

The Committee has adopted the following model civil jury instruction, effective April 25, 2019.

## ADOPTED

### M Civ JI 15.01A

#### Definition of the Proximate Cause

When I use the words “the proximate cause” I mean first, that the negligence must have been a cause of plaintiff’s injury, and second, that it was reasonably foreseeable that the negligence could result in harm or injury to plaintiff, and third, that if there was more than one negligent actor, the defendant’s negligence was the one most immediate, efficient, and direct cause of the plaintiff’s injury. There is no special definition of what it means to be the one most immediate, efficient, and direct proximate cause and its application is for your judgment. However, to be the one most immediate, efficient, and direct proximate cause, the defendant’s negligent act or omission does not need to be the last in time before the plaintiff’s injury.

Proximate cause refers to negligent human conduct. Non-human and natural causes cannot be considered to be a proximate cause of injury, although they can be considered in determining whether the damages were reasonably foreseeable to the defendant. Only negligent human acts or omissions can be the proximate cause of the injury.

#### Note on Use

Use only in determining a defendant’s entitlement to governmental immunity pursuant to the Government Tort Liability Act (GTLA) or as otherwise required by statute.

#### History

M Civ JI 15.01A was added April 2019.

The Committee has amended the following model civil jury instruction, effective April 25, 2019.

## AMENDED

The Committee has amended this instruction to delete the word “monthly” from the bracketed phrase “applicable monthly

maximum” to make the phrase consistent with the nomenclature in the Table of Maximum Work Loss Benefits in the Note on Use.

### M Civ JI 35.01

#### No-Fault First-Party Benefits Action: Explanation of Statute

We have a state law known as the No-Fault Automobile Insurance Law which provides that if a person sustains accidental bodily injury or death arising out of the [ownership/or/operation/or/maintenance/or/use] of a motor vehicle as a motor vehicle, by [himself or herself/or/someone else], an insurance company may be responsible to pay the following types of benefits:

(a) \*(The first type of benefit is known as “allowable expenses” and consists of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person’s care, recovery or rehabilitation. Allowable expenses include, but are not limited to, medical expenses.)

(b) \*(The second type of benefit is known as “work loss benefit” and consists of †(85 percent) of an injured person’s loss of income from work the injured person would have performed during the first three years after the date of the accident if the person had not been injured. The total work loss benefit for any 30-day period may not exceed \$[*applicable maximum*]).

(c) \*(The third type of benefit is known as “replacement service expenses” and consists of expenses not exceeding \$20 per day reasonably incurred in obtaining ordinary and necessary services in place of those the injured person would have performed during the first three years after the date of the accident, not for income but for the benefit of [himself/herself] or of [his/her] dependents.)

(d) \*(The fourth type of benefit is known as “survivors’ loss benefits” and consists of two separate types of benefits:

1. A loss, after the date on which the decedent died, of contributions of tangible things of economic value, not including services, that dependents of the decedent, at the time of [his/her] death, would have received from the decedent for support during their dependency if [he/she] had not suffered the accidental bodily injury causing death; and

2. Replacement service expenses, not exceeding \$20 per day, reasonably incurred by

these dependents, during their dependency and after the date on which the decedent died, in obtaining ordinary and necessary services in place of those services that the decedent would have performed for their benefit if [he/she] had not suffered the injury causing death.

It should be noted, however, that the total survivors’ loss benefits for any 30-day period, that is, the combination of loss of support and replacement services, may not exceed \$ [*applicable maximum*] and are not payable beyond three years from the date of the accident.)

(e) \*(The last type of benefit is funeral and burial expenses. These may not exceed \*\*\$ [*policy maximum*]).

#### Notes on Use

\*The words and subparagraphs should be selected to fit the facts in the particular case.

\*\*See MCL 500.3107(1)(a) for the statutory minimum and maximum for funeral and burial expenses.

Maximum work loss benefits have been increased each year by the Insurance Commission, according to increased cost of living. (See the table below for maximum work loss benefit amounts.) Annual adjustments for survivors’ loss benefits commenced on October 1, 1978, with an amendment to MCL 500.3108. Prior to that date, the maximum survivors’ loss per 30-day period was \$1,000. Since October 1, 1978, survivors’ loss maximums have been the same as work loss maximums under MCL 500.3107(1)(b).

It should also be noted that no-fault insurance can be purchased which provides benefits in excess of the minimum. For those benefits in excess of the no-fault law, the Court may supply the appropriate amount in the blank captioned “applicable maximum.”

†This standard statutory percentage should be modified if plaintiff’s income tax consequences are less than 15 percent. See MCL 500.3107(1)(b).

October 1, 1973 through September 30, 1974—\$1,000 per single 30-day period.

October 1, 1974 through September 30, 1975—\$1,111 per single 30-day period.

October 1, 1975 through September 30, 1976—\$1,213 per single 30-day period.

October 1, 1976 through September 30, 1977—\$1,285 per single 30-day period.

October 1, 1977 through September 30, 1978—\$1,373 per single 30-day period.

October 1, 1978 through September 30, 1979—\$1,475 per single 30-day period.

October 1, 1979 through September 30, 1980—\$1,636 per single 30-day period.

October 1, 1980 through September 30, 1981—\$1,870 per single 30-day period.

October 1, 1981 through September 30, 1982—\$2,049 per single 30-day period.

October 1, 1982 through September 30, 1983—\$2,195 per single 30-day period.

October 1, 1983 through September 30, 1984—\$2,252 per single 30-day period.

October 1, 1984 through September 30, 1985—\$2,347 per single 30-day period.

October 1, 1985 through September 30, 1986—\$2,434 per single 30-day period.

October 1, 1986 through September 30, 1987—\$2,477 per single 30-day period.

October 1, 1987 through September 30, 1988—\$2,569 per single 30-day period.

October 1, 1988 through September 30, 1989—\$2,670 per single 30-day period.

October 1, 1989 through September 30, 1990—\$2,808 per single 30-day period.

October 1, 1990 through September 30, 1991—\$2,939 per single 30-day period.

October 1, 1991 through September 30, 1992—\$3,077 per single 30-day period.

October 1, 1992 through September 30, 1993—\$3,172 per single 30-day period.

October 1, 1993 through September 30, 1994—\$3,267 per single 30-day period.

October 1, 1994 through September 30, 1995—\$3,349 per single 30-day period.

October 1, 1995 through September 30, 1996—\$3,450 per single 30-day period.

October 1, 1996 through September 30, 1997—\$3,545 per single 30-day period.

October 1, 1997 through September 30, 1998—\$3,627 per single 30-day period.

October 1, 1998 through September 30, 1999—\$3,688 per single 30-day period.

October 1, 1999 through September 30, 2000—\$3,760 per single 30-day period.

October 1, 2000 through September 30, 2001—\$3,898 per single 30-day period.

October 1, 2001 through September 30, 2002—\$4,027 per single 30-day period.

October 1, 2002 through September 30, 2003—\$4,070 per single 30-day period.

October 1, 2003 through September 30, 2004—\$4,156 per single 30-day period.

October 1, 2004 through September 30, 2005—\$4,293 per single 30-day period.

October 1, 2005 through September 30, 2006—\$4,400 per single 30-day period.

October 1, 2006 through September 30, 2007—\$4,589 per single 30-day period.

October 1, 2007 through September 30, 2008—\$4,713 per single 30-day period.

October 1, 2008 through September 30, 2009—\$4,948 per single 30-day period.

October 1, 2009 through September 30, 2010—\$4,878 per single 30-day period.

October 1, 2010 through September 30, 2011—\$4,929 per single 30-day period.

October 1, 2011 through September 30, 2012—\$5,104 per single 30-day period.

October 1, 2012 through September 30, 2013—\$5,189 per single 30-day period.

October 1, 2013 through September 30, 2014—\$5,282 per single 30-day period.

October 1, 2014 through September 30, 2015—\$5,392 per single 30-day period.

October 1, 2015 through September 30, 2016—\$5,398 per single 30-day period.

October 1, 2016 through September 30, 2017—\$5,452 per single 30-day period.

### History

M Civ JI 35.01 was added November 1980. Amended May 1998.

The Committee solicits comment on the following proposal by October 15, 2019. Comments may be sent in writing to Timothy J. Raubinger, Reporter, Committee on Model Civil Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCJI@courts.mi.gov.

### PROPOSED

The Committee proposes to amend this instruction in order to conform it to amendments to MCL 330.1401 and MCL 330.1472a.

#### **[AMENDED] M Civ JI 171.02 Mental Illness: Involuntary Treatment— Elements and Burden of Proof**

Two requirements must be met for you to find that an individual is a person requiring treatment.

First, the person must be mentally ill. Mentally ill means that the person suffers from a substantial disorder of thought or

mood which significantly impairs [his/her] judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

However, mental illness is not the only requirement.

The second requirement is that the person, as a result of that mental illness, is subject to one or more of the following conditions:

(a) the person can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure [himself/herself] or another person and has engaged in an act or acts or made significant threats that substantially support this expectation, or

(b) the person is unable to attend to those of [his/her] basic physical needs such as food, clothing or shelter, which must be attended to in order for the person to avoid serious harm in the near future; and the person has demonstrated that inability by failing to attend to those basic physical needs, or

(c) the person's judgment is so impaired that [he/she] is ~~unable to understand~~ lacks an understanding of [his/her] need for treatment and the person's continued behavior as a result of mental illness can reasonably be expected, on the basis of competent clinical opinion, to result in significant physical harm to [himself/herself] or others, or which has caused [him/her] to demonstrate an unwillingness to voluntarily participate in or adhere to treatment that is necessary, on the basis of competent clinical opinion, to prevent a relapse or harmful deterioration of [his/her] condition, and presents a substantial risk of significant physical or mental harm to [himself/herself] or to others.

~~(d) the person's understanding of the need for treatment is impaired to the point that:~~

~~(i) [he /she] is unlikely to participate in treatment voluntarily, and~~

~~(ii) [he/she] is currently noncompliant with treatment that has been recommended by a mental health professional and that has been determined to be necessary to prevent a relapse or harmful deterioration of [his/her] condition, and~~

~~(iii) [his/her] noncompliance with treatment has been a factor in [his/her] placement in a psychiatric hospital, prison, or jail at least 2 times within the last 48 months or~~

~~whose noncompliance with treatment has been a factor in [his/her] committing 1 or more acts, attempts, or threats of serious violent behavior within the last 48 months.~~

An individual who meets both requirements is considered to be “a person requiring treatment.”

The petitioner has the burden of proving by clear and convincing evidence that the respondent is a person requiring treatment.

If you find that the petitioner has met [his/her] burden of proving that the respondent is a person requiring treatment, your verdict will be:

“We find that the respondent is a person requiring treatment.”

If you find that the petitioner has not met [his/her] burden of proving that the respondent is a person requiring treatment, your verdict will be:

“We do not find that the respondent is a person requiring treatment.”

#### Notes on Use

In the case of a hearing on a petition for discharge, this instruction must be modified to show that the alleged person requiring treatment is the petitioner.

If there is evidence of senility, epilepsy, alcoholism, or drug dependence, to determine if this instruction should be given, see § 401(2) of the Mental Health Code, MCL 330.1401(2).

This instruction should be followed by the definition of clear and convincing evidence in M Civ JI 8.01.

#### Comments

See MCL 330.1401 for the definition of “person requiring treatment,” and MCL 330.1400(g) for the definition of “mental illness.”

This instruction is designed for use in any of four types of hearings under the Mental Health Code. See MCL 330.1452.

The first type of hearing is initiated by a petition or application to filed in the probate court for involuntary mental health treatment of a person. The hospitalization portion of an initial order may not exceed 60 days; An initial order of assisted outpatient treatment may not exceed 180 days. An initial order of combined hospitalization and

assisted outpatient treatment shall not exceed 180 days. The hospitalization portion of the initial order may not exceed 60 days. and alternative treatment or combination of alternative treatment and hospitalization may not exceed 90 days. MCL 330.1472a(1). The person may not be retained beyond the expiration of the initial order without a further hearing.

The second hearing involves a petition by the hospital director or alternative assisted outpatient treatment supervisor that asserts that the person continues to be a person requiring treatment and requests further hospitalization involuntary mental health treatment for a period of not more than 90 days; MCL 330.1472a(2). The person may not be retained beyond the expiration of the second order without a third hearing. At the third hearing, the court may issue a continuing order of hospitalization involuntary mental health treatment for not more than one year; ~~a continuing order of alternative treatment for not more than one year, or a continuing order of combined hospitalization and alternative treatment for not more than one year but the hospitalization portion of a combined order may not exceed 90 days.~~ MCL 330.1472a(3). Succeeding continuing orders for involuntary mental health treatment may not exceed one year. MCL 330.1472a(4).

After a continuing (one-year) order of involuntary mental health treatment, the hospital director or alternative treatment program supervisor must review the person's status and report it to the court and notify the person, his or her attorney, his or her guardian, or a person designated by the individual, as well as other enumerated persons every six months. MCL 330.1482 and .1483. If the report concludes that the person continues to require treatment, the person is entitled to challenge it in a hearing on a petition for discharge. MCL 330.1484.

In each of these hearings, the person is entitled to have the question whether he or she requires treatment heard by a jury. MCL 330.1458; *In re Wagstaff*, 93 Mich App 755; 287 NW2d 339 (1979). In each type of hearing, it must be shown that the person is a “person requiring treatment” as that term is defined in the statute. MCL 330.1401. The

standard of “person requiring treatment” applies equally to continuing orders and the initial order. *People ex rel Book v Hooker*, 83 Mich App 495; 268 NW2d 698 (1978). The burden is on the petitioner (or the hospital director in the case of a petition for discharge) to meet this standard by clear and convincing evidence. MCL 330.1465; *Addington v Texas*, 441 US 418; 99 S Ct 1804; 60 L Ed 2d 323 (1979).

Once the jury determines that the person is a “person requiring treatment,” the judge determines the appropriate treatment, and the person has no right to have the jury determine appropriate treatment or hospitalization. *In re Portus*, 142 Mich App 799; 371 NW2d 871 (1985).

#### History

Added May 1984. Amended June 2000, July 2012.

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The Michigan Supreme Court has delegated to the Committee on Model Civil Jury Instructions the authority to propose and adopt Model Civil Jury Instructions. MCR 2.512(D). In drafting Model Civil Jury Instructions, it is not the committee's function to create new law or anticipate rulings of the Michigan Supreme Court or Court of Appeals on substantive law. The committee's responsibility is to produce instructions that are supported by existing law.

The members of the Committee on Model Civil Jury Instructions are:

**Chair:** Hon. Mark T. Boonstra

**Reporter:** Timothy J. Raubinger

**Members:** Benjamin J. Aloia; Robert L. Avers; Hilary A. Ballentine; Hon. Jane M. Beckering; Mark R. Bendure; Hon. James N. Erhart; Hon. Kathleen A. Feeney; Gary N. Felty Jr.; William B. Forrest III; Hon. Michael F. Gadola; Donald J. Gasiorek; James F. Hewson; Hon. Michael L. Jaconette; Amy M. Johnston; C. Thomas Ludden; Daniel J. Schulte; Judith A. Susskind; Hon. Donald A. Teeple; Thomas Van Dusen; Thomas W. Waun.

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