

## 70 From the Committee on Model Criminal Jury Instructions

The Committee solicits comment on the following proposals by November 1, 2015. 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 instructions where a defendant has been charged with a violation of the operating-while-intoxicated statute, MCL 257.625, where the violation is based on operating with any amount of a Schedule 1 or 2 substance in the body. The unpublished per curiam Court of Appeals decision in *People v Wilds*, No. 311644 (April 2, 2013), caused the Committee to review the instructions and amend M Crim JI 15.11a and 15.12a to comport with the statutory language, and to amend M Crim JI 15.3 to add the appropriate scienter element. Deletions are in strikethrough; additions are underlined.

### [AMENDED] 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:

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

(2 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].

(3 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.

## History

M Crim JI 15.3a (formerly CJI2d 15.3a) was added in September 2010.

After reviewing the unpublished per curiam decision in *People v Wilds*, No. 311644 (April 2, 2013), the Committee determined in 2015 that this instruction should be amended to provide a scienter element.

## Reference Guide

### Statutes

MCL 257.625.

### Caselaw

*People v Koon*, 494 Mich 1; 832 NW2d 724 (2013).

### [AMENDED] M Crim JI 15.11a Operating with Any Amount of Schedule 1 or 2 Controlled Substance 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 or 2 controlled substance alleged] in [his/her] body.

(5) Fourth, that the defendant voluntarily decided to drive knowing that [he/she] had ~~any amount of~~ consumed or used a controlled substance [state specific schedule 1 or 2 controlled substance alleged] in [his/her] body.

(6) Fifth, that the defendant's operation of the vehicle caused<sup>1</sup> 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).

## History

M Crim JI 15.11a (formerly CJI2d 15.11a) was adopted in September 2006.

After reviewing the unpublished per curiam decision in *People v Wilds*, No. 311644 (April 2, 2013), the Committee determined in 2015 that this instruction should be amended to comport with the statutory language.

## Reference Guide

### Statutes

MCL 257.625.

### Caselaw

*People v Koon*, 494 Mich 1; 832 NW2d 724 (2013).

### [AMENDED] M Crim JI 15.12a Operating With Any Amount of Schedule 1 or 2 Controlled Substance 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 or 2 controlled substance alleged] in [his/her] body.

(5) Fourth, that the defendant voluntarily decided to drive knowing that [he/she] had ~~any amount of consumed or used a controlled substance~~ [state specific schedule 1 or 2 controlled substance alleged] in [his/her] body.

(6) Fifth, that the defendant's operation of the vehicle caused<sup>1</sup> a serious impairment of a body function<sup>2</sup> 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 Notes

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). *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 three 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.

#### History

M Crim JI 15.12a (formerly CJI2d 15.12a) was adopted in September 2006.

After reviewing the unpublished per curiam decision in *People v Wilds*, No. 311644 (April 2, 2013), the Committee determined in 2015 that this instruction should be amended to comport with the statutory language.

#### Reference Guide

##### Statutes

MCL 257.625; MCL 257.58c.

##### Caselaw

*People v Koon*, 494 Mich 1; 832 NW2d 724 (2013); *People v Schaefer*, 473 Mich 418, 438–439; 703 NW2d 774 (2005).



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