

The Committee on Model Criminal Jury Instructions has adopted the following new model criminal jury instruction, M Crim JI 5.14, to explain the presence of support persons or animals in the courtroom, effective March 2018.

#### **[NEW] M Crim JI 5.14 Support Persons or Animals**

You [are about to hear/have heard] testimony from a witness who [will be/was] accompanied by a support [person/animal]. The use of a support [person/animal] is authorized by law. You should disregard the support [person/animal]'s presence and decide the case based solely on the evidence presented. You should not consider the witness's testimony to be any more or less credible because of the [person/animal]'s presence. You must not allow the use of a support [person/animal] to influence your decision in any way.

The Committee on Model Criminal Jury Instructions has adopted the following new model criminal jury 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), effective March 2018.

#### **[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.<sup>2</sup>

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

#### **[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.<sup>2</sup>

(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].<sup>3</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>4</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. “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 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.

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 over-

ruled 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.<sup>2</sup>

(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>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. “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).

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The Committee on Model Criminal Jury Instructions has adopted the following amended model criminal jury instructions, M Crim JI 31.4, M Crim JI 31.5, M Crim JI 31.6, M Crim JI 31.7, M Crim JI 31.8, M Crim JI 31.9, M Crim JI 31.10, for violations of the arson statutes, MCL 750.74 *et seq.*, effective March 2018.

### **[AMENDED] M Crim JI 31.4 Arson in the Second Degree**

(1) [The defendant is charged with the crime of/You may also consider the lesser charge of] arson in the second degree. To

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

(2) First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*]. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3) Second, that at the time of the burning, damaging, or destroying, the property that was burned, damaged, or destroyed was a dwelling or any of its contents.

[*Dwelling* includes, but is not limited to, any building, structure, vehicle, watercraft, or trailer adapted for human habitation that was actually lived in or reasonably could have been lived in at the time of the fire or explosion and any building or structure that is on the grounds around that dwelling or that is connected to that dwelling.]

[A business that is located very close to and used in connection with a dwelling may be considered to be a dwelling.] [It does not matter whether the defendant owned or used the dwelling.]

(4) Third, that when the defendant burned, damaged, or destroyed the dwelling or any of its contents, [he/she] intended to burn, damage, or destroy the dwelling or its contents or intentionally committed an act that created a very high risk of burning, damaging, or destroying the dwelling or its contents and that, while committing the act, the defendant knew of that risk and disregarded it.

#### **[AMENDED] M Crim JI 31.5 Arson in the Third Degree— Building/Structure/Real Property**

(1) [The defendant is charged with the crime of/You may also consider the lesser

charge of] arson in the third degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt.

(2) First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*]. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3) Second, that at the time of the burning, damaging, or destroying, the property was a building, structure, or other real property or its contents.

[*Building* includes any structure, regardless of class or character, and any building or structure that is on the grounds around that building or structure or that is connected to that building or structure.] [It does not matter whether the building was occupied, unoccupied, or vacant at the time of the fire or explosion.] [It does not matter whether the defendant owned or used the building.]

(4) Third, that when the defendant burned, damaged, or destroyed the building or any of its contents, [he/she] intended to burn, damage, or destroy the building or contents or intentionally committed an act that created a very high risk of burning, damaging, or destroying the building or contents and that, while committing the act, the defendant knew of that risk and disregarded it.

#### **[AMENDED] M Crim JI 31.6 Arson in the Third Degree— Personal Property**

(1) [The defendant is charged with the crime of/You may also consider the lesser charge of] arson in the third degree. To

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

(2) First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*]. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3) Second, that at the time of the burning, damaging, or destroying, the property that was burned, damaged, or destroyed was any personal property. [*Personal property* in this case means any personally owned property regardless of class or character.] [It does not matter whether the defendant owned the property.]

(4) Third, that when the defendant burned, damaged, or destroyed it, the property had a fair market value of:

[*Choose one*.]

(a) \$20,000 or more.

(b) \$1,000 or more.

(5) Fourth, that when the defendant burned, damaged, or destroyed the property, [he/she] intended to burn, damage, or destroy or intentionally committed an act that created a very high risk of burning, damaging, or destroying the building or contents and that, while committing the act, the defendant knew of that risk and disregarded it.

#### **[AMENDED] M Crim JI 31.7 Arson in the Fourth Degree— Personal Property**

(1) [The defendant is charged with the crime of/You may also consider the lesser charge of] arson in the fourth degree. To prove this charge, the prosecutor must prove

each of the following elements beyond a reasonable doubt:

(2) First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*]. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3) Second, that at the time of the burning, damaging, or destroying, the property was personal property.

[*Personal property* means any personally owned property, regardless of class or character.] [It does not matter whether the defendant owned the property.]

(4) Third, that when the defendant burned, damaged, or destroyed the property, it had a fair market value of:

[*Choose one:*]

(a) \$1,000 or more but less than \$20,000.

(b) \$200 or more.

(5) Fourth, that when the defendant burned, damaged, or destroyed the property, [he/she] intended to burn, damage, or destroy the property, or intentionally committed an act that created a very high risk of burning, damaging, or destroying the property and that, while committing the act, the defendant knew of that risk and disregarded it.

### **[AMENDED] M Crim JI 31.8 Arson of Insured Property—Dwelling**

(1) The defendant is charged with the crime of arson of insured property. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*]. If any part of

the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3) Second, that the property burned, damaged, or destroyed by fire or explosive was a dwelling or any of its contents.

[*Dwelling* includes, but is not limited to, any building, structure, vehicle, watercraft, or trailer adapted for human habitation that was actually lived in or reasonably could have been lived in at the time of the fire or explosion and any building or structure that is on the grounds around that dwelling or connected to that dwelling.]

[A business that is located very close to and used in connection with a dwelling may be considered to be a dwelling.] [It does not matter whether the defendant owned or used the dwelling.]

(4) Third, that at the time of the burning, damaging, or destroying, the property was insured against loss or damage by fire or explosion. [It does not matter whether this was the defendant's property or someone else's.]

(5) Fourth, that at the time of the burning, damaging, or destroying, the defendant knew that the property was insured against loss or damage by fire or explosion.

(6) Fifth, that when the defendant burned, damaged, or destroyed the property, [he/she] intended to set a fire or explosion, knowing that this would cause injury or damage to another person or to property, and that the defendant did it without just cause or excuse.

(7) Sixth, that when the defendant burned, damaged, or destroyed the property, [he/she] intended to defraud or cheat the insurer.

### **[AMENDED] M Crim JI 31.9 Arson of Insured Property— Building/Real Property**

(1) The defendant is charged with the crime of arson of insured property. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*]. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3) Second, that the property burned, damaged, or destroyed by fire or explosive was a structure, building, or other real property or its contents. [It does not matter whether the defendant owned or used the property.]

(4) Third, that at the time of the burning, damaging, or destroying, the property was insured against loss or damage by fire or explosion. [It does not matter whether this was the defendant's property or someone else's.]

(5) Fourth, that at the time of the burning, damaging, or destroying, the defendant knew that the property was insured against loss or damage by fire or explosion.

(6) Fifth, that when the defendant burned, damaged, or destroyed the property, [he/she] intended to set a fire or explosion, knowing that this would cause injury or damage to another person or to property, and that the defendant did it without just cause or excuse.

(7) Sixth, that when the defendant burned the property, [he/she] intended to defraud or cheat the insurer.

**[AMENDED] M Crim JI 31.10  
Arson of Insured Property—  
Personal Property**

(1) The defendant is charged with the crime of arson of insured property. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*]. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3) Second, that the property burned, damaged, or destroyed by fire or explosive was personal property.

[*Personal property* means any personally owned property, regardless of class, character, or value.] [It does not matter whether the defendant owned or used the property.]

(4) Third, that at the time of the burning, damaging, or destroying, the property was insured against loss or damage by fire or explosion.

(5) Fourth, that at the time of the burning, damaging, or destroying, the defendant knew that the property was insured against loss or damage by fire or explosion.

(6) Fifth, that when the defendant burned, damaged, or destroyed the property, [he/she] intended to set a fire or explosion, knowing that this would cause injury or damage to another person or to property, and that the defendant did it without just cause or excuse.

(7) Sixth, that when the defendant burned, damaged, or destroyed the property, [he/she] intended to defraud or cheat the insurer.

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