

The Committee solicits comment on the following proposal by April 1, 2019. 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 Paragraph (6) of M Crim JI 3.11, the Composite Instruction that explains the deliberative process to the jury. The amendment attempts to clarify the instruction, to reduce the court's housekeeping obligations to provide the names of different offenses that a jury may be considering, and to make it easier for judges to read. Deletions are in strike-through, and new language is underlined.

### [AMENDED] M Crim JI 3.11 Deliberations and Verdict

(1) When you go to the jury room, you will be provided with a written copy [copies] of the final jury instructions. [A copy of electronically recorded instructions will also be provided to you.] You should first choose a foreperson. The foreperson should see to it that your discussions are carried on in a businesslike way and that everyone has a fair chance to be heard.

(2) During your deliberations please turn off your cell phones or other communications equipment until we recess.

(3) A verdict in a criminal case must be unanimous. In order to return a verdict, it is necessary that each of you agrees on that verdict. In the jury room you will discuss the case among yourselves, but ultimately each of you will have to make up your own mind. Any verdict must represent the individual, considered judgment of each juror.

(4) It is your duty as jurors to talk to each other and make every reasonable effort to reach agreement. Express your opinions and the reasons for them, but keep an open mind as you listen to your fellow jurors. Rethink your opinions and do not hesitate to change your mind if you decide you were wrong. Try your best to work out your differences.

(5) However, although you should try to reach agreement, none of you should give up your honest opinion about the case just because other jurors disagree with you or just for the sake of reaching a verdict. In the end, your vote must be your own, and you must vote honestly and in good conscience.

*[Use the next paragraph when there are less serious included crimes:]*

(6) ~~In this case, there are several different crimes that you may consider. When you discuss the case, you must consider the crime of [name principal charge] first. [I have already given you instructions regarding a lesser offense. As to any count which includes a lesser offense, you must first consider the principal offense. If you all agree that the defendant is guilty of that crime, you may stop your discussions and return your verdict you need not consider the lesser offense.]~~ If you believe that the defendant is not guilty of ~~[name principal charge]~~ the principal offense or if you cannot agree ~~about on that crime offense, you should may~~ consider the ~~less serious crime of [name less serious charge] lesser offense. [You decide how long to spend on (name principal charge) before discussing (name less serious charge). You can go back to (name principal charge) after discussing (name less serious charge). It is up to you to decide how long to consider the principal offense before discussing the lesser offense. You may go back to consider the principal offense again after discussing the lesser offense, if you want to.]~~

(7) If you have any questions about the jury instructions before you begin deliberations, or questions about the instructions that arise during deliberations, you may submit them in writing in a sealed envelope to the bailiff.

### Use Note

~~This instruction should be given after the attorney's closing arguments regardless of whether the jury instructions are given before or after closing argument.~~

Paragraph (6) of this instruction is only used the approved form when the jury is instructed on less serious crimes. See *People v Handley*, 415 Mich 356; 329 NW2d 710 (1982). The remainder of the instruction should be given in every case.

The Committee solicits comment on the following proposal by May 1, 2019. 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 a new instruction, M Crim JI 7.25, for use where a defendant interposes a self-defense claim to a felon-in-possession-of-a-firearm charge as permitted under *People v Dupree*, 486 Mich 693 (2010).

### [NEW] M Crim JI 7.25 Self-Defense as Defense to Felon in Possession of a Firearm

(1) The defendant claims that [he/she] possessed the firearm in order to act in lawful [self-defense/defense of \_\_\_\_]. A person may possess a firearm to defend [himself/herself/another person] under certain circumstances, even where it would otherwise be unlawful for [him/her] to possess the firearm. If a person possesses a firearm to act in lawful [self-defense/defense of others], [his/her] actions are excused, and [he/she] is not guilty of being a felon in possession of a firearm.

(2) Just as when considering the claim of self-defense to the charge of *[identify principal assaultive charge to which the defendant is asserting self-defense]*, you should consider all the evidence and use the following rules to decide whether the defendant possessed a firearm to act in lawful [self-defense/defense of \_\_\_\_]. You should judge the defendant's conduct according to how the circumstances appeared to [him/her] at the time [he/she] acted.

(3) First, when [he/she] acted, the defendant must have honestly and reasonably believed that [he/she] had to possess a firearm to protect [himself/herself] from the imminent unlawful use of force by another. If [his/her] belief was honest and reasonable, [he/she] could act to defend [himself/herself/\_\_\_\_] with a firearm, even if it turns out later that [he/she] was wrong

about how much danger [he/she/\_\_\_\_\_] was in.

(4) Second, a person is only justified in possessing a firearm when necessary at the time to protect [himself/herself/\_\_\_\_\_] from danger of death or serious injury. The defendant may only possess a firearm if it is appropriate to the attack made and the circumstances as [he/she] saw them. When you decide whether the possession of the firearm was what seemed necessary, you should consider whether the defendant knew about any other ways of protecting [himself/herself], but you may also consider how the excitement of the moment affected the choice the defendant made.

(5) Third, at the time [he/she] possessed the firearm, the defendant must not have been engaged in a criminal act that would tend to provoke a person to try to defend [himself/herself] from the defendant.<sup>1</sup>

#### Use Note

1. This paragraph should be given only when supported by the facts; that is, where there is evidence that, at the time the defendant used deadly force, he or she was engaged in the commission of some crime likely to lead to the other person's assaultive behavior. For example, this paragraph is usually unwarranted if the defendant was engaged in a drug transaction and used force in self-defense against an unprovoked attack by the other party in the transaction. See *People v Townes*, 391 Mich 578, 593; 218 NW2d 136 (1974). On the other hand, this paragraph *would* apply to a defendant who engaged in a robbery of another person and that other person reacted with force. This paragraph is unnecessary if there are no issues other than who was the aggressor in the situation, whether defendant had an honest and reasonable belief of the use of imminent force by another, or whether the degree of force used was necessary.

The Committee solicits comment on the following proposal by April 1, 2019. 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 M Crim JI 11.38 and 11.38a, the instructions for felon-in-possession-of-a-firearm charges to comport with the felony-firearm instruction, M Crim JI 11.34, by requiring that the possession of the firearm be “knowing,” and to otherwise clarify the instructions. Deletions are in strike-through, and new language is underlined. (As the Use Notes to the instructions are lengthy and are irrelevant to the amendments, they are not published below and the superscript Use Note numbers in the instructions are not included.)

### [AMENDED] M Crim JI 11.38 Felon Possessing Firearm: Nonspecified Felony

The defendant is charged with possession of [a firearm/ammunition] after having been convicted of a felony. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(1) First, that the defendant knowingly [possessed/used/transported/sold/distributed/received/carried/shipped/purchased] [a firearm/ammunition] in this state.

(2) Second, at that time, the defendant was had been convicted of [name felony].

*[Use the following paragraph only if the defendant offers some evidence that more than three years have passed since completion of the sentence on the underlying offense.]*

(3) Third, that less than three years had passed since [all fines were paid/all imprisonment was served/all terms of (probation/parole) were successfully completed].

### [AMENDED] M Crim JI 11.38a Felon Possessing Firearm: Specified Felony

The defendant is charged with possession of [a firearm/ammunition] after having been convicted of a specified felony. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(1) First, that the defendant knowingly [possessed/used/sold/distributed/received/carried/shipped/transported/purchased] [a firearm/ammunition] in this state.

(2) Second, at that time, the defendant was had been convicted of [name specified felony].

*[Use the following paragraphs only if the defendant offers some evidence that more than five years have passed since completion of the sentence on the underlying offense and that his or her firearm rights have been restored, MCL 28.424.]*

(3) Third, that less than five years had passed since [all fines were paid/all imprisonment was served/all terms of (probation/parole) were successfully completed].

(4) Fourth, that the defendant's right to [possess/use/transport/sell/receive] [a firearm/ammunition] has not been restored pursuant to Michigan law.

The Committee solicits comment on the following proposal by May 1, 2019. 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 M Crim JI 15.18 and eliminating 15.19, the instructions for charges involving moving violations causing death or serious impairment of a body function under MCL 257.601d. The amendment follows the decision in *People v Czuprynski*, a published Court of Appeals opinion (No. 336883), finding M Crim JI 15.19 in error for failing to require proof that a moving violation was the cause of the serious impairment of a body function. The proposal combines the elements for both instructions in M Crim JI 15.18. Deletions are in strike-through, and new language is underlined.

### [AMENDED] M Crim JI 15.18 Moving Violation Causing Death or Serious Impairment of a Body Function [Use for Acts Committed On or After October 31, 2010]

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

of [state charge] committing a moving traffic violation that caused [death/serious impairment of a body function] 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 operated a motor vehicle. To operate means to drive or have actual physical control of the vehicle.

(3) Second, that the defendant operated the vehicle on a highway or other place open to the public or generally accessible to motor vehicles [including any designated parking area].

(4) Third, that, while operating the motor vehicle, the defendant committed the following a moving violation by: [describe the moving violation].

(5) Fourth, The moving violation of [describe the moving violation] was a cause of the death of [name deceased]. 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: that by committing the moving violation, the defendant caused [the death of (name deceased)]/(name injured person) to suffer a serious impairment of a body function?]. To cause [the death of (name deceased)]/such injury to (name injured person), the defendant’s moving violation must have been a factual cause of the [death/injury], that is, but for committing the moving violation the [death/injury] would not have occurred. In addition, the [death/injury] must have been a direct and natural result of committing the moving.

### Use Notes

1. Use when instructing on this crime as a lesser offense.

2. 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.

## FOCUS ON YOUR PET’S CARE NOT THE COST

Pets’ medical emergencies never happen when you expect them. Pet insurance reimburses you for covered vet bills, so you can give your pet the best care possible.

**SAVE 10% WITH YOUR MEMBER DISCOUNT\***

1-877-343-5314  
aspcapetinsurance.com/sbm  
Priority Code: SBMPET

**SBM**  
STATE BAR OF MICHIGAN

PREFERRED PARTNER

**ASPCA** PET HEALTH INSURANCE

\* Discounts apply to base plan premium.  
Plans are underwritten by the United States Fire Insurance Company and administered by Fairmont Specialty Insurance Agency (FSIA Insurance Agency in CA), companies of Crum & Forster. The ASPCA® does not offer insurance. Through a strategic licensing agreement, in exchange for the use of ASPCA trademarks, the ASPCA is paid a royalty fee of up to 10% of the purchase price, with a minimum of \$335,000 per year.

U0816-SBM04

