

The Committee has adopted the following amended model civil jury instructions, effective October 31, 2019.

## ADOPTED

### [AMENDED] M Civ JI 97.01 Preliminary Instructions to Prospective Jurors

(1) Ladies and gentlemen, I am Judge [\_\_\_\_\_] and it is my pleasure and privilege to welcome you to the [\_\_\_\_\_] County Circuit Court.

(2) I know that jury service may be a new experience for some of you. Jury duty is one of the most serious duties that members of a free society are called upon to perform.

(3) The jury is an important part of this court. The right to a trial by jury is an ancient tradition and is part of our legal heritage. The parties have a right to a jury that is selected fairly, that comes to the case without bias, and that will attempt to reach a verdict based on the evidence presented. Because you are making very important decisions in this case, you are to evaluate the evidence carefully and avoid decisions based on generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law and your oath demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice. Jurors must be as free as humanly possible from bias, prejudice, or sympathy for either side. Each side in a trial is entitled to jurors who keep open minds until the time comes to decide the case. Take the time you need to test what might be reflexive unconscious responses and to reflect carefully and consciously about the evidence. I caution you to avoid reaching conclusions that may have been influenced by unintended stereotypes or associations. You must each reach your own conclusions about this case individually, but you should do so only after listening to and considering the opinions of the other jurors, who may have different backgrounds and perspectives from yours. Working together will help achieve a fair result.

## History

M Civ JI 97.01 was added March 2005. Amended October 2019.

### [AMENDED] M Civ JI 97.13 Judging Credibility and Weight of Evidence

(1) It is your job to decide what the facts of this case are. You must decide which witnesses you believe and how important you think their testimony is. You do not have to accept or reject everything a witness says. You are free to believe all, none, or part of any person's testimony.

(2) In deciding which testimony you believe, you should rely on your own common sense and everyday experience. However, in deciding whether you believe a witness's testimony, you must set aside any bias or prejudice you have based on the witness's disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, socioeconomic status, or any other factor irrelevant to the rights of the parties.

Each of us may have biases about or certain perceptions or stereotypes of other people. We may be aware of some of our biases, though we may not share them with others. We may not be fully aware of some of our other biases. Our biases often affect how we act, favorably or unfavorably, toward someone. Bias can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions. Witnesses can have the same implicit biases. As jurors you are being asked to make very important decisions in this case. You must not let bias, prejudice, or public opinion influence your decision. You must not be biased in favor of or against any party, witness, or lawyer because of his or her disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, socioeconomic status, or any other factor irrelevant to the rights of the parties. Your verdict must be based solely on the evidence presented. You must carefully evaluate the evidence and resist any urge to reach a verdict that is influenced by bias for or against any party, witness, or lawyer.

Take the time you need to test what might be reflexive unconscious responses

and to reflect carefully and consciously about the evidence. I caution you to avoid reaching conclusions that may have been influenced by unintended stereotypes or associations. You must each reach your own conclusions about this case individually, but you should do so only after listening to and considering the opinions of the other jurors, who may have different backgrounds and perspectives from yours. Working together will help achieve a fair result.

(3) There is no fixed set of rules for judging whether you believe a witness, but it may help you to think about these questions:

(a) Was the witness able to see or hear clearly? How long was the witness watching or listening? Was anything else going on that might have distracted the witness?

(b) Does the witness seem to have a good memory?

(c) How does the witness look and act while testifying? Does the witness seem to be making an honest effort to tell the truth, or does the witness seem to evade the questions or argue with the lawyers?

(d) Does the witness's age or maturity affect how you judge his or her testimony?

(e) Does the witness have any bias or prejudice or any personal interest in how this case is decided?

(f) Have there been any promises, threats, suggestions, or other influences that affect how the witness testifies?

(g) In general, does the witness have any special reason to tell the truth, or any special reason to lie?

(h) All in all, how reasonable does the witness's testimony seem when you think about all the other evidence in the case?

## History

M Civ JI 97.13 was added March 2005. Amended October 2019.

### [AMENDED] M Civ JI 97.19 Jurors Not to Discuss Case

(1) Because the law requires that cases be decided only on the evidence presented during the trial and only by the deliberating jurors, you must keep an open mind and not make a decision about anything in the case until after you have (a) heard all of the evidence, (b) heard the closing arguments of

counsel, (c) received all of my instructions on the law and the verdict form, and (d) any alternate jurors have been excused. At that time, you will be sent to the jury room to decide the case. Sympathy must not influence your decision. Nor should your decision be influenced by prejudice regarding disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, socioeconomic status, or any other factor irrelevant to the rights of the parties.

(2) [Alternative A] (Before you are sent to the jury room to decide the case, you may discuss the case among yourselves during recesses in the trial, but there are strict rules that must be followed:

First, you may only discuss the case when (a) all of you are together, (b) you are all in the jury room, and (c) no one else is present in the jury room. You must not discuss the case under any other circumstances. The reason you may not discuss the case with other jurors while some of you are not present is that all of you are entitled to participate in all of the discussions about the case.

Second, as I stated before, you must keep an open mind until I send you to the jury room to decide the case. Your discussions before then are only tentative.

Third, you do not have to discuss the case during the trial. But if you choose to do so, you must follow the rules I have given you.)

[Alternative B] (Before you are sent to the jury room to decide the case, you are not to discuss the case even with the other members of the jury. This is to ensure that all of you are able to participate in all of the discussions about the case, and so that you do not begin to express opinions about the case until it has been submitted to you for deliberation.)

### Note on Use

The court will choose between Alternative A or B in paragraph 2 based on the court's decision whether to permit the jurors to discuss the evidence among themselves during trial recesses.

### History

M Civ JI 97.19 was added March 2005. Amended November 2015, October 2019.

## [AMENDED] M Civ JI 97.33 Witnesses—Credibility

(1) As I said before, it is your job to decide what the facts of this case are. You must decide which witnesses you believe and how important you think their testimony is. You do not have to accept or reject everything a witness said. You are free to believe all, none, or part of any person's testimony.

(2) In deciding which testimony you believe, you should rely on your own common sense and everyday experience. However, in deciding whether you believe a witness's testimony, you must set aside any bias or prejudice you may have regarding a witness's disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, socioeconomic status, or any other factor irrelevant to the rights of the parties.

Each of us may have biases about or certain perceptions or stereotypes of other people. We may be aware of some of our biases, though we may not share them with others. We may not be fully aware of some of our other biases. Our biases often affect how we act, favorably or unfavorably, toward someone. Bias can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions. Witnesses can have the same implicit biases. As jurors you are being asked to make very important decisions in this case. You must not let bias, prejudice, or public opinion influence your decision. You must not be biased in favor of or against any party, witness, or lawyer because of his or her disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, socioeconomic status, or any other factor irrelevant to the rights of the parties. Your verdict must be based solely on the evidence presented. You must carefully evaluate the evidence and resist any urge to reach a verdict that is influenced by bias for or against any party, witness, or lawyer.

(3) There is no fixed set of rules for judging whether you believe a witness, but it may help you to think about these questions:

(a) Was the witness able to see or hear clearly? How long was the witness watching or listening? Was anything else going on that might have distracted the witness?

(b) Did the witness seem to have a good memory?

(c) How did the witness look and act while testifying? Did the witness seem to be making an honest effort to tell the truth, or did the witness seem to evade the questions or argue with the lawyers?

(d) Does the witness's age or maturity affect how you judge his or her testimony?

(e) Does the witness have any bias or prejudice or any personal interest in how this case is decided?

(f) Have there been any promises, threats, suggestions, or other influences that affected how the witness testified?

(g) In general, does the witness have any special reason to tell the truth, or any special reason to lie?

(h) All in all, how reasonable does the witness's testimony seem when you think about all the other evidence in the case?

(4) Sometimes the testimony of different witnesses will not agree, and you must decide which testimony you accept. You should think about whether the disagreement involves something important or not, and whether you think someone is lying or is simply mistaken. People see and hear things differently, and witnesses may testify honestly but simply be wrong about what they thought they saw or remembered. It is also a good idea to think about which testimony agrees best with the other evidence in the case.

(5) However, you may conclude that a witness deliberately lied about something that is important to how you decide the case. If so, you may choose not to accept anything that witness said. On the other hand, if you think the witness lied about some things but told the truth about others, you may simply accept the part you think is true and ignore the rest.

### History

M Civ JI 97.33 was added March 2005. Amended October 2019.

## [AMENDED] M Civ JI 97.35 Statutory Grounds

(1) The issue that you, the jury, will have to decide is whether one or more of the statutory grounds alleged in the petition

have been proven.\* If you find that one or more of the statutory grounds alleged in the petition have been proven, then the Court will have jurisdiction over [*children's names*]. I will now explain what those statutory grounds are. The Court has jurisdiction over a child\*\*:

(a) If that child's parent or other person legally responsible for the care and maintenance of that child, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, or

(b) If that child is subject to a substantial risk of harm to his or her mental well-being, or

(c) If that child is abandoned by his or her parents, guardian, or other custodian, or

(d) If that child is without proper custody or guardianship, or

(e) If that child's home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for that child to live in, or

(f) If the juvenile is dependent and in danger of substantial physical or psychological harm when,

(i) the juvenile is homeless or not domiciled with a parent or other legally responsible person, or

(ii) the juvenile has repeatedly run away from home and is beyond the control of a parent or other legally responsible person, or

(iii) the juvenile is alleged to have performed or engaged in a commercial sexual activity or a delinquent act that is the result of force, fraud, coercion, or manipulation exercised by a parent or other adult, or

(iv) the juvenile's custodial parent or legally responsible person has died or has become permanently incapacitated and no appropriate parent or legally responsible person is willing and able to provide care for the juvenile, or

(g) If that child's parent has substantially failed, without good cause, to comply with a limited guardianship placement plan regarding the child, or

(h) If that child's parent has substantially failed, without good cause, to comply

with a court-structured plan regarding the child, or

(i) If that child has a guardian appointed for him or her under the Michigan Estates and Protected Individuals Code, and

(i) that child's parent, having the ability to support or assist in supporting the child, has failed or neglected, without good cause, to provide regular and substantial support for the child for a period of two years or more before the filing of the petition, or if a support order has been entered, has failed to substantially comply with the order for a period of two years or more before the filing of the petition, and

(ii) that child's parent, having the ability to visit, contact or communicate with the child, has regularly and substantially failed or neglected, without good cause, to do so for a period of two years or more before the filing of the petition.

#### Notes on Use

\*If only one statutory ground is alleged in the petition, substitute "the statutory ground" for "one or more of the statutory grounds" throughout these instructions.

\*\*The court should select the subsections that apply.

#### Comment

MCL 712A.2(b)(1)–(6)

#### History

M Civ JI 97.35 was added March 2005. Amended October 2019.

#### [AMENDED] M Civ JI 97.36 Definitions

(1) Neglect means harm to a child's health or welfare by a person responsible for the child's health or welfare that occurs through negligent treatment, including, but not limited to, the failure to provide adequate food, clothing, shelter, or medical care, though financially able to do so, or the failure to seek financial or other reasonable means to provide adequate food, clothing, shelter, or medical care.

(2) Child neglect means harm or threatened harm to a child's health or welfare by a parent, legal guardian, or any other person responsible for the child's health or welfare that occurs through either of the following:

(a) Negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care, though financially able to do so, or by the failure to seek financial or other reasonable means to provide adequate food, clothing, shelter, or medical care.

(b) Placing a child at an unreasonable risk to the child's health or welfare by failure of the parent, legal guardian, or other person responsible for the child's health or welfare to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk.

(3) The legal definition of cruelty is the same as the common understanding of the word cruelty. It implies physical or emotional mistreatment of a child.

(4) Depravity means a morally corrupt act or practice.

(5) The legal definition of criminality is the same as the common understanding of the word criminality. Criminality is present when a person violates the criminal laws of the state of Michigan or of the United States. Whether a violation of the criminal laws of the state of Michigan or of the United States by a parent, guardian, nonparent adult, or custodian renders the home or environment of a child an unfit place for the child to live in is for you to decide based on all of the evidence in the case.

(6) A child is without proper custody or guardianship when he or she is: 1) left with, or found in the custody of, a person other than a legal parent, legal guardian, or other person authorized by law or court order to have custody of the child, and 2) the child was originally placed, or came to be, in the custody of a person not legally entitled to custody of the child for either an indefinite period of time, no matter how short, or for a definite, but unreasonably long, period of time. What is unreasonably long depends on all the circumstances. It is proper for a parent or guardian to place his or her child with another person who is legally responsible for the care and maintenance of the child and who is able to and does provide the child with proper care and maintenance. A babysitter, relative, or other caregiver is not legally responsible for the care and maintenance of a child after the previously agreed-upon period of care has ended.

(7) Education means learning based on an organized educational program that is appropriate, given the age, intelligence, ability, and any psychological limitations of a child, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.

(8) A child is abandoned when the child's [parent(s)/guardian/custodian] leave(s) the child for any length of time, no matter how short, with the intention of never returning for the child. The intent of the [parent(s)/guardian/custodian] to abandon the child may be inferred from the [parent's/parents'/guardian's/custodian's] words or actions surrounding the act of leaving the child.

(9) "Commercial sexual activity" means one or more of the following for which anything of value is given or received by any person:

(i) An act of sexual penetration or sexual contact.

(ii) Any conduct constituting child sexually abusive activity or child sexually abusive material.

(iii) Any sexually explicit performance.

### Notes on Use

Only read those statutory provisions that apply to the facts of the case.

Pursuant to MCL 750.462a(c)(i), sexual penetration or sexual contact are to be defined as in MCL 750.520a. Pursuant to MCL 750.462a(c)(ii), conduct in violation of MCL 750.145c constitutes commercial sexual activity. Pursuant to MCL 750.462a(c)(iii), a sexually explicit performance is to be defined as in MCL 722.673(g).

### Comment

MCL 712A.2(b)(1)(B) and (C); MCL 722.602(1)(b),(d); MCL 722.622(k); MCL 750.145c.

### History

M Civ JI 97.36 was added March 2005. Amended July 2017, October 2019.

## [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] lacks an understanding of [his/her] need for treatment, 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.

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.

### Comment

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 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. 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 assisted outpatient treatment supervisor that asserts that the person continues to be a person requiring treatment and requests further 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 involuntary mental health treatment for not more than one year. 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 330.1483. 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, October 2019.

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.

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