

The Committee on Model Criminal Jury Instructions has adopted amended model criminal jury instructions M Crim JI 15.11a and 15.12a to eliminate over-broad phrasing. Both contained language that any schedule 2 controlled substance was included, while the statute, MCL 257.625(8), does not include all schedule 2 substances. The amendments provide the appropriate limitations. They are effective July 2018.

**[AMENDED] 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 Notes

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).

**[AMENDED] 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 Notes

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 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

The Committee on Model Criminal Jury Instructions has adopted amended model criminal jury instructions M Crim JI 17.20 and 17.20c. M Crim JI 17.20 was amended to correct an error in the current instruction by adding a statutory provision that was missing from the current instruction. M Crim JI 17.20c was amended to accommodate a legislative amendment expanding the range of those whose conduct can amount

to second-degree child abuse. The amendments are effective July 2018.

**[AMENDED] M Crim JI 17.20
Child Abuse, Second Degree
(Reckless Act or Omission
Causing Serious Injury)**

(1) The defendant is charged with second-degree child abuse. To establish this charge, the prosecution must prove each of the following elements beyond a reasonable doubt: [Choose (2) or (3):]

(2) First, that the defendant was the [parent/guardian] of [name child].

(3) First, that the defendant had care or custody of or authority over [name child] when the abuse allegedly happened.

[Choose (4) or (5):]

(4) Second, that the defendant did some reckless act.

(5) Second, that the defendant willfully [failed to provide food, clothing, or shelter necessary for (name child)'s welfare/abandoned (name child)].

(6) Third, that as a result, [name child] suffered serious physical harm. By “serious physical harm” I mean any physical injury to a child that seriously impairs the child’s health or physical well-being, including, but not limited to, brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut.

(7) Fourth, that [name child] was at the time under the age of 18.

Use Note

The statutory language indicates this is a general intent crime. The jury should be instructed on parental discipline, M Crim JI 17.24, when this is raised as a defense.

**[NEW] M Crim JI 17.20c
Child Abuse, Second Degree
(Child Care Provider)**

(1) The defendant is charged with second-degree child abuse. To establish this charge, the prosecution must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was [a licensed child care organization or agency/a representative or officer of a licensed corporation, association, or organization providing

care, maintenance, training, or supervision of persons less than 18 years of age].¹

(3) Second, that the defendant had care or custody of or authority over [name child] when the abuse allegedly occurred.

(4) Third, that the defendant violated a rule for family and group homes, in particular that defendant: [provide alleged statutory violation in the Child Care Organizations Act, MCL 722.111 et seq.].

(5) Fourth, that as a result of violating the rule, [name child] died.

(6) Fifth, that [name child] was at the time under the age of 18.

Use Note

The statutory language indicates this is a general intent crime.

1. See MCL 722.111 et seq.

The Committee on Model Criminal Jury Instructions has adopted amended model criminal jury instruction M Crim JI 17.33 to accommodate a legislative amendment to MCL 750.145n, expanding those who may be found guilty of fourth-degree vulnerable adult. It is effective July 2018.

**[AMENDED] M Crim JI 17.33
Vulnerable Adult Abuse,
Fourth Degree**

(1) The defendant is charged with vulnerable adult abuse in the fourth degree. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that the defendant was a caregiver¹ or other person with authority over [name complainant].

[Select from (3) or (4):]

(3) Second, that the defendant by [his/her] reckless act or reckless failure to act caused physical harm to [name complainant].²

(a) By “reckless act or reckless failure to act” I mean that the defendant’s conduct demonstrates a deliberate disregard of the likelihood that the natural tendency of the act or failure to act is to cause physical harm, serious physical harm, or serious mental harm.

(b) By “physical harm” I mean any injury to a vulnerable adult’s physical condition.

(4) Second, that the defendant knowingly or intentionally committed an act that, under the circumstances, posed an unreasonable risk of harm or injury to a vulnerable adult, regardless of whether [he/she] actually sustained a physical injury.

(5) Third, that [name complainant] was at the time a “vulnerable adult.” The term *vulnerable adult* means

[Choose (a), (b), or (c) or any combination of the three:]³

(a) A person 18 years of age or older who, because of age, developmental disability, mental illness, or physical handicap requires supervision or personal care or lacks the personal and social skills required to live independently.

(b) A person 18 years of age or older who is placed in an adult foster care family home or an adult foster care small group home.

(c) A person 18 years of age or older who is suspected of being or believed to be abused, neglected, or exploited.

Use Notes

1. *Caregiver* is defined by the statute as an individual who directly cares for or has physical custody of a vulnerable adult. MCL 750.145m(c).

2. The statutory language indicates that this is a general intent crime.

3. The statute sets forth three separate definitions for the term *vulnerable adult*, which, in a particular case, may be limited to one or may include one or more of such definitions. MCL 750.145m(u).

The Committee on Model Criminal Jury Instructions has adopted amended model criminal jury instruction M Crim JI 36.5 to accommodate an amendment to the human-trafficking statute, MCL 750.462f(1)(b), adding punishment for those whose crime causes a victim to be engaged in commercial sexual activity. It is effective July 2018.

**[AMENDED] M Crim JI 36.5
Aggravating Factors**

(1) If you find that the defendant is guilty of [obtaining a person for forced labor or services/holding a person in debt bondage/knowingly subjecting a person to forced labor or services or debt bondage/participating in an enterprise involving forced

labor, debt bondage, or commercial sex for financial gain], then you must decide whether the prosecutor has proved the following aggravating element[s] beyond a reasonable doubt:

[*Select from the following. Proving a bodily injury under (5) below may be a lesser offense where serious bodily injury has been charged under (3).*]

(2) That the violation involved

[*Select one or more as warranted by the evidence:*]

(a) kidnapping or attempted kidnapping of [name complainant]. Kidnapping means restraining someone for ransom, to use as a shield, to engage in criminal sexual conduct, to take out of the state, or to hold in involuntary servitude.

(b) first-degree criminal sexual conduct or attempted first-degree criminal sexual conduct of [name complainant]. First-degree criminal sexual conduct is sexual penetration of a person [provide particular elements that may apply from M Crim JI 20.3 through 20.11].

(c) an attempt to kill [name complainant].

(d) the death of [name complainant].

(3) That the violation resulted in serious bodily injury to [name complainant]. A serious bodily injury is any physical injury that requires medical treatment. It does not matter whether [name complainant] tried to get medical treatment.

(4) That the violation resulted in [name complainant] being engaged in commercial sexual activity. "Commercial sexual activity"¹ means performing acts of sexual penetration or contact,² child sexually abusive activity,³ or a sexually explicit performance.⁴

(5) [That the violation/You may also consider the less serious offense that the violation⁵] resulted in bodily injury to [name complainant]. Bodily injury is any physical injury.

Use Notes

1. Definitions of *commercial sexual activity* are found in MCL 750.462a.

2. Definitions of *sexual penetration* and *sexual contact* are found in MCL 750.520a.

3. *Child sexually abusive activity* is defined in MCL 750.145c(1)(n) as a child engaging in a "listed sexual act."

Listed sexual act is defined in MCL 750.145c(1)(i) as "sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity." Those terms, in turn, are each defined in MCL 750.145c(1), and the court may provide definitions where appropriate.

4. *Sexually explicit performance* is defined in MCL 722.673(g) as "a motion picture, video game, exhibition, show, representation, or other presentation that, in whole or in part, depicts nudity, sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse."

5. The lesser offense language only applies where "serious bodily injury" is charged and paragraph (3) is read to the jury.

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