

The Committee solicits comment on the following proposal by December 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 instructions, M Crim JI 15.23, 15.24, and 15.25, for violations of MCL 257.904(2) and (7), permitting another person to drive the defendant's car while the other person's license was suspended (and causing serious injury or death).

### [NEW] M Crim JI 15.23 Permitting Another Person to Drive Motor Vehicle While License Suspended/Revoked

(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]. 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.<sup>1</sup>

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

(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].

### 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.

### [NEW] 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.<sup>1</sup>

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

(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 of victim].<sup>2</sup> 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.<sup>3</sup>

### 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 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).

**[NEW] 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.<sup>1</sup>

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

(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.<sup>2</sup>

**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 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).



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