

**STATE BAR OF MICHIGAN
2010-2011 COMMITTEE ANNUAL REPORT**

Article VI §6, Bylaws of the State Bar of Michigan

No later than May 1 of each year, the chair of each committee and subentity of the Bar, with the assistance of the staff liaison, shall report to the Executive Director on a form provided by the State Bar on the activities and accomplishments of the committee or subentity.

Committee Name: Criminal Jury Instructions Committee

Jurisdiction: Draft proposed standard criminal jury instructions for publication by the Institute for Continuing Education.

Chair(s) and Committee Members:

Officer	Name	Address	Telephone	Email
Chair	Hon. William J. Caprathe	305 Linden Park Dr. Bay City, MI 48706-2553	989 225-6407	bcaprathe@netscape.net
Staff Liaison	Candace Crowley	State Bar of Michigan	517 346-6319	ccrowley@mail.michbar.org
Commissioner Liaison	Maureen M. McGinnis	Donald E. McGinnis Jr. PC 1721 Crooks Rd., Suite 101 Troy, MI 48084-5392	(248) 643-6002	mmcginnis@dmcginnis.com

Member/Advisor/Other	Member/Advisor/Other
Hon. Timothy M. Kenny/Reporter	Daniel D. Kopka/ICLE
Ronald J. Bretz	Opolla Brown
J. Mark Cooney	LaNita R. Haith
Hon. John T. Hammond	Hon. Annette M. Jurkiewicz-Berry
Anica Letica	Hon. Kathleen J. McCann
Louisa M. Papalas-Concessi	Gene Schnelz
Rudolph A. Serra	Lawrence B. Shulman
Christopher Michael Smith	Hon. Thomas L. Solka
Hon. Brian R. Sullivan	Stephen M. Taratuta

Committee Meeting Schedule:

Please attach any additional information needed regarding Committee meetings as an addendum.

Meeting Type	Date	Location
Description		
Regular Meeting	May 15, 2010	State Bar of Michigan
Regular Meeting	September 11, 2010	Thomas M. Cooley Law School
Regular Meeting	February 26, 2011	Thomas M. Cooley Law School

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Resources provided by the State Bar of Michigan in support of committee work:

Provided staff support for meetings, printing support for materials, and coordinated the room and food for the meetings.

Committee Activities:

At the scheduled meeting on **May 15, 2010** the committee recommended and approved an amendment on CJI2d 17.23 Child Abuse, Fourth Degree (Unreasonable Risk of Harm or Injury). They discussed the “super drunk” driving verdict form that went into effect on Oct 31, 2010. They approved adding a use note to CJI2d 16.14 (Negligent Homicide)- CJI2d 16.12 (Manslaughter with a Motor Vehicle)-and CJI2d 15.10 (Felonious Driving) in accordance with the repealed traffic statutes above. They approved the recommended amendments to CJI2d 20.28 (Uncharged Acts in Child Criminal Sexual Conduct)and agreed to amend the Use Note and Commentary to reflect the People V. DerMartex holding. The committee tabled a request for a standard jury instruction for violation of MCL 750.540 (Use of Electronic Medium of Communication, prohibited conduct) until the September meeting. The juror manual revisions were discussed and agreed to. Review of CJI2d 2.16 (Outside Sources of Information) was added to the September agenda as well. A concern with CJI2d 5.4 (Witness an Undisputed Accomplice)) was tabled until September. A proposed jury instruction on polygraph evidence reference during trial was set to be submitted in September.

At the scheduled meeting on **September 11, 2010** the committee approved adding language to the commentary of CJI2d 11.38 and 11.38a (Felon in Possession of a Firearm) to reflect People v Dupree. An action to CJI2d 15.11 (Operating While Intoxicated Causing Death) was tabled. Two additional use notes were approved on CJI2d 25.2a (Home Invasion First Degree). The committee added comment to CJI2d 23.5 (Larceny from a Motor Vehicle) citing MCR 750.36a. Action on CJI2d 18.1 &18.3 (Robbery Armed and Unarmed Robbery) was tabled until the February meeting. They decided not to include standard polygraph instruction but rather leave the solution to trial judges to create curative instructions. They agreed that a proposed final version of the Juror Manual be prepared for the February meeting. The committee approved modification to CJI2d 15.6 (Operating while Intoxicated “Super Drunk”)to support the new penalties and avoid the Apprendi v New Jersey appellate issue. They approved a modification to CJI2d 5.4 to more accurately reflect that the immunity granted by MCL 767.6 is use immunity. The committee also approved new instruction on the new offense Moving Violation Causing Death and tabled discussion of the commentary until February. They approved instruction for CJI2d 15.3a (Zero Tolerance). They approved new instruction for Telephone Interference (MCL 750.540). They approved instruction and commentary on CJI2d 3.10a (Time and Place Criminal Sexual Conduct). The committee also set up a group of members to work on CJI2d Vol. 1 revisions.

On **February 26, 2011** the committee discussed a suggestion from a concerned attorney to amend the definition in CJI2d11.4 and 11.5 (Definition of Dangers Stabbing Weapon and Definition of Dirk Dagger and Stiletto) and decided instead to amend the use note to add people v Lynn, 459 Mich 53 (1998). The committee decided that any change to the definition should come from the legislature. They discussed Medical Marijuana Defense and tabled it until there were further Appellate decisions- the position of the committee was agreed to be sent to the Jackson County Prosecutor’s office. The committee learned of a new chapter titled “Telecommunications and Computers” and instructions 30.14-30.21 were moved to the new chapter. An amendment on CJI2d 17.21 (Child Abuse Third Degree) was made to conform with the 2008 statutory revision. A use

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note was approved for addition to CJI2d 25.5 (Possession of Burglar's Tools) to reflect MCL 750.116. A new use note was also added to CJI2d 18.2 (Robbery). A use note was approved for CJI2d 18.3 (Assault with Intent to Commit Robbery Being Armed). A use note was approved for CJI2d 15.11 (Operating While Intoxicated Causing Death). The committee reviewed the top 50 crime categories and recommended that Identity Theft instruction to be submitted for the May 7, 2011 meeting. Bar staff agreed to follow up with State Bar Communications on the status of the revised Juror Manual.

Future Goals and Activities:

The committee will be continuing its work to review changes to Michigan law, update instructions and create new instructions as necessary.

Other Information: The work of the committee is submitted to the Institute of Continuing Legal Education for inclusion in the ICLE criminal jury instruction publication.