Agenda
Public Policy Committee
September 17, 2025 – 2:00 p.m. to 3:30 p.m.
Via Zoom Meetings

Public Policy Committee……Lisa J. Hamameh, Chairperson

1. Reports
1.1. Approval of June 11, 2025 minutes
1.2. Public Policy Report

2. Court Rule Amendments
2.1. ADM File No. 2021-29: Proposed Amendment of MCR 6.201
The proposed amendment of MCR 6.201 would require, before providing a police report or interrogation record to the defendant, redaction of personal identifying information and information otherwise protected under the rule.
Status: 10/01/25 Comment Period Expires.
Referred: 06/30/25 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.
Positions: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee.
Comments submitted to the Court and SBM are included in the materials.
Liaison: Patrick J. Crowley

3. Consent Agenda
To allow the Criminal Jurisprudence & Practice Committee and Criminal Law Section to submit their positions on each of the following items:
3.1. M Crim JI 1.10
The Committee proposes a new preliminary instruction, M Crim JI 1.10 (Referring to Jurors By Number) that would direct jurors not to draw any inferences from the use of juror numbers in lieu of names.

3.2. M Crim JI 3.17, 3.18, 3.20, 3.22
The Committee proposes amending M Crim JI 3.17 (Single Defendant-Single Count), M Crim JI 3.18 (Multiple Defendants-Single Count), M Crim JI 3.20 (Single Defendant-Multiple Counts-More Than One Wrongful Act), and M Crim JI 3.22 (Multiple Defendants-Multiple Counts-More Than One Wrongful Act) to present the possible verdicts in a consistent sequence, with "not guilty" appearing as the first option.

3.3. M Crim JI 16.1, 16.4 thru 16.8, 16.10, 16.11, 17.3
The Committee proposes amending the following instructions to eliminate an unnecessary element: M Crim JI 16.1 (First-degree Premeditated Murder), M Crim JI 16.4 (First-degree Felony Murder), M Crim JI 16.5 (Second Degree Murder), M Crim JI 16.6 (Element Chart First-degree Premeditated Murder and Second-degree Murder), M Crim JI 16.7 (Element Chart First-degree Felony Murder and Second-degree Murder), M Crim JI 16.8 (Voluntary Manslaughter), M Crim JI 16.10 (Involuntary Manslaughter), M Crim JI 16.11 (Involuntary Manslaughter – Firearm Intentionally Aimed), and M Crim JI 17.3 (Assault with Intent to Murder). The proposal primarily serves as a response to *People v Spears*, 346 Mich App 494 (2023), lv den ___ Mich ___ (December 13, 2024) (Docket No. 165768). Additionally, M Crim JI 16.8 has been modified for greater consistency with M Crim JI 16.9, and M

Crim JI 16.11 has been modified to remove duplicative language and to reflect statutory involuntary manslaughter's status as a cognate lesser included offense of murder, see MCL 750.329; *People v Smith*, 478 Mich 64 (2007).

3.4. M Crim JI 20.38, 20.38a, 20.38b, 20.38c

The Committee proposes amending M Crim JI 20.38 (Child Sexually Abusive Activity – Causing or Allowing), M Crim JI 20.38a (Child Sexually Abusive Activity – Producing), M Crim JI 20.38b (Child Sexually Abusive Activity – Distributing), and M Crim JI 20.38c (Child Sexually Abusive Activity – Possessing or Accessing) to account for the sentencing enhancements added by the Legislature in 2019. This proposal would also modify the title of each instruction to more accurately describe the offense at issue.

MINUTES
Public Policy Committee
June 11, 2025

Committee Members: Lori A. Buiteweg, Patrick J. Crowley, Lisa J. Hamameh, Ashley E. Lowe, Silvia A. Mansoor, John W. Reiser, III, Douglas B. Shapiro, Danielle Walton
SBM Staff: Peter Cunningham, Nathan Triplett, Carrie Sharlow
GCSI: Samantha Zandee

1. Reports

1.1. Approval of April 23, 2025 minutes – The minutes were unanimously adopted.
1.2 Public Policy Report – Nathan Triplett provided a verbal report.

2. Court Rule Amendments

2.1. ADM File No. 2023-35: Proposed Amendments of MCJC 3 and MRPC 6.5

The proposed amendments of MCJC 3 and MRPC 6.5 would incorporate the ABA Model Code of Judicial Conduct Canon 2, Rule 2.3 into Michigan's code and rule to prohibit bias, prejudice, and harassment.
The following entities offered recommendations for consideration: Access to Justice Policy Committee; Diversity & Inclusion Advisory Committee; Judicial Ethics Committee/Professional Ethics Committee; Justice Initiatives Committee; LGBTQ+ Law Section.
The Public Policy Committee voted 7 to 1 to support ADM File No. 2023-35 with further amendments recommended by the standing committees on Judicial Ethics and Professional Ethics, the Diversity and Inclusion Advisory Committee, and the LGBTQ+ Law Section as follows:

Canon 3:

(14) ~~Without regard to a person's race, gender, or other protected personal characteristic, a judge should~~ A judge shall, in the performance of judicial duties, treat every person fairly, with courtesy and respect. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, based upon race, color, sex, gender identity or expression, religion, national origin, ethnicity, disability, age, height, weight, sexual orientation, marital status, familial status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so. ~~To the extent possible, a judge should required staff, court officials, and others who are subject to the judge's direction and control to provide such fair, courteous, and respectful treatment to persons who have contact with the court.~~

(15) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment as provided in MRPC 6.5.

(16) The restrictions of paragraphs (14) and (15) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

Rule 6.5. Professional Conduct.

(a) A lawyer shall treat with courtesy and respect all persons involved in the legal process. A lawyer shall not, by words or conduct manifest bias or prejudice for or against any person involved in the legal process, or engage in harassment against any person involved in the legal process, based upon race, color, sex, gender identity or expression, religion, national origin, ethnicity, disability, age, height, weight, sexual orientation, marital status, familial status, socioeconomic status, or political affiliation, and ~~A lawyer shall take particular care to avoid treating such a person discourteously or disrespectfully because of the person's race, gender, or other protected personal characteristic~~. ~~T~~to

the extent possible, a lawyer shall not permit~~require~~ subordinate lawyers and nonlawyer assistants to do so~~provide such courteous and respectful treatment~~.

(b) A lawyer serving as an adjudicative officer, shall not, by words or conduct manifest bias or prejudice for or against any person, or engage in harassment against any person, based upon race, color, sex, gender identity or expression, religion, national origin, ethnicity, disability, age, height, weight, sexual orientation, marital status, familial status, socioeconomic status, or political affiliation, and ~~A lawyer serving as an adjudicative officer shall, without regard to a person's race, gender, or other protected personal characteristic, treat every person fairly, with courtesy and respect.~~ ~~T~~to the extent possible, the lawyer shall not permit~~require~~ staff and others who are subject to the adjudicative officer's direction and control to do so~~provide such fair, courteous, and respectful treatment~~ to persons who have contact with the adjudicative tribunal.

Comment:

A supervisory lawyer should make every reasonable effort to ensure that subordinate lawyers and nonlawyer assistants, as well as other agents, avoid biased, prejudicial, or harassing~~discourteous or disrespectful~~ behavior toward persons involved in the legal process. Further, a supervisory lawyer should make reasonable efforts to ensure that the firm has in effect policies and procedures that do not discriminate against members or employees of the firm on the basis of the attributes identified in the rule~~race, gender, or other protected personal characteristic~~. See Rules 5.1 and 5.3. Further, all lawyers are encouraged to review the Professionalism Principles established in Administrative Order No, 2020-23 for guidance.

The Public Policy Committee voted unanimously to authorize sections to advocate their respective positions on ADM File No. 2023-35.

2.2. ADM File No. 2019-40: Proposed Adoption of AO 2025-X, Proposed Rescission of AO 2012-7, and Proposed Amendment of MCR 2.407

The proposed administrative order would clarify when, from where, and how a judicial officer may participate remotely, subject to their chief judge's approval. If adopted, a related amendment of MCR 2.407 would strike a reference to AO 2012-7 being suspended and that administrative order would be rescinded.

The following entities offered recommendations for consideration: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section; Negligence Law Section.

The Public Policy Committee voted 3 to 5 to adopt the position of the Access to Justice Policy Committee. The motion failed.

The Public Policy Committee voted unanimously (8) to support ADM File No. 2019-40 in concept with amendments recommending that: (1) remote participation by judicial officers be limited to scheduling and administrative matters, or extraordinary circumstances; (2) that consideration be given to the concerns raised by visiting judges; and (3) that attorneys and parties not be required to appear in person if the judicial officer is participating remotely.

2.3. ADM File No. 2025-03: Proposed Amendment of MCR 1.111

The proposed amendment of MCR 1.111 would prohibit reimbursement for interpreter services in criminal cases, update the definitions for "interpret," "certified foreign language interpreter," and "qualified foreign language interpreter," and add a new definition for a "registered interpreter firm."

The following entities offered recommendations for consideration: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee.

The Public Policy Committee voted unanimously (8) to support ADM File No. 2025-03 with an additional amendment of (A)(4) to state that " . . . a person who meets all of the following criteria or in the first year after the court rule is passed, is making substantial progress to meet all the following criteria."

2.4. ADM File No. 2025-04: Proposed Amendment of MCR 3.613
The proposed amendment of MCR 3.613 would realign the rule with recent amendments of MCL 711.1 and MCL 711.3 regarding name change proceedings.
The following entities offered recommendations for consideration: Access to Justice Policy Committee; Civil Procedure & Courts Committee.
The Public Policy Committee voted unanimously (8) to support ADM File No. 2025-04.

2.5. ADM File No. 2023-10: Proposed Amendment of MCR 6.008
The proposed amendment of MCR 6.008 would incorporate the People v Cramer, 511 Mich 896 (2023) holding by clarifying that circuit courts can remand misdemeanor charges to the district court following the dismissal of all felony charges that were bound over.
The following entities offered recommendations for consideration: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee.
The Public Policy Committee voted unanimously (8) to support ADM File No. 2023-10.

2.6. ADM File No. 2023-38: Proposed Amendments of Subchapters MCR 9.100 and MCR 9.200 and MRPC 1.12 and MRPC 3.5
The proposed amendments would replace the term "master" or "special master" with "neutral arbiter" or add the term "neutral arbiter" to a definition.
The following entities offered recommendations for consideration: Civil Procedure & Courts Committee.
The Public Policy Committee voted unanimously (8) to support ADM File No. 2023-38.

3. Legislation
3.1. HB 4434 (Meerman) Courts: juries; one-person grand jury provisions; repeal. Repeals secs. 3, 4, 5, 6, 6a & 6b, ch. VII of 1927 PA 175 (MCL 767.3 et seq.).
The following entities offered recommendations for consideration: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee.
The Public Policy Committee voted 7 to 1 that HB 4434 in *Keller*-permissible as necessarily related to the functioning of the courts.
The Public Policy Committee voted 6 to 1 (with 1 abstention) to support HB 4434.

4. Consent Agenda
The Public Policy Committee approved the authorization to allow the Criminal Jurisprudence & Practice Committee and Criminal Law Section to submit their positions on each of the following items:
M Crim JI 15.14, M Crim JI 15.14a, and M Crim JI 15.15
The Committee proposes amending M Crim JI 15.14 (Reckless Driving), M Crim JI 15.14a (Reckless Driving Causing Death or Serious Impairment of a Body Function), and M Crim JI 15.15 (Moving Violation Causing Death or Serious Impairment of a Body Function) for improved readability and greater consistency with the statutes defining these offenses. The proposed changes were inspired by Footnote 7 in *People v Fredell*, ___ Mich ___ (December 26, 2024) (Docket No. 164098).
M Crim JI 20.24
The Committee proposes amending M Crim JI 20.24 (Definition of Sufficient Force) in response to *People v Levran*, ___ Mich App ___ (December 3, 2024) (Docket No. 370931). The Court of Appeals held in *Levran* that the fifth paragraph of the current instruction did not accurately reflect how MCL 750.520b(1)(f)(*iv*) defines "force or coercion" for purposes of criminal sexual conduct committed during a medical exam or treatment. The proposed amendment would remedy this defect.

M Crim JI 37.11

The Committee proposes amending M Crim JI 37.11 (Removing, Destroying or Tampering with Evidence) to add a missing *mens rea* element. MCL 750.483a(5)(a) makes it a crime to "[k]nowingly and intentionally remove, alter, conceal, destroy, or otherwise tamper with evidence to be offered in a present or future official proceeding." While the current instruction addresses the requirement that the defendant act "intentionally," it does not address the requirement that the defendant act "knowingly." The Court of Appeals has indicated that "the word 'knowingly' in the statute likely includes knowledge of an official proceeding." *People v Walker*, 330 Mich App 378, 388 (2019). The proposed amendment would add that element and make other stylistic changes.

July 1, 2025

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2023-35: Proposed Amendments of Canon 3 of the Michigan Code of Judicial Conduct and Rule 6.5 of the Michigan Rules of Professional Conduct

Dear Clerk Royster:

The Board of Commissioners of the State Bar of Michigan voted to support the adoption of ADM File No. 2023-35 with two recommended modifications: (1) the existing "courtesy and respect" language in both Canon 3 and Rule 6.5 should be retained, and (2) a reference to the Professionalism Principles established in Administrative Order 2020-23 should be added to the comment on Rule 6.5.[1] These proposed amendments are attached to this letter for the Court's consideration. The Board's position was informed by comments from the Access to Justice Policy Committee, Diversity & Inclusion Advisory Committee, Judicial Ethics Committee, Professional Ethics Committee, Justice Initiatives Committee, LGBTQ+ Law Section, as well as several member comments.

Protecting the integrity of legal proceedings from bias, prejudice, or harassment, and promoting public confidence in the judiciary and the rule of law are state interests of the highest order. The amendments to Canon 3 of the Michigan Code of Judicial Conduct ("MCJC") and Rule 6.5 of the Michigan Rules of Professional Conduct ("MRPC") proposed in ADM File No. 2023-35 would significantly advance these interests by clarifying the ethical obligations of judges and attorneys, while preserving zealous advocacy and protecting free speech and conscience rights within the legal profession.

Michigan's existing rules are out of alignment with most other jurisdictions. Rule 6.5's broad, standalone requirement that lawyers treat "all persons" with "courtesy and respect" is not found in the American Bar Association ("ABA") Model Rules and has not been adopted in this form by any other state. In contrast, twenty-seven states have adopted language identical or substantially similar to Canon 2, Rule 2.3 of the ABA Model Code of Judicial Conduct, which has existed since the adoption of the 1990 iteration of the ABA's Model Code. While many of the comments submitted in response to ADM File No. 2023-35 make reference to ABA Model Rule 8.4(g), and the subject matter is similar, the proposed language is in fact based on the Model Code — not the Model Rules. Having said that, it is notable that nearly three-quarters of the states have also taken action to prohibit harassment and discrimination in their professional conduct rules for attorneys in the vein of Model Rule 8.4(g). Twenty-three states have adopted a black letter rule of professional conduct regarding harassment and discrimination, and thirteen have added specific language regarding harassment and discrimination to the commentary on other existing rules. Adopting ADM File No. 2023-35 would not make Michigan

[1] Article VIII, Section 7(2) of the Bylaws of the State Bar of Michigan prohibit a section from advocating a public policy position that is inconsistent with State Bar policy, unless expressly authorized to do so by the State Bar. In this case, the Board voted to authorize all sections to advocate their positions, including inconsistent positions, so that the Court would have the benefit of the full range of views within the Bar.

an outlier or an innovator; adopting these changes simply aligns Michigan's rules with the majority of other jurisdictions nationwide. Notably, these other jurisdictions have not experienced the type of negative hypotheticals raised by opponents of this amendment when implementing similar rules over the last many years.

Michigan's current rules, while well-intentioned, lack specificity and fail to provide meaningful guidance to judges and attorneys. As a result, they are ineffective as a tool to address biased, prejudiced, or harassing behavior in the legal process. The enumeration of protected characteristics is essential to ensure that *all* persons are, in fact, protected, not just in the conclusory text of the rules, but in reality. Without specificity, the rules are more likely to be applied inconsistently, or not at all — which leaves those individuals most vulnerable to bias and harassment without effective recourse.

The existing comment to Rule 6.5 rightly notes that "it is not possible to formulate a rule that will clearly divide what is properly challenging from what is impermissibly rude." However, the proposed amendments provide significantly greater clarity than the current Rule, which will benefit the bench, bar, and public alike. At the same time, the Board does recommend retaining the current "courtesy and respect" language as an aspirational statement of professional ideals and is concerned about how the removal of this language might be interpreted.

Both the MCJC and the MRPC use terminology throughout that some argue is vague or subjective. For example, Rule 4.4 uses the term "embarrass" and Rule 3.5 uses "undignified." Even the terms "courtesy" and "respect" in the current Rule 6.5 and Canon 3 necessarily mean different things to different people. None of these terms have been specifically defined in the text of either set of professional conduct rules. However, attorneys, judges, and disciplinary authorities are called upon daily to parse and apply these terms, and they do so successfully. As noted previously, ADM File No. 2023-35 makes both Canon 3 and Rule 6.5 clearer and more specific than either are today. As a result, if anything, the proposal before the Court will make the task of interpreting and applying these rules easier, not more difficult, in the future.

The Board takes seriously the concerns raised about the potential impact of these amendments on the speech and conscience rights of lawyers and judges. The proposed rules are narrowly drawn to address only words or conduct "involved in the legal process," in contrast to the broader "in conduct related to the practice of law" scope found in Model Rule 8.4(g). The proposed language in both Canon 3[2] and Rule 6.5[3] explicitly protects vigorous advocacy that might otherwise be construed as biased, prejudiced, or harassing. These provisions provide robust protection for the First Amendment rights of lawyers and judges while recognizing that courts have a duty to act impartially and ensure integrity in legal proceedings and need rules that will allow them to do so effectively.

The public's trust in our legal institutions is dependent on having a legal process that is free from the corrosive effects of bias, prejudice, and harassment. Adopting the amendments proposed in ADM File No. 2023-35 would be a significant, positive step toward defining and clarifying the professional responsibilities of judges and lawyers to eliminate bias and harassment from legal proceedings. The

[2] "The restrictions . . . do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding." Canon 3(A)(16).

[3] "The prohibition against manifesting bias or prejudice or engaging in harassment is not inconsistent with the lawyer's right, where appropriate, to speak and write bluntly." Rule 6.5 Comment.

Board therefore urges the Court to approve the proposed amendments of Canon 3 and Rule 6.5 and to give consideration to the additional amendments recommended by the Board.

Thank you for the opportunity to comment.

Sincerely,

Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
Joseph P. McGill, President

Attachment

Canon 3:
(14) ~~Without regard to a person's race, gender, or other protected personal characteristic, a judge should~~ A judge shall, in the performance of judicial duties, treat every person fairly, with courtesy and respect. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, based upon race, color, sex, gender identity or expression, religion, national origin, ethnicity, disability, age, height, weight, sexual orientation, marital status, familial status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so. ~~To the extent possible, a judge should required staff, court officials, and others who are subject to the judge's direction and control to provide such fair, courteous, and respectful treatment to persons who have contact with the court.~~
(15) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment as provided in MRPC 6.5.
(16) The restrictions of paragraphs (14) and (15) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

Rule 6.5. Professional Conduct.

(a) A lawyer shall treat with courtesy and respect all persons involved in the legal process. A lawyer shall not, by words or conduct manifest bias or prejudice for or against any person involved in the legal process, or engage in harassment against any person involved in the legal process, based upon race, color, sex, gender identity or expression, religion, national origin, ethnicity, disability, age, height, weight, sexual orientation, marital status, familial status, socioeconomic status, or political affiliation, and ~~A lawyer shall take particular care to avoid treating such a person discourteously or disrespectfully because of the person's race, gender, or other protected personal characteristic~~. ~~T~~to the extent possible, a lawyer shall not permit~~require~~ subordinate lawyers and nonlawyer assistants to do so~~provide such courteous and respectful treatment~~.

(b) A lawyer serving as an adjudicative officer, shall not, by words or conduct manifest bias or prejudice for or against any person, or engage in harassment against any person, based upon race, color, sex, gender identity or expression, religion, national origin, ethnicity, disability, age, height, weight, sexual orientation, marital status, familial status, socioeconomic status, or political affiliation, and ~~A lawyer serving as an adjudicative officer shall, without regard to a person's race, gender, or other protected personal characteristic, treat every person fairly, with courtesy and respect.~~ ~~T~~to the extent possible, the lawyer shall not permit~~require~~ staff and others who are subject to the adjudicative officer's direction and control to do so~~provide such fair, courteous, and respectful treatment~~ to persons who have contact with the adjudicative tribunal.
Comment:
A supervisory lawyer should make every reasonable effort to ensure that subordinate lawyers and nonlawyer assistants, as well as other agents, avoid biased, prejudicial, or harassing~~discourteous or disrespectful~~ behavior toward persons involved in the legal process. Further, a supervisory lawyer should make reasonable efforts to ensure that the firm has in effect policies and procedures that do not discriminate against members or employees of the firm on the basis of the attributes identified in the rule~~race, gender, or other protected personal characteristic~~. See Rules 5.1 and 5.3. Further, all lawyers are encouraged to review the Professionalism Principles established in Administrative Order No, 2020-23 for guidance.

June 30, 2025

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2019-40: Proposed Adoption of Administrative Order No. 2025-X, Proposed Rescission of Administrative Order No. 2012-7, and Proposed Amendment of Rule 2.407 of the Michigan Court Rules

Dear Clerk Royster:

The Board of Commissioners of the State Bar of Michigan considered ADM File No. 2019-40 at its meeting on June 13, 2025. In its review, the Board considered recommendations from the Access to Justice Policy Committee, Civil Procedure & Courts Committee, Criminal Jurisprudence & Practice Committee, Criminal Law Section, and Negligence Law Section.

While the Board recognizes the demonstrated value of remote participation in many legal proceedings, it also believes that the Court should proceed cautiously when considering an expansion of remote participation by judicial officers, given the unique and important role these officers perform in the legal system. Therefore, the Board voted to support ADM File No. 2019-40 in concept, but recommend that:

1. Remote participation by judicial officers be limited to scheduling and administrative matters, or extraordinary circumstances;
2. Consideration be given to the concerns raised by visiting judges in comments submitted to the Court;
3. Attorneys and parties not be required to appear in person if a judicial officer is participating remotely in a proceeding; and
4. The requirement of a black robe be removed for referees.

Thank you for the opportunity to comment on ADM File No. 2019-40.

Sincerely,

Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
Joseph P. McGill, President

June 30, 2025

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2025-03: Proposed Amendment of Rule 1.111 of the Michigan Court Rules

Dear Clerk Royster:

The Board of Commissioners of the State Bar of Michigan considered ADM File No. 2025-03 at its meeting on June 13, 2025. In its review, the Board considered recommendations from the Access to Justice Policy Committee, Civil Procedure & Courts Committee, and Criminal Jurisprudence & Practice Committee.

In order to ensure that the adoption of the proposed amendment of Rule 1.111 does not have the unintended consequence of making interpreters less available immediately following implementation, the Board voted to support ADM File No. 2025-03 with an additional amendment to (A)(4) providing that a certified foreign language interpreter is a person who either meets all of the criteria outlined in the Rule or, in the first year after the amended Rule is adopted by the Court, is making substantial progress toward meeting all the required criteria.

Thank you for the opportunity to comment on the proposed amendment.

Sincerely,

Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
Joseph P. McGill, President

June 30, 2025

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2025-04: Proposed Amendment of Rule 3.613 of the Michigan Court Rules

Dear Clerk Royster:

The Board of Commissioners of the State Bar of Michigan considered ADM File No. 2025-04 at its meeting on June 13, 2025. In its review, the Board considered recommendations from the Access to Justice Policy Committee and Civil Procedure & Courts Committee. The Board voted to support the proposed amendments of Rule 3.613, which will align the Rule's language with amendments recently made to the Probate Code, 1939 PA 288, name change proceeding provisions by the Legislature via 2024 PA 229.

Thank you for the opportunity to comment on the proposed amendment.

Sincerely,

Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
Joseph P. McGill, President

June 30, 2025

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2023-10: Proposed Amendment of Rule 6.008 of the Michigan Court Rules

Dear Clerk Royster:

The Board of Commissioners of the State Bar of Michigan considered ADM File No. 2023-10 at its meeting on June 13, 2025. In its review, the Board considered recommendations from the Access to Justice Policy Committee and Criminal Jurisprudence & Practice Committee. The Board voted to support proposed amendment of Rule 6.008, which will incorporate the Court's holding in *People v Cramer*, 511 Mich 896 (2023), into the text of the Rule. Aligning the Court Rules and applicable case law promotes clarity and consistency in practice for both bench and Bar alike.

Thank you for the opportunity to comment on the proposed amendment.

Sincerely,

Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
Joseph P. McGill, President

June 30, 2025

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2023-38: Proposed Amendments of Rules 9.110, 9.111, 9.115, 9.117, 9.118, 9.125, 9.128, 9.129, 9.131, 9.201, 9.211, 9.221, 9.224, 9.231, 9.232, 9.233, 9.234, 9.235, 9.236, 9.240, 9.241, 9.242, 9.243, 9.244, 9.245, 9.251, 9.261, and 9.263 of the Michigan Court Rules and Rules 1.12 and 3.5 of the Michigan Rules of Professional Conduct

Dear Clerk Royster:

The Board of Commissioners of the State Bar of Michigan considered ADM File No. 2023-38 at its meeting on June 13, 2025. In its review, the Board considered a recommendation from the Civil Procedure & Courts Committee. The Board voted to support ADM File No. 2023-38.

Thank you for the opportunity to comment on the proposed amendments.

Sincerely,

Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
Joseph P. McGill, President

SBM STATE BAR OF MICHIGAN

To: Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: September 11, 2025

Re: ADM File No. 2021-29 – Proposed Amendments of Rule 6.201

The amendments to MCR 6.201 proposed in ADM File No. 2021-29 are the latest iteration of a policy conversation that originates with the Michigan Court of Appeals opinion in *People v Jack*, 507 Mich 948; 970 NW2d 443 (2021)[1]. In *Jack*, the court held that "absent an applicable exception provided for in MCR 6.201, a prosecutor is required to produce unredacted police reports under MCR 6.201(B)(2)." The State Bar of Michigan has previously taken public policy positions on both a previous iteration of ADM File No. 2021-29 and related legislation.

Prior Action – Court Rules

Following *Jack*, the Michigan Supreme Court issued a proposed amendment of MCR 6.201. The Criminal Jurisprudence & Practice Committee ("CJAP") voted to support the proposed amendment with an additional amendment striking "the address, telephone or cell phone number, or" from the proposed language. The practical effect of the proposed CJAP amendment was to leave the Court of Appeals holding in *Jack* undisturbed, while allowing other personal information less essential to the preparation of a defense to be redacted. The Access to Justice Policy Committee then voted to support CJAP's position. The Board of Commissioners followed suit and voted to support CJAP's proposed amendment, which SBM has been advocating since that time. The previous committee positions and the Board of Commissioners letter to the Court and included for reference.

The comment period on the previous iteration of ADM File No. 2021-29 expired on October 1, 2022. On June 25, 2025, the Court revised its original proposal and published the revision for comment. The Court's revision essentially adopts the language previously recommended by the SBM Board of Commissioners and committees. It corrects the rule citation and strikes "the address, telephone or cell phone number, or" from the proposed amendment.

Prior Action – Legislation

Bills were also introduced in the last legislative session to overrule *Jack*. 2023 HB 4738 would have amended the Code of Criminal Procedure, 1927 PA 115, and 2023 HB 4739 would have amended the William Van Regenmorter Crime Victim's Rights Act, 1985 PA 87, to require prosecuting attorneys to redact the personal information of witnesses and victims of crime from certain court documents. As introduced, the bills would have permitted disclosure of personal information to defense counsel or defendants only upon court order and unauthorized disclosure would be a misdemeanor offense. The SBM Board of Commissioners voted to oppose both bills, and the State Bar and other like-minded stakeholders were successful in defeating both last legislative session. Similar legislation has not been reintroduced in the current session to date.

[1] *Jack* concerned access to witness information. Subsequently, in *People v Antaramian*, 346 Mich App 710; 13 NW3d 380 (2023), the Court of Appeals applied the same holding to the redaction of crime victims' information. Applications for leave to appeal were filed in both *Jack* and *Antaramian*. Both were denied by the Michigan Supreme Court.

2025 Order

Order

Michigan Supreme Court
Lansing, Michigan

June 25, 2025

ADM File No. 2021-29

Proposed Amendment of
Rule 6.201 of the Michigan
Court Rules

Megan K. Cavanagh,
Chief Justice

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas
Noah P. Hood,
Justices

The Court, having given an opportunity for comment in writing and at a public hearing, again seeks public comment regarding the proposed amendment of Rule 6.201 of the Michigan Court Rules. The Court has revised the original proposal and is interested in receiving additional comments on this revised proposal.

On order of the Court, this is to advise that the Court is considering an amendment of Rule 6.201 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover.]

Rule 6.201 Discovery

(A) [Unchanged.]

(B) Discovery of Information Known to the Prosecuting Attorney. Upon request, the prosecuting attorney must provide each defendant:

(1) [Unchanged.]

(2) any police report and interrogation records concerning the case, except so much of a report as:

(a) concerns a continuing investigation;

(b) contains any personal identifying information protected by MCR 1.109(D)(9)(a), which may be redacted;

(c) contains information otherwise protected under MCR 6.201, which may be redacted.

(3)-(5) [Unchanged.]

(C)-(K) [Unchanged.]

Staff Comment (ADM File No. 2021-29): The proposed amendment of MCR 6.201 would require, before providing a police report or interrogation record to the defendant, redaction of personal identifying information and information otherwise protected under the rule.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by October 1, 2025 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2021-29. Your comments and the comments of others will be posted under the chapter affected by this proposal.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 25, 2025

Clerk

Position on 2025 Order

SBM State Bar of Michigan | ACCESS TO JUSTICE POLICY COMMITTEE

Public Policy Position
ADM File No. 2021-29: Proposed Amendment of MCR 6.201

Support

Explanation
The Committee voted to support ADM File No. 2021-29. The amendment of MCR 6.201 presented in this revised order reflects changes from the order as initially published for comment in 2022 that were recommended by the Access to Justice Policy Committee and Criminal Jurisprudence & Practice Committee, which were ultimately supported by the SBM Board of Commissioners.

Position Vote:
Voted For position: 17
Voted against position: 0
Abstained from vote: 0
Did not vote (absence): 7

Contact Persons:
Katherine L. Marcuz kmarcuz@sado.org

Position on 2025 Order

SBM State Bar of Michigan | CRIMINAL JURISPRUDENCE & PRACTICE COMMITTEE

Public Policy Position
ADM File No. 2021-29: Proposed Amendment of MCR 6.201

Support

Explanation:
The Committee voted to support ADM File No. 2021-29. The revised language as republished for comment incorporates modifications initially proposed by the Criminal Jurisprudence & Practice Committee (supported by the Access to Justice Policy Committee) and ultimately adopted by the SBM Board of Commissioners.

Position Vote:
Voted For position: 10
Voted against position: 8
Abstained from vote: 1
Did not vote (absent): 9

Contact Persons:
Nimish R. Ganatra ganatran@washtenaw.org
John A. Shea jashea@earthlink.net

MSC Comments on 2025 Order

KEITH WATSON
OFFICE OF THE PUBLIC DEFENDER

August 20, 2025

To the Justices of the Michigan Supreme Court,

My name is Jonathan Forman, and I am an Assistant Public Defender at the Ingham County Office of the Public Defender. In 2021, our office litigated *People v Jack*, 336 Mich App 316 (2021), lv den 507 Mich 948 (2021), in which the Court of Appeals determined that MCR 6.201 does not allow for the redaction of witness contact information from a police report without Court approval. That action came in response to a long-running practice of the Ingham County Prosecutor's Office of unilaterally redacting discovery in contravention of this Court's rules. I write today on behalf of my office requesting that this Court maintain the new status quo, which has allowed criminal defense lawyers greater opportunity to effectively prepare a defense and brought the criminal justice system in Michigan closer to its ideal of achieving just outcomes.

Before *Jack*, the attorneys in my office would receive redacted police reports in cases involving the Ingham County Prosecutor's Office. This practice seemingly applied in all cases, regardless of severity. This meant that the Prosecutor's Office redacted police reports not just in homicide and armed robbery cases, but also in retail fraud and leaving the scene of an accident cases. Precious resources were spent to do the bare minimum in every type of case, requiring our investigators to run searches for the contact information of persons listed in police reports – even though that information was readily available to the prosecution. This created a giant obstacle in our office's ability to meet MIDC's Standard 3 – approved by this Court, see AO No. 2016-2 – requiring an independent investigation of the charges and offense as promptly as practicable. Without access to information as essential and simple as a witness's date of birth, our office was defending cases with a hand tied behind our back.

Jack has been a game-changer. Since the decision, our office has had greater ability to thoroughly and independently investigate cases. Resources that used to be devoted to running Lexis searches in the hope that a witness's most recent information could be found are now used to actually speak to those witnesses, review body camera, and investigate the alleged incident. The *Jack* decision has made our office more effective and efficient in advocating for our clients.

300 S. Washington Sq., Ste 315 · Lansing, MI 48933
Phone: 517 -679-2979 · Email: pd@ingham.org

One of the key pieces of discovery we now receive since *Jack* is the date of birth of complainants and witnesses. This information is key, as it allows us to run essential background checks to use for potential impeachment. See MRE 609. Without this information, we would be unable to run these checks. And the existence of a witness's criminal convictions would not necessarily be available if prosecutors were permitted to redact a person's date of birth, as the discovery rules only require "a description or list of criminal convictions, *known to the . . . prosecuting attorney*." MCR 6.201(A)(5) (emphasis added). The proposed amendment would require a prosecuting attorney to restrict defense counsel's ability to investigate key facts about a potential witness, while also creating a system in which that same prosecutor is incentivized to not discover those same facts about witnesses they intend to call. The amendment would serve to restrict defense counsel's ability to conduct a full and thorough investigation prior to preliminary examination and trial.

"Michigan law clearly recognizes the importance of broad discovery to an accused's right to a fair trial." 1B Gillespie, Michigan Criminal Law & Procedure (2d ed.), § 20:46. The *Jack* decision continued that tradition of recognizing the importance of discovery. The proposed amendment would serve the opposite goal, and would stifle the work of defense lawyers upholding the promise of the Sixth Amendment. This amendment would be counterproductive to justice, and our office respectfully requests that this Court reject it.

Respectfully Submitted,

Jonathan Forman (P80333)

Jonathan Forman (P80333)
Keith Watson (P56463)
Ingham Co. Office of the Public Defender
300 S. Washington Sq., Ste. 315
Lansing, MI 48933

MSC Comments on 2025 Order

Name: Jennifer LaCroix

Date: 08/28/2025

ADM File Number: 2021-29

Comment:
ADM File No. 2021-29
I agree with this.

MSC Comments on 2025 Order

Name: Deborah Blair

Date: 09/04/2025

ADM File Number: 2021-29

Comment:
I fully support this proposed rule. This is just plain common sense. How many times do we have to read in the news where a complaining witness has been injured, stalked, or even killed, after reporting a crime. There are several other mechanisms that a Defendant can use to obtain discovery in his or her case. This private information should remain private unless a specified need is met to obtain the personal information.

2022 Order

Order

Michigan Supreme Court
Lansing, Michigan

June 15, 2022

Bridget M. McCormack,
Chief Justice

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

ADM File No. 2021-29

Proposed Amendment of
Rule 6.201 of the Michigan
Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 6.201 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover.]

Rule 6.201 Discovery

(A) [Unchanged.]

(B) Discovery of Information Known to the Prosecuting Attorney. Upon request, the prosecuting attorney must provide each defendant:

(1) [Unchanged.]

(2) any police report and interrogation records concerning the case, except so much of a report as concerns a continuing investigation or contains the address, telephone or cell phone number, or any personal identifying information protected by MCR 1.109(9)(a), which may be redacted;

(3)-(5) [Unchanged.]

(C)-(K) [Unchanged.]

Staff Comment: The proposed amendment of MCR 6.201 would require redaction of certain information contained in a police report or interrogation record before providing it to the defendant.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by October 1, 2022 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2021-29. Your comments and the comments of others will be posted under the chapter affected by this proposal.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 15, 2022

Clerk

SBM Letter on 2022 Order

SBM State Bar of Michigan

p (517) 346-6300
p (800) 968-1442
f (517) 482-6248

Michael Franck Building
306 Townsend Street
Lansing, MI 48933-2012

www.michbar.org

September 30, 2022

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2021-29 – Proposed Amendment of Rule 6.201 of the Michigan Court Rules

Dear Clerk Royster:

At its September 16, 2022 meeting, the Board of Commissioners of the State Bar of Michigan considered ADM File No. 2021-29. In its review, the Board considered recommendations from the Access to Justice Policy Committee and the Criminal Jurisprudence & Practice Committee. The Board voted to support ADM File No. 2021-29 with an additional amendment striking "the address, telephone or cell phone number, or" from the proposed language. The Board believes that this additional amendment will address the need to protect sensitive personal identifying information from disclosure, while also ensuring access to information necessary to contact witnesses and prepare a defendant's defense. Additionally, the Board recommends that the citation in the proposed amendment be corrected to read "MCR 1.109(D)(9)(a)."

We thank the Court for the opportunity to convey the Board's position.

Sincerely,

Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
James W. Heath, President

SBM Committee Position on 2022 Order

SBM State Bar of Michigan | ACCESS TO JUSTICE POLICY COMMITTEE

Public Policy Position
ADM File No. 2021-29: Proposed Amendment of MCR 6.201

Support with Recommended Amendment

Explanation

The Committee voted to support the proposed amendment of Rule 6.201 with the additional amendments recommended by the Criminal Jurisprudence & Practice Committee striking "the address, telephone or cell phone number, or" from the proposed language and correcting the citation of MCR 1.109.

The Access to Justice Policy Committee agrees with the Criminal Jurisprudence & Practice Committee that this alternative:

> would limit the required redaction to the following personal identifying information: date of birth, social security number or national identification number, driver's license number or state-issued personal identification number, passport number, and financial account numbers. The proposed amendment should also be corrected read "MCR 1.109(D)(9)(a)." The Committee believes that this approach strikes a more appropriate balance between the need to protect personal identifying information and a defendant's need to be able to contact witnesses, etc. to prepare their case.

Position Vote:

Voted For position: 17
Voted against position: 1
Abstained from vote: 3
Did not vote (absent): 6

Contact Persons:

Katherine L. Marcuz kmarcuz@sado.org
Lore A. Rogers rogersl4@michigan.gov

SBM Committee Position on 2022 Order

SBM State Bar of Michigan | CRIMINAL JURISPRUDENCE & PRACTICE COMMITTEE

Public Policy Position
ADM File No. 2021-29: Proposed Amendment of MCR 6.201

Support with Amendment

Explanation:
The Committee voted to support ADM File No. 2021-29 with an additional amendment striking "the address, telephone or cell phone number, or" from the proposed language. The Committee's alternative would limit the required redaction to the following personal identifying information: date of birth, social security number or national identification number, driver's license number or state-issued personal identification number, passport number, and financial account numbers. The proposed amendment should also be corrected read "MCR 1.109(D)(9)(a)." The Committee believes that this approach strikes a more appropriate balance between the need to protect personal identifying information and a defendant's need to be able to contact witnesses, etc. to prepare their case.

Position Vote:
Voted For position: 11
Voted against position: 6
Abstained from vote: 1
Did not vote (absent): 6

Contact Persons:
Mark A. Holsomback mahols@kalcounty.com
Sofia V. Nelson snelson@sado.org

FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS

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The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by November 1, 2025. Comments may be sent in writing to Christopher M. 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.

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PROPOSED

The Committee proposes a new preliminary instruction, M Crim JI 1.10 (Referring to Jurors By Number) that would direct jurors not to draw any inferences from the use of juror numbers in lieu of names. This instruction is entirely new.

[NEW] M Crim JI 1.10 Referring to Jurors by Number

During jury selection and throughout trial, the lawyers and I will refer to you by number rather than by name. The use of juror numbers is for administrative purposes only. You must not allow this procedure to influence your decision in any way. Your decision must be based solely on the evidence presented.

Public Policy Position
M Crim JI 1.10

Support with Amendments

Explanation:
The Committee voted to support Model Criminal Jury Instruction 1.10 with an amendment changing the "will" to "may."

Position Vote:
Voted For position: 19
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 7

Contact Persons:
Nimish R. Ganatra ganatran@washtenaw.org
John A. Shea jashea@earthlink.net

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

==========

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by November 1, 2025. Comments may be sent in writing to Christopher M. 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 3.17 (Single Defendant-Single Count), M Crim JI 3.18 (Multiple Defendants-Single Count), M Crim JI 3.20 (Single Defendant-Multiple Counts-More Than One Wrongful Act), and M Crim JI 3.22 (Multiple Defendants-Multiple Counts-More Than One Wrongful Act) to present the possible verdicts in a consistent sequence, with "not guilty" appearing as the first option. Deletions are in ~~strikethrough~~, and new language is underlined.

[AMENDED] M Crim JI 3.17 Single Defendant-Single Count

You may return a verdict of not guilty or guilty of the alleged crime [, or guilty of a less serious crime~~,~~] ~~or not guilty~~.

[AMENDED] M Crim JI 3.18 Multiple Defendants-Single Count

You must return a separate verdict for each defendant. This means that, for each individual defendant, you may return a verdict of not guilty or guilty of the alleged crime [, or guilty of a less serious crime~~,~~] ~~or not guilty~~.

[AMENDED] M Crim JI 3.20 Single Defendant-Multiple Counts-More Than One Wrongful Act

(1) The defendant is charged with ___ counts, that is, with the crimes of _____ and _____. These are separate crimes, and the prosecutor is charging that the defendant committed [both / all] of them. You must consider each crime separately in light of all the evidence in the case.

(2) You may find the defendant not guilty or guilty of all or [any one / any combination] of these crimes [, or guilty of a less serious crime~~,~~] ~~or not guilty~~.

[AMENDED] M Crim JI 3.22 Multiple Defendants-Multiple Counts-More Than One Wrongful Act

(1) The defendants are each charged with ___ counts, that is, with the crimes of _____ and _____. These are separate crimes, and the prosecutor is charging that each defendant committed [both / all] of them. You must consider each crime separately in light of all the evidence.

(2) You must return a separate verdict for each defendant. For each defendant, you may return a verdict of not guilty or guilty of one or more of the alleged crimes [, or guilty of a less serious crime~~,~~] ~~or not guilty~~. Remember that you must consider each defendant separately.

Public Policy Position
M Crim JI 3.17, 3.18, 3.20, 3.22

Support

Explanation:
The Committee voted unanimously to support Model Criminal Jury Instructions 3.17, 3.18, 3.20, and 3.22 as written.

Position Vote:
Voted For position: 19
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 7

Contact Persons:
Nimish R. Ganatra ganatran@washtenaw.org
John A. Shea jashea@earthlink.net

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

==========

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by November 1, 2025. Comments may be sent in writing to Christopher M. 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 the following instructions to eliminate an unnecessary element: M Crim JI 16.1 (First-degree Premeditated Murder), M Crim JI 16.4 (First-degree Felony Murder), M Crim JI 16.5 (Second Degree Murder), M Crim JI 16.6 (Element Chart First-degree Premeditated Murder and Second-degree Murder), M Crim JI 16.7 (Element Chart First-degree Felony Murder and Second-degree Murder), M Crim JI 16.8 (Voluntary Manslaughter), M Crim JI 16.10 (Involuntary Manslaughter), M Crim JI 16.11 (Involuntary Manslaughter – Firearm Intentionally Aimed), and M Crim JI 17.3 (Assault with Intent to Murder). The proposal primarily serves as a response to *People v Spears*, 346 Mich App 494 (2023), lv den ___ Mich ___ (December 13, 2024) (Docket No. 165768). Additionally, M Crim JI 16.8 has been modified for greater consistency with M Crim JI 16.9, and M Crim JI 16.11 has been modified to remove duplicative language and to reflect statutory involuntary manslaughter's status as a cognate lesser included offense of murder, see MCL 750.329; *People v Smith*, 478 Mich 64 (2007). Deletions are in ~~strikethrough~~, and new language is underlined.

[AMENDED] M Crim JI 16.1 First-Degree Premeditated Murder

(1) The defendant is charged with the crime of first-degree premeditated murder.[1] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant caused the death of [*name deceased*], that is, that [*name deceased*] died as a result of [*state alleged act causing death*].[2]

(3) Second, that the defendant intended to kill [*name deceased*].[3]

(4) Third, that this intent to kill was premeditated, that is, thought out beforehand.

(5) Fourth, that the killing was deliberate, which means that the defendant considered the pros and cons of the killing and thought about and chose [his / her] actions before [he / she] did it. There must have been real and substantial reflection for long enough to give a reasonable person a chance to think twice about the intent to kill. The law does not say how much time is needed. It is for you to decide if enough time passed under the circumstances of this case. The killing cannot be the result of a sudden impulse without thought or reflection.

~~[(6) Fifth, that the killing was not justified, excused, or done under circumstances that reduce it to a lesser crime.]~~[4]

Use Notes

1. Second-degree murder is a lesser included offense of first-degree murder and should be instructed upon if supported by the evidence. *People v Cornell*, 466 Mich 335, 358 n13; 646 NW2d 127 (2002). Use M Crim JI 16.5 for this purpose. Manslaughter is also a lesser included offense of murder and should be instructed upon if supported by the evidence. *People v Mendoza*, 468 Mich 527; 664 NW2d 685 (2003). See M Crim JI 16.9 and 16.10. In lying-in-wait or poisoning cases, use M Crim JI 16.2 or 16.3, respectively. The Time and Place (Venue) instruction can be found at M Crim JI 3.10.

2. Where causation is an issue, see the special causation instructions, M Crim JI 16.15-16.23.

3. This is a specific intent crime.

~~4. Paragraph (6) may be omitted if there is no evidence of justification or excuse, and the jury is not being instructed on manslaughter or any offense less than manslaughter. Justification or excuse instructions may be inserted here, but they are more commonly given at a later time.~~

[AMENDED] M Crim JI 16.4 First-Degree Felony Murder

(1) The defendant is charged with first-degree felony murder. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant caused the death of [*name deceased*], that is, that [*name deceased*] died as a result of [*state alleged act causing death*].

(3) Second, that the defendant had one of these three states of mind: [he / she] intended to kill, or [he / she] intended to do great bodily harm to [*name deceased*], or [he / she] knowingly created a very high risk of death or great bodily harm knowing that death or such harm would be the likely result of [his / her] actions.

(4) Third, that when [he / she] did the act that caused the death of [*name deceased*], the defendant was committing [(or) attempting to commit / (or) helping someone else commit] the crime of [*state felony*]. For the crime of [*state felony*], the prosecutor must prove each of the following elements beyond a reasonable doubt: [*state elements of felony*].

~~[(5) Fourth, that the killing was not justified, excused, or done under circumstances that reduce it to a lesser crime.]*~~

[*Use (~~6~~5) or (~~7~~6) where factually appropriate:*]

(~~6~~5) To establish an attempt, the prosecutor must prove beyond a reasonable doubt that the defendant intended to commit the crime of [*state felony*] and that [he / she] took some action toward committing that crime~~,~~ but failed to complete it. It is not enough to prove that the defendant made preparations for committing the crime. Things like planning the crime or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the crime would have been completed if it had not been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the crime of [*state felony*] and not some other objective.

(~~7~~6) The defendant must have been either committing or helping someone else commit the crime of [*state felony*]. To help means to perform acts or give encouragement, before or during the commission of the crime, that aids or assists in its commission. At the time of giving aid or encouragement, the defendant must have intended the commission of the [*state felony*].

~~*Use Note*~~

~~* Paragraph (5) may be omitted if there is no evidence of justification or excuse, and the jury is not being instructed on manslaughter or any offense less than manslaughter. Justification or excuse instructions may be inserted here, but they are more commonly given at a later time.~~

[AMENDED] M Crim JI 16.5 Second-Degree Murder

(1) [The defendant is charged with the crime of / You may also consider the lesser charge of] second-degree murder.[1] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant caused the death of [*name deceased*], that is, that [*name deceased*] died as a result of [*state alleged act causing death*].[2]

(3) Second, that the defendant had one of these three states of mind: [he / she] intended to kill, or [he / she] intended to do great bodily harm to [*name deceased*], or [he / she] knowingly created a very high risk of death or great bodily harm knowing that death or such harm would be the likely result of [his / her] actions.[3]

~~[(4) Third, that the killing was not justified, excused, or done under circumstances that reduce it to a lesser crime.]~~[4]

Use Notes

1. Where there is a question as to venue, insert M Crim JI 3.10, Time and Place (Venue).

2. Where causation is an issue, see the special causation instructions, M Crim JI 16.15-16.23.

3. Second-degree murder is not a specific intent crime. *People v Langworthy*, 416 Mich 630; 331 NW2d 171 (1982).

~~4. Paragraph (4) may be omitted if there is no evidence of justification or excuse, and the jury is not being instructed on manslaughter or any offense less than manslaughter. Justification or excuse instructions may be inserted here, but they are more commonly given at a later time.~~

[AMENDED] M Crim JI 16.6 Element Chart—First-Degree Premeditated and Second-Degree Murder

First-Degree Premeditated Murder	Second-Degree Murder
(1) victim's death	(1) same
(2) death caused by defendant	(2) same
~~[(3) death not justified or excused or mitigated to manslaughter]*~~	~~[(3) same]*~~
(3~~4~~) defendant actually intended to kill victim, *and*	(3~~4~~) defendant actually intended to kill victim, *or* defendant intended to do great bodily harm to victim, *or* defendant knowingly created a very high risk of death or great bodily harm knowing that death or such harm would be the likely result of [his / her] actions
(4~~5~~) defendant premeditated victim's death, *and*	
(5~~6~~) defendant deliberated victim's death	

Use Note

This chart may be distributed to jurors when first-degree premeditated and second-degree murder are the only potential verdicts, *or* when jurors request further clarification of the differences between the two offenses. To avoid undue reliance on the charts, the committee recommends that they only be distributed when written copies of all instructions are also distributed to jurors. This chart is intended for the supplemental guidance of the jury, rather than as a substitute for the comprehensive murder definitions contained in M Crim JI 16.1, 16.4, and 16.5.

~~*Paragraph (3) may be omitted if there is no evidence of justification or excuse, and the jury is not being instructed on manslaughter or any offense less than manslaughter.~~

[AMENDED] M Crim JI 16.7 Element Chart—First-Degree Felony and Second-Degree Murder

First-Degree Felony Murder	Second-Degree Murder
(1) victim's death	(1) same
(2) death caused by defendant	(2) same
~~[(3) death not justified or excused]*~~	~~[(3) same]*~~
(3~~4~~) defendant actually intended to kill victim, *or* defendant intended to do great bodily harm to victim, *or* defendant knowingly created a very high risk of death or great bodily harm knowing that death or such harm would be the likely result of [his / her] actions	(3~~4~~) same
(4~~5~~) defendant was committing or attempting to commit a specified felony at the time of the act causing victim's death	

Use Note

This chart may be distributed to jurors when first-degree felony and second-degree murder are the only potential verdicts, *or* when jurors request further clarification of the differences between the two offenses. To avoid undue reliance on the charts, the committee recommends that they only be distributed when written copies of all instructions are also distributed to jurors. This chart is intended for the supplemental guidance of the jury, rather than as a substitute for the comprehensive murder definitions contained in M Crim JI 16.1, 16.4, and 16.5.

~~*Paragraph (3) may be omitted if there is no evidence of justification or excuse, and the jury is not being instructed on manslaughter or any offense less than manslaughter.~~

[AMENDED] M Crim JI 16.8 Voluntary Manslaughter

(1) ~~[~~The defendant is charged with the crime of _____ ~~/ You may also consider the lesser charge of*]~~ voluntary manslaughter.[1] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant caused the death of [*name deceased*], that is, that [*name deceased*] died as a result of [*state alleged act causing death*].

(3) Second, that the defendant had one of these three states of mind: [he / she] intended to kill, or [he / she] intended to do great bodily harm to [*name deceased*], or [he / she] knowingly created a very high risk of death or great bodily harm knowing that death or such harm would be the likely result of [his / her] actions.

~~[(4) Third, that the defendant caused the death without lawful excuse or justification.]~~

Use Note

*1. If instructions on voluntary manslaughter are being given as a lesser offense to murder, use M Crim JI 16.9.

[AMENDED] M Crim JI 16.10 Involuntary Manslaughter

(1) [The defendant is charged with the crime of _____/ You may also consider the lesser charge of] involuntary manslaughter. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant caused the death of [*name deceased*], that is, that [*name deceased*] died as a result of [*state alleged act causing death*].

[*Use (3) when gross negligence is alleged:*]

(3) Second, in doing the act that caused [*name deceased*]'s death, the defendant acted in a grossly negligent manner.[1]

[*Use (4) when the act requires an intent to injure:*][2]

(4) Second, in doing the act that caused [*name deceased*]'s death, the defendant intended[3] to injure [*name deceased*]. The act charged in this case is assault and battery. The prosecution must prove the following beyond a reasonable doubt: First, that the defendant committed a battery on [*name deceased*]. A battery is a forceful or violent touching of the person or something closely connected with the person. The touching must have been intended by the defendant, that is, not accidental, and it must have been against [*name deceased*]'s will. Second, that the defendant intended to injure [*name deceased*].

~~[(5) Third, that the defendant caused the death without lawful excuse or justification.]~~[4]

Use Notes

1. For a definition of *gross negligence*, see M Crim JI 16.18.

2. An unlawful act ~~which~~ that is committed with the intent to injure is not limited to an assault and battery. The applicable elements of that offense are set forth in this instruction because assault and battery is the most common type of unlawful act needed to support a charge of involuntary manslaughter.

3. This is a specific intent variant of the crime.

~~4. Paragraph (5) may be omitted if there is no evidence of excuse or justification.~~

[AMENDED] M Crim JI 16.11 Involuntary Manslaughter-Firearm Intentionally Aimed

(1) ~~[~~The defendant is charged with the crime of _____~~/ You may also consider the lesser charge of]~~ involuntary manslaughter. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant caused the death of [*name deceased*]~~, that is, [*name deceased*] died as a result of [*state alleged act causing death*]~~.

(3) Second, that death resulted from the discharge of a firearm.[1] ~~[A firearm is an instrument from which (shot / a bullet) is propelled by the explosion of gunpowder.]~~

(4) Third, at the time the firearm discharged ~~went off~~, the defendant was intentionally aiming or pointing it at [*name deceased*].

~~(5) Fourth, at that time, the defendant intended to point the firearm at [*name deceased*].~~[1]

~~[(6) Fifth, that the defendant caused the death without lawful excuse or justification.]~~[2]

Use Note

1. ~~This is a specific intent crime.~~ *Firearm* is defined in MCL 750.222(e) as "any weapon which will, is designed to, or may readily be converted to expel a projectile by action of an explosive."

~~2. Paragraph (6) should be given only if there is a claim by the defense that the killing was excused or justified.~~

[AMENDED] M Crim JI 17.3 Assault with Intent to Murder

(1) The defendant is charged with the crime of assault with intent to murder. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant tried to physically injure another person.

(3) Second, that when the defendant committed the assault, [he / she] had the ability to cause an injury, or at least believed that [he / she] had the ability.

(4) Third, that the defendant intended[1] to kill the person [he / she] assaulted ~~[, and the circumstances did not legally excuse or reduce the crime]~~.*[2]

Use Notes

*1. This is a specific intent crime.

2. Where appropriate, give special instructions on particular defenses (see chapter 7), on mitigation (M Crim JI 17.4), and transferred intent (M Crim JI 17.17).

Public Policy Position
M Crim JI 16.1, 16.4 thru 16.8, 16.10, 16.11, 17.3

Support

Explanation:
The Committee voted unanimously to support Model Criminal Jury Instructions 16.1, 16.4 thru 16.8, 16.10, 16.11, and 17.3 as written.

Position Vote:
Voted For position: 19
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 7

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FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

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The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by November 1, 2025. Comments may be sent in writing to Christopher M. 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.

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PROPOSED

The Committee proposes amending M Crim JI 20.38 (Child Sexually Abusive Activity – Causing or Allowing), M Crim JI 20.38a (Child Sexually Abusive Activity – Producing), M Crim JI 20.38b (Child Sexually Abusive Activity – Distributing), and M Crim JI 20.38c (Child Sexually Abusive Activity – Possessing or Accessing) to account for the sentencing enhancements added by the Legislature in 2019. This proposal would also modify the title of each instruction to more accurately describe the offense at issue. Deletions are in ~~strikethrough~~, and new language is underlined.

[AMENDED] M Crim JI 20.38 Child Sexually Abusive ~~Activity~~ Material– Causing or Allowing

(1) The defendant is charged with the crime of causing or allowing a child to engage in sexually abusive activity in order to create or produce child sexually abusive material. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [persuaded / induced / enticed / coerced / caused / knowingly allowed] a child under 18 years old to engage in child sexually abusive activity.

(3) Child sexually abusive activity includes~~:~~

[*Choose any of the following that apply*:][1]

(a) sexual intercourse, which is genital-genital, oral-genital, anal-genital, or oral-anal penetration, whether the intercourse is real or simulated, and whether it is between persons of the same or

opposite sex, or between a person and an animal, or with an artificial genital, [and / or]

(b) erotic fondling, which is the touching of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for the purpose of sexual gratification or stimulation of any person involved, but does not include other types of touching, even if affectionate, [and / or]

(c) sadomasochistic abuse, which is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation, [and / or]

(d) masturbation, which is stimulation by hand or by an object of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for sexual gratification or stimulation, [and / or]

(e) passive sexual involvement, which is watching, drawing attention to, or exposing someone to persons who are performing real or simulated sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, sexual excitement, or erotic nudity for the purpose of sexual gratification or stimulation of any person involved, [and / or]

(f) sexual excitement, which is the display of someone's genitals in a state of stimulation or arousal, [and / or]

(g) erotic nudity, which is showing the genital, pubic, or rectal area of someone in a way that tends to produce lewd or lustful emotions.

(4) Second, that the defendant caused or allowed the person to engage in child sexually abusive activity for the purpose of producing or making child sexually abusive material. Child sexually abusive materials are pictures, movies, or illustrations, made or produced by any means,[2] of [a person under 18 years old / the representation of a person under 18 years old] engaged in sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, and/or erotic nudity.[2]

(5) Third, that the defendant knew or reasonably should have known that the person was less than 18 years old~~,~~ or failed to take reasonable precautions to determine whether the person was less than 18 years old.[3]

[*Add the following paragraph if appropriate*:][4]

(6) Fourth, that the child sexually abusive activity or the child sexually abusive material involved

[*Choose any of the following that apply*:]

(a) a child who has not yet reached puberty, or

(b) sadomasochistic abuse, which [I have already defined / is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation], or

(c) sexual acts between a person and an animal,[5] or

(d) a video or more than 100 images of child sexually abusive material.

Use Notes

1. The statute prohibits both real and simulated sexual acts. Where the acts are simulated, or simulated acts are included, the instructions should be modified accordingly.

2. The statute, MCL 750.145c(1)(o), provides a list of forms that child sexually abusive materials can take:

> . . . any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image,

> computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.

The Committee on Model Criminal Jury Instructions believes that the phrase~~,~~ "pictures, movies, or illustrations, made or produced by any means," will generally suffice to describe such materials. However, the court may prefer to select a more specific term or phrase from the statutory list.

3. The statute lists several alternatives for this element of the offense in MCL 750.145c(2), (3), and (4):

> . . . if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

Generally, the language of the instruction will suffice. However, in appropriate cases, the court may select some or all of the other statutory language for this element.

4. Paragraph (6) applies when the prosecution seeks the enhanced sentence set forth in MCL 750.145c(2)(b). It need not be given when sadomasochistic abuse is the only type of child sexually abusive activity being alleged because, in that scenario, the jury will have already found the facts pertaining to the sentence enhancement.

5. MCL 750.145c uses the term *bestiality* but does not define it. In *People v Carrier*, 74 Mich App 161, 165-166; 254 NW2d 35 (1977), the Court of Appeals indicated that bestiality encompasses sexual acts between a man or woman and an animal. These acts are not limited to anal copulation.

[AMENDED] M Crim JI 20.38a Child Sexually Abusive ~~Activity~~ <u>Material</u> – Producing

(1) The defendant is charged with the crime of producing child sexually abusive material. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [arranged for / produced / made[1] / copied / reproduced / financed / (attempted / prepared / conspired) to (arrange for / produce / make / copy / reproduce / finance)] child sexually abusive [activity / material].

(3) Child sexually abusive materials are pictures, movies, or illustrations, made or produced by any means,[2] of [a person under 18 years old / the representation of a person under 18 years old] engaged in one or more of the following sexual acts:

[*Choose any of the following that apply*:][3]

(a) sexual intercourse, which is genital-genital, oral-genital, anal-genital, or oral-anal penetration, whether the intercourse is real or simulated, and whether it is between persons of the same or opposite sex, or between a person and an animal, or with an artificial genital, [and / or]

(b) erotic fondling, which is the touching of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for the purpose of sexual gratification or stimulation of any person involved, but does not include other types of touching, even if affectionate, [and / or]

(c) sadomasochistic abuse, which is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation, [and / or]

(d) masturbation, which is stimulation by hand or by an object of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for sexual gratification or stimulation, [and / or]

(e) passive sexual involvement, which is watching, drawing attention to, or exposing someone to persons who are performing

real or simulated sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, sexual excitement, or erotic nudity for the purpose of sexual gratification or stimulation of any person involved, [and / or]

(f) sexual excitement, which is the display of someone's genitals in a state of stimulation or arousal, [and / or]

(g) erotic nudity, which is showing the genital, pubic, or rectal area of someone in a way that tends to produce lewd or lustful emotions.

[*Choose either (4) or (5), depending on whether the depiction is an actual person or is a created representation of a person under the age of 18*:]

(4) Second, that the defendant knew or should reasonably have known that the person shown in the sexually abusive material was less than 18 years old~~,~~ or failed to take reasonable precautions to determine whether the person was less than 18 years old.[4]

(5) Second, that the defendant produced a portrayal of a person appearing to be less than 18 years old, knowing that the person portrayed appeared to be less than 18 years old, and all of the following conditions apply:[4]

(a) An average person, applying current community standards, would find that the material appealed to an unhealthy or shameful interest in nudity, sex, or excretion.[5]

(b) A reasonable person would not find any serious literary, artistic, political, or scientific value in the material.

(c) The material shows or describes sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity, as previously described for you.

[*Add the following paragraph if appropriate*:][6]

(6) Third, that the child sexually abusive activity or the child sexually abusive material involved

[*Choose any of the following that apply*:]

(a) a child who has not yet reached puberty, or

(b) sadomasochistic abuse, which [I have already defined / is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation], or

(c) sexual acts between a person and an animal,[7] or

(d) a video or more than 100 images of child sexually abusive material.

Use Notes

1. *Make* is defined in MCL 750.145c(1)(j) as:

> . . . to bring into existence by copying, shaping, changing, or combining material, and specifically includes, but is not limited to, intentionally creating a reproduction, copy, or print of child sexually abusive material, in whole or part. Make does not include the creation of an identical reproduction or copy of child sexually abusive material within the same digital storage device or the same piece of digital storage media.

2. The statute, MCL 750.145c(1)(o), provides a list of forms that child sexually abusive materials can take:

> . . . any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image, computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic

> visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.

The Committee on Model Criminal Jury Instructions believes that the phrase~~,~~ "pictures, movies, or illustrations, made or produced by any means," will generally suffice to describe such materials. However, the court may prefer to select a more specific term or phrase from the statutory list.

3. The statute prohibits both real and simulated sexual acts. Where the acts are simulated, the instructions should be modified accordingly.

4. The statute lists several alternatives for this element of the offense in MCL 750.145c(2), (3), and (4):

> . . . if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

Generally, the language of the instruction will suffice. However, in appropriate cases, the court may select some or all of the other statutory language for this element.

5. If necessary, *excretion* may be defined as the act or product of urinating or defecating.

6. Paragraph (6) applies when the prosecution seeks the enhanced sentence set forth in MCL 750.145c(2)(b). It need not be given when sadomasochistic abuse is the only type of child sexually abusive material being alleged because, in that scenario, the jury will have already found the facts pertaining to the sentence enhancement.

7. MCL 750.145c uses the term *bestiality* but does not define it. In *People v Carrier*, 74 Mich App 161, 165-166; 254 NW2d 35 (1977), the Court of Appeals indicated that bestiality encompasses sexual acts between a man or woman and an animal. These acts are not limited to anal copulation.

[AMENDED] M Crim JI 20.38b Child Sexually Abusive ~~Activity~~ <u>Material</u> – Distributing

(1) The defendant is charged with the crime of distributing child sexually abusive material. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [distributed / promoted / financed the (distribution / promotion) of / received for the purpose of (distributing / promoting) / (conspired / attempted / prepared) to (distribute / receive / finance / promote)] child sexually abusive [material / activity].

(3) Child sexually abusive materials are pictures, movies, or illustrations[1] of [a person under 18 years old / the representation of a person under 18 years old] engaged in one or more of the following sexual acts:

[*Choose any of the following that apply*:][2]

(a) sexual intercourse, which is genital-genital, oral-genital, anal-genital, or oral-anal penetration, whether the intercourse is real or simulated, and whether it is between persons of the same or opposite sex, or between a person and an animal, or with an artificial genital, [and / or]

(b) erotic fondling, which is the touching of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for the purpose of sexual gratification or stimulation of any person involved, but does not include other types of touching, even if affectionate, [and / or]

(c) sadomasochistic abuse, which is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation, [and / or]

(d) masturbation, which is stimulation by hand or by an object of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for sexual gratification or stimulation, [and / or]

(e) passive sexual involvement, which is watching, drawing attention to, or exposing someone to persons who are performing real or simulated sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, sexual excitement, or erotic nudity for the purpose of sexual gratification or stimulation of any person involved, [and / or]

(f) sexual excitement, which is the display of someone's genitals in a state of stimulation or arousal, [and / or]

(g) erotic nudity, which is showing the genital, pubic, or rectal area of someone in a way that tends to produce lewd or lustful emotions.

[*Choose either (4) or (5), depending on whether the depiction is an actual person or is a created representation of a person under the age of 18*:]

(4) Second, that the defendant knew or should reasonably have known[3] that the person shown in the sexually abusive material was less than 18 years old~~,~~ or failed to take reasonable precautions to determine whether the person was less than 18 years old.

(5) Second, that the defendant distributed a portrayal of a person appearing to be less than 18 years old, knowing that the person portrayed appeared to be less than 18 years old, and all of the following conditions apply:

(a) An average person, applying current community standards, would find that the material appealed to an unhealthy or shameful interest in nudity, sex, or excretion.[4]

(b) A reasonable person would not find any serious literary, artistic, political, or scientific value in the material.

(c) The material shows or describes sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity, as previously described for you.

[*Add the following paragraph if appropriate*:][5]

(6) Third, that the child sexually abusive activity or the child sexually abusive material involved

[*Choose any of the following that apply*:]

(a) a child who has not yet reached puberty, or

(b) sadomasochistic abuse, which [I have already defined / is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation], or

(c) sexual acts between a person and an animal,[6] or

(d) a video or more than 100 images of child sexually abusive material.

Use Notes

1. The statute, MCL 750.145c(1)(o), provides a list of forms that child sexually abusive materials can take:

> . . . any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image, computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.

The Committee on Model Criminal Jury Instructions believes that the phrase~~,~~ "pictures, movies, or illustrations, made or produced by any means," will generally suffice to describe such materials. However, the court may prefer to select a more specific term or phrase from the statutory list.

2. The statute prohibits both real and simulated sexual acts. Where the acts are simulated, the instructions should be modified accordingly.

3. The statute lists several alternatives for this element of the offense in MCL 750.145c(2), (3), and (4):

> . . . if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

Generally, the language of the instruction will suffice. However, in appropriate cases, the court may select some or all of the other statutory language for this element.

4. If necessary, *excretion* may be defined as the act or product of urinating or defecating.

5. Paragraph (6) applies when the prosecution seeks the enhanced sentence set forth in MCL 750.145c(3)(b). It need not be given when sadomasochistic abuse is the only type of child sexually abusive material being alleged because, in that scenario, the jury will have already found the facts pertaining to the sentence enhancement.

6. MCL 750.145c uses the term *bestiality* but does not define it. In *People v Carrier*, 74 Mich App 161, 165-166; 254 NW2d 35 (1977), the Court of Appeals indicated that bestiality encompasses sexual acts between a man or woman and an animal. These acts are not limited to anal copulation.

[AMENDED] M Crim JI 20.38c Child Sexually Abusive ~~Activity~~ Material – Possessing or Accessing

(1) The defendant is charged with the crime of possessing or accessing child sexually abusive material. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [possessed child sexually abusive material / intentionally looked for child sexually abusive material to view it~~,~~ or to cause it to be sent to or seen by another person].

(3) Child sexually abusive materials are pictures, movies, or illustrations[1] of [a person under 18 years old / the representation of a person under 18 years old] engaged in one or more of the following sexual acts:

[*Choose any of the following that apply*:][2]

(a) sexual intercourse, which is genital-genital, oral-genital, anal-genital, or oral-anal penetration, whether the intercourse is real or simulated, and whether it is between persons of the same or opposite sex, or between a person and an animal, or with an artificial genital, [and / or]

(b) erotic fondling, which is the touching of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for the purpose of sexual gratification or stimulation of any person involved, but does not include other types of touching, even if affectionate, [and / or]

(c) sadomasochistic abuse, which is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation, [and / or]

(d) masturbation, which is stimulation by hand or by an object of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for sexual gratification or stimulation, [and / or]

(e) passive sexual involvement, which is watching, drawing attention to, or exposing someone to persons who are performing

real or simulated sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, sexual excitement, or erotic nudity for the purpose of sexual gratification or stimulation of any person involved, [and / or]

(f) sexual excitement, which is the display of someone's genitals in a state of stimulation or arousal, [and / or]

(g) erotic nudity, which is showing the genital, pubic, or rectal area of someone in a way that tends to produce lewd or lustful emotions.

[*Choose either (4) or (5), depending on whether the depiction is an actual person or is a created representation of a person under the age of 18*:]

(4) Second, that the defendant knew or should reasonably have known that the person shown in the sexually abusive material was less than 18 years old, or failed to take reasonable precautions to determine whether the person was less than 18 years old.[3]

(5) Second, that the defendant produced a portrayal of a person appearing to be less than 18 years old, knowing that the person portrayed appeared to be less than 18 years old, and all of the following conditions apply:

(a) An average person, applying current community standards, would find that the material appealed to an unhealthy or shameful interest in nudity, sex, or excretion.[4]

(b) A reasonable person would not find any serious literary, artistic, political, or scientific value in the material.

(c) The material shows or describes sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity, as previously described for you.

(6) Third, that the defendant [knew that (he / she) possessed / knowingly looked for] the material.

[*Add the following paragraph if appropriate*:][5]

(7) Fourth, that the child sexually abusive activity or the child sexually abusive material involved

[*Choose any of the following that apply*:]

(a) a child who has not yet reached puberty, or

(b) sadomasochistic abuse, which [I have already defined / is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation], or

(c) sexual acts between a person and an animal,[6] or

(d) a video or more than 100 images of child sexually abusive material.

Use Notes

1. The statute, MCL 750.145c(1)(o), provides a list of forms that child sexually abusive materials can take:

> . . . any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image, computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.

The Committee on Model Criminal Jury Instructions believes that the phrase~~,~~ "pictures, movies, or illustrations, made or produced by any means," will generally

suffice to describe such materials. However, the court may prefer to select a more specific term or phrase from the statutory list.

2. The statute prohibits both real and simulated sexual acts. Where the acts are simulated, the instructions should be modified accordingly.

3. The statute lists several alternatives for this element of the offense in MCL 750.145c(2), (3), and (4):

> . . . if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

Generally, the language of the instruction will suffice. However, in appropriate cases, the court may select some or all of the other statutory language for this element.

4. If necessary, *excretion* may be defined as the act or product of urinating or defecating.

5. Paragraph (7) applies when the prosecution seeks the enhanced sentence set forth in MCL 750.145c(4)(b). It need not be given when sadomasochistic abuse is the only type of child sexually abusive material being alleged because, in that scenario, the jury will have already found the facts pertaining to the sentence enhancement.

6. MCL 750.145c uses the term *bestiality* but does not define it. In *People v Carrier*, 74 Mich App 161, 165-166; 254 NW2d 35 (1977), the Court of Appeals indicated that bestiality encompasses sexual acts between a man or woman and an animal. These acts are not limited to anal copulation.

Public Policy Position
M Crim JI 20.38, 20.38a, 20.38b, 20.38c

Support

Explanation:
The Committee voted unanimously to support Model Criminal Jury Instructions 20.38, 20.38a, 20.38b, and 20.38c as written.

Position Vote:
Voted For position: 19
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 7

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