lawyers. The motion was approved and adopted.

Public Policy: Robert J. Buchanan, Chairperson

COURT RULES

ADM File No. 2002-37: Proposed Addition of MCR 2.226

The proposed addition of MCR 2.226 would clarify the process for change of venue and transfer orders.

A motion was made to support the proposed addition of Rule 2.226 of the Michigan Court Rules with the following amendments:

- In Section (3), rather than using the term “promptly,” set forth a specific number of days in which the receiving court must provide notice of refusal and return the case to the transferring court.
- Consistent with the Court’s efforts to modify time periods to be in seven-day increments, for Section (4), consider modifying the three-day time period to a seven-day time period.
- Provide chief judges authority to exercise their discretion to oversee and administer transfers to help ensure that the rules are being followed.
- Provide an electronic process for courts to submit transfer orders and refusals of those orders to help expedite the process.

The motion was seconded and approved.

ADM File No. 2019-47: Proposed Amendments of MCR 3.804, 5.140, and 5.404 and Proposed Addition of MCR 3.811

The proposed amendments of MCR 3.804, 5.140, and 5.404 and proposed new MCR 3.811 would allow greater use of videoconferencing equipment in cases involving Indian children.

A motion was made to support the ADM File No. 2019-47 and to adopt the comments provided by the Access to Justice Policy Committee. The Access to Justice Policy Committee, while supportive of the proposed court rule as drafted, emphasized that “[p]hysical appearance by the parties remains the best avenue for a judge to determine if a permanent release is both informed and voluntary and if the requirements, goals, and principals under ICWA and MIFPA have been met.”

The motion was supported and approved.

ADM File No. 2019-41: Proposed Amendment of MCR 4.201

The proposed amendment of MCR 4.201 would require disclosure of the right to object to venue in actions brought under the Summary Proceedings Act for landlord/tenant proceedings in district court, consistent with MCL 600.5706.

A motion was made to support ADM File No. 2019-41. The motion was seconded and approve.

ADM File No. 2020-04: Proposed Amendment of Rule 4 of the Rules for the Board of Law Examiners

The proposed amendment of BLE Rule 4 would explicitly state that a passing bar exam score is valid for three years, which is consistent with the character and fitness clearance expiration.

A motion was made to support ADM File No. 2020-04 because the proposed rule would create a three-year “shelf life” for bar exam score validity—a time frame consistent with character and fitness clearance expiration.

The motion was seconded and approved.

LEGISLATION

HB 5444 (Liberati) Children; services; kinship caregiver navigator program; create. Creates new act.

A motion was made that the legislation is *Keller*-permissible. The motion was seconded and approved.

A motion was made to support the legislation with recommendations from the Access to Justice Policy Committee that:

- First, Section 6(c) should be clarified to indicate that the legal services initiatives shall be integrated into the current system of legal service providers.
- Second, to ensure quality pro bono and low bono legal services, required training should include legal services to marginalized communities, when applicable, such as immigration laws for documented and undocumented children, and training to ensure compliance with the Indian Child Welfare Act and Michigan Indian Family Preservation Act for kinship caregivers of children enrolled or eligible for enrollment in a federally recognized Tribe.

The motion was seconded and approved.

HB 5488 (Lightner) Criminal procedure; sentencing; certain permissible costs; extend sunset. Amends sec. 1k, ch. IX of 1927 PA 175 (MCL 769.1k).

A motion was made that the legislation is *Keller*-permissible. The motion was seconded and approved with one abstention.

A motion was made to support the legislation with the two-year extension for ongoing funding of the state’s trial courts. The committee, while fully supportive of the bill, looks forward to a time when the TCFC’s recommendations are fully implemented and temporary fixes such as those set forth in this legislation are no longer necessary.

The motion was seconded and approved.

HB 5795 (Filler) Probate; wills and estates; electronic signature of wills; allow. Amends sec. 2502 of 1998 PA 386 (MCL 700.2502) & adds sec. 2504a.

A motion was made that the legislation is *Keller*-permissible. The motion was seconded and approved.

A motion was made and supported to oppose the legislation as drafted while supporting the work of the Probate & Estate Planning Section and Elder Law & Disability Rights Section in their work with the sponsors to modify the legislation to address procedural issues not currently contemplated in the bill.

A roll call vote was taken.

Commissioners voting for the position: Barnes, Baumann, Buchanan, Burrell, Butler, DeLorenzo, Hamameh, Heath, Kuchon, Larsen, Low, McCarthy; McGill, Newman, Ohanesian, Orvis, Perkins, Powers, Quick, Rebeck, Sinas, Warnez, Washington, Wisniewski, Zemke.

Commissioners voting in opposition of the position: Howlett, Ulrich.

The motion was approved.

HB 5805 (Berman) Courts; judges; hearings on emergency motions by defendant in criminal cases; provide for. Amends sec. 1, ch. I of 1927 PA 175 (MCL 761.1) & adds sec. 12 to ch. III.

A motion was made that the legislation is *Keller*-permissible. The motion was seconded and approved.

A motion was made and supported to oppose this legislation because matters of how and when courts hear emergency motions are more appropriately addressed through court rule amendment(s) than through legislative action.

A roll call vote was taken.

Commissioner voting for the position: Barnes, Baumann, Buchanan, Burrell, Butler, DeLorenzo, Hamameh, Heath, Howlett, Kuchon, Larsen, Low, McCarthy, McGill, Newman, Ohanesian, Orvis, Perkins, Powers, Quick, Rebeck, Sinas, Warnez, Washington, Wisniewski.

Commissioners opposing the position: Ulrich.

The motion was approved.

HB 5806 (Berman) Courts; records; online attorney access to court actions and filed documents without fees; provide for. Amends secs. 1985 & 1991 of 1961 PA 236 (MCL 600.1985 & 600.1991) & adds sec. 1991a.

A motion was made that the legislation is *Keller*-permissible. The motion was seconded and approved.

A motion was made and supported to table the legislation. The motion failed.

A motion was made and supported to oppose this legislation as an issue of the separation of powers.

The motion failed to reach a 2/3 majority.

The Board agreed to take no position on the legislation.

SB 0682 (Lucido) Juveniles; juvenile justice services; juvenile records; require to be confidential. Amends sec. 28, ch. XIA of 1939 PA 288 (MCL 712A.28).

A motion was made that the legislation is not *Keller*-permissible. The motion was seconded and approved.

SB 0865 (Lucido) Courts; other; procedures and regulations related to cellular telephones in courtrooms; provide restrictions and penalties.

A motion was made and supported that the legislation is *Keller*-permissible. The motion was seconded and approved.

A motion was made to oppose this legislation as procedures and regulations governing courtrooms are best addressed through court rule amendment.

The motion was seconded and approved.

SB 0895 (Runestad) Civil procedure; other; new trial; revise procedure for granting. Amends 1961 PA 236 (MCL 600.101 to 600.9947).

A motion was made that the legislation is *Keller*-permissible. The motion was seconded and approved.

A motion was made and supported to oppose the legislation because Michigan courts already have well established court rules and an effective appellate process by which parties may seek relief from judgment. The committee opposes an additional legislatively mandated layer of review.

The motion was seconded and approved.

Other

Comments or questions from Commissioners

There were none.

Comments or questions from the public

There were none.

Adjournment

The meeting was adjourned at 1:45 p.m.

**STATE BAR OF MICHIGAN
BOARD OF COMMISSIONERS MEETING MINUTES**

President Barnes called the meeting to order at 9:34 a.m. on Friday, August 21, 2020 via videoconference.

Commissioners present:

David C. Anderson	E. Thomas McCarthy Jr.
Dennis M. Barnes, President	Joseph P. McGill
Joseph J. Baumann	Valerie R. Newman
Robert J. Buchanan, President-Elect	Nicholas M. Ohanesian
Aaron V. Burrell	Samantha J. Orvis
B.D. "Chris" Christenson	Hon. David A. Perkins
Josephine A. DeLorenzo	Barry R. Powers
Thomas H. Howlett	Daniel D. Quick, Treasurer
Lisa J. Hamameh	Chelsea M. Rebeck
Kara R. Hart-Negrich	Thomas G. Sinas
James W. Heath, Secretary	Gregory L. Ulrich
Sarah E. Kuchon	Dana M. Warnez, Vice President
Suzanne C. Larsen	Erane C. Washington
James W. Low	Mark A. Wisniewski

Commissioners Absent:

Danielle Mason Anderson	Hon. Shauna L. Dunnings
Erika L. Butler	Ryan Zemke
Hon. Clinton Canady III	

State Bar staff present:

Janet Welch, Executive Director
Margaret Bossenbery, Executive Coordinator
Peter Cunningham, Assistant Executive Director and Director, Governmental Relations
Michelle Erskine, Research Assistant & Event Specialist
Tatiana Goodkin, Chief Financial Officer
Kathryn Hennessey, General Counsel
Carrie Sharlow, Administrative Assistant
Janna Sheppard, Administrative Assistant
Becky Weaver, Financial Services Manager

LEADERSHIP REPORTS

President and Executive Director's Report: Dennis M. Barnes, President and Janet K. Welch, Executive Director

Mr. Barnes and Ms. Welch reported that notice was given at the last meeting for the following proposed bylaw amendments:

1. A motion was offered that Bylaw Article VIII, Section 1 be amended so that the committee annual reports are due on November 1 following the end of the fiscal year as follows:

Every Section and State Bar entity so directed by the Board of Commissioners or Representative Assembly shall annually make a written report containing a summary of its activities during the ~~association~~ fiscal year which shall be submitted to the Secretary on or before **November 1 of the next fiscal year** ~~May 31~~. Annual reports may not exceed five 8 1/2" x 11" pages unless a waiver of this limitation is approved by the Executive Director.

The motion was seconded and approved.

2. A motion was offered that Bylaw Article III, Section 1, be amended to remove one seat from District H and add one seat to District I as follows:

Each district shall be entitled to elect one Commissioner with the exception of District C, which shall be entitled to elect two Commissioners; District E, which shall be entitled to elect two Commissioners; District H, which shall be entitled to elect ~~five~~ **four** Commissioners; and District I, which shall be entitled to elect ~~six~~ **seven** Commissioners.

The motion was seconded and approved.

3. A motion was offered that Bylaw Article III, Section 1 be amended to move Barry Judicial Circuit from District E to District F as follows:

There shall be nine Commissioner election districts composed of the judicial circuits indicated:

[. . .]

District E—~~5th~~, 8th, 29th, 30th, 35th, 44th, 56th

District F—1st, 2nd, **5th**, 9th, 15th, 36th, 37th, 43rd, 45th, 48th

[. . .]

The motion was seconded and approved.

COMMISSIONER COMMITTEES

Finance: Daniel M. Quick, Chairperson

Mr. Quick and Ms. Welch presented the FY 2021 budget and responded to questions and received comments from Board members.

A motion was offered to adopt the FY 2021 budget. The motion was seconded and approved.

Other

Comments or questions from Commissioners

There were none.

Comments or questions from the public

There were none.

Adjournment

The meeting was adjourned at 10:15 a.m.

State Bar of Michigan
Executive Committee Conference Call
Tuesday, July 14, 2020
4:00 p.m.

Call to Order: President Barnes called the meeting to order at 4:05 p.m.

Members Present: President Dennis M. Barnes, Vice President Dana M. Warnez, Secretary James W. Heath, Treasurer Daniel D. Quick, Representative Assembly Chair Aaron V. Burrell, Representative Assembly Vice Chair Chelsea M. Rebeck, and Commissioners Thomas H. Howlett, Joseph P. McGill, and Erane C. Washington

Member Absent: President-Elect Robert J. Buchanan

State Bar Staff Present: Executive Director Janet Welch, Executive Coordinator Margaret Bossenbery, Assistant Executive Director Nancy Brown, Assistant Executive Director Peter Cunningham, General Counsel Kathryn Hennessey, Lawyer Service Program Director Kari Thrush, Chief Financial Officer Tatiana Goodkin, Communications Director Elizabeth Couch, and Financial Services Manager Becky Weaver.

Minutes

Mr. Barnes called for a motion to approve the minutes from the June 2, 2020 EC meeting. A motion was made to approve the minutes. The motion was seconded and approved.

President and Executive Director's Report

Mr. Barnes reported that the Apportionment/Redistricting Work Group had completed its work and will bring two proposed bylaw changes and a proposed change to the Rules of the Supreme Court Governing the State Bar to the Board for consideration at its July 24 meeting.

Mr. Barnes stated that the Strategic Planning Committee had completed its work and will have several items, including a proposed bylaw amendment, to come before the Board for its consideration at its July 24 meeting.

Ms. Welch reported that after the discussion about racial equity issues at the April Board meeting, the Bar invited bar associations and law-related entities to Zoom meetings on this topic. There was impressive attendance and participation. SBM has now created an online resource, the Race and Justice Forum, for Michigan lawyers, affinity and local bars, and justice system stakeholders.

Ms. Welch said that the *Detroit News* published a story about the detention of a longtime activist that included a photo with a tag line referencing the "Michigan Bar Association". The story and the photo had nothing to do with SBM, so the Communications Team contacted the newspaper for a correction. An alternate tag line was subsequently posted.

Ms. Welch described a potential member program that the staff is exploring, called the Support of Lawyers/Legal Personnel—All Concern Encouraged (SOLACE) Program.

Ms. Welch reminded the committee that at the beginning of the pandemic, the SBM was operating without a CFO, an ethics counsel, an assistant general counsel, a professional standards director, and facing the retirement of the director of LJAP and a finance specialist. She reported that as of this

week those positions have been filled, with restructuring for better fit and efficiency, and the new staff members will be introduced at the July Board meeting.

Ms. Welch informed the committee that a staff member was recently diagnosed with stage 4 lung cancer and has entered hospice. She will send his address to those who express interest.

Mr. Barnes and Ms. Welch commented on the communication that Wayne State University School of Law sent to its new graduates about being careful about what is said on social media because it might be held against them in the character and fitness process. To clarify that SBM does not act in contravention of applicants' free speech rights, a concise statement was prepared and posted on the website about the role of the SBM is in the character and fitness ~~process~~, process. A call is scheduled with Wayne State Law School and both Mr. Barnes, Ms. Welch, Ms. Couch, and Ms. Hennessey will participate.

Ms. Hennessey provided the committee with a litigation update.

Representative Assembly (RA) Chair's Report

Mr. Burrell reported that he participated in a Zoom meeting with Ms. Welch, Mr. Cunningham, Ms. Hennessey, Ms. Sharlow, and Ms. Thrush about the logistical challenges of hosting an in-person RA meeting in September. A survey was sent to RA members soliciting their feedback about the April meeting and the September meeting; the result showed 75 percent of the members are not in favor of an in-person meeting in September. Mr. Burrell stated that the RA meeting would not be held in person.

Mr. Burrell stated there will be a contested race for the clerk's position and the election will take place during the September meeting.

2020 Annual Meeting

Ms. Warnez reviewed the staff memo on options of holding the Annual Meeting in person or virtually. Contracts, liability and staffing issues, a hybrid option, and the Executive Orders were discussed. After discussion, Mr. Barnes stated that he reluctantly supported the recommendation that the Annual Meeting be held virtually, and would like to circle back with Mr. Buchanan.

FY2021 Preliminary Budget—Key Budget Assumptions

Consistent with past practice, Ms. Welch reviewed preliminary Key Budget Assumptions. Mr. Quick asked that the Finance committee also review the document. The document will be refined based on the input from the Executive Committee and Finance committee and then presented to the Board at its July meeting.

Appointment to Michigan Advocacy Program

A motion was offered to appoint Mr. Robert Mossel to the Michigan Advocacy Program Board of Directors. The motion was seconded and approved.

Agenda for July 24, 2020 Board Meeting

Ms. Bossenbery presented the July 24, 2020 Board agenda with proposed amendments. A motion was offered to approve the agenda as amended. The motion was seconded and approved.

The meeting was adjourned at 5:20 p.m.

State Bar of Michigan
Executive Committee Conference Call
Tuesday, August 11, 2020
4:00 p.m.

Call to Order: President Barnes called the meeting to order at 4:05 p.m.

Members Present: President Dennis M. Barnes, President-Elect Robert J. Buchanan, Vice President Dana M. Warnez, Secretary James W. Heath, Treasurer Daniel D. Quick, Representative Assembly Chair Aaron V. Burrell, Representative Assembly Vice Chair Chelsea M. Rebeck, and Commissioners Thomas H. Howlett and Erane C. Washington

Member Absent: Commissioner Joseph P. McGill

State Bar Staff Present: Executive Director Janet Welch, Executive Coordinator Margaret Bossenbery, Assistant Executive Director Nancy Brown, Assistant Executive Director Peter Cunningham, General Counsel Kathryn Hennessey

Minutes

Mr. Barnes called for a motion to approve the minutes from the July 14, 2020 Executive Committee meeting. A motion was made to approve the minutes. The motion was seconded and approved with one abstention.

President and Executive Director's Report

Mr. Barnes stated that preparations are underway for the Annual Meeting and that the hearing on the lawsuit has been postponed.

Representative Assembly (RA) Chair's Report

Mr. Burrell stated that the RA calendar for the September meeting is in place and includes a financial update of the State Bar from Mr. Quick and Ms. Welch, two substantive proposals, and an election for the clerk position.

Appointment to Lakeshore Legal Aid Board of Directors

A motion was offered to appoint Thomas W. Linn and Thomas W. Stotz to the Lakeshore Legal Aid Board of Directors. The motion was seconded and approved.

Agenda for August 21, 2020 Board Meeting

Ms. Bossenbery presented the August 21, 2020 Board agenda. A motion was offered to approve the agenda. The motion was seconded and approved.

Other:

Mr. Howlett stated that he reviewed the Pandemic Impact Survey results and was impressed that 82 percent of attorneys support continuing remote video conference for certain court proceedings. He suggested that the SBM post on social media comments from attorneys about the benefits of video conferencing and institutionalizing the process. Ms. Welch stated that the SBM is working hand in glove with the Supreme Court and the State Court Administrative Office on this issue.

The meeting was adjourned at 4:21 p.m.

President Dennis M. Barnes
President's Activities
July 25 through September 17, 2020

Date	Event	Location
July 25 – September 17	Ongoing SBM internal leadership meetings, not separately noted	Virtual
August 3 – 4	ABA House of Delegates meeting	Virtual
August 7	Michigan State Bar Foundation (MSBF) Access to Justice Thank You Event	Virtual
August 7	MSBF Fellows Nominating Committee meeting	Virtual
August 11	Call with Executive Director Janet Welch	Virtual
August 11	Executive Committee meeting	Virtual
August 21	Board of Commissioners meeting	Virtual
August 26 - 27	National Conference of Bar Presidents	Virtual
August 27 - 28	Officers Retreat	Saugatuck
September 3	St. Joseph County Bar Association Golf Outing	St. Joseph
September 8	Executive Committee meeting	Virtual
September 16	Board of Commissioners meeting	Virtual
September 17	Representative Assembly meeting	Virtual
September 17	2020-2021 Officer's Swearing-In Ceremony	Virtual

Executive Director Janet K. Welch
Executive Director Activities
July 25 through September 17, 2020

Date	Event	Location
	Ongoing SBM internal leadership meetings, not separately noted	Virtual
July 27	Budget review meetings with State Bar staff	Virtual
July 28	YLS Council meeting	Virtual
July 28	Budget review meetings with YLS and Judicial Council	Virtual
July 28	State Bar and Equal Justice Works meeting	Virtual
July 28	NCBP 21 st Century Lawyer Virtual Program The Status of Regulated Bar	Virtual
July 29	Justice for All (JFA) Planning Team meeting	Virtual
July 29 – August 2	ABA Annual Meeting Sessions	Virtual
July 29	Attorney Discipline System weekly meeting	Virtual
July 29	Executive Team meeting	Virtual
July 29	ABA President’s Reception	Virtual
July 30	Finance Team meeting	Virtual
July 31	JFA Representation by a Lawyer Workgroup meeting	Virtual
August 3 -4	ABA House of Delegates meeting	Virtual
August 3	Executive Team meeting	Virtual
August 3	JFA Workgroup meeting	Virtual
August 4	Meeting with State Senator James Runestad, President Barnes, Peter Cunningham	Virtual
August 4	JFA Workgroup 2 meeting	Virtual
August 5	International Working Group - Transition after Pandemic Restrictions meeting	Virtual
August 5	Finance Committee meeting	Virtual
August 5	ABA Working Group on House Operations	Virtual
August 6	Strategic Management Team meeting	Virtual

Date	Event	Location
August 6	Great Rivers Bar Executives meeting	Virtual
August 7	Finance Team meeting	Virtual
August 10	Executive Team Meeting	Virtual
August 11	Meeting with Mary Hiniker, ICLE	Virtual
August 11	Call with President Dennis Barnes	
August 11	Executive Committee meeting	Virtual
August 12	Strategic Management Team meeting	Virtual
August 12	JFA Planning Team meeting	Virtual
August 14	FY 2021 Budget Presentation Rehearsal meeting	Virtual
August 17	Executive Team meeting	Virtual
August 18	CloudLaw meeting	Virtual
August 19	International Working Group - Transition after Pandemic Restrictions meeting	Virtual
August 19	Strategic Management Team meeting	Virtual
August 19	Integrated Tech meeting	Virtual
August 19	LRS Collaboration Marketing Team meeting	Virtual
August 20	Committee Appointment Day	Virtual
August 21	Board of Commissioners meeting	Virtual
August 21	YLS Budget Discussion meeting	Virtual
August 21	JFA Workgroup meeting	Virtual
August 24 – 25	National Association of Bar Executives (NABE) Annual Meeting	Virtual
August 24	Executive Team Meeting	Virtual
August 25	JFA Consumer Needs, Community Integration workgroup meeting	Virtual
August 25	JFA Assistance Without a Lawyer workgroup meeting	Virtual
August 25 – 26	National Conference of Bar President's Annual Meeting	Virtual
August 26	JFA Full Representation and Limited Scope Representation Workgroup meeting	Virtual

Date	Event	Location
August 26	Strategic Management Team meeting	Virtual
August 26	RA Meeting Planning	Virtual
August 26	JFA Planning Team meeting	Virtual
August 26	Attorney Discipline System meeting	Virtual
August 26	LRS Collaboration Marketing Team meeting	Virtual
August 27	JFA Assistance Without a Lawyer Workgroup meeting	Virtual
August 27	Request from MDOT meeting	Virtual
August 27 -28	Officers' Retreat	Saugatuck
August 31	Executive Team meeting	Virtual
August 31	RA Special Issues Committee Report meeting	Virtual
September 1	Meeting with Jennifer Bentley, Executive Director Michigan State Bar Foundation	Virtual
September 2	International Working Group - Transition after Pandemic Restrictions meeting	Virtual
September 2	Strategic Management Team meeting	Virtual
September 2	RA Presentation meeting	Virtual
September 3	Client Disclosure meeting	Virtual
September 3	Strategic Planning Committee meeting	Virtual
September 3	RA Special Issues & Diversity Committees meeting	Virtual
September 4	RA meeting Planning	Virtual
September 8	Executive Committee meeting	Virtual
September 9	Senior Management Team meeting	Virtual
September 9	RA Meeting Logistics meeting	Virtual
September 10	JFA Planning meeting	Virtual
September 10	Justice Initiatives meeting	Virtual
September 11	ABA Working Group on House Operations	Virtual
September 14	Officer Swearing-In Ceremony Rehearsal	Virtual
September 14	Executive Team meeting	Virtual
September 15	Strategic Management Team meeting	Virtual

Date	Event	Location
September 16	Professional Standards meeting	Virtual
September 16	Public Policy Committee meeting	Virtual
September 16	Board of Commissioners meetings	Virtual
September 17	Representative Assembly meeting	Virtual
September 17	Officer Swearing-In Ceremony	Virtual
September 17	Michigan Fellows and Awards Ceremony	Virtual

State Bar of Michigan Financial Results Summary

For the Ten Months Ended July 31, 2020

Fiscal Year 2020

Administrative Fund

Summary of YTD July 31, 2020 Actual Results

For the ten months ended July 31, 2020, the State Bar had an Operating Loss of \$801,133 and Non-Operating Revenue of \$413,283, for a decrease in Net Position of \$387,846. Net Position as of July 31, 2020 totaled \$11,829,374. Net Position excluding the impacts of the Retiree Health Care Trust net of the GASB 75 liability totaled \$9,591,643.

YTD Variance from Budget Summary:

YTD Operating Revenue - \$117,097 unfavorable to YTD budget, or (1.5%)

YTD Operating Expense - \$861,107 favorable to YTD budget, or 9.2%

YTD Non-Operating Income - \$204,950 favorable to YTD budget, or 98.4%

YTD Change in Net Position - \$948,963 favorable to YTD budget

YTD Key Budget Variances:

YTD Operating Revenue variance - \$117,097 unfavorable to budget:

- Operating revenue was unfavorable to budget primarily due to lower LRS, Bar Journal, Print Center, BLF, UMLI Member Services revenue, C&F and Ethics.

YTD Operating Expense variance - \$861,107 favorable to budget:

- Salaries and Employee Benefits/ Payroll Taxes - \$321,171, favorable 5.2%
 - Underage in salaries and benefits due to vacancies and health care.
- Non-Labor Operating Expenses - \$539,936, favorable 16.9%
 - Exec Offices - \$173,569, favorable 27.8% - Primarily Executive Office, HR, R&D, RA, BOC and other.
 - Finance & Admin - \$70,830, favorable 6.2% – Under in Administration and in Facilities Services due to timing.
 - Member & Communication Services - \$241,047, favorable 18.4% - Primarily Member & Endorsed Services, Website, Bar Journal, Directory, BLF, UMLI, Print Center and Media Relations.
 - Professional Standards - \$54,490, favorable 48.2% - Primarily C&F, Ethics, UPL and other.

YTD Non-Operating Revenue Budget Variance - \$204,950 favorable to budget

- **Operating investment income is unfavorable to budget by \$32,412 or 15.6%.**
- **Retiree Health Care Trust investment income is favorable by \$237,362 due to investment gain; however, no investment income or loss was budgeted.**

Cash and Investment Balance – Admin Fund

As of July 30, 2020, the cash and investment balance in the State Bar Admin Fund (net of “due to Sections, Client Protection Fund, and Retiree Health Care Trust”) was \$7,480,364, a decrease of \$788,569 so far in FY 2020 due to expenses exceeding revenues.

SBM Retiree Health Care Trust

As of July 31, 2020, the SBM Retiree Health Care Trust had a fund balance of \$3,752,321, which is an increase of \$284,277 or 8% so far in FY 2020 due to investment gain.

Capital Budget – Admin Fund

Through July 31, 2020, YTD capital expenditures totaled \$279,026 which is under the YTD capital budget by \$63,399 due to delay in some capex expenditures to FY 2021 and rebalancing of the on-going IT projects.

Administrative Fund FY 2020 Year-End Financial Forecast

We are projecting to do better than the FY 2020 budget and continue to monitor the forecast. Our current projection shows us favorable to budget by \$699k, not including the investment impacts of the retiree health care trust. This projection is based on lower operational expenses primarily in salary, benefits, travel, meetings and programs, and lower depreciation, net of lower revenue for canceled programs and lower investment income.

Client Protection Fund

The Net Position of the Client Protection Fund as of July 31, 2020 totaled \$1,981,457, a decrease of \$15,333 so far in FY 2020. Claims payments so far this year totaled \$493,912. In addition, there is a total of \$159,750.00 approved claims awaiting subrogation agreements.

SBM Membership

As of July 31, 2020, the total active, inactive and emeritus membership in good standing totaled 46,302 attorney members, a net increase of 210 members so far in FY 2020. A total of 761 new members have joined the SBM so far during FY 2020.

**STATE BAR OF MICHIGAN
ADMINISTRATIVE FUND**

Unaudited and For Internal Use Only

**FINANCIAL REPORTS
July 31, 2020**

FY 2020

Note: License Fee revenue is recognized and budgeted as earned each month throughout the year.

State Bar of Michigan
Statement of Net Position
Administrative Fund
For the Ten Months Ending July 31, 2020

	June 30, 2020	July 31, 2020	Increase (Decrease)	%	Beginning of FY 2020 10/1/19
ASSETS AND DEFERRED OUTFLOWS					
Cash	\$4,240,254	\$3,265,642	(\$974,613)	(23.0%)	\$1,767,913
Investments	7,103,528	7,103,528	0	0.0%	8,753,528
Accounts Receivable	172,108	179,773	7,665	4.5%	299,326
Due from (to) CPF	(945)	(390)	555	(58.7%)	(7,740)
Due to Sections	(2,937,981)	(2,888,416)	49,566	(1.7%)	(2,250,516)
Prepaid Expenses	231,253	246,177	14,924	6.5%	434,486
Inventory	6,823	6,823	0	0.0%	23,538
Capital Assets	3,649,109	3,664,431	15,322	0.4%	3,800,583
SBM Retiree Health Care Trust	3,575,979	3,752,321	176,341	4.9%	3,468,044
Total Assets	\$16,040,128	\$15,329,889	(\$710,239)	(4.4%)	\$16,289,160
Deferred outflows of resources related to pensions	34,117	34,117	0	0.0%	34,117
Deferred outflows of resources related to OPEB	313,165	313,165	0	0.0%	313,165
Total Deferred outflows of resources	347,282	347,282	0	0.0%	347,282
Total Assets and Deferred Outflows of Resources	16,387,411	15,677,172	(710,239)	(4.3%)	16,636,442
LIABILITIES, DERERRED INFLOWS AND NET POSITION					
Liabilities					
Accounts Payable	\$8	\$6	(\$2)	(27.7%)	\$390,272
Accrued Expenses	486,548	415,875	(70,673)	(14.5%)	516,643
Deferred Revenue	1,856,957	1,245,102	(611,855)	(32.9%)	1,325,490
Net Pension Liability	330,798	330,798	0	0.0%	330,798
Net OPEB Liability	1,603,186	1,603,186	0	0.0%	1,603,186
Total Liabilities	4,277,496	3,594,967	(682,530)	(16.0%)	4,166,389
Deferred Inflows of resources related to pensions	28,262	28,262	0	0.0%	28,262
Deferred Inflows of resources related to OPEB	224,569	224,569	0	0.0%	224,569
Total Deferred inflows of resources	252,831	252,831	0	0.0%	252,831
Total Liabilities and Deferred Inflows	4,530,327	3,847,798	(682,530)	(15.1%)	4,419,220
Net Assets					
Invested in Capital Assets, Net of Related Debt	3,649,109	3,664,431	15,322	0.4%	3,800,583
Restricted for Retiree Health Care Trust	2,061,389	2,237,731	176,341	8.6%	1,953,454
Unrestricted	6,146,585	5,927,212	(219,373)	(3.6%)	6,463,184
Total Net Position	11,857,083	11,829,374	(27,709)	(0.2%)	12,217,220
Total Liabilities, Deferred Inflows and Net Position	\$16,387,411	\$15,677,172	(710,239)	(4.3%)	\$16,636,442
Net Position <u>excluding</u> the impacts of retiree health care	\$9,795,694	\$9,591,643			

Note: Cash and investments actually available to the State Bar Administrative Fund, after deduction of the "Due to Sections" and "Due to CPF" and not including the "Retiree Health Care Trust" is \$7,480,364 (see below)

	June 30, 2020	July 31, 2020	Increase (Decrease)	%	Beginning of FY 2020 10/1/19
CASH AND INVESTMENT BALANCES					
Cash (including CD's and Money Market)	\$4,240,254	\$3,265,642	(\$974,613)	(23.0%)	\$1,767,913
Investments	7,103,528	7,103,528	0	0.0%	8,753,528
Total Available Cash and Investments	11,343,782	10,369,170	(974,613)	(8.6%)	10,521,440
Less:					
Due to Sections	2,937,981	2,888,416	(49,566)	(1.7%)	2,244,767
Due to CPF	945	390	(555)	(58.7%)	7,740
Due to Sections and CPF	2,938,926	2,888,806	(50,121)	(1.7%)	2,252,507
Net Administrative Fund Cash and Investment Balance	8,404,856	7,480,364	(924,492)	(11.0%)	8,268,933

State Bar of Michigan
Statement of Revenue, Expense, and Net Assets
Administrative Fund
For the Ten Months Ending July 31, 2020

	Actual YTD	Budget YTD	Variance	Percentage
Revenue				
Finance & Administration				
License Fees	\$6,498,245	\$6,503,325	(\$5,080)	(0.08%)
Investment Income - SBM Operations	175,921	208,333	(32,412)	(15.56%)
Investment Income - Ret HC Trust	237,362		237,362	0.00%
Other Revenue	356,877	347,333	9,544	2.75%
Finance & Administration Total	7,268,405	7,058,991	209,414	2.97%
Member Services & Communications				
Bar Journal Directory	39,310	35,850	3,460	9.65%
Bar Journal 11 issues	124,311	138,625	(14,314)	(10.33%)
Print on Demand Dept	42,958	54,083	(11,125)	(20.57%)
e-Journal and Website	64,523	65,433	(910)	(1.39%)
BCBS Insurance	75,000	75,000		0.00%
Annual Meeting		4,000	(4,000)	(100.00%)
Labels	1,491	3,333	(1,842)	(55.27%)
Practice Management Resource Center	530	833	(303)	(36.37%)
Upper Michigan Legal Institute	597	12,500	(11,903)	(95.22%)
Other Member & Endorsed Revenue	64,236	81,898	(17,662)	(21.57%)
Lawyer Referral Service	116,816	137,819	(21,003)	(15.24%)
Bar Leadership Forum	946	11,725	(10,779)	(91.93%)
Member Services & Communications Total	530,718	621,099	(90,381)	(14.55%)
Professional Regulation				
Ethics	5,890	8,500	(2,610)	(30.71%)
Character & Fitness	313,715	341,625	(27,910)	(8.17%)
Other Revenue	34,340	35,000	(660)	(1.89%)
Professional Regulation Total	353,945	385,125	(31,180)	(8.10%)
Total Revenue	8,153,068	8,065,215	87,853	1.09%

State Bar of Michigan
Statement of Revenue, Expense and Net Assets
Administrative Fund
For the Ten Months Ending July 31, 2020

	Actual YTD	Budget YTD	Variance	Percentage
Expense				
Executive Offices				
Executive Office	\$56,871	\$77,225	(\$20,354)	(26.36%)
Representative Assembly	(225)	21,500	(21,725)	(101.05%)
Board of Commissioners	26,184	81,067	(54,883)	(67.70%)
General Counsel	31,552	31,217	335	1.07%
Governmental Relations	48,132	61,034	(12,902)	(21.14%)
Human Resources	1,586,608	1,709,597	(122,989)	(7.19%)
Outreach	104,953	111,208	(6,255)	(5.62%)
Research and Development	8,744	22,390	(13,646)	(60.95%)
Justice Initiatives Department	129,770	141,067	(11,297)	(8.01%)
Diversity	5,919	18,950	(13,031)	(68.77%)
Salaries	1,293,434	1,346,434	(53,000)	(3.94%)
Executive Offices Total	3,291,942	3,621,689	(329,747)	(9.10%)
Administration				
Administration	25,390	32,054	(6,664)	(20.79%)
Facilities Services	294,349	317,442	(23,093)	(7.27%)
Financial Services	749,727	790,800	(41,073)	(5.19%)
Salaries	371,814	408,220	(36,406)	(8.92%)
Administration Total	1,441,280	1,548,516	(107,236)	(6.93%)
Member Services & Communications				
Bar Journal Directory	51,864	57,000	(5,136)	(9.01%)
Bar Journal 11 Issues	331,903	389,508	(57,605)	(14.79%)
Print Center	36,144	52,283	(16,139)	(30.87%)
Website	83,661	122,108	(38,447)	(31.49%)
e-Journal	29,412	29,025	387	1.33%
Media Relations	22,671	34,975	(12,304)	(35.18%)
Member & Endorsed Services	74,395	109,817	(35,422)	(32.26%)
50 Yr. Golden Celebration	1,643	23,075	(21,432)	(92.88%)
Annual Meeting	18,778	17,188	1,590	9.25%
Lawyer Referral Service	1,270	1,383	(113)	(8.17%)
Bar Leadership Forum	847	37,650	(36,803)	(97.75%)
Practice Management Resource Center	4,751	5,800	(1,049)	(18.09%)
UMLI	3,393	29,450	(26,057)	(88.48%)
IT	409,849	402,366	7,483	1.86%
Salaries	1,784,402	1,849,980	(65,578)	(3.54%)
Member Services & Communications Total	2,854,983	3,161,608	(306,625)	(9.70%)
Professional Standards				
Character & Fitness	23,573	39,381	(15,808)	(40.14%)
Client Protection Fund Dept	2,350	9,110	(6,760)	(74.20%)
LJAP	13,116	25,633	(12,517)	(48.83%)
Ethics	6,734	16,075	(9,341)	(58.11%)

UPL	12,728	22,792	(10,064)	(44.16%)
Salaries	894,212	957,220	(63,008)	(6.58%)
Professional Standards Total	952,713	1,070,211	(117,498)	(10.98%)
Total Expense	8,540,918	9,402,024	(861,106)	(9.16%)
Human Resources Detail				
Payroll Taxes	320,041	347,448	(27,407)	(7.89%)
Benefits	1,228,043	1,303,815	(75,772)	(5.81%)
Other Expenses	38,523	58,334	(19,811)	(33.96%)
Total Human Resources	1,586,607	1,709,597	(122,990)	(7.19%)
Financial Services Detail				
Depreciation	415,178	465,000	(49,822)	(10.71%)
Other Expenses	334,550	325,800	8,750	2.69%
Total Financial Services	749,728	790,800	(41,072)	(5.19%)
Salaries				
Executive Offices	1,293,434	1,346,434	(53,000)	(3.94%)
Finance and Administration	371,814	408,220	(36,406)	(8.92%)
Member Services & Communications	1,784,402	1,849,980	(65,578)	(3.54%)
Professional Standards	894,212	957,220	(63,008)	(6.58%)
Total Salaries Expense	4,343,862	4,561,854	(217,992)	(4.78%)
Non-Labor Expense Summary				
Executive Offices	450,423	623,992	(173,569)	(27.82%)
Finance and Administration	1,069,466	1,140,296	(70,830)	(6.21%)
Member Services & Communications	1,070,581	1,311,628	(241,047)	(18.38%)
Professional Standards	58,501	112,991	(54,490)	(48.23%)
Total Non-Labor Expense	2,648,971	3,188,907	(539,936)	(16.93%)

State Bar of Michigan
Statement of Revenue, Expense and Net Assets
For the Ten Months Ending July 31, 2020

YTD FY 2020 Increase (Decrease) in Net Position Summary

	Actual YTD	Budget YTD	Variance	Percentage	Last Year Actual YTD	Variance
Operating Revenue						
- License Fees, Dues & Related	\$6,498,245	\$6,503,325	(5,080)	(0.1%)	5,227,241	1,271,004
- All Other Op Revenue	1,241,540	1,353,557	(112,017)	(8.3%)	1,145,302	96,238
Total Operating Revenue	<u>7,739,785</u>	<u>7,856,882</u>	<u>(117,097)</u>	<u>(1.5%)</u>	<u>6,372,543</u>	<u>1,367,242</u>
Operating Expenses						
- Labor-related Operating Expenses						
Salaries	4,343,862	4,561,854	(217,992)	(4.8%)	3,277,834	1,066,028
Benefits and PR Taxes	1,548,084	1,651,263	(103,179)	(6.2%)	1,207,732	340,352
Total Labor-related Operating Expenses	<u>5,891,946</u>	<u>6,213,117</u>	<u>(321,171)</u>	<u>(5.2%)</u>	<u>4,485,566</u>	<u>1,406,380</u>
- Non-labor Operating Expenses						
Executive Offices	450,423	623,992	(173,569)	(27.8%)	489,326	(38,903)
Finance & Administration	1,069,466	1,140,296	(70,830)	(6.2%)	942,232	127,234
Member & Communication Services	1,070,581	1,311,628	(241,047)	(18.4%)	977,167	93,414
Professional Standards	58,501	112,991	(54,490)	(48.2%)	67,537	(9,036)
Total Non-labor Operating Expenses	<u>2,648,971</u>	<u>3,188,907</u>	<u>(539,936)</u>	<u>(16.9%)</u>	<u>2,476,262</u>	<u>172,709</u>
Total Operating Expenses	<u>8,540,917</u>	<u>9,402,024</u>	<u>(861,107)</u>	<u>(9.2%)</u>	<u>6,961,828</u>	<u>1,579,089</u>
Operating Income (Loss)	<u>(801,133)</u>	<u>(1,545,142)</u>	744,010	N/A	<u>(589,285)</u>	<u>(211,848)</u>
Non-operating Revenue (Expenses)						
Investment Income	175,921	208,333	(32,412)	(15.6%)	186,477	(10,556)
Investment Income - Ret HC Trust	237,362	0	237,362	N/A	171,108	66,254
Net Non-operating revenue (expenses)	<u>413,283</u>	<u>208,333</u>	<u>204,950</u>	98.4%	<u>357,585</u>	<u>55,698</u>
Increase (Decrease) in Net Position	<u>(387,846)</u>	<u>(1,336,809)</u>	<u>948,963</u>	N/A	<u>(231,700)</u>	<u>(156,146)</u>
Net Position - Beginning the Year	<u>12,217,220</u>	<u>12,217,220</u>	0	0.0%	<u>12,800,771</u>	<u>(583,551)</u>
Net Position - Year-to-Date	<u>\$11,829,374</u>	<u>\$10,880,411</u>	<u>\$948,963</u>	8.7%	<u>12,569,071</u>	<u>(\$739,697)</u>
Increase (Decrease) in Net Position Excluding Ret HC Trust Inv. Income	<u>(625,208)</u>	<u>(1,336,809)</u>	<u>711,601</u>	<u>(53.2%)</u>	<u>(357,585)</u>	<u>(267,623)</u>

State Bar of Michigan Administrative Fund
Revenues, Expenses and Net Assets
FY 2020 - Year-End Forecast
Updated August 25, 2020

	FY 2020 Year-End Forecast	FY 2020 Budget	Variance	Percentage	FY 2019 Actual
Operating Revenue					
- License Fees, Dues & Related	7,741,300	7,757,000	(15,700)	(0.2%)	7,750,310
- All Other Op Revenue	1,348,642	1,581,450	(232,808)	(14.7%)	1,601,165
Total Operating Revenue	9,089,942	9,338,450	(248,508)	(2.7%)	9,351,475
Operating Expenses					
- Labor-related Operating Expenses					
Salaries	5,192,273	5,441,927	(249,654)	(4.6%)	5,051,419
Benefits, PR Taxes, and Ret HC Exp	1,786,215	1,910,512	(124,297)	(6.5%)	1,833,191
Total Labor-related Operating Expenses	6,978,488	7,352,439	(373,951)	(5.1%)	6,884,610
- Non-labor Operating Expenses					
Executive Offices	551,598	842,169	(290,571)	(21.4%)	781,548
Finance & Administration	1,316,647	1,357,175	(40,528)	(4.8%)	1,246,714
Member & Communication Services	1,423,998	1,666,913	(242,915)	(14.6%)	1,529,513
Professional Standards	98,600	163,435	(64,835)	(39.7%)	123,002
Total Non-labor Operating Expenses	3,390,843	4,029,692	(638,849)	(15.9%)	3,680,777
Total Operating Expenses	10,369,331	11,382,131	(1,012,800)	(8.9%)	10,565,387
Operating Income (Loss)	(1,279,389)	(2,043,681)	764,292	N/A	(1,213,912)
Nonoperating Revenue (Expenses)					
Investment Income	185,000	250,000	65,000	26.0%	249,731
Investment Income - Ret HC Trust*	0	0	0	N/A	384,630
Loss on Disposal of Capital Assets	0	0	0	N/A	(4,000)
Net Nonoperating Revenue (Expenses)	185,000	250,000	(65,000)	(26.0%)	630,361
Increase (Decrease) in Net Position	(1,094,389)	(1,793,681)	699,292	N/A	(583,551)

Operating Revenue forecast

- Expect to be under in license fee revenues by \$16K, UMLI, BLF, 50 year, LRS, advertising and other revenue.

Labor forecast:

- Salaries - Expect to be under due to vacancies
- Benefits - Expect to be under due to vacancies

Nonlabor forecast:

- Executive Offices - Expect to be under primarily in meetings, travel and other expenses
- Finance & Administration - Expect to be under in Finance primarily due to lower depreciation, net of higher credit card fees
- Member Services & Communications - Expect to be under primarily in meetings, travel and other expenses.
- Professional Standards - Expect to be under primarily in meetings, travel and other expenses.

Non-Operating Income forecast:

- Investment Income - Expect to be under due to lower interest rates.
- Retiree Health Care Trust Investment income was not budgeted nor forecasted

State Bar of Michigan
Administrative Fund
FY 2020 Capital Expenditures vs Budget
For the Ten Months Ending July 31, 2020

	YTD Actual	YTD Budget	YTD Variance	Variance Explanations	Total Approved FY 2020 Budget	FY 2020 Year-End Forecast	Projected Year-end Variance
<u>Building and Equipment</u>							
Elevator Modernization	132,251	120,000	12,251	Will be over on cab interior offset by Facilities operating expense	120,000	132,251	12,251
Replacement of floor copiers	0	35,000	(35,000)		35,000	0	(35,000)
<u>Information Technology</u>							
Network Firewalls (2)	0	25,000	(25,000)		25,000	0	(25,000)
Receivership /Interim Administrator Program data portal (Phase I)	0	30,000	(30,000)		30,000	0	(30,000)
E-commerce store (Phase 1)	12,425	12,425	0		20,000	20,000	0
e-service application for court e-filing (e-mail addresses)	0	10,000	(10,000)		10,000	0	(10,000)
Firm billing/invoices for dues	0	10,000	(10,000)		10,000	0	(10,000)
Firm administration application	4,975	10,000	(5,025)		10,000	4,975	(5,025)
Lawyer referral consumer portal (Ph 3)	34,975	30,000	4,975	This was used for Front line responders panel builds and Rapid Response and portal enhancements	40,000	40,000	0
Unauthozed Practice of Law Portal (Phase 1)	0	20,000	(20,000)		20,000	0	(20,000)
Volunteer Application Portal	\$19,500	0	19,500	Not budgeted, project continued from last year	0	20,000	20,000
CPF Fund Portal (Phase 1)	0	30,000	(30,000)		30,000	0	(30,000)
Website functionality enhancements	14,950	10,000	4,950	Ethics search engine added	10,000	14,950	4,950
Illinois State Bar LRS Portal Build	2,500	0	2,500	Not budgeted, project continued from last year	0	2,500	2,500
E-commerce license fee update	10,000	0	10,000		0	20,000	20,000
Character & Fitness BLE Portal	47,450	0	47,450	Not budgeted, project continued from last year	0	47,450	47,450
Total	<u>\$279,026</u>	<u>\$342,425</u>	<u>(\$63,399)</u>		<u>\$360,000</u>	<u>\$302,126</u>	<u>(\$57,874)</u>

Note: Any overages on unbudgeted projects will be offset by other project underages.

Unaudited and For Internal Use Only

FINANCIAL REPORTS
July 31, 2020

FY 2020

Note: License fee revenue is recognized and budgeted as earned each month throughout the year.

State Bar Of Michigan
Client Protection Fund
Comparative Statement of Net Assets
For the Ten Months Ending July 31, 2020

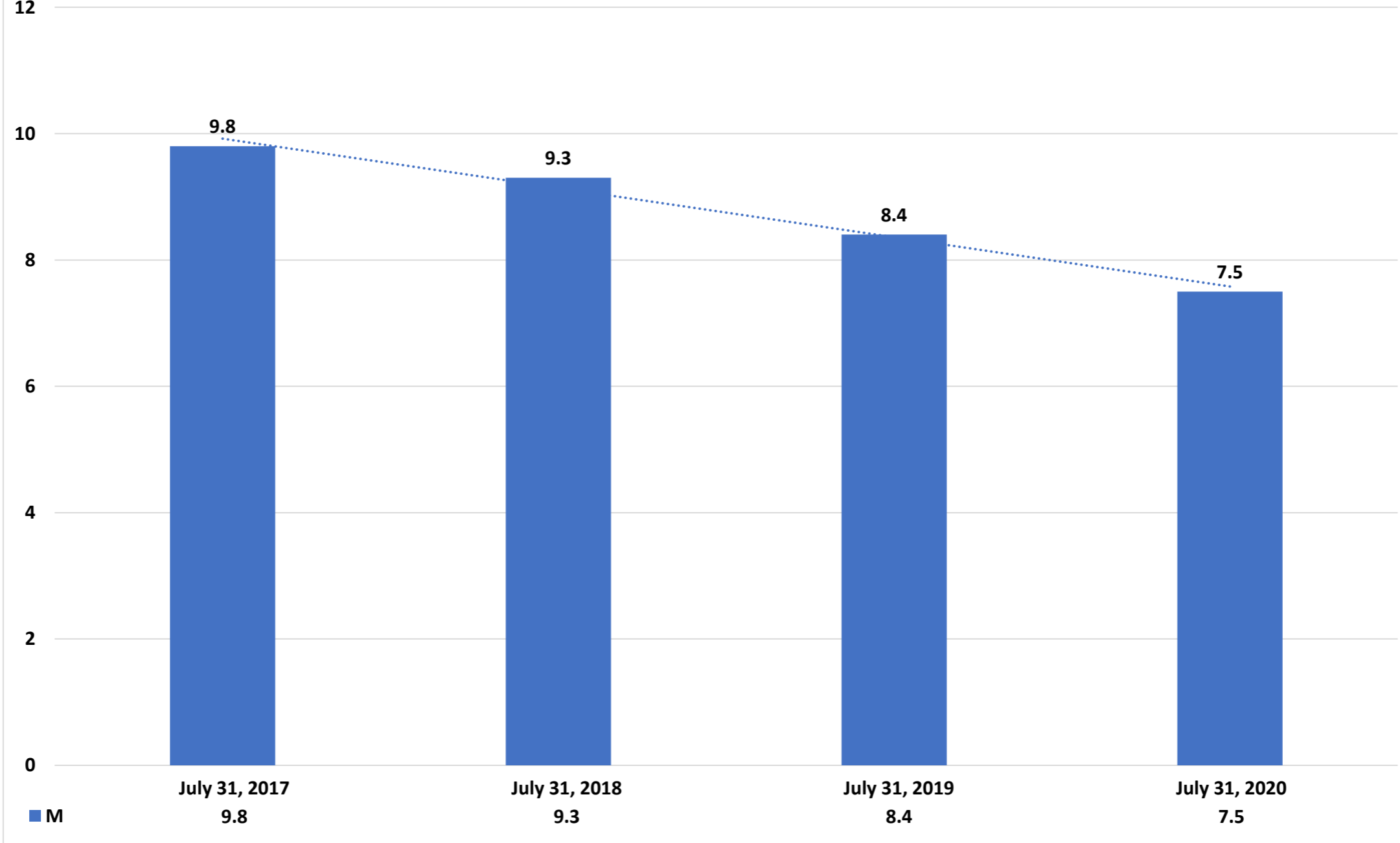
	June 30, 2020	July 31, 2020	Increase (Decrease)	%	Beginning of FY 2020 10/1/19
Assets					
Cash-Checking	\$12,149	\$25,608	\$13,459	110.8%	\$102,758
Savings	1,111,274	846,321	(264,953)	(23.8%)	752,362
Investment	1,000,000	1,000,000		0.0%	1,053,412
Account Receivable	212,163	210,329	(1,834)	(0.9%)	159,875
Due From SBM	945	390	(555)	(58.7%)	7,740
Accrued Interest Receivable	1,422	1,846	424	29.8%	7,314
Total Assets	\$2,337,953	\$2,084,495	(\$253,459)	(10.8%)	\$2,083,460
Liabilities					
Deferred Revenue	156,822	103,038	(53,785)	(34.3%)	86,670
Total Liabilities	156,822	103,038	(53,785)	(34.3%)	86,670
Fund Balance					
Fund Balance at Beginning of Year	1,996,790	1,996,790		0.0%	2,009,754
Net Income (Expense) Year to Date	184,341	(15,333)	(199,674)	(108.3%)	(12,964)
Total Fund Balance	2,181,131	1,981,457	(199,674)	(9.2%)	1,996,790
Total Liabilities and Fund Balance	\$2,337,953	\$2,084,495	(\$253,459)	(10.8%)	\$2,083,460

In addition there are \$159,750.00 authorized but unpaid claims awaiting signatures of subrogation.

Client Protection Fund
Statement of Revenue, Expenses, and Changes in Net Assets □
For the Ten Months Ending July 31, 2020

	2020 YTD	2019 YTD
Income:		
3-7-00-000-0005 Contributions Received	3,061	30,630
3-7-00-000-0050 Membership Fees Assessment	541,820	536,350
3-7-00-000-0051 Pro Hac Vice Fees	11,055	11,190
3-7-00-000-0890 Claims Recovery	89,090	15,120
Total Income	660,936	614,234
 Expenses:		
3-9-00-000-0200 Claims Payment	493,912	516,965
3-9-00-000-0910 Administrative Fee	181,667	176,667
3-9-00-000-0994 Bank Service Charges	690	
Total Expenses	676,268	693,632
 Investment Income	15,910	20,943
 Increase/Decrease in Net Position	578	(58,455)
 Net Position, Beginning of Year	1,996,790	
 Net Position, End of Period	1,997,368	

State Bar of Michigan Cash & Investments
Excluding Sections, Client Protection Fund and Retiree Health Care Trust
For the Ten Months Ending July 31, 2020
\$7.5M



Note: The State Bar of Michigan has no bank debt outstanding

Summary of Cash and Investment Balances by Financial Institution

7/31/2020

Assets	Bank Rating	Financial Institution Summary	Interest Rates	Fund Summary	
\$2.73 Trillion	5 stars	SBM Chase Checking \$ 122,856.00 SBM Chase Credit Card \$ 2,992.50 SBM Chase E Checking \$ - SBM Chase Payroll \$ (2,364.02) SBM Chase Savings \$ 899,440.46 ADS Chase Checking \$ 15,662.45 CPF Chase Checking \$ 25,607.92 CPF Chase Savings \$ 48,467.37 ** Chase Totals \$ 1,112,662.68	0.05% 0.05%	Client Protection Fund \$ 1,871,928.80 State Bar Admin Fund (including Sections) \$ 10,369,169.57 Attorney Discipline System \$ 3,664,340.18 SBM Retiree Health Care Trust \$ 3,752,320.61 ADB Retiree Health Care Trust \$ 1,060,587.23 AGC Retiree Health Care Trust \$ 3,753,164.84 Total \$ 24,471,511.23	
\$2.38 Trillion	5 stars	ADS Bank of America Petty Cash \$ 1,584.99 Bank of America Totals \$ 1,584.99	0.00%		
\$171 Billion	5 stars	SBM Fifth Third Commercial Now \$ 33,585.02 Fifth Third Totals \$ 33,585.02	0.00% *		
\$223 Million	5 stars	Grand River Bank Money Market \$ 11,439.42 Grand River Bank Totals \$ 11,439.42 Grand River Bank Total w/CD \$ 491,439.42	0.35%	State Bar Admin Fund Summary Cash and Investments \$ 10,369,169.57 Less: Due (to)/from Sections (2,888,416.00) Due (to)/from CPF (390.00) Due to Sections and CPF \$ (2,888,806.00) Net Administrative Fund \$ 7,480,363.57	
\$2.96 Billion	4 stars	Sterling Bank \$ 100.94 Sterling Bank Total \$ 100.94	0.40%		
\$155 Billion	5 stars	Citizens Bank Checking \$ 10,000.00 Citizens Bank Money Market \$ 1,286,024.27 Citizens Bank Totals \$ 1,296,024.27	0.25%		
\$4.2 Billion	5 stars	MSUCU Savings \$ 8.92 MSUCU Checking \$ 26,593.58 MSU Credit Union Total \$ 26,602.50 MSU Credit Union Total w/CD \$ 2,166,602.50	0.00% 0.00%	SBM Average Weighted Yield: 1.14% ADS Average Weighted Yield: 0.38% CPF Average Weighted Yield: 0.35%	
\$22 Billion	4 stars	SBM Flagstar ICS Checking \$ 503,822.86 SBM Flagstar CDARS - 12 Month \$ 1,000,000.00 SBM Flagstar CDARS - 12 Month \$ 500,000.00 SBM Flagstar CDARS - 12 Month \$ 500,000.00 ADS Flagstar ICS Checking Account \$ 2,018,234.67 ADS Flagstar CDARS - 12 Month \$ 2,000,000.00 CPF Flagstar ICS Checking \$ 797,853.51 CPF Flagstar CDARS - 12 Month \$ 1,000,000.00 Flagstar Bank Totals \$ 8,319,911.04	0.20% 0.50% 0.50% 0.50% 0.20% 0.50% 0.20% 0.50%	Maturity 03/18/21 03/18/21 03/18/21 03/18/21	Note: average weighted yields exclude retiree health care trusts Notes: - All amounts are based on reconciled book balance and interest rates as of 07/31/20 - CDARS are invested in multiple banks up to the FDIC limit for each bank - Funds held in bank accounts are FDIC insured up to \$250,000 per bank - The SBM funds held with Charles Schwab in the Retiree Health Care Trusts are invested in 80% equity and 20% fixed income mutual funds - As of 07/31/2020, the funds held by SBM attributable to ADS was (\$371,141.93) - Bank Star rating from Bauer Financial. *Lockbox fees are offset by 0.30% (annual rate) on average monthly balance. **Actual unreconciled Chase balance per statements was \$1,435,103.24
\$21.5 Billion	4 stars	SBM - CD Chemical Bank \$ 250,000.00 SBM - CD Chemical Bank \$ 250,000.00 SBM - CD Chemical Bank \$ 250,000.00 SBM - Grand River Bank \$ 253,527.69 SBM - Grand River Bank \$ 245,000.00 SBM-CD Horizon Bank \$ 245,000.00 SBM-CD Horizon Bank \$ 245,000.00 SBM-CD Horizon Bank \$ 250,000.00 SBM-CD Horizon Bank \$ 250,000.00	1.75% 1.75% 1.75% 2.50% 2.75% 0.97% 0.97% 2.66% 2.66%	Maturity 07/25/21 07/25/21 07/25/21 05/11/21 10/17/20 03/19/21 03/19/21 04/25/21 04/25/21	\$ -
\$1.36 Billion	3.5 stars	SBM-CD First National Bank of America \$ 240,000.00 SBM-CD First National Bank of America \$ 245,000.00 SBM-CD First National Bank of America \$ 240,000.00 SBM-CD First National Bank of America \$ 240,000.00 SBM-CD MSU Credit Union \$ 235,000.00 SBM-CD MSU Credit Union \$ 235,000.00 SBM-CD MSU Credit Union \$ 235,000.00 SBM-CD MSU Credit Union \$ 235,000.00 SBM-CD MSU Credit Union \$ 240,000.00 SBM-CD MSU Credit Union \$ 240,000.00 SBM-CD MSU Credit Union \$ 240,000.00 SBM-CD MSU Credit Union \$ 240,000.00 SBM-CD MSU Credit Union \$ 240,000.00 SBM-CD MSU Credit Union \$ 240,000.00 Bank CD Totals \$ 5,103,527.69	2.35% 2.35% 1.85% 1.85% 2.05% 2.05% 2.05% 2.05% 2.00% 2.00% 2.00% 2.00%	10/12/20 10/16/20 10/16/20 10/16/20 10/25/20 10/25/20 10/25/20 10/25/20 11/21/20 11/21/20 11/21/20 11/21/20	
Total Cash & Investments (excluding Schwab)		\$ 15,905,438.55			
		SBM - Charles Schwab (Ret HC Trust) \$ 3,752,320.61 ADB - Charles Schwab (Ret HC Trust) \$ 1,060,587.23 AGC - Charles Schwab (Ret HC Trust) \$ 3,753,164.84 Charles Schwab Totals \$ 8,566,072.68		Mutual Funds Mutual Funds Mutual Funds	
Grand Total (including Schwab)		\$ 24,471,511.23			
Total amount of cash and investments (excluding Schwab) not FDIC insured		\$ 5,771,728.87	36.29%		

Monthly SBM Attorney and Affiliate Report - July 31, 2020

FY 2020

<u>Attorneys and Affiliates In Good Standing</u>	<u>September 30 2014</u>	<u>September 30 2015</u>	<u>September 30 2016</u>	<u>September 30 2017</u>	<u>September 30 2018</u>	<u>September 30 2019</u>	<u>July 30 2020</u>	<u>FY Increase (Decrease)</u>
Active	41,093	41,608	41,921	42,100	42,342	42,506	42,389	(117)
Less than 50 yrs serv	40,036	40,490	40,725	40,833	40,973	41,036	40,792	(244)
50 yrs or greater	1,057	1,118	1,196	1,267	1,369	1,470	1,597	127
Voluntary Inactive	1,211	1,218	1,250	1,243	1,169	1,139	1,210	71
Less than 50 yrs serv	1,184	1,195	1,230	1,217	1,142	1,105	1,174	69
50 yrs or greater	27	23	20	26	27	34	36	2
Emeritus	1,552	1,678	1,841	1,973	2,204	2,447	2,703	256
Total Attorneys in Good Standing	43,856	44,504	45,012	45,316	45,715	46,092	46,302	210
Fees paying Attorneys (Active & Inactive less than 50 yrs of Serv)	41,220	41,685	41,955	42,050	42,115	42,141	41,966	(175)
Affiliates								
Legal Administrators	14	13	13	13	10	10	10	0
Legal Assistants	413	425	405	400	401	393	415	22
Total Affiliates in Good Standing	427	438	418	413	411	403	425	22

Total Attorneys and Former Attorneys in the Database

<u>State Bar of Michigan Attorney and Affiliate Type</u>	<u>September 30 2014</u>	<u>September 30 2015</u>	<u>September 30 2016</u>	<u>September 30 2017</u>	<u>September 30 2018</u>	<u>September 30 2019</u>	<u>June 30 2020</u>	<u>FY Increase (Decrease)</u>
<u>Attorneys in Good Standing:</u>								
ATA (Active)	41,093	41,608	41,921	42,100	42,342	42,506	42,389	(117)
ATVI (Voluntary Inactive)	1,211	1,218	1,250	1,243	1,169	1,139	1,210	71
ATE (Emeritus)	1,552	1,678	1,841	1,973	2,204	2,447	2,703	256
Total Attorneys in Good Standing	43,856	44,504	45,012	45,316	45,715	46,092	46,302	210
<u>Attorneys Not in Good Standing:</u>								
ATN (Suspended for Non-Payment of Dues)	5,427	5,578	5,743	5,888	6,072	6,246	6,439	193
ATDS (Discipline Suspension - Active)	407	415	418	430	439	440	444	4
ATDI (Discipline Suspension - Inactive)	12	11	18	19	19	24	25	1
ATDC (Discipline Suspension - Non-Payment of Court Costs)	1	3	3	16	15	16	16	0
ATNS (Discipline Suspension - Non-Payment of Other Costs)	83	92	99	94	95	98	100	2
ATS (Attorney Suspension - Other)*	1	1	1	0	1	1	2	1
ATR (Revoked)	521	517	534	562	583	596	611	15
ATU (Status Unknown - Last known status was inactive)**	2,088	2,076	2,074	2,070	2,070	2,070	2,070	0
Total Attorneys Not in Good Standing	8,540	8,693	8,890	9,079	9,294	9,491	9,707	216
<u>Other:</u>								
ATSC (Former special certificate)	136	140	145	152	155	157	158	1
ATW (Resigned)	1,429	1,483	1,539	1,612	1,689	1,798	1,900	102
ATX (Deceased)	8,127	8,445	8,720	9,042	9,287	9,524	9,750	226
Total Other	9,692	10,068	10,404	10,806	11,131	11,479	11,808	329
Total Attorneys in Database	62,088	63,265	64,306	65,201	66,140	67,062	67,817	755

* ATS is a new status added effective August 2012 - suspended by a court, administrative agency, or similar authority

** ATU is a new status added in 2010 to account for approximately 2,600 attorneys who were found not to be accounted for in the iMIS database
The last known status was inactive and many are likely deceased. We are researching these attorneys to determine a final disposition.

N/R - not reported

Notes: Through July 31, 2020 a total of 761 new attorneys joined the SBM in FY 2020

TO: Board of Commissioners

FROM: Professional Standards Committee

DATE: September 16, 2020, BOC Meeting

RE: Client Protection Fund Claims for Consent Agenda

Rule 15 of the Client Protection Fund Rules provides that “claims, proceedings and reports involving claims for reimbursement are confidential until the Board authorizes reimbursement to the claimant.” To protect CPF claim information as required in the Rule, and to avoid negative publicity about a lawyer subject to a claim, which has been denied and appealed, the CPF Report to the Board of Commissioners is designated “confidential.”

**CONSENT AGENDA
CLIENT PROTECTION FUND**

Claims recommended for payment:

Consent Agenda

	<u>Claim No.</u>	<u>Amt. Recommended</u>
1.	CPF 3412	\$2,000.00
2.	CPF 3454	\$4,000.00
3.	CPF 3455	\$9,000.00
4.	CPF 3530	\$2,175.00
5.	CPF 3598	\$1,582.50
6.	CPF 3633	\$5,000.00
7.	CPF 3644	\$13,000.00
8.	CPF 3645	\$64,664.61
	TOTAL	\$101,422.11

The Professional Standards Committee recommends payment of these claims by the State Bar of Michigan Client Protection Fund:

1. **CPF 3412** **\$2,000.00**
 Claimant retained Respondent regarding an immigration matter and paid a fee of \$2,000. Respondent did not complete any services before he was disbarred. Respondent’s failure to return the unearned fee constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1) and 9(C)(6).

2. CPF 3454 \$4,000.00

Claimant retained Respondent regarding an immigration matter and paid \$4,000 toward an agreed upon fee of \$6,000. Respondent did not complete any services before he was disbarred. Respondent's failure to return the unearned fee constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1) and 9(C)(6).

3. CPF 3455 \$9,000.00

Claimant retained Respondent regarding three separate immigration matters and paid \$9,000 toward the fee. Respondent completed some research but could not complete the services before he was disbarred. Respondent's failure to refund the unearned \$9,000 received for the three matters constitutes dishonest conduct and is a reimbursable loss.

4. CPF 3530 \$2,175.00

Claimant retained Respondent for representation in three post-divorce matters and paid \$3,100. Respondent drafted and filed pleadings and paid the \$175 filing fee, billing Claimant \$925 for services rendered. Thereafter, Respondent abandoned the matters. Respondent's failure to return the unearned portion of the legal fee advanced to him constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1) and 9(C)(6).

5. CPF 3598 \$1,582.50

Claimant retained Respondent regarding real estate matter and paid \$1,582.50 for the representation. Respondent did not complete any legal services. Respondent's failure to return the unearned fee constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1), 9(C)(6) and 11(B).

6. CPF 3633 \$5,000.00

Claimant retained Respondent regarding two criminal matters and paid \$5,000 toward the agreed upon fee. The first agreement stated that it was "non-refundable," but did not meet the requirements for a non-refundable fee agreement required by *Cooper*.¹ Claimant and Respondent met before Respondent's license to practice law was suspended, preventing completion of the legal services. Attorneys experienced in this practice area opined that the \$2,500 charged for just the evaluation was clearly excessive and that the costs for an evaluation would never amount to \$500. Thus, the nonrefundable \$2,500 fee and the \$500 for costs charged by Respondent were deemed unreasonable or excessive under MRPC 1.5(a) and no services were provided under the second agreement. Respondent's failure to return the unearned fee advanced to him constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1) and 9(C)(6).

¹ In *Grievance Adm'r v Cooper*, 757 NW2d 867 (Mich 2008), the Michigan Supreme Court ruled as follows regarding a nonrefundable retainer:

As written, the agreement clearly and unambiguously provided that the respondent was retained to represent the client and that the minimum fee was incurred upon execution of the agreement, regardless of whether the representation was terminated by the client before the billings at the stated hourly rate exceeded the minimum. So understood, neither the agreement nor the respondent's retention of the minimum fee after the client terminated the representation violated existing MRPC 1.5(a), MPRC 1.15(b) or MRPC 1.16(d).

7. CPF 3644 \$13,000.00

Claimant retained Respondent for representation in a worker's compensation matter. Per Respondent's instructions, Claimant remitted \$13,000 to Respondent's attorney trust account to be held in safekeeping in the event of a settlement. Respondent misappropriated the funds and was later suspended from the practice of law and ordered to pay \$13,000 in restitution to Claimant. Respondent's failure to return the settlement funds constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1) and 11(B).

8. CPF 3645 \$64,664.61

Claimant contacted Respondent regarding a Trust. Respondent became Trustee and was convicted of embezzling \$64,664.61 from the Trust along with additional convictions for filing a false tax return and wire fraud. Respondent was ordered to pay \$366,861.46 in restitution, including \$64,664.81 to the Trust. Respondent's misappropriation of trust funds constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1) and 11(B).

For all Claims, CPF staff is granted permission to adjust the amount payable on any claim listed above to reflect any payments made on behalf of the Respondent and received by the Claimant or payee before the Fund receives an executed subrogation agreement and issues a check, without further review.

Total payments recommended: \$101,422.11



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

=====

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by October 1, 2020. Comments may be sent in writing to Samuel R. 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.

=====

PROPOSED

The Committee proposes amending instruction M Crim JI 13.19 and adding a new instruction, M Crim JI 13.19a, to address offenses charged under MCL 750.411a, as amended, for making a false report of a crime (M Crim JI 13.19) or a false report of a medical or other emergency (M Crim JI 13.19a). With respect to amendments to M Crim JI 13.19, deleted language from the current instruction is in strikeout and added language is underlined; M Crim JI 13.19a is entirely new.

[AMENDED] M Crim JI 13.19 False Report of a Felony Crime

(1) The defendant is charged with making a false report ~~in connection with a felony~~ of a crime to the police. To prove this charge the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, the defendant [~~reported~~ / caused (another person / identify person who made report) to make a report] that a the crime of (identify crime reported) had been committed.

(3) Second, that the report was made to [a police officer or a police agency / a 9-1-1 operator / (identify government employee or contractor) if (he / she) was authorized to receive emergency reports].

(4) Third, that ~~this~~ the report was false as to either the fact that the crime was committed or the detail[s] of the crime.

(5) Fourth, that when the defendant [~~made the report / caused the report to be made~~], the defendant knew it was false.

(6) Fifth, that the defendant ~~intended to [make a~~ made the false report / caused the false report to be made ~~intentionally concerning a crime~~.

~~(6) Fifth, that the crime reported was a felony, i.e., an offense [punishable by more than one year incarceration / declared by statute to be a felony].~~

[Use the following where an aggravating factor has been charged.]

(7) Sixth, that the report resulted in a response to address the reported crime and [name injured person] suffered physical injury as a consequence of [his / her] lawful conduct arising out of the response.

(8) Sixth, that the report resulted in a response to address the reported crime and [name injured person] suffered serious impairment of a body function as a consequence of [his / her] lawful conduct arising out of the response.

(9) Sixth, that the report resulted in a response to address the reported crime and [name deceased person] died as a consequence of [his / her] lawful conduct arising out of the response.

Use Note

~~This instruction does not cover false report of bomb threats, which is addressed separately in the statute MCL 750.411a(2).~~

**[NEW] M Crim JI 13.19a False Report of Medical or Other
Emergency**

(1) The defendant is charged with making a false report of a medical emergency or other emergency to police or fire personnel.

(2) First, the defendant [reported / caused (another person / *identify person who made report*) to make a report] that there was a medical emergency or other emergency.

(3) Second, that the report was made to [a police officer or a police agency / a firefighter or fire department / a 9-1-1 operator / a medical first responder / (*identify government employee or contractor*) if (he / she) was authorized to receive emergency reports].

(4) Third, that the report was false.

(5) Fourth, that when the defendant [made the report / caused the report to be made], [he / she] knew it was false.

(6) Fifth, that the defendant [made the false report / caused the false report to be made] intentionally.

[Use the following where an aggravating factor has been charged.]

(7) Sixth, that the report resulted in a response to address the reported emergency and [*name injured person*] suffered physical injury as a consequence of [his / her] lawful conduct arising out of the response.

(8) Sixth, that the report resulted in a response to address the reported emergency and [*name injured person*] suffered serious impairment of a body function as a consequence of [his / her] lawful conduct arising out of the response.

(9) Sixth, that the report resulted in a response to address the reported emergency and [*name deceased person*] died as a consequence of [his / her] lawful conduct arising out of the response.

**Public Policy Position
M Crim JI 13.19 and 13.19a**

Support as Drafted

Explanation

The committee unanimously supported the proposed Model Criminal Jury Instructions 13.19 and 13.19a as drafted.

Position Vote:

Voted For position: 17

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 4

Contact Persons:

Mark A. Holsomback mahols@kalcounty.com

Sofia V. Nelson snelson@sado.org



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

=====

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by November 1, 2020. Comments may be sent in writing to Samuel R. 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 .

=====

The Committee on Model Criminal Jury Instructions proposes a revision of Chapter 15 (Traffic Offenses) of the Model Criminal Jury Instructions. Repeated statutory amendments over the past four decades have left the jury instructions for this chapter a hodgepodge and inconsistent in format with other chapters, especially the driving-while-intoxicated portion of Chapter 15. The Committee offers a rewrite that organizes the instructions according to the current statutory structure for driving offenses in a more consistent and comprehensive format.

The instructions are divided into four sets in hopes of making them more convenient to compare and review. The first set of instructions are the current instructions, M Crim JI 15.1 through 15.13, involving intoxicated driving. They are followed by the proposed amended instructions for intoxicated driving, M Crim JI 15.1 through 15.12, including three new instructions: M Crim JI 15.10 (Owner or Person in Control of Vehicle Permitting Operation By Another Person While Intoxicated or Impaired), 15.11 (Person Under 21 Operating With Any Alcohol in System) and 15.12 (Violation With a Person Under the Age of 16 in the Motor Vehicle). The next set of instructions are the current instructions for other driving offenses, M Crim JI 15.14 through 15.25. Those are followed by the proposed revised jury instructions for those offenses, M Crim JI 15.13 through 15.17a.

Again, comments may be sent in writing to Samuel R. 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.

This page blank

Current intoxicated-driving jury instructions MCrimJI 15.1 through 15.13
are on following pages (pp 3-26)

M Crim JI 15.1 Operating While Intoxicated [OWI]

[The defendant is charged with / You may also consider the less serious charge of] operating a motor vehicle [*Choose from the following:*]

- (1) with an unlawful bodily alcohol level; [and/or]
- (2) while under the influence of alcohol; [or]
- (3) while under the influence of a controlled substance; [or]
- (4) while under the influence of an intoxicating substance; [or]
- (5) while under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance].¹

Use Note

¹Select the appropriate combination of alcohol/substances based on the evidence presented.

M Crim JI 15.1a Operating With High Bodily Alcohol Content [OWHBAC]

- (1) The defendant is charged with operating a motor vehicle with a high bodily alcohol content. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt.
- (2) First, that the defendant was operating a motor vehicle on or about [state date]. Operating means driving or having actual physical control of the vehicle.
- (3) Second, that the defendant was operating a vehicle on a highway or other place open to the public or generally accessible to motor vehicles [, including an area designated for parking vehicles].
- (4) Third, that the defendant operated the vehicle with a bodily alcohol content of 0.17 grams or more per [100 milliliters of blood / 210 liters of breath / 67 milliliters of urine].

Use Note

Lesser offense instructions for the offenses of operating while intoxicated and operating while visibly impaired involving the consumption of alcohol must be given. See appropriate provisions of M Crim JI 15.1, 15.2, 15.3 and 15.4.

M Crim JI 15.2 Elements Common to Operating While Intoxicated [OWI] and Operating While Visibly Impaired [OWVI]

To prove that the defendant operated while intoxicated [or while visibly impaired], the prosecutor must prove each of the following elements beyond a reasonable doubt:

- (1) First, that the defendant was operating a motor vehicle [on or about (*state date*)]. Operating means driving or having actual physical control of the vehicle.
- (2) Second, that the defendant was operating a vehicle on a highway or other place open to the public or generally accessible to motor vehicles.
- (3) Third, that the defendant was operating the vehicle in the [county / city] of _____.

M Crim JI 15.3 Specific Elements of Operating While Intoxicated [OWI]

(1) To prove that the defendant operated a motor vehicle while intoxicated, the prosecutor must also prove beyond a reasonable doubt that the defendant [*choose from the following*]:

- (a) operated the vehicle with a bodily alcohol level of 0.08 grams or more [per 100 milliliters of blood / 210 liters of breath / 67 milliliters of urine];¹
- (b) was under the influence of alcohol while operating the vehicle;
- (c) was under the influence of a controlled substance while operating the vehicle;
- (d) was under the influence of an intoxicating substance while operating the vehicle;
- (e) was under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance]² while operating the vehicle.

[*Choose (i), (ii), or (iii) as appropriate:*]

(i) [*Name substance*] is a controlled substance.

(ii) [*Name substance*] is an intoxicating substance.³

(iii) An intoxicating substance is a substance in any form, including but not limited to vapors and fumes, other than food, that was taken into the defendant's body in any manner, that is used in a manner or for a purpose for which it was not intended, and that may result in a condition of intoxication.

(2) [“Under the influence of alcohol” / “Under the influence of a controlled substance” / “Under the influence of an intoxicating substance”] means that because of [drinking alcohol / using or consuming a controlled substance / consuming or taking into (his / her) body an intoxicating substance], the defendant's ability to operate a motor vehicle in a normal manner was substantially lessened. To be under the influence, a person does not have to be falling down or hardly able to stand up. On the other hand, just because a person has [drunk alcohol or smells of alcohol / consumed or used a controlled substance / consumed or used an intoxicating substance] does not prove, by

itself, that the person is under the influence of [alcohol / a controlled substance / an intoxicating substance]. The test is whether, because of [drinking alcohol / using or consuming a controlled substance / consuming or taking into (his / her) body an intoxicating substance], the defendant's mental or physical condition was significantly affected and the defendant was no longer able to operate a vehicle in a normal manner.

Use Note

¹If the defendant is charged with OWI by virtue of bodily alcohol content only, use the appropriate bracketed material in this paragraph (1)(a) and do not use any of the following paragraphs (1)(b) through (e). If the defendant is charged with OWI by virtue of operating under the influence of alcohol, a controlled substance or an intoxicating substance only, do not use this paragraph (1)(a), but use the appropriate alternative paragraphs (1)(b)-(e) with the associated alternatives in paragraph (2). If the defendant is charged with OWI alternatively as having an unlawful bodily alcohol content or operating under the influence of alcohol or a substance, use the appropriate paragraphs based on the evidence presented.

² Select the appropriate combination of alcohol or substances based on the evidence presented.

³ Certain substances are intoxicating substances as a matter of law. The sources for determining those substances are found in MCL 257.625(25)(a)(i).

M Crim JI 15.3a Operating with Any Amount of Schedule 1 or 2 Controlled Substance

(1) The defendant is charged with the crime of operating a motor vehicle with a controlled substance in [his / her] body. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was operating a motor vehicle. “Operating” means driving or having actual physical control of the vehicle.

(3) Second, that the defendant was operating the vehicle on a highway or other place that was open to the public [or generally accessible to motor vehicles, including any designated parking area].

(4) Third, that while operating the vehicle, the defendant had any amount of [*state specific schedule 1 or 2 controlled substance alleged*] in [his / her] body.

(5) Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed or used a controlled substance.

M Crim JI 15.4 Specific Elements of Operating While Visibly Impaired [OWVI]

[The defendant is charged with / You may also consider the less serious charge of] operating a motor vehicle while visibly impaired. To prove that the defendant operated while visibly impaired, the prosecutor must prove beyond a reasonable doubt that, due to the [drinking of alcohol / use or consumption of a controlled substance / use or consumption of an intoxicating substance / use or consumption of a combination of (alcohol / a controlled substance / an intoxicating substance)¹], the defendant drove with less ability than would an ordinary careful driver. The defendant's driving ability must have been lessened to the point that it would have been noticed by another person.

Use Note

¹ Select the appropriate combination of alcohol/substances based on the evidence presented.

M Crim JI 15.5 Factors in Considering Operating While Intoxicated [OWI] and Operating While Visibly Impaired [OWVI]

As you consider the possible verdicts, you should think about the following:

[Choose appropriate paragraphs:]

(1) What was the mental and physical condition of the defendant at the time that [he / she] was operating the motor vehicle? Were the defendant's reflexes, ability to see, way of walking and talking, manner of driving, and judgment normal? If there was evidence that any of these things seemed abnormal, was this caused by [drinking alcohol / using or consuming a controlled substance / using or consuming an intoxicating substance / using or consuming a combination of (alcohol / a controlled substance / an intoxicating substance)¹]?

(2) You may also consider bodily alcohol content in reaching your verdict. In that regard, [was / were] the test(s) technically accurate? Was the equipment properly assembled and maintained and in good working order when the test(s) [was / were] given?

(3) Were the test results reliable? Was the test given correctly? Was the person who gave it properly trained? Did the circumstances under which the test was given affect the accuracy of the results?

(4) One way to determine whether a person is intoxicated is to measure how much alcohol is in [his / her] [blood / breath / urine]. There was evidence in this trial that a test was given to the defendant. The purpose of this test is to measure the amount of alcohol in a person's [blood / breath / urine].

[Choose (5)(a) or (5)(b):]

(5) If you find

(a) that there were 0.17 grams or more of alcohol [per 100 milliliters of blood / per 210 liters of breath / per 67 milliliters of urine] when [he / she] operated the vehicle, you may find that the defendant was operating a motor vehicle with a high bodily alcohol content, whether or not it affected the defendant's ability to operate a motor vehicle.

(b) that there were 0.08 grams or more of alcohol [per 100 milliliters of blood / per 210 liters of breath / per 67 milliliters of urine] when [he / she] operated the vehicle, you may find the defendant guilty of operating a motor vehicle with an unlawful bodily alcohol content, whether or not this alcohol content affected the defendant's ability to operate a motor vehicle.

(6) You may infer that the defendant's bodily alcohol content at the time of the test was the same as [his / her] bodily alcohol content at the time [he / she] operated the motor vehicle.²

(7) In considering the evidence and arriving at your verdict, you may give the test whatever weight you believe that it deserves. The results of a test are just one factor you may consider, along with all other evidence about the condition of the defendant at the time [he / she] was operating the motor vehicle.

Use Note

Read both (5)(a) and (5)(b) if operating with a high bodily alcohol content is charged. Otherwise, read only (5)(b).

¹ Where a combination of alcohol and other controlled or intoxicating substances is shown, select the appropriate combination of alcohol/substances based on the evidence presented.

² If the evidence warrants, the following can be added to this paragraph (6): "However, you have heard evidence that the defendant consumed alcohol after driving but before the [blood / breath / urine] test was administered. You may consider this evidence in determining whether to infer that the defendant's bodily alcohol content at the time of the test was the same as [his / her] bodily alcohol content at the time that [he / she] operated the motor vehicle."

M Crim JI 15.6 Possible Verdicts Where OWHBAC Is Not Charged

There are three possible verdicts:

(1) Not guilty, or

(2) Guilty of

[Choose appropriate paragraphs:]

(a) operating a motor vehicle with an unlawful bodily alcohol level;
[or]

(b) operating a motor vehicle while under the influence of alcohol; [or]

(c) operating a motor vehicle while under the influence of a controlled substance; [or]

(d) operating a motor vehicle while under the influence of an intoxicating substance; [or]

(e) operating a motor vehicle while under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance].¹

[(f) If you all agree that the defendant operated a motor vehicle either with an unlawful bodily alcohol level or while under the influence of [alcohol / a controlled substance / an intoxicating substance / a combination of (alcohol / a controlled substance / an intoxicating substance)¹], it is not necessary that you agree on which of these violations occurred. However, in order to return a verdict of guilty, you must all agree that one of those violations did occur.]²

[or]

(3) Guilty of operating a motor vehicle while visibly impaired.

Use Note

¹ Select the appropriate combination of alcohol/substances based on the evidence presented.

² Use bracketed paragraph (2)(f) only if the defendant is charged with both unlawful bodily alcohol level (UBAL) and operating while intoxicated (OWI). This paragraph specifically states that the jury need not be unanimous on which theory applies as long as all jurors agree that the defendant violated MCL 257.625 in at least one fashion. See *People v Nicolaidis*, 148 Mich App 100; 383 NW2d 620 (1985).

M Crim JI 15.6a Possible Verdicts Where OWHBAC Is Charged

There are four possible verdicts:

- (1) Not guilty, or
- (2) Guilty of operating a vehicle with a high bodily alcohol content, or
- (3) Guilty of

[Choose appropriate paragraphs:]

- (a) operating a motor vehicle with an unlawful bodily alcohol level; [or]
- (b) operating a motor vehicle while under the influence of alcohol; [or]
- (c) operating a motor vehicle while under the influence of a controlled substance; [or]
- (d) operating a motor vehicle while under the influence of an intoxicating substance; [or]
- (e) operating a motor vehicle while under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance].¹

[(f) If you all agree that the defendant operated a motor vehicle either with an unlawful bodily alcohol level or while under the influence of [alcohol / a controlled substance / an intoxicating substance / a combination of (alcohol / a controlled substance / an intoxicating substance)], it is not necessary that you agree on which of these violations occurred. However, in order to return a verdict of guilty, you must all agree that one of those violations did occur.]²

[or]

- (4) Guilty of operating a motor vehicle while visibly impaired.

Use Note

¹ Select the appropriate combination of alcohol/substances based on the evidence presented.

² Use bracketed paragraph (3)(f) only if the defendant is charged with both unlawful bodily alcohol level (UBAL) and operating while intoxicated (OWI). This paragraph specifically states that the jury need not be unanimous on which theory applies as long as all jurors agree that the defendant violated MCL 257.625 in at least one fashion. See *People v Nicolaidis*, 148 Mich App 100; 383 NW2d 620 (1985).

M Crim JI 15.7 Verdict Form Where OWHBAC Is Not Charged

Defendant: _____

POSSIBLE VERDICTS:

You may return only one verdict on this charge. Mark only (1), (2) or (3).

- (1) Not guilty
- (2) Guilty of Operating While Intoxicated
- (3) Guilty of the less serious offense of Operating While Visibly Impaired

M Crim JI 15.7a Verdict Form Where OWHBAC Is Charged

Defendant: _____

POSSIBLE VERDICTS:

You may return only one verdict on this charge. Mark only (1), (2), (3) or (4).

- (1) Not guilty
- (2) Guilty of Operating with a High Bodily Alcohol Content
- (3) Guilty of the less serious offense of Operating While Intoxicated
- (4) Guilty of the less serious offense of Operating While Visibly Impaired

M Crim JI 15.8 Verdict Form *[modified and renumbered 15.7 in 1993]*

[This instruction was modified and renumbered M Crim JI 15.7 as part of the 1993 revision of chapter 15.]

M Crim JI 15.9 Defendant's Decision to Forgo Chemical Testing

Evidence has been admitted in this case that the defendant refused to take a chemical test. If you find that the defendant did refuse, that evidence was admitted solely for the purpose of showing that a test was offered to the defendant. That evidence is not evidence of guilt.

Use Note

MCL 257.625a(9) provides: A person's refusal to submit to a chemical test as provided in subsection (6) is admissible in a criminal prosecution for a crime described in section 625c(1) only to show that a test was offered to the defendant, but not as evidence in determining the defendant's innocence or guilt. The jury shall be instructed accordingly.

M Crim JI 15.10 Felonious Driving [Use for Acts Occurring Before October 31, 2010] *[deleted]*

Note. This instruction was deleted May, 2010, due to the repeal of the felonious driving statute, MCL 257.626c, by 2008 PA 463, effective October 31, 2010. The offense previously covered by this instruction is dealt with in M Crim JI 15.17.

M Crim JI 15.11 Operating While Intoxicated [OWI] and Operating While Visibly Impaired [OWVI] Causing Death

(1) The defendant is charged with the crime of operating¹ a motor vehicle while intoxicated or while visibly impaired causing the death of another person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was operating a motor vehicle on or about [*state date*] in the [county / city] of [*state jurisdiction*]. Operating means driving or having actual physical control of the vehicle.

(3) Second, that the defendant was operating the vehicle on a highway or other place that was open to the public [or generally accessible to motor vehicles, including any designated parking area].

(4) Third, that while operating the vehicle, the defendant was intoxicated or visibly impaired.

(5) Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed [alcohol / a controlled substance / an intoxicating substance / a combination of (alcohol / a controlled substance / an intoxicating substance)²] and might be intoxicated or visibly impaired.

(6) Fifth, that the defendant's operation of the vehicle caused the victim's death. To "cause" the victim's death, the defendant's operation of the vehicle must have been a factual cause of the death, that is, but for the defendant's operation of the vehicle the death would not have occurred. In addition, operation of the vehicle must have been a proximate cause of death, that is, death or serious injury must have been a direct and natural result of operating the vehicle.

Use Note

¹ The term "operating" has been defined by the Michigan Supreme Court in *People v Wood*, 450 Mich 399, 538 NW2d 351 (1995). The court held that "[o]nce a person using a motor vehicle as a motor vehicle has put the vehicle in motion, or in a position posing a significant risk of causing a collision, such a person continues to operate it until the vehicle is returned to a position posing no such risk." □ *Id.* at 404-405. The holding in *Wood* was applied in *People v Lechleitner*, 291 Mich App

56, 804 NW2d 345 (2010), which held that the defendant was properly convicted under the operating-while-intoxicated-causing-death statute where he was intoxicated, operated his vehicle, and crashed it, with the result that it sat in the middle of the freeway at night creating a risk of injury or death to others, and a following car swerved to miss his stopped truck and killed another motorist on the side of the road.

If it is claimed that the defendant's operation of the vehicle was not a proximate cause of death because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439, 703 NW2d 774 (2005). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010).

² Select the appropriate combination of alcohol/substances based on the evidence presented.

M Crim JI 15.11a Operating with Any Amount of Schedule 1 Controlled Substance or Cocaine Causing Death

(1) The defendant is charged with the crime of operating a motor vehicle with a controlled substance in [his / her] body causing the death of another person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was operating a motor vehicle on or about [*state date*] in the [county / city] of [*state jurisdiction*]. Operating means driving or having actual physical control of the vehicle.

(3) Second, that the defendant was operating the vehicle on a highway or other place that was open to the public [or generally accessible to motor vehicles, including any designated parking area].

(4) Third, that while operating the vehicle, the defendant had any amount of [*state specific schedule 1 controlled substance or controlled substance in MCL 333.7214(a)(iv) alleged by the prosecutor*] in [his / her] body.

(5) Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed or used a controlled substance.

(6) Fifth, that the defendant's operation of the vehicle caused¹ the victim's death. To "cause" the victim's death, the defendant's operation of the vehicle must have been a factual cause of the death, that is, but for the defendant's operation of the vehicle the death would not have occurred. In addition, operation of the vehicle must have been a proximate cause of death, that is, death or serious injury must have been a direct and natural result of operating the vehicle.

Use Note

This instruction is intended to state the elements of the offense found at MCL 257.625(4) and (8).

1. If it is claimed that the defendant's operation of the vehicle was not a proximate cause of death because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439, 703 NW2d 774 (2005). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d

822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010).

M Crim JI 15.12 Operating While Intoxicated [OWI] and Operating While Visibly Impaired [OWVI] Causing Serious Impairment of a Body Function

(1) The defendant is charged with the crime of operating a motor vehicle while intoxicated or while visibly impaired causing serious impairment of a body function to another person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was operating a motor vehicle on or about [*state date*] in the [county / city] of [*state jurisdiction*]. Operating means driving or having actual physical control of the vehicle.

(3) Second, that the defendant was operating the vehicle on a highway or other place that was open to the public [or generally accessible to motor vehicles, including any designated parking area].

(4) Third, that while operating the vehicle, the defendant was intoxicated or visibly impaired.

(5) Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed [alcohol / a controlled substance / an intoxicating substance / a combination of (alcohol / a controlled substance / an intoxicating substance)¹] and might be intoxicated or visibly impaired.

(6) Fifth, that the defendant's operation of the vehicle caused² a serious impairment of a body function³ to [*name victim*]. To "cause" such injury, the defendant's operation of the vehicle must have been a factual cause of the injury, that is, but for the defendant's operation of the vehicle the injury would not have occurred. In addition, operation of the vehicle must have been a proximate cause of the injury, that is, the injury must have been a direct and natural result of operating the vehicle.

Use Note

¹ Select the appropriate combination of alcohol/substances based on the evidence presented.

² If it is claimed that the defendant's operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439, 703 NW2d

774 (2005) (a “causes death” case under MCL 257.625(4)). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010).

³ The statute, MCL 257.58c, provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

- (a) Loss of a limb or loss of use of a limb.
- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.
- (j) Loss of an organ.

M Crim JI 15.12a Operating With Any Amount of Schedule 1 Controlled Substance or Cocaine Causing Serious Impairment of a Body Function

(1) The defendant is charged with the crime of operating a motor vehicle with any amount of a controlled substance causing serious impairment of a body function to another person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was operating a motor vehicle on or about [*state date*] in the [county / city] of [*state jurisdiction*]. Operating means driving or having actual physical control of the vehicle.

(3) Second, that the defendant was operating the vehicle on a highway or other place that was open to the public [or generally accessible to motor vehicles, including any designated parking area].

(4) Third, that while operating the vehicle, the defendant had any amount of [*state specific schedule 1 controlled substance or controlled substance in MCL 333.7214(a)(iv) alleged by the prosecutor*] in [his / her] body.

(5) Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed or used a controlled substance.

(6) Fifth, that the defendant's operation of the vehicle caused¹ a serious impairment of a body function² to [*name victim*]. To "cause" such injury, the defendant's operation of the vehicle must have been a factual cause of the injury, that is, but for the defendant's operation of the vehicle the injury would not have occurred. In addition, operation of the vehicle must have been a proximate cause of the injury, that is, the injury must have been a direct and natural result of operating the vehicle.

Use Note

This instruction is intended to state the elements of the offense found at MCL 257.625(5) and (8).

1. If it is claimed that the defendant's operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439, 703 NW2d 774 (2005) (a "causes death" case under MCL 257.625(4)). *Schaefer* was modified

in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010).

2. The statute, MCL 257.58c, provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

- (a) Loss of a limb or loss of use of a limb.
- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.
- (j) Loss of an organ

M Crim JI 15.13 Operating a Commercial Vehicle with an Unlawful Bodily Alcohol Content [UBAL]

(1) The defendant is charged with the crime of operating a commercial motor vehicle with an unlawful bodily alcohol level. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was operating a commercial motor vehicle* on or about [*state date*] in the [county / city] of [*state jurisdiction*]. Operating means driving or having actual physical control of the vehicle.

(3) Second, that the defendant had a bodily alcohol content of 0.04 grams or more but less than 0.08 grams per 100 milliliters of blood [per 210 liters of breath or 67 milliliters of urine] when operating the commercial motor vehicle.

Use Note

*For the definition of *commercial motor vehicle*, see MCL 257.7a.

This page blank

Proposed intoxicated-driving jury instructions, MCrimJI 15.1 through 15.12,
begin on following page (pp 28-63)

M Crim JI 15.1 Operating While Intoxicated; High Bodily Alcohol Content [OWIHBAC]

(1) The defendant is charged with the crime of operating a motor vehicle with a high bodily alcohol content. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle.¹ To operate means to drive or have actual physical control of the vehicle.

(3) Second, that the defendant operated the vehicle on a highway or other place open to the public or generally accessible to motor vehicles [including any designated parking area].²

(4) Third, that the defendant operated the vehicle with a bodily alcohol level of 0.17 grams or more per [per 100 milliliters of blood / 210 liters of breath / 67 milliliters of urine].

Use Note

Lesser offenses of other forms of OWI and/or OWVI may be given. Use only the provisions for alcohol intoxication when instructing on the lesser offense(s) for this charge.

1. The term “motor vehicle” is defined in MCL 257.33.

2. A private driveway is “generally accessible to motor vehicles” and within the purview of the statute. *People v Rea*, 500 Mich 422; 902 NW2d 362 (2017).

M Crim JI 15.1a Operating While Intoxicated; High Bodily Alcohol Content Causing Death or Serious Impairment of a Body Function [OWIHBAC: Death or Serious Impairment]

(1) The defendant is charged with the crime of operating a motor vehicle while intoxicated with a high bodily alcohol content causing [death / serious impairment of a body function to another person].¹ To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle.² To *operate* means to drive or have actual physical control of the vehicle.

(3) Second, that the defendant operated the vehicle on a highway or other place open to the public or generally accessible to motor vehicles [including any designated parking area].³

(4) Third, that the defendant operated the vehicle with a bodily alcohol level of 0.17 grams or more per [per 100 milliliters of blood / 210 liters of breath / 67 milliliters of urine].

(5) Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed alcohol.

(6) Fifth, that the defendant's operation of the vehicle caused⁴ [the death of (*name decedent*) / a serious impairment of a body function⁵ to (*name injured person*)]. To cause [the death / such injury], the defendant's operation of the vehicle must have been a factual cause of the [death / injury], that is, but for the defendant's operation of the vehicle, the [death / injury] would not have occurred. In addition, [death or serious injury / the injury] must have been a direct and natural result of operating the vehicle.

Use Notes

1. Lesser offenses of OWI and/or OWVI may be given. Use only the provisions for alcohol intoxication when instructing on the lesser offense(s).

2. The term *motor vehicle* is defined in MCL 257.33.

3. A private driveway is “generally accessible to motor vehicles” and within the purview of the statute. *People v Rea*, 500 Mich 422; 902 NW2d 362 (2017).

4 If it is claimed that the defendant’s operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439; 703 NW2d 774 (2005) (a “causes death” case under MCL 257.625(4)). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316; 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184; 783 NW2d 67 (2010).

5. MCL 257.58c provides that serious impairment of a body function includes but is not limited to one or more of the following:

- (a) Loss of a limb or loss of use of a limb.
- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.
- (j) Loss of an organ.

M Crim JI 15.2 Operating While Intoxicated [OWI]

(1) [The defendant is charged with the crime of operating a motor vehicle while intoxicated / You may also consider a less serious charge of] operating a motor vehicle while intoxicated]:

[Choose from the following:]

- (a) with an unlawful bodily alcohol level; [and/or]
- (b) while under the influence of alcohol; [or]
- (c) while under the influence of a controlled substance; [or]
- (d) while under the influence of an intoxicating substance; [or]
- (e) while under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance].

To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle.¹ To *operate* means to drive or have actual physical control of the vehicle.

(3) Second, that the defendant operated the vehicle on a highway or other place open to the public or generally accessible to motor vehicles [including any designated parking area].²

(4) Third, that the defendant was intoxicated. That is, the defendant [choose from the following]:

- (a) operated the vehicle with a bodily alcohol level of 0.08 grams or more per [100 milliliters of blood / 210 liters of breath / 67 milliliters of urine];
- (b) operated the vehicle while under the influence of alcohol;
- (c) operated the vehicle while under the influence of a controlled substance;
- (d) operated the vehicle while under the influence of an intoxicating substance;
- (e) operated the vehicle while under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance].

[Choose from the following alternatives where the charge is “under the influence”:]

(5) *Under the influence* of [alcohol / a controlled substance / an intoxicating substance] means that because of [drinking alcohol / using or consuming a controlled substance / consuming or taking into (his / her) body an intoxicating substance], the defendant’s ability to operate a motor vehicle in a normal manner was substantially lessened. To be under the influence, a person does not have to be falling down or hardly able to stand up. On the other hand, just because a person has [drunk alcohol or smells of alcohol / consumed or used a controlled substance / consumed or used an intoxicating substance] does not prove, by itself, that the person is under the influence of [alcohol / a controlled substance / an intoxicating substance]. The test is whether, because of [drinking alcohol / using or consuming a controlled substance / consuming or taking into (his / her) body an intoxicating substance], the defendant’s mental or physical condition was significantly affected and the defendant was no longer able to operate a vehicle in a normal manner.

(6) [Where the charge is “under the influence” of a substance other than alcohol choose (a), (b), or (c) as appropriate:]

(a) [Name substance] is a controlled substance.

(b) [Name substance] is an intoxicating substance.

(c) An *intoxicating substance* is a substance in any form, including but not limited to vapors and fumes, other than food, that was taken into the defendant’s body in any manner, that is used in a manner or for a purpose for which it was not intended, and that may result in a condition of intoxication.

Use Note

The lesser offense of OWVI may be given.

1. The term *motor vehicle* is defined in MCL 257.33.

2. A private driveway is “generally accessible to motor vehicles” and within the purview of the statute. *People v Rea*, 500 Mich 422; 902 NW2d 362 (2017).

M Crim JI 15.2a Operating While Intoxicated Causing Death or Serious Impairment of a Body Function] [OWI: Death or Serious Impairment]

(1) The defendant is charged with the crime of operating a motor vehicle while intoxicated causing [death / serious impairment of a body function to another person].¹ To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle.² To *operate* means to drive or have actual physical control of the vehicle.

(3) Second, that the defendant operated the vehicle on a highway or other place open to the public or generally accessible to motor vehicles [including any designated parking area].³

(4) Third, that the defendant was intoxicated. That is, the defendant [*choose from the following*]:

(a) operated the vehicle with a bodily alcohol level of 0.08 grams or more per [100 milliliters of blood / 210 liters of breath / 67 milliliters of urine];

(b) operated the vehicle while under the influence of alcohol;

(c) operated the vehicle while under the influence of a controlled substance;

(d) operated the vehicle while under the influence of an intoxicating substance;

(e) operated the vehicle while under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance].

[*Choose from the following alternatives where the charge is “under the influence”:*]

(5) *Under the influence* of [alcohol / a controlled substance / an intoxicating substance] means that because of [drinking alcohol / using or consuming a controlled substance / consuming or taking into (his / her) body an intoxicating substance], the defendant’s ability to operate a motor vehicle in a normal manner was substantially lessened. To be under the influence, a person does

not have to be falling down or hardly able to stand up. On the other hand, just because a person has [drunk alcohol or smells of alcohol / consumed or used a controlled substance / consumed or used an intoxicating substance] does not prove, by itself, that the person is under the influence of [alcohol / a controlled substance / an intoxicating substance]. The test is whether, because of [drinking alcohol / using or consuming a controlled substance / consuming or taking into (his / her) body an intoxicating substance], the defendant's mental or physical condition was significantly affected and the defendant was no longer able to operate a vehicle in a normal manner.

(6) [Where the charge is "under the influence" of a substance other than alcohol choose (a), (b), or (c) as appropriate:]

(a) [Name substance] is a controlled substance.

(b) [Name substance] is an intoxicating substance.

(c) An *intoxicating substance* is a substance in any form, including but not limited to vapors and fumes, other than food, that was taken into the defendant's body in any manner, that is used in a manner or for a purpose for which it was not intended, and that may result in a condition of intoxication.

(7) Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed [alcohol / a controlled substance / an intoxicating substance / a combination of (alcohol / a controlled substance / an intoxicating substance)]⁴ and might be intoxicated.

(8) Fifth, that the defendant's operation of the vehicle caused⁵ [the death of (*name decedent*) / a serious impairment of a body function⁶ to (*name injured person*)]. To cause [the death / such injury], the defendant's operation of the vehicle must have been a factual cause of the [death / injury], that is, but for the defendant's operation of the vehicle, the [death / injury] would not have occurred. In addition, [death or serious injury / the injury] must have been a direct and natural result of operating the vehicle.

Use Notes

1. Lesser offense(s) of OWI and OWVI may be given.

2. The term *motor vehicle* is defined in MCL 257.33.
3. A private driveway is “generally accessible to motor vehicles” and within the purview of the statute. *People v Rea*, 500 Mich 422; 902 NW2d 362 (2017).
4. Select the appropriate combination of alcohol/substances based on the evidence presented.
5. If it is claimed that the defendant’s operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439; 703 NW2d 774 (2005) (a “causes death” case under MCL 257.625(4)). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316; 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184; 783 NW2d 67 (2010).
6. MCL 257.58c provides that serious impairment of a body function includes but is not limited to one or more of the following:
 - (a) Loss of a limb or loss of use of a limb.
 - (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
 - (c) Loss of an eye or ear or loss of use of an eye or ear.
 - (d) Loss or substantial impairment of a bodily function.
 - (e) Serious visible disfigurement.
 - (f) A comatose state that lasts for more than 3 days.
 - (g) Measurable brain or mental impairment.
 - (h) A skull fracture or other serious bone fracture.
 - (i) Subdural hemorrhage or subdural hematoma.
 - (j) Loss of an organ.

M Crim JI 15.3 Operating While Visibly Impaired [OWVI]

(1) [The defendant is charged with the crime of / You may also consider the less serious charge of] operating a motor vehicle while visibly impaired. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle.¹ To *operate* means to drive or have actual physical control of the vehicle.

(3) Second, that the defendant operated the vehicle on a highway or other place open to the public or generally accessible to motor vehicles [including any designated parking area].²

(4) Third, that, due to the [drinking of alcohol / use or consumption of a controlled substance / use or consumption of an intoxicating substance / use or consumption of a combination of (alcohol / a controlled substance / an intoxicating substance)]³, the defendant drove with less ability than would an ordinary careful driver. The defendant's ability to drive must have been lessened to the point that it would have been noticed by another person. It is the defendant's ability to drive that must have been visibly lessened, not the defendant's manner of driving, though evidence of the defendant's manner of driving may be considered as evidence of the defendant's ability to drive.

Use Note

1. The term *motor vehicle* is defined in MCL 257.33.
2. A private driveway is "generally accessible to motor vehicles" and within the purview of the statute. *People v Rea*, 500 Mich 422; 902 NW2d 362 (2017).
3. Select the appropriate combination of alcohol/substances based on the evidence presented.

M Crim JI 15.3a Operating While Visibly Impaired Causing Death or Serious Impairment of a Body Function [OWVI: Death or Serious Impairment]

(1) The defendant is charged with the crime of operating a motor vehicle while visibly impaired causing [death / serious impairment of a body function to another person]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle.¹ To *operate* means to drive or have actual physical control of the vehicle.

(3) Second, that the defendant operated the vehicle on a highway or other place open to the public or generally accessible to motor vehicles [including any designated parking area].²

(4) Third, that, due to the [drinking of alcohol / use or consumption of a controlled substance / use or consumption of an intoxicating substance / use or consumption of a combination of (alcohol / a controlled substance / an intoxicating substance)]³, the defendant drove with less ability than would an ordinary careful driver. The defendant's ability to drive must have been lessened to the point that it would have been noticed by another person. It is the defendant's ability to drive that must have been visibly lessened, not the defendant's manner of driving, though evidence of the defendant's manner of driving may be considered as evidence of the defendant's ability to drive.

(5) Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed [alcohol / a controlled substance / an intoxicating substance / a combination of (alcohol / a controlled substance / an intoxicating substance)]³ and might be visibly impaired.

(6) Fifth, that the defendant's operation of the vehicle caused⁴ [the death of (*name decedent*) / a serious impairment of a body function⁵ to (*name injured person*)]. To cause [the death / such injury], the defendant's operation of the vehicle must have been a factual cause of the [death / injury], that is, but for the defendant's operation of the vehicle, the [death / injury] would not have occurred. In addition, [death or serious injury / the injury] must have been a direct and natural result of operating the vehicle.

Use Notes

1. The term *motor vehicle* is defined in MCL 257.33.
2. A private driveway is “generally accessible to motor vehicles” and within the purview of the statute. *People v Rea*, 500 Mich 422; 902 NW2d 362 (2017).
3. Select the appropriate combination of alcohol/substances based on the evidence presented.
4. If it is claimed that the defendant’s operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439; 703 NW2d 774 (2005) (a “causes death” case under MCL 257.625(4)). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316; 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184; 783 NW2d 67 (2010).
5. MCL 257.58c provides that serious impairment of a body function includes but is not limited to one or more of the following:
 - (a) Loss of a limb or loss of use of a limb.
 - (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
 - (c) Loss of an eye or ear or loss of use of an eye or ear.
 - (d) Loss or substantial impairment of a bodily function.
 - (e) Serious visible disfigurement.
 - (f) A comatose state that lasts for more than 3 days.
 - (g) Measurable brain or mental impairment.
 - (h) A skull fracture or other serious bone fracture.
 - (i) Subdural hemorrhage or subdural hematoma.
 - (j) Loss of an organ.

M Crim JI 15.4 Operating with Any Amount of Schedule 1 Controlled Substance or Cocaine [OWACS]

(1) The defendant is charged with the crime of operating a motor vehicle with any amount of a controlled substance in [his / her] body. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle.¹ To *operate* means to drive or have actual physical control of the vehicle.

(3) Second, that the defendant operated the vehicle on a highway or other place open to the public or generally accessible to motor vehicles [including any designated parking area].²

(4) Third, that while operating the vehicle, the defendant had any amount of [*state specific schedule 1 controlled substance or controlled substance in MCL 333.7214(a)(iv) alleged by the prosecutor*] in [his / her] body.

Use Note

1. The term *motor vehicle* is defined in MCL 257.33.

2. A private driveway is “generally accessible to motor vehicles” and within the purview of the statute. *People v Rea*, 500 Mich 422; 902 NW2d 362 (2017).

M Crim JI 15.4a Operating with Any Amount of Schedule 1 Controlled Substance or Cocaine Causing Death or Serious Impairment of a Body Function [OWACS: Death or Serious Impairment]

(1) The defendant is charged with the crime of operating a motor vehicle with a controlled substance in [his / her] body causing [death / serious impairment of a body function to another person]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle.¹ To *operate* means to drive or have actual physical control of the vehicle.

(3) Second, that the defendant operated the vehicle on a highway or other place open to the public or generally accessible to motor vehicles [including any designated parking area].²

(4) Third, that while operating the vehicle, the defendant had any amount of [*state specific schedule 1 controlled substance or controlled substance in MCL 333.7214(a)(iv) alleged by the prosecutor*] in [his / her] body.

(5) Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed or used a controlled substance.

(6) Fifth, that the defendant's operation of the vehicle caused³ [the death of (*name decedent*) / a serious impairment of a body function⁴ to (*name injured person*)]. To cause [the death / such injury], the defendant's operation of the vehicle must have been a factual cause of the [death / injury], that is, but for the defendant's operation of the vehicle, the [death / injury] would not have occurred. In addition, [death or serious injury / the injury] must have been a direct and natural result of operating the vehicle.

Use Notes

1. The term *motor vehicle* is defined in MCL 257.33.

2. A private driveway is “generally accessible to motor vehicles” and within the purview of the statute. *People v Rea*, 500 Mich 422; 902 NW2d 362 (2017).

3. If it is claimed that the defendant’s operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439; 703 NW2d 774 (2005) (a “causes death” case under MCL 257.625(4)). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316; 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184; 783 NW2d 67 (2010).

4. The statute, MCL 257.58c, provides that serious impairment of a body function includes but is not limited to one or more of the following:

- (a) Loss of a limb or loss of use of a limb.
- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.
- (j) Loss of an organ.

**M Crim JI 15.5 Factors in Considering Operating While Intoxicated
[OWI] and Operating While Visibly Impaired [OWVI]**

As you consider the possible verdicts, you should think about the following:

[Choose appropriate paragraphs:]

(1) What was the mental and physical condition of the defendant at the time that [he / she] operated the motor vehicle? Were the defendant's reflexes, ability to see, way of walking and talking, manner of driving, and judgment normal? If there was evidence that any of these things seemed abnormal, was this caused by [drinking alcohol / using or consuming a controlled substance / using or consuming an intoxicating substance / using or consuming a combination of (alcohol / a controlled substance / an intoxicating substance)¹]?

(2) You may also consider body alcohol content in reaching your verdict. In that regard, [was / were] the test(s) technically accurate? Was the equipment properly assembled and maintained and in good working order when the test(s) [was / were] given?

(3) Were the test results reliable? Was the test given correctly? Was the person who gave it properly trained? Did the circumstances under which the test was given affect the accuracy of the results?

(4) One way to determine whether a person is intoxicated is to measure how much alcohol is in [his / her] [blood / breath / urine]. There was evidence in this trial that a test was given to the defendant. The purpose of this test is to measure the amount of alcohol in a person's [blood / breath / urine].

*[Choose (5)(a) and/or (5)(b):]*²

(5) If you find

(a) that there were 0.17 grams or more of alcohol [per 100 milliliters of blood / per 210 liters of breath / per 67 milliliters of urine] when [he / she] operated the vehicle, you may find the defendant operated a motor vehicle while intoxicated with a high bodily alcohol content, whether or not it affected [his / her] ability to operate a motor vehicle.

(b) that there were 0.08 grams or more of alcohol [per 100 milliliters of the defendant's blood / per 210 liters of the defendant's breath / per 67 milliliters of the defendant's urine] when [he / she] operated the vehicle, you may find the defendant operated a motor vehicle with an unlawful bodily alcohol content, whether or not this alcohol content affected [his / her] ability to operate a motor vehicle.

(6) You may infer that the defendant's bodily alcohol content at the time of the test was the same as [his / her] bodily alcohol content at the time [he / she] operated the motor vehicle.³

(7) In considering the evidence and arriving at your verdict, you may give the test whatever weight you believe that it deserves. The results of a test are just one factor you may consider, along with all other evidence about the condition of the defendant at the time [he / she] operated the motor vehicle.

Use Notes

1. Where a combination of alcohol and other controlled or intoxicating substances is shown, select the appropriate combination of alcohol/substances based on the evidence presented.

2. Read both (5)(a) and (5)(b) if operating with a high body alcohol content is charged, and operating while intoxicated is being considered by the truer of fact as a lesser offense. Otherwise, read (5)(a) or (5)(b) according to the charge and the evidence.

3. If the evidence warrants, the following can be added to this paragraph (6): [However, you have heard evidence that the defendant consumed alcohol after driving but before the [blood / breath / urine] test was administered. You may consider this evidence in determining whether to infer that the defendant's body alcohol content at the time of the test was the same as [his / her] body alcohol content at the time that [he / she] operated the motor vehicle.]

M Crim JI 15.6 Possible Verdicts [OWIHBAC]

There are four possible verdicts:

- (1) not guilty, or
- (2) guilty of operating a motor vehicle with a high bodily alcohol content, or
- (3) guilty of operating a motor vehicle while

[Select appropriate possibilities:]

- (a) under the influence of alcohol;
- (b) under the influence of a controlled substance;
- (c) under the influence of an intoxicating substance;
- (d) under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance];
- (e) with an unlawful bodily alcohol level.

If you all agree that the defendant either operated a motor vehicle with an unlawful bodily alcohol level or while under the influence of [alcohol / a controlled substance / an intoxicating substance / a combination of (alcohol / a controlled substance / an intoxicating substance)], it is not necessary that you agree on which of these violations occurred. However, in order to return a verdict of guilty, you must all agree that one of those violations did occur.

- (4) guilty of operating a motor vehicle while visibly impaired.

M Crim JI 15.6a Possible Verdicts [for OWI]

There are three possible verdicts:

- (1) not guilty, or
- (2) guilty of operating a motor vehicle while

[Select appropriate possibilities:]

- (a) under the influence of alcohol;
- (b) under the influence of a controlled substance;
- (c) under the influence of an intoxicating substance;
- (d) under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance];
- (e) with an unlawful bodily alcohol level.

If you all agree that the defendant either operated a motor vehicle with an unlawful bodily alcohol level or while under the influence of [alcohol / a controlled substance / an intoxicating substance / a combination of (alcohol / a controlled substance / an intoxicating substance)], it is not necessary that you agree on which of these violations occurred. However, in order to return a verdict of guilty, you must all agree that one of those violations did occur.

or

- (3) guilty of operating a motor vehicle while visibly impaired.

M Crim JI 15.6b Possible Verdicts [for OWVI]

There are two possible verdicts:

- (1) not guilty, or
- (2) guilty of operating a motor vehicle while visibly impaired.

M Crim JI 15.6c Possible Verdicts [for OWACS]

There are two possible verdicts:

- (1) not guilty, or
- (2) guilty of operating a motor vehicle with any amount of [*state specific schedule 1 or 2 controlled substance alleged*].

M Crim JI 15.6d Possible Verdicts [OWIHBAC/OWI/OWVI/ Causing Death or Serious Impairment]

There are five possible verdicts:

- (1) not guilty, or
- (2) guilty of causing [death / serious impairment of a body function] while operating a motor vehicle with a high bodily alcohol content,
while

[Select any appropriate possibilities:]

- (a) under the influence of alcohol;
- (b) under the influence of a controlled substance;
- (c) under the influence of an intoxicating substance;
- (d) under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance];
- (e) with an unlawful bodily alcohol content.

or while impaired.

- (3) guilty of operating a motor vehicle with a high bodily alcohol content not causing [death / serious impairment of a body function], or
- (4) guilty of operating a motor vehicle while

[Select appropriate possibilities:]

- (a) under the influence of alcohol;
- (b) under the influence of a controlled substance;
- (c) under the influence of an intoxicating substance;
- (d) under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance];
- (e) with an unlawful bodily alcohol level;
but not causing [death / serious impairment of a body function]

If you all agree that the defendant either operated a motor vehicle with an unlawful bodily alcohol level or while under the influence of [alcohol / a controlled substance / an intoxicating substance / a combination of (alcohol / a controlled substance / an intoxicating substance)], it is not necessary that you agree on which of these violations occurred. However, in order to return a verdict of guilty, you must all agree that one of those violations did occur. Or,

(5) guilty of operating a motor vehicle while visibly impaired, but not causing [death / serious impairment of a body function].

M Crim JI 15.6e Possible Verdicts [OWACS Causing Death or Serious Impairment]

There are three possible verdicts:

- (1) not guilty, or
- (2) guilty of causing [death / serious impairment of a body function] while operating a motor vehicle with any amount of [*state specific schedule 1 or 2 controlled substance alleged*].
- (3) guilty of operating a motor vehicle with any amount of [*state specific schedule 1 or 2 controlled substance alleged*] not causing [death / serious impairment of a body function].

M Crim JI 15.7 Verdict Form [OWIHBAC]

Check only one of the following verdicts:

- (1) Not Guilty
- (2) Guilty of Operating with a High Bodily Alcohol Content
- (3) Guilty of the less serious offense of Operating While Intoxicated
- (4) Guilty of the less serious offense of Operating While Visibly Impaired

M Crim JI 15.7a Verdict Form [OWI]

Choose only one of the following verdicts:

- (1) Not Guilty
- (2) Guilty of Operating While Intoxicated
- (3) Guilty of the less serious offense of Operating While Visibly Impaired

M Crim JI 15.7b Verdict Form [OWVI]

Choose only one of the following verdicts:

- (1) Not Guilty
- (2) Guilty of Operating While Visibly Impaired

M Crim JI 15.7c Verdict Form [OWACS]

Check only one of the following verdicts:

- (1) Not Guilty
- (2) Guilty of Operating with Any Amount of a Controlled Substance

M Crim JI 15.7d Verdict Form [OWIHBAC/OWI/OWVI causing death/serious impairment]

Check only one of the following verdicts:

- (1) Not Guilty
- (2) Guilty of Operating with a High Bodily Alcohol Content, Operating While Intoxicated, or Operating While Visibly Impaired causing [death / serious impairment of a body function]
- (2) Guilty of the less serious offense of Operating with a High Bodily Alcohol Content, but not causing [death / serious impairment of a body function]
- (3) Guilty of the less serious offense of Operating While Intoxicated, but not causing [death / serious impairment of a body function]
- (4) Guilty of the less serious offense of Operating While Visibly Impaired, but not causing [death / serious impairment of a body function]

M Crim JI 15.7e Verdict Form [OWACS causing death/serious impairment]

Check only one of the following verdicts:

- (1) Not Guilty
- (2) Guilty of Operating with Any Amount of a Controlled Substance causing [death / serious impairment of a body function]
- (3) Guilty of the less serious offense of Operating with Any Amount of a Controlled Substance, but not causing [death / serious impairment of a body function]

M Crim JI 15.8 Defendant's Decision to Forgo Chemical Testing

Evidence has been admitted in this case that the defendant refused to take a chemical test. If you find that the defendant did refuse, that evidence was admitted solely for the purpose of showing that a test was offered to the defendant. That evidence is not evidence of guilt.

Use Note

MCL 257.625a(9) provides: A person's refusal to submit to a chemical test as provided in subsection (6) is admissible in a criminal prosecution for a crime described in section 625c(1) only to show that a test was offered to the defendant, but not as evidence in determining the defendant's innocence or guilt. The jury must be instructed accordingly.

M Crim JI 15.9 Operating a Commercial Vehicle with an Unlawful Bodily Alcohol Content [UBAL]

(1) The defendant is charged with the crime of operating a commercial motor vehicle with an unlawful bodily alcohol level. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a commercial motor vehicle.¹ To *operate* means to drive or have actual physical control of the vehicle.

(3) Second, that the defendant had a bodily alcohol content of 0.04 grams or more but less than 0.08 grams per 100 milliliters of blood [per 210 liters of breath or 67 milliliters of urine] when [he / she] operated the commercial motor vehicle.

Use Note

1. *Commercial motor vehicle* is defined in MCL 257.7a.

**[NEW] M Crim JI 15.10 Owner or Person in Control of Vehicle
Permitting Operation by Another Person
While Intoxicated or Impaired**

(1) The defendant is charged with the crime of knowingly authorizing or permitting a motor vehicle to be operated by another while that person was intoxicated or impaired. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was the owner of a motor vehicle,¹ or was in charge of or in control of the vehicle.

(2) Second, that the defendant knowingly authorized or permitted the motor vehicle to be operated by [*identify driver*]. To operate means to drive or have actual physical control of the vehicle.

(3) Third, that [*identify driver*] operated the vehicle on a highway or other place open to the public or generally accessible to motor vehicles [including any designated parking area].²

(4) Fourth, that [*identify driver*]:

[*Choose from the following alternatives:*]

(a) operated the vehicle with a bodily alcohol level of 0.08 grams or more [per 100 milliliters of blood / 210 liters of breath / 67 milliliters of urine];

(b) operated the vehicle while under the influence of alcohol;

(c) operated the vehicle while under the influence of a controlled substance;

(d) operated the vehicle while under the influence of an intoxicating substance;

(e) operated the vehicle while under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance]

[Choose from the following alternatives where the charge is “under the influence”:]

(5) *Under the influence* of [alcohol / a controlled substance / an intoxicating substance] means that because of [drinking alcohol / using or consuming a controlled substance / consuming or taking into (his / her) body an intoxicating substance], the defendant’s ability to operate a motor vehicle in a normal manner was substantially lessened. To be under the influence, a person does not have to be falling down or hardly able to stand up. On the other hand, just because a person has [drunk alcohol or smells of alcohol / consumed or used a controlled substance / consumed or used an intoxicating substance] does not prove, by itself, that the person is under the influence of [alcohol / a controlled substance / an intoxicating substance]. The test is whether, because of [drinking alcohol / using or consuming a controlled substance / consuming or taking into (his / her) body an intoxicating substance], the defendant’s mental or physical condition was significantly affected and the defendant was no longer able to operate a vehicle in a normal manner.

(6) [Where the charge is “under the influence” of a substance other than alcohol choose (a), (b), or (c) as appropriate:]

(a) [Name substance] is a controlled substance.

(b) [Name substance] is an intoxicating substance.

(c) An *intoxicating substance* is a substance in any form, including but not limited to vapors and fumes, other than food, that was taken into the defendant’s body in any manner, that is used in a manner or for a purpose for which it was not intended, and that may result in a condition of intoxication.

Use Note

1. The term *motor vehicle* is defined in MCL 257.33.
2. A private driveway is “generally accessible to motor vehicles” and within the purview of the statute. *People v Rea*, 500 Mich 422; 902 NW2d 362 (2017).

[NEW] M Crim JI 15.11 Person Under 21 Operating with Any Alcohol in System

(1) The defendant is charged with the crime of operating a motor vehicle while less than 21 years of age with any bodily alcohol content. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle.¹ To *operate* means to drive or have actual physical control of the vehicle.

(3) Second, that the defendant operated the vehicle on a highway or other place open to the public or generally accessible to motor vehicles [including any designated parking area].²

(3) Third, that at the time the defendant operated the motor vehicle [he / she] was under the age of 21.

(4) Fourth, that at the time the defendant operated the motor vehicle, [he / she]

[Choose from the following:]

(a) had a bodily alcohol content of 0.02 grams or more [per 100 milliliters of blood / per 210 liters of breath / per 67 milliliters of urine].

(b) had any presence of alcohol within their body resulting from the consumption of alcoholic liquor.

Where the alternative chosen is (b), where appropriate under the evidence:

[(5) Fifth, that the presence of alcohol in the defendant's body was not the result of the consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.]

Use Note

1. The term *motor vehicle* is defined in MCL 257.33.
2. A private driveway is “generally accessible to motor vehicles” and within the purview of the statute. *People v Rea*, 500 Mich 422; 902 NW2d 362 (2017).

**[NEW] M CRIM JI 15.12 Violation with a Person Under the Age of 16
in the Motor Vehicle**

[MCL 257.625(7)(a) and (b) prohibit operating a motor vehicle in violation of paragraphs (1), (3), (4), (5), (6), or (8) when the vehicle is occupied by someone who is under the age of 16, with different penalties than the underlying violation. In this circumstance, instruct on the underlying violation, and add at the end:

[Number of element], that at the time that the defendant operated the motor vehicle, a child under the age of 16 was present in the vehicle.

This page left blank

Current jury instructions for non-intoxication driving offenses, MCrimJI 15.14 through 15.25, begin on the following page (pp 65-79).

M Crim JI 15.14 Leaving the Scene of an Accident

The defendant is charged with failing to stop after an accident involving [serious impairment of a body function or death / personal injury / property damage].¹ To prove this charge the prosecutor must prove each of the following elements beyond a reasonable doubt:

- (1) First, the defendant was the driver of a motor vehicle.
- (2) Second, the motor vehicle driven by the defendant was involved in an accident.
- (3) Third, the defendant knew or had reason to know that [he / she] had been involved in an accident on a public road or any property open to travel by the public.
- (4) Fourth, that the accident resulted in

[*Select (a), (b), or (c) as appropriate.*]¹

- (a) serious impairment of a body function or death.²
 - (b) personal injury to any individual.
 - (c) damage to a vehicle driven or attended by another.
- (5) Fifth, that the defendant failed to immediately stop [his / her] motor vehicle at the scene of the accident in order to render assistance and give information required by law, or to immediately report the accident to the nearest or most convenient police agency or officer if there was a reasonable and honest belief that remaining at the scene would result in further harm.³ The requirement that the driver “immediately stop” means that the driver must stop and park the car as soon as practicable and reasonable under the circumstances and without obstructing traffic more than is necessary.

Use Note

¹ Select the appropriate phrase to describe the violation alleged: serious impairment of a body function or death, MCL 257.617, a five-year felony; personal injury, MCL 257.617a, a one-year misdemeanor; or damage to an attended vehicle, MCL 257.618, a misdemeanor.

² The definition of “serious impairment of a body function” is at MCL 257.58c. See *Use Note* to M Crim JI 15.12.

³ MCL 257.619 describes the information that must be provided and the assistance that must be rendered.

M Crim JI 15.14a Leaving the Scene of an Accident Causing Death

The defendant is charged with failing to stop after causing an accident resulting in death. To prove this charge the prosecutor must prove each of the following elements beyond a reasonable doubt:

- (1) First, the defendant was the driver of a motor vehicle.
- (2) Second, the motor vehicle driven by the defendant was involved in an accident.
- (3) Third, the defendant knew or had reason to know that [he / she] was involved in an accident on a public road or any property open to travel by the public.
- (4) Fourth, that the accident resulted in death.
- (5) Fifth, that the defendant caused the accident.
- (6) Sixth, that the defendant failed to immediately stop [his / her] motor vehicle at the scene of the accident in order to render assistance and give information required by law.¹ The requirement that the driver “immediately stop” means that the driver must stop and park the car as soon as practicable and reasonable under the circumstances and without obstructing traffic more than is necessary.

Use Notes

¹ MCL 257.619 describes the information that must be provided and the assistance that must be rendered.

M Crim JI 15.15 Reckless Driving

(1) [The defendant is charged with the crime of / You may also consider the lesser charge of ¹] reckless driving. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant drove a motor vehicle on a highway² or other place open to the public [or generally accessible to motor vehicles, including a designated parking area].

(3) Second, that the defendant drove the motor vehicle in willful or wanton disregard for the safety of persons or property. “Willful or wanton disregard” means more than simple carelessness but does not require proof of an intent to cause harm. It means knowingly disregarding the possible risks to the safety of people or property.

Use Notes

¹ Use when instructing on this crime as a lesser included offense.

² A “highway” is the entire area between the boundary lines of a publicly maintained roadway, any part of which is open for automobile travel. *People v Bartel*, 213 Mich App 726, 728-729, 540 NW2d 491 (1995).

M Crim JI 15.15 Reckless Driving

(1) [The defendant is charged with the crime of / You may also consider the lesser charge of ¹] reckless driving. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant drove a motor vehicle on a highway² or other place open to the public [or generally accessible to motor vehicles, including a designated parking area].

(3) Second, that the defendant drove the motor vehicle in willful or wanton disregard for the safety of persons or property. “Willful or wanton disregard” means more than simple carelessness but does not require proof of an intent to cause harm. It means knowingly disregarding the possible risks to the safety of people or property.

Use Notes

¹ Use when instructing on this crime as a lesser included offense.

² A “highway” is the entire area between the boundary lines of a publicly maintained roadway, any part of which is open for automobile travel. *People v Bartel*, 213 Mich App 726, 728-729, 540 NW2d 491 (1995).

M Crim JI 15.17 Reckless Driving Causing Serious Impairment of a Body Function [Use for Acts Committed on or After October 31, 2010]

(1) [The defendant is charged with the crime of / You may also consider the lesser charge of¹] reckless driving causing serious impairment of a body function to another person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant drove a motor vehicle on a highway² or other place open to the public [or generally accessible to motor vehicles, including a designated parking area].

(3) Second, that the defendant drove the motor vehicle in willful or wanton disregard for the safety of persons or property. “Willful or wanton disregard” means more than simple carelessness but does not require proof of an intent to cause harm. It means knowingly disregarding the possible risks to the safety of people or property.

(4) Third, that the defendant’s operation of the vehicle caused³ a serious impairment of a body function⁴ to [*name victim*]. To “cause” such injury, the defendant’s operation of the vehicle must have been a factual cause of the injury, that is, but for the defendant’s operation of the vehicle the injury would not have occurred. In addition, operation of the vehicle must have been a proximate cause of the injury, that is, the injury must have been a direct and natural result of operating the vehicle.

Use Note

¹ Use when instructing on this crime as a lesser included offense.

² A “highway” is the entire area between the boundary lines of a publicly maintained roadway, any part of which is open for automobile travel. *People v Bartel*, 213 Mich App 726, 728-729, 540 NW2d 491 (1995).

³ If it is claimed that the defendant’s operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439, 703 NW2d 774 (2005) (a “causes death” case under MCL 257.625(4)). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010)).

⁴The statute, MCL 257.58c, provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

- (a) Loss of a limb or loss of use of a limb.
- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.
- (j) Loss of an organ.

M Crim JI 15.18 Moving Violation Causing Death or Serious Impairment of a Body Function

(1) [The defendant is charged with the crime / You may consider the lesser charge¹] of committing a moving traffic violation that caused [death / serious impairment of a body function]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle. To operate means to drive or have actual physical control of the vehicle.

(3) Second, that the defendant operated the vehicle on a highway or other place open to the public or generally accessible to motor vehicles [including any designated parking area].

(4) Third, that, while operating the motor vehicle, the defendant committed a moving violation by: [*describe the moving violation*].

(5) Fourth, that by committing the moving violation, the defendant caused [the death of (*name deceased*) / (*name injured person*) to suffer a serious impairment of a body function²]. To cause [the death of (*name deceased*) / such injury to (*name injured person*)], the defendant's moving violation must have been a factual cause of the [death / injury], that is, but for committing the moving violation the [death / injury] would not have occurred. In addition, the [death / injury] must have been a direct and natural result of committing the moving violation.

Use Note

1. Use when instructing on this crime as a lesser offense.
2. MCL 257.58c, provides that serious impairment of a body function includes, but is not limited to, one or more of the following:
 - (a) Loss of a limb or loss of use of a limb.
 - (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
 - (c) Loss of an eye or ear or loss of use of an eye or ear.
 - (d) Loss or substantial impairment of a bodily function.
 - (e) Serious visible disfigurement.
 - (f) A comatose state that lasts for more than 3 days.
 - (g) Measurable brain or mental impairment.
 - (h) A skull fracture or other serious bone fracture.
 - (i) Subdural hemorrhage or subdural hematoma.
 - (j) Loss of an organ.

M Crim JI 15.19 Moving Violation Causing Serious Impairment of a Body Function [Use for Acts Committed on or After October 31, 2010] [deleted]

Note. This instruction was deleted by the committee in September, 2019, because it was combined with M Crim JI 15.18.

M Crim JI 15.20 Driving While License Suspended or Revoked

The defendant is charged with driving while [his / her] operator's license is suspended or revoked. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

- (1) First, that the defendant was operating a motor vehicle. "Operating" means driving or having actual physical control of the vehicle.
- (2) Second, that the defendant was operating that vehicle on a highway or other place open to the general public [*or generally accessible to motor vehicles, including any area designated for the parking of motor vehicles*].
- (3) Third, that at the time the defendant's operator's license was suspended or revoked.
- (4) Fourth, that the Secretary of State gave notice of the suspension or revocation by first-class, United States Postal Service mail addressed to the defendant at the address shown by the record of the Secretary of State at least five days before the date of the alleged offense.

M Crim JI 15.21 Driving While License Suspended / Revoked Causing Death

(1) The defendant is charged with driving while [his / her] operator's license is suspended or revoked causing death. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

- (2) First, that the defendant was operating a motor vehicle. "Operating" means driving or having actual physical control of the vehicle.¹

(3) Second, that the defendant was operating that vehicle on a highway or other place open to the general public [or generally accessible to motor vehicles, including any area designated for the parking of motor vehicles].

(4) Third, that, at the time, the defendant's operator's license was suspended or revoked.²

(5) Fourth, that the defendant's operation of the vehicle caused the victim's death. To "cause" the victim's death, the defendant's operation of the vehicle must have been a factual cause of the death, that is, but for the defendant's operation of the vehicle, the death would not have occurred. In addition, operation of the vehicle must have been a proximate cause of death, that is, death must have been a direct and natural result of operating the vehicle.³

Use Note

¹ The term "operating" has been defined by the Michigan Supreme Court in *People v Wood*, 450 Mich 399, 538 NW2d 351 (1995). The court held that "[o]nce a person using a motor vehicle as a motor vehicle has put the vehicle in motion, or in a position posing a significant risk of causing a collision, such a person continues to operate it until the vehicle is returned to a position posing no such risk." *Id.* at 404-405. The holding in *Wood* was applied in *People v Lechleitner*, 291 Mich App 56, 804 NW2d 345 (2010), which held that the defendant was properly convicted under the operating-while-intoxicated-causing-death statute where he was intoxicated, operated his vehicle, and crashed it, with the result that it sat in the middle of the freeway at night creating a risk of injury or death to others, and a following car swerved to miss his stopped truck and killed another motorist on the side of the road.

² The court should alter this element where one of the alternatives found in MCL 257.904(1) applies: where the defendant had a suspended or revoked "chauffer's license," where the defendant's application for a license was denied, or where the defendant never applied for a license.

³ If it is claimed that the defendant's operation of the vehicle was not a proximate cause of death because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439, 703 NW2d 774 (2005). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d

822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010).

M Crim JI 15.22 Driving While License Suspended / Revoked Causing Serious Impairment of Body Function

(1) The defendant is charged with driving while [his / her] operator's license is suspended or revoked causing serious impairment of body function. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was operating a motor vehicle. "Operating" means driving or having actual physical control of the vehicle.¹

(3) Second, that the defendant was operating that vehicle on a highway or other place open to the general public [or generally accessible to motor vehicles, including any area designated for the parking of motor vehicles].

(4) Third, that, at the time, the defendant's operator's license was suspended or revoked.

(5) Fourth, that the defendant's operation of the vehicle caused a serious impairment of a body function to [*name victim*].³ To "cause" such injury, the defendant's operation of the vehicle must have been a factual cause of the injury, that is, but for the defendant's operation of the vehicle the injury would not have occurred. In addition, operation of the vehicle must have been a proximate cause of the injury, that is, the injury must have been a direct and natural result of operating the vehicle.⁴

Use Note

¹ The term "operating" has been defined by the Michigan Supreme Court in *People v Wood*, 450 Mich 399, 538 NW2d 351 (1995). The court held that "[o]nce a person using a motor vehicle as a motor vehicle has put the vehicle in motion, or in a position posing a significant risk of causing a collision, such a person continues to operate it until the vehicle is returned to a position posing no such risk." *Id.* at 404-405. The holding in *Wood* was applied in *People v Lechleitner*,

291 Mich App 56, 804 NW2d 345 (2010), which held that the defendant was properly convicted under the operating-while-intoxicated-causing-death statute where he was intoxicated, operated his vehicle, and crashed it, with the result that it sat in the middle of the freeway at night creating a risk of injury or death to others, and a following car swerved to miss his stopped truck and killed another motorist on the side of the road.

2 The court should alter this element where one of the alternatives found in MCL 257.904(1) applies: where the defendant had a suspended or revoked “chauffer’s license,” where the defendant’s application for a license was denied, or where the defendant never applied for a license.

3 The statute, MCL 257.58c, provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

- (a) Loss of a limb or loss of use of a limb.
- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.
- (j) Loss of an organ.

⁴ If it is claimed that the defendant’s operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439, 703 NW2d 774 (2005) (a “causes death” case under MCL 257.625(4)). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010).

M Crim JI 15.24 Permitting Another Person to Drive Motor Vehicle While License Suspended / Revoked Causing Serious Impairment of a Body Function

(1) The defendant is charged with permitting another person to drive [his / her] motor vehicle knowing the other person had [a (suspended / revoked) operator's license / (his / her) application for an operator's license denied / never applied for an operator's license] causing serious impairment of a body function. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name of other person*] was operating a motor vehicle. "Operating" means driving or having actual physical control of the vehicle.¹

(3) Second, defendant owned the motor vehicle that [*name of other person*] was operating.²

(4) Third, [*name of other person*] was operating that vehicle [on a highway / in another place open to the general public / in a place generally accessible to motor vehicles, including any area designated for the parking of motor vehicles].

(5) Fourth, that, at the time, [*name of other person*] had [a (suspended / revoked) operator's license / (his / her) application for an operator's license denied / never applied for an operator's license].

(6) Fifth, that the defendant permitted [*name of other person*] to operate the vehicle.

(7) Sixth, that, at the time, defendant knew that [*name of other person*] had [a (suspended / revoked) operator's license / (his / her) application for an operator's license denied / never applied for an operator's license].

(8) Seventh, that [*name of other person*]'s operation of the vehicle caused a serious impairment of a body function to [*name victim*].³ To "cause" such injury, [*name of other person*]'s operation of the vehicle must have been a factual cause of the injury, that is, but for [*name of other person*]'s operation of the vehicle the injury would not have occurred. In addition, operation of the vehicle must have been a proximate cause of the injury, that is, the injury must have been a direct and natural result of operating the vehicle.⁴

Use Note

1. The term “operating” has been defined by the Michigan Supreme Court in *People v Wood*, 450 Mich 399, 538 NW2d 351 (1995). The court held that “[o]nce a person using a motor vehicle as a motor vehicle has put the vehicle in motion, or in a position posing a significant risk of causing a collision, such a person continues to operate it until the vehicle is returned to a position posing no such risk.” *Id.* at 404-405. The holding in *Wood* was applied in *People v Lechleitner*, 291 Mich App 56, 804 NW2d 345 (2010), which held that the defendant was properly convicted under the operating-while-intoxicated-causing-death statute where he was intoxicated, operated his vehicle, and crashed it, with the result that it sat in the middle of the freeway at night creating a risk of injury or death to others, and a following car swerved to miss his stopped truck and killed another motorist on the side of the road.

2. “Owner” is defined in MCL 257.37. This element may be worded differently to accommodate the defendant’s possessory interest under appropriate circumstances.

3. The statute, MCL 257.58c, provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

- (a) Loss of a limb or loss of use of a limb.
- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.
- (j) Loss of an organ.

4. If it is claimed that the other person’s operation of the vehicle was not a proximate cause of serious impairment of a bodily function because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439,

703 NW2d 774 (2005), a “causes death” case under MCL 257.625(4). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010).

M Crim JI 15.25 Permitting Another Person to Drive Motor Vehicle While License Suspended / Revoked Causing Death

(1) The defendant is charged with permitting another person to drive [his / her] motor vehicle knowing the other person had [a (suspended / revoked) operator's license / (his / her) application for an operator's license denied / never applied for an operator's license] causing death. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name of other person*] was operating a motor vehicle. "Operating" means driving or having actual physical control of the vehicle.¹

(3) Second, defendant owned the motor vehicle that [*name of other person*] was operating.²

(4) Third, [*name of other person*] was operating that vehicle [on a highway / in another place open to the general public / in a place generally accessible to motor vehicles, including any area designated for the parking of motor vehicles].

(5) Fourth, that, at the time, [*name of other person*] had [a (suspended / revoked) operator's license / (his / her) application for an operator's license denied / never applied for an operator's license].

(6) Fifth, that the defendant permitted [*name of other person*] to operate the vehicle.

(7) Sixth, that, at the time, defendant knew that [*name of other person*] had [a (suspended / revoked) operator's license / (his / her) application for operator's license denied / never applied for an operator's license].

(8) Seventh, that [*name of other person*]'s operation of the vehicle caused the victim's death. To "cause" the victim's death, the [*name of other person*]'s operation of the vehicle must have been a factual cause of the death, that is, but for the [*name of other person*]'s operation of the vehicle, the death would not have occurred. In addition, operation of the vehicle must have been a proximate cause of death, that is, death must have been a direct and natural result of operating the vehicle.³

Use Note

1. The term “operating” has been defined by the Michigan Supreme Court in *People v Wood*, 450 Mich 399, 538 NW2d 351 (1995). The court held that “[o]nce a person using a motor vehicle as a motor vehicle has put the vehicle in motion, or in a position posing a significant risk of causing a collision, such a person continues to operate it until the vehicle is returned to a position posing no such risk.” *Id.* at 404-405. The holding in *Wood* was applied in *People v Lechleitner*, 291 Mich App 56, 804 NW2d 345 (2010), which held that the defendant was properly convicted under the operating-while-intoxicated-causing-death statute where he was intoxicated, operated his vehicle, and crashed it, with the result that it sat in the middle of the freeway at night creating a risk of injury or death to others, and a following car swerved to miss his stopped truck and killed another motorist on the side of the road.

2. “Owner” is defined in MCL 257.37. This element may be worded differently to accommodate the defendant’s possessory interest under appropriate circumstances.

3. If it is claimed that the other person’s operation of the vehicle was not a proximate cause of death because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439, 703 NW2d 774 (2005). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010).

This page left blank

Proposed jury instructions for non-intoxication driving offenses, M Crim JI 15.13 through 15.17a begin on the following page (pp 81-97).

M Crim JI 15.13 Leaving the Scene of an Accident

The defendant is charged with the crime of failing to stop after an accident. To prove this charge the prosecutor must prove each of the following elements beyond a reasonable doubt:

- (1) First, the defendant was the driver of a motor vehicle.¹
- (2) Second, the motor vehicle driven by the defendant was involved in an accident with another vehicle operated or attended by another person.
- (3) Third, the defendant knew or had reason to know that [he / she] had been involved in an accident.
- (4) Fourth, that the defendant failed to immediately stop [his / her] motor vehicle at the scene of the accident in order to render assistance and give information required by law, or to immediately report the accident to the nearest or most convenient police agency or officer if there was a reasonable and honest belief that remaining at the scene would result in further harm.² The requirement that the driver immediately stop means that the driver must stop and park the car as soon as practicable and reasonable under the circumstances and without obstructing traffic more than is necessary.

Use Note

1. The term *motor vehicle* is defined in MCL 257.33.
2. MCL 257.619 describes the information that must be provided and the assistance that must be rendered.

M Crim JI 15.13a Leaving the Scene of an Accident Resulting in Vehicle Damage, Injury, Serious Impairment of a Body Function, or Death

(1) The defendant is charged with the crime of failing to stop after an accident that resulted in [vehicle damage / injury / serious impairment of a body function / death]. To prove this charge the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was the driver of a motor vehicle.¹

(3) Second, that the motor vehicle driven by the defendant was involved in an accident on public or private property that is open to travel by the public.

(4) Third, that the defendant knew or had reason to know that [he / she] had been involved in an accident.

(5) Fourth, that the accident resulted in [damage to a vehicle driven or attended by another / personal injury to any individual / serious impairment of a body function² / death].

(6) Fifth, that the defendant failed to immediately stop [his / her] motor vehicle at the scene of the accident in order to render assistance and give information required by law, or to immediately report the accident to the nearest or most convenient police agency or officer if there was a reasonable and honest belief that remaining at the scene would result in further harm.³ The requirement that the driver immediately stop means that the driver must stop and park the car as soon as practicable and reasonable under the circumstances and without obstructing traffic more than is necessary.

Use Note

1. The term *motor vehicle* is defined in MCL 257.33.

2. The statute, MCL 257.58c, provides that serious impairment of a body function includes but is not limited to one or more of the following:

(a) Loss of a limb or loss of use of a limb.

- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.
- (j) Loss of an organ.

3. MCL 257.619 describes the information that must be provided and the assistance that must be rendered.

M Crim JI 15.13b Leaving the Scene of an Accident Caused by Defendant Resulting in Death

(1) The defendant is charged with the crime of failing to stop after causing an accident that resulted in death. To prove this charge the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was the driver of a motor vehicle.¹

(3) Second, that the motor vehicle driven by the defendant was involved in an accident on public or private property that is open to travel by the public.

(4) Third, that the defendant knew or had reason to know that [he / she] had been involved in an accident.

(5) Fourth, that the defendant caused the accident.

(6) Fifth, that the accident resulted in the death of [*identify decedent*].

(7) Sixth, that the defendant failed to immediately stop [his / her] motor vehicle at the scene of the accident in order to render assistance and give information required by law, or to immediately report the accident to the nearest or most convenient police agency or officer if there was a reasonable and honest belief that remaining at the scene would result in further harm.² The requirement that the driver immediately stop means that the driver must stop and park the car as soon as practicable and reasonable under the circumstances and without obstructing traffic more than is necessary.

Use Note

1. The term *motor vehicle* is defined in MCL 257.33.

2. MCL 257.619 describes the information that must be provided and the assistance that must be rendered.

M Crim JI 15.14 Reckless Driving

(1) [The defendant is charged with the crime of / You may also consider the lesser charge of¹] reckless driving. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant drove a motor vehicle² on a highway³ or other place open to the public or generally accessible to motor vehicles [including any designated parking area].

(3) Second, that the defendant drove the motor vehicle in willful or wanton disregard for the safety of persons or property. Willful or wanton disregard means more than simple carelessness but does not require proof of an intent to cause harm. It means knowingly disregarding the possible risks to the safety of people or property.

Use Notes

1. Use when instructing on this crime as a lesser included offense.
2. The term *motor vehicle* is defined in MCL 257.33.
3. A *highway* is the entire area between the boundary lines of a publicly maintained roadway, any part of which is open for automobile travel. *People v Bartel*, 213 Mich App 726, 728-729; 540 NW2d 491 (1995).

M Crim JI 15.14a Reckless Driving Causing Death or Serious Impairment of a Body Function

(1) [The defendant is charged with the crime of / You may also consider the lesser charge of¹] reckless driving causing [death / serious impairment of body function to another person]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant drove a motor vehicle² on a highway³ or other place open to the public or generally accessible to motor vehicles [including any designated parking area].

(3) Second, that the defendant drove the motor vehicle in willful or wanton disregard for the safety of persons or property. Willful or wanton disregard means more than simple carelessness but does not require proof of an intent to cause harm. It means knowingly disregarding the possible risks to the safety of people or property.

(4) Third, that the defendant's operation of the vehicle caused [the death of / a serious impairment of a body function⁴ to] [*identify decedent or injured person*]. To [cause the death / such injury], the defendant's operation of the vehicle must have been a factual cause of the [death / injury], that is, but for the defendant's operation of the vehicle the [death / injury] would not have occurred. In addition, [death or serious injury / the injury] must have been a direct and natural result of operating the vehicle.⁵

Use Note

1. Use when instructing on this crime as a lesser included offense.
2. The term *motor vehicle* is defined in MCL 257.33.
3. A *highway* is the entire area between the boundary lines of a publicly maintained roadway, any part of which is open for automobile travel. *People v Bartel*, 213 Mich App 726, 728-729; 540 NW2d 491 (1995).

4. The statute, MCL 257.58c, provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

- (a) Loss of a limb or loss of use of a limb.
- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.
- (j) Loss of an organ.

5. If it is claimed that the defendant's operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause, the court may wish to review *People v Schaefer*, 473 Mich 418, 438-439; 703 NW2d 774 (2005) (a "causes death" case under MCL 257.625(4)). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316; 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184; 783 NW2d 67 (2010).

M Crim JI 15.15 Moving Violation Causing Death or Serious Impairment of a Body Function

(1) [The defendant is charged with the crime / You may consider the lesser charge¹] of committing a moving traffic violation that caused [death / serious impairment of a body function]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle.² To *operate* means to drive or have actual physical control of the vehicle.

(3) Second, that the defendant operated the vehicle on a highway or other place open to the public or generally accessible to motor vehicles [including any designated parking area].³

(4) Third, that, while operating the motor vehicle, the defendant committed a moving violation by: [*describe the moving violation*].

(5) Fourth, that by committing the moving violation, the defendant caused [the death of (*name deceased*) / (*name injured person*) to suffer a serious impairment of a body function⁴]. To cause [the death of (*name deceased*) / such injury to (*name injured person*)], the defendant's moving violation must have been a factual cause of the [death / injury], that is, but for committing the moving violation, the [death / injury] would not have occurred. In addition, the [death / injury] must have been a direct and natural result of committing the moving violation.⁵

Use Note

1. Use when instructing on this crime as a lesser offense.
2. The term *motor vehicle* is defined in MCL 257.33.
3. A *highway* is the entire area between the boundary lines of a publicly maintained roadway, any part of which is open for automobile travel. *People v Bartel*, 213 Mich App 726, 728-729; 540 NW2d 491 (1995).
4. MCL 257.58c, provides that serious impairment of a body function includes but is not limited to one or more of the following:
 - (a) Loss of a limb or loss of use of a limb.

- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.
- (j) Loss of an organ.

5. If it is claimed that the defendant's operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause, the court may wish to review *People v Schaefer*, 473 Mich 418, 438-439; 703 NW2d 774 (2005) (a "causes death" case under MCL 257.625(4)). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316; 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184; 783 NW2d 67 (2010).

M Crim JI 15.16

Driving While License Suspended or Revoked

(1) The defendant is charged with the crime of driving while [his / her] operator's license is suspended or revoked. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle.¹ To *operate* means to drive or have actual physical control of the vehicle.

(3) Second, that the defendant operated that vehicle on a highway or other place open to the general public or generally accessible to motor vehicles [including any designated parking area].

(4) Third, that at the time the defendant's operator's license was suspended or revoked.

[Use the following element only where the charge involves a commercial carrier with a vehicle group designation:]

(5) Fourth, that the Secretary of State gave notice of the [suspension / revocation] to the defendant at least five days before the alleged offense.²

Use Note

1. The term "motor vehicle" is defined in MCL 257.33.
2. See MCL 257.904(16) and 257.212.

**M Crim JI 15.16a Driving While License Suspended or Revoked
Causing Death or Serious Impairment of a Body
Function**

(1) The defendant is charged with the crime of driving while [his / her] operator's license is suspended or revoked causing [the death of another person / serious impairment of body function to another person]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle.¹ To *operate* means to drive or have actual physical control of the vehicle.

(3) Second, that the defendant operated that vehicle on a highway or other place open to the general public or generally accessible to motor vehicles [including any designated parking area].²

(4) Third, that at the time the defendant's operator's license was suspended or revoked.³

(5) Fourth, that the defendant's operation⁴ of the vehicle caused [the death of / a serious impairment of a body function⁵ to] [*identify decedent or injured person*]. To cause [the death / such injury], the defendant's operation of the vehicle must have been a factual cause of the [death / injury], that is, but for the defendant's operation of the vehicle, the [death / injury] would not have occurred. In addition, [death or serious injury / the injury] must have been a direct and natural result of operating the vehicle.⁶

[*Use the following element only where the charge involves a commercial carrier with a vehicle group designation:*]

(6) Fifth, that the Secretary of State gave notice of the [suspension / revocation] to the defendant at least five days before the alleged offense.⁷

Use Notes

1. The term *motor vehicle* is defined in MCL 257.33.

2. A *highway* is the entire area between the boundary lines of a publicly maintained roadway, any part of which is open for automobile travel. *People v Bartel*, 213 Mich App 726, 728-729; 540 NW2d 491 (1995).

3. The court should alter this element where one of the alternatives found in MCL 257.904(1) applies: where the defendant had a suspended or revoked “chauffer’s license,” where the defendant’s application for a license was denied, or where the defendant never applied for a license.

4. *Operating* is defined by statute as being in actual physical control of a vehicle. MCL 257.35a. *See also People v Wood*, 450 Mich 399; 538 NW2d 351 (1995); *People v Lechleitner*, 291 Mich App 56; 804 NW2d 345 (2010).

5. The statute, MCL 257.58c, provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

- (a) Loss of a limb or loss of use of a limb.
- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.
- (j) Loss of an organ.

6. If it is claimed that the defendant’s operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause the court may wish to review *People v Schaefer*, 473 Mich 418, 438-439; 703 NW2d 774 (2005) (a “causes death” case under MCL 257.625(4)). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316; 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184; 783 NW2d 67 (2010).

7. *See* MCL 257.904(16) and 257.212.

**M Crim JI 15.17 Permitting Another Person to Drive Motor Vehicle
While License Suspended / Revoked**

(1) The defendant is charged with the crime of permitting another person to drive [his / her] motor vehicle knowing the other person had [a (suspended / revoked) operator's license / (his / her) application for an operator's license denied / never applied for an operator's license]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name of other person*] operated a motor vehicle.¹ To *operate* means to drive or have actual physical control of the vehicle.²

(3) Second, that the defendant was the owner of the motor vehicle that [*name of other person*] operated.³

(4) Third, that [*name of other person*] operated that vehicle on a highway or other place open to the public or generally accessible to motor vehicles [including any designated parking area].⁴

(5) Fourth, that, at the time, [*name of other person*] [had a (suspended / revoked) operator's license / (his / her) application for an operator's license had been denied / never applied for an operator's license].

(6) Fifth, that the defendant permitted [*name of other person*] to operate the vehicle.

(7) Sixth, that, at the time, defendant knew that [*name of other person*] [had a (suspended / revoked) operator's license / (his / her) application for operator's license had been denied / never applied for an operator's license].

Use Notes

1. The term *motor vehicle* is defined in MCL 257.33.

2. *Operating* is defined by statute as being in actual physical control of a vehicle. MCL 257.35a. *See also People v Wood*, 450 Mich 399, 538 NW2d 351 (1995); *People v Lechleitner*, 291 Mich App 56, 804 NW2d 345 (2010).

3. *Owner* is defined in MCL 257.37. This element may be worded differently to accommodate the defendant's possessory interest under appropriate circumstances.

4. A *highway* is the entire area between the boundary lines of a publicly maintained roadway, any part of which is open for automobile travel. *People v Bartel*, 213 Mich App 726, 728-729; 540 NW2d 491 (1995).

M Crim JI 15.17a Permitting Another Person to Drive Motor Vehicle While License Suspended / Revoked Causing Death or Serious Impairment of a Body Function

(1) The defendant is charged with the crime of permitting another person to drive [his / her] motor vehicle knowing the other person [had a (suspended / revoked) operator's license / (his / her) application for an operator's license denied / never applied for an operator's license] causing [the death of another person / serious impairment of a body function to another person]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name of other person*] operated a motor vehicle.¹ To operate means to drive or have actual physical control of the vehicle.²

(3) Second, that the defendant owned the motor vehicle that [*name of other person*] operated.³

(4) Third, that [*name of other person*] operated that vehicle on a highway or other place open to the public or generally accessible to motor vehicles [including any designated parking area].⁴

(5) Fourth, that, at the time, [*name of other person*] [had a (suspended / revoked) operator's license / (his / her) application for an operator's license had been denied / never applied for an operator's license].

(6) Fifth, that the defendant permitted [*name of other person*] to operate the vehicle.

(7) Sixth, that, at the time, the defendant knew that [*name of other person*] [had a (suspended / revoked) operator's license / (his / her) application for operator's license had been denied / never applied for an operator's license].

(8) Seventh, that [*name of other person*]'s operation of the vehicle caused [the death of / a serious impairment of a body function⁵ to] [*identify decedent or injured person*]. To cause [the death / such injury], [*name of other person*]'s operation of the vehicle must have been a factual cause of the [death / injury], that is, but for [*name of other person*]'s operation of the vehicle the [death / injury] would not have

occurred. In addition, [death or serious injury / the injury] must have been a direct and natural result of operating the vehicle.⁶

Use Note

1. The term *motor vehicle* is defined in MCL 257.33.
2. *Operating* is defined by statute as being in actual physical control of a vehicle. MCL 257.35a. See also *People v Wood*, 450 Mich 399; 538 NW2d 351 (1995); *People v Lechleitner*, 291 Mich App 56; 804 NW2d 345 (2010). This subdivision applies regardless of whether or not the person is licensed under this act as an operator or chauffeur.
3. *Owner* is defined in MCL 257.37. This element may be worded differently to accommodate the defendant's possessory interest under appropriate circumstances.
4. A *highway* is the entire area between the boundary lines of a publicly maintained roadway, any part of which is open for automobile travel. *People v Bartel*, 213 Mich App 726, 728-729; 540 NW2d 491 (1995).
5. The statute, MCL 257.58c, provides that serious impairment of a body function includes but is not limited to one or more of the following:
 - (a) Loss of a limb or loss of use of a limb.
 - (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
 - (c) Loss of an eye or ear or loss of use of an eye or ear.
 - (d) Loss or substantial impairment of a bodily function.
 - (e) Serious visible disfigurement.
 - (f) A comatose state that lasts for more than 3 days.
 - (g) Measurable brain or mental impairment.
 - (h) A skull fracture or other serious bone fracture.
 - (i) Subdural hemorrhage or subdural hematoma.
 - (j) Loss of an organ.
6. If it is claimed that the driver's operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause the court may wish to review *People v Schaefer*, 473 Mich 418, 438-439; 703 NW2d 774 (2005) (a "causes

death” case under MCL 257.625(4)). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316; 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184; 783 NW2d 67 (2010).

**Public Policy Position
M Crim JI Chapter 15**

Support as Drafted

Explanation

The committee voted unanimously to support the revised Criminal Jury Instructions Chapter 15 as drafted.

Position Vote:

Voted For position: 17

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 4

Contact Persons:

Mark A. Holsomback mahols@kalcounty.com

Sofia V. Nelson snelson@sado.org