

The Committee on Model Criminal Jury Instructions has adopted the following new model criminal jury instructions, effective January 2017.

ADOPTED

The Committee has adopted new and amended instructions in firearms cases to comport with legislative amendments to MCL 8.3t and 75.222(g) (adding pneumatic guns), 750.226 (carrying with unlawful intent), and 750.227b (felony-firearm), and in response to the Court of Appeals decision in *People v Humphrey* — Mich App — (2015), that inoperability of a firearm is not a defense to firearms violations. Some instructions have been renumbered.

NOTICE OF RENUMBERING: In order to accommodate an amendment to the felony-firearm statute, the numbers for M Crim JI 11.34a, Felony-Firearm—Possession, and M Crim JI 11.34b, Felony-Firearm—Self-Defense have been changed. Felony-Firearm—Possession is renumbered to M Crim JI 11.34b, and Felony-Firearm—Self-Defense is renumbered to M Crim JI 11.34c.

[AMENDED] M Crim JI 11.3 Definition of Pistol

(1) A pistol is a firearm. A firearm includes any weapon which will, or is designed to, or may readily be converted to expel a projectile by action of an explosive.

(2) The shape of the pistol is not important as long as it is twenty-six inches or less in length.

(3) It does not matter whether or not the pistol was capable of firing a projectile or whether it was loaded.

[NEW] M Crim JI 11.3a Definition of Pneumatic Gun

A pneumatic gun means any implement, designed as a gun, that will expel a BB or pellet by spring, gas, or air. Pneumatic gun includes a paintball gun that expels by pneumatic pressure plastic balls filled with paint for the purpose of marking the point of impact.

M Crim JI 11.6 Defense—Firearm Inoperable

[Deleted]

This instruction was stricken as an incorrect statement of the law. *People v Humphrey*, 312 Mich App 309; 877 NW2d 770 (2015).

[AMENDED] M Crim JI 11.17 Going Armed with Firearm or Dangerous Weapon with Unlawful Intent

(1) The defendant is charged with the crime of going armed with a dangerous weapon with unlawful intent. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant went armed with a _____.¹

(3) Second, at that time the defendant intended to use this weapon unlawfully against someone else.²

Use Notes

1. Define term used:

M Crim JI 11.3 Pistol

M Crim JI 11.3a Pneumatic Gun

M Crim JI 11.5 Dirk, Dagger, and Stiletto

M Crim JI 11.18 Knife and Razor

M Crim JI 11.19 Dangerous Weapon

2. This is a specific intent crime.

[AMENDED] M Crim JI 11.34 Possession of Firearm at Time of Commission or Attempted Commission of Felony (Felony Firearm)

(1) The defendant is also charged with the separate crime of possessing a firearm at the time [he/she] committed [or attempted to commit]¹ the crime of _____.²

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

(3) First, that the defendant committed [or attempted to commit] the crime of _____, which has been defined for you. It is not necessary, however, that the defendant be convicted of that crime.

(4) Second, that at the time the defendant committed [or attempted to commit] that crime [he/she] knowingly carried or possessed a firearm.

[Use any of the following paragraphs when factually appropriate.]

[(5) This charge includes possession of a firearm during either a completed crime or an attempted crime. An attempt has two elements. First, the defendant must have intended to commit the crime of _____. Second, the defendant must have taken some action toward committing the alleged crime, but failed to complete the crime. It is not enough to prove that the defendant made preparations for committing the crime. Things like planning the crime or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the crime would have been completed if it had not been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the crime the defendant is charged with attempting and not some other objective.]²

[(6) It does not matter whether or not the firearm was capable of firing a projectile or whether it was loaded.]

[(7) A firearm includes any weapon which will, or is designed to, or may readily be converted to expel a projectile by action of an explosive.]³

[(8) A pistol is a firearm.]

Use Notes

Note that the statute states “felony” but explicitly excludes the felonies of carrying a concealed weapon, MCL 750.227; unlawful possession of a pistol by a licensee, MCL 750.227a; or altering firearms identification numbers, MCL 750.230. Do not use this instruction when these are the felonies charged.

1. Attempt is part of the statutory definition of this offense, rather than a lesser included offense. When factually appropriate or requested, include attempt language in paragraphs (1), (3), and (4), and give (5) in its entirety.

2. Any attempt to commit an offense is a specific intent crime. See *People v Langworthy*, 416 Mich 630, 644–645; 331 NW2d 171 (1982), and *People v Joeseype Johnson*, 407 Mich 196, 239; 284 NW2d 718 (1979) (opinion of Levin, J.).

3. The prosecutor need not prove that the firearm was operable. *People v Peals*, 476 Mich 636; 720 NW2d 196 (2006).

[NEW] M Crim JI 11.34a
Using Pneumatic Gun in Furtherance of Commission or Attempted Commission of Felony (Felony Firearm)

(1) The defendant is also charged with the separate crime of using a pneumatic gun while committing [or attempting to commit]¹ the crime of _____.

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

(3) First, that the defendant committed [or attempted to commit] the crime of _____, which has been defined for you. It is not necessary, however, that the defendant be convicted of that crime.

(4) Second, that at the time the defendant committed [or attempted to commit] that crime [he/she] used a pneumatic gun to further the commission of [or attempt to commit] that crime. A pneumatic gun is any implement, designed as a gun, that will expel a BB or pellet by spring, gas, or air [such as a paintball gun that expels by gas or air pressure plastic balls filled with paint for the purpose of marking the point of impact].

[Use any of the following paragraphs when factually appropriate:]

[(5) This charge includes use of a pneumatic gun in furtherance of either a completed crime or an attempted crime. An attempt has two elements. First, the defendant must have intended to commit the crime of _____. Second, the defendant must have taken some action toward committing the alleged crime, but failed to complete the crime. It is not enough to prove that the defendant made preparations for committing the crime. Things like planning the crime or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the crime would have been completed if it had not been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the crime the

defendant is charged with attempting and not some other objective.]²

[(6) It does not matter whether or not the pneumatic gun was capable of firing a projectile or whether it was loaded.]

Use Notes

Note that the statute states “felony” but explicitly excludes the felonies of selling firearms/ammunition illegally, MCL 750.223; carrying a concealed weapon, MCL 750.227; unlawful possession of a pistol by a licensee, MCL 750.227a; and altering firearms identification numbers, MCL 750.230. Do not use this instruction when these are the felonies charged.

1. Attempt is part of the statutory definition of this offense, rather than a lesser included offense. When factually appropriate or requested, include attempt language in paragraphs (1), (3), and (4), and give (5) in its entirety.

2. Any attempt to commit an offense is a specific intent crime. See *People v Langworthy*, 416 Mich 630, 644–645; 331 NW2d 171 (1982), and *People v Joesepe Johnson*, 407 Mich 196, 239; 284 NW2d 718 (1979) (opinion of Levin, J.).

[AMENDED] M Crim JI 17.11
Definition of Firearm—
Gun, Revolver, Pistol

(1) A gun [revolver/pistol] is a firearm. A firearm includes any weapon which is designed to or may readily be converted to expel a projectile by action of an explosive.

[(2) It does not matter whether or not the gun (revolver/pistol) was capable of firing a projectile or whether it was loaded.]

The Committee on Model Criminal Jury Instructions has adopted the following new model criminal jury instructions, effective January 2017.

ADOPTED

The Committee has adopted new instructions M Crim JI 15.21 and 15.22 for violations of MCL 257.904(4) and (5), driving while license suspended causing death and causing serious injury.

[NEW] 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.

(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.²

Use Notes

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. 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).

[NEW] 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].² 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.³

Use Notes

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 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.

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).

The Committee solicits comment on the following proposal by March 1, 2017. 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 new cautionary instructions for violations of the Human Trafficking Act, MCL 750.462a. These instructions are entirely new.

[NEW] M Crim JI 36.7

Testimony of Victim Not Required/ Need Not Be Corroborated

[Select (1) or (2) where applicable]

(1) To prove this charge, testimony from [name complainant] is not required, as long as the evidence presented proves guilt beyond a reasonable doubt.

(2) To prove this charge, it is not necessary that there be evidence other than the testimony of [name complainant], if that testimony proves guilt beyond a reasonable doubt.

[NEW] M Crim JI 36.8

Victim's Resistance or Lack of Resistance Not Relevant

When considering whether the prosecutor has proved this charge, you should not consider whether [name complainant] resisted the defendant.



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