

**Agenda
Public Policy Committee
September 16, 2020 – 9 a.m.**

Meeting starts promptly at 9 a.m.

(Vince Lombardi Rule: “Early is on time. On time is late.”)

Public Policy Committee.....Robert J. Buchanan, Chairperson

A. Opening Statements

(Each member’s “good news,” whether personal, business, or State Bar of Michigan-related.)

B. Reports

1. Approval of July 22, 2020 minutes
2. Public Policy Report

C. Court Rule Amendments

1. ADM File No. 2020-11: Proposed Amendment of MCR 2.108

The proposed amendment of MCR 2.108 would provide a timeframe for a responsive pleading when a motion for more definite statement is denied.

Status: 10/01/20 Comment Period Expires.

Referrals: 06/10/20 Civil Procedure & Courts Committee; Consumer Law Section; Litigation Section; Negligence Law Section

Comments: Civil Procedure & Courts Committee.

Liaison: Joseph J. Baumann

2. ADM File No. 2020-14: Amendment of MCR 4.202

The amendment of MCR 4.202(H) makes the rule consistent with the requirements of MCR 4.201(F)(4) by requiring the court clerk to mail defendant notice of entry of a default judgment. The rule was amended previously to require plaintiff to mail a default judgment to the defendant, unlike MCR 4.201(F)(4), which was not amended. Having two different procedures for matters that are both summary proceedings has caused confusion for courts. This amendment returns the language to its previous status and makes MCR 4.201 and MCR 4.202 consistent again.

Status: 10/01/20 Comment Period Expires.

Referrals: 06/10/20 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Real Property Law Section.

Comments: Access to Justice Policy Committee; Civil Procedure & Courts Committee.

Liaison: Hon. Shauna L. Dunning

D. Consent Agenda

To support the positions submitted by the Criminal Jurisprudence and Practice Committee on each of the following items:

Model Criminal Jury Instructions

M Crim JI 13.19 and 13.19a

The Committee proposes amending instruction M Crim JI 13.19 and adding a new instruction, M Crim JI 13.19a, to address offenses charged under MCL 750.411a, as amended, for making a false report of a crime (M Crim JI 13.19) or a false report of a medical or other emergency (M Crim JI 13.19a). With respect to amendments to M Crim JI 13.19, deleted language from the current instruction is in ~~strikeout~~ and added language is underlined; M Crim JI 13.19a is entirely new.

M Crim JI Chapter 15

The Committee on Model Criminal Jury Instructions proposes a revision of Chapter 15 (Traffic Offenses) of the Model Criminal Jury Instructions. Repeated statutory amendments over the past four decades have left the jury instructions for this chapter a hodgepodge and inconsistent in format with other chapters, especially the driving-while-intoxicated portion of Chapter 15. The Committee offers a re-write that organizes the instructions according to the current statutory structure for driving offenses in a more consistent and comprehensive format.

The instructions are divided into four sets in hopes of making them more convenient to compare and review. The first set of instructions are the current instructions, M Crim JI 15.1 through 15.13, involving intoxicated driving. They are followed by the proposed amended instructions for intoxicated driving, M Crim JI 15.1 through 15.12, including three new instructions: M Crim JI 15.10 (Owner or Person in Control of Vehicle Permitting Operation By Another Person While Intoxicated or Impaired), 15.11 (Person Under 21 Operating With Any Alcohol in System) and 15.12 (Violation With a Person Under the Age of 16 in the Motor Vehicle). The next set of instructions are the current instructions for other driving offenses, M Crim JI 15.14 through 15.25. Those are followed by the proposed revised jury instructions for those offenses, M Crim JI 15.13 through 15.17a.

Agenda
Public Policy Committee
July 22, 2020 – 9 a.m. to 11 a.m.

Committee Members: Robert J. Buchanan, Joseph J. Baumann, Judge Shauna L. Dunning, Suzanne C. Larsen, E. Thomas McCarthy, Jr., Valerie R. Newman, Thomas G. Sinas, Mark A. Wisniewski
SBM Staff: Janet Welch, Peter Cunningham, Elizabeth Goebel, Carrie Sharlow
GCSI: Marcia Hune

A. Opening Statements

B. Reports

1. Approval of June 11, 2020 minutes

The minutes were unanimously approved.

C. Court Rule Amendments

1. ADM File No. 2002-37: Proposed Addition of MCR 2.226

The proposed addition of MCR 2.226 would clarify the process for change of venue and transfer orders.

The following entities offered recommendations: Civil Procedure & Courts Committee.

The committee voted unanimously (8) to support ADM File No. 2002-37 and adopt the amendments proposed by the Civil Procedure & Courts Committee:

1. **In Section (3), rather than using the term “promptly,” set forth a specific number of days in which the receiving court must provide notice of refusal and return the case to the transferring court.**
2. **Consistent with the Court’s efforts to modify time periods to be in seven-day increments, for Section (4), consider modifying the three-day time period to a seven-day time period.**
3. **Provide chief judges authority to exercise their discretion to oversee and administer transfers to help ensure that the rules are being followed.**
4. **Provide an electronic process for courts to submit transfer orders and refusals of those orders to help expedite the process.**

2. ADM File No. 2019-47: Proposed Amendments of MCR 3.804, 5.140, and 5.404 and Proposed Addition of MCR 3.811

The proposed amendments of MCR 3.804, 5.140, and 5.404 and proposed new MCR 3.811 would allow greater use of videoconferencing equipment in cases involving Indian children.

The following entities offered recommendations: Access to Justice Policy Committee.

The committee voted unanimously to support the ADM File No. 2019-47 and to adopt the comments provided by the Access to Justice Policy Committee. The Access to Justice Policy Committee, while supportive of the proposed court rule as drafted, emphasized that “[p]hysical appearance by the parties remains the best avenue for a judge to determine if a permanent release is both informed and voluntary and if the requirements, goals, and principals under ICWA and MIFPA have been met.”

3. ADM File No. 2019-41: Proposed Amendment of MCR 4.201

The proposed amendment of MCR 4.201 would require disclosure of the right to object to venue in actions brought under the Summary Proceedings Act for landlord/tenant proceedings in district court, consistent with MCL 600.5706.

The following entities offered recommendations: Access to Justice Policy Committee; Civil Procedure & Courts Committee.

The committee voted unanimously to support ADM File No. 2019-41 as the rule provides notice to defendant-tenants of their right to have the venue changed to the district court in which the rental property is located.

4. ADM File No. 2020-04: Proposed Amendment of Rule 4 of the Rules for the Board of Law Examiners
The proposed amendment of BLE Rule 4 would explicitly state that a passing bar exam score is valid for three years, which is consistent with the character and fitness clearance expiration.

The committee voted unanimously to support ADM File No. 2020-04 because the proposed rule would create a three year “shelf life” for bar exam score validity - a time frame consistent with character and fitness clearance expiration.

D. Legislation

1. HB 5444 (Liberati) Children; services; kinship caregiver navigator program; create. Creates new act.

The following entities offered recommendations: Access to Justice Policy Committee.

The committee agreed unanimously that the legislation is *Keller*-permissible in affecting the availability of legal services to society.

The committee voted unanimously to support the legislation with recommendations from the Access to Justice Policy Committee that:

- **First, Section 6(c) should be clarified to indicate that the legal services initiatives shall be integrated into the current system of legal service providers.**
- **Second, to ensure quality pro bono and low bono legal services, required training should include legal services to marginalized communities, when applicable, such as immigration laws for documented and undocumented children, and training to ensure compliance with the Indian Child Welfare Act and Michigan Indian Family Preservation Act for kinship caregivers of children enrolled or eligible for enrollment in a federally recognized Tribe.**

2. HB 5488 (Lightner) Criminal procedure; sentencing; certain permissible costs; extend sunset. Amends sec. 1k, ch. IX of 1927 PA 175 (MCL 769.1k).

The following entities offered recommendations: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.

The committee agreed unanimously that the legislation is *Keller*-permissible in affecting the functioning of the courts and the availability of legal services to society.

The committee voted unanimously to support the legislation with the two-year extension for on-going funding of the state’s trial courts. The committee, while fully supportive of the bill, looks forward to a time when the TCFC’s recommendations are fully implemented and temporary fixes such as those set forth in this legislation are no longer necessary.

3. HB 5795 (Filler) Probate; wills and estates; electronic signature of wills; allow. Amends sec. 2502 of 1998 PA 386 (MCL 700.2502) & adds sec. 2504a.

The following entities offered recommendations: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Elder Law & Disability Rights Section; Probate & Estate Planning Section.

The committee agreed unanimously that the legislation is *Keller*-permissible in affecting the availability of legal services to society.

The committee voted unanimously to oppose this legislation as drafted. The committee supports the work of the Probate & Estate Planning Section and Elder Law & Disability Rights Section to continue their work with the sponsors to modify the legislation to address procedural issues not currently contemplated in the bill.

4. HB 5805 (Berman) Courts; judges; hearings on emergency motions by defendant in criminal cases; provide for. Amends sec. 1, ch. I of 1927 PA 175 (MCL 761.1) & adds sec. 12 to ch. III.

The following entities offered recommendations: Criminal Jurisprudence & Practice Committee.

The committee agreed unanimously that the legislation is *Keller*-permissible in affecting the functioning of the courts.

The committee voted unanimously to oppose this legislation because matters of how and when courts hear emergency motions are more appropriately addressed through court rule amendment(s) than through legislative action.

5. HB 5806 (Berman) Courts; records; online attorney access to court actions and filed documents without fees; provide for. Amends secs. 1985 & 1991 of 1961 PA 236 (MCL 600.1985 & 600.1991) & adds sec. 1991a. The following entities offered recommendations: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Appellate Practice Section; Family Law Section. **The committee agreed unanimously that the legislation is *Keller*-permissible in affecting the functioning of the courts and the availability of legal services to society.** **The committee voted unanimously (7) to take no position and allow the Sections to continue to advocate.**

6. SB 0682 (Lucido) Juveniles; juvenile justice services; juvenile records; require to be confidential. Amends sec. 28, ch. XIA of 1939 PA 288 (MCL 712A.28). The following entities offered recommendations: Access to Justice Policy Committee. **The committee agreed that the legislation is not *Keller*-permissible.**

7. SB 0865 (Lucido) Courts; other; procedures and regulations related cellular telephones in courtrooms; provide restrictions and penalties. The following entities offered recommendations: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Family Law Section; Member Comment. **The committee agreed unanimously that the legislation is *Keller*-permissible in affecting the functioning of the courts.** **The committee voted unanimously to oppose this legislation as procedures and regulations governing courtrooms are best addressed through Court rule amendment.**

8. SB 0895 (Runestad) Civil procedure; other; new trial; revise procedure for granting. Amends 1961 PA 236 (MCL 600.101 to 600.9947). The following entities offered recommendations: Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Appellate Practice Section; Member Comment. **The committee agreed unanimously that the legislation is *Keller*-permissible in affecting the functioning of the courts and the availability of legal services to society.** **The committee voted unanimously to oppose the legislation because Michigan courts already have well established court rules and an effective appellate process by which parties may seek relief from judgment. The committee opposes an additional legislatively mandated layer of review.**

E. Consent Agenda

Model Criminal Jury Instructions

1. M Crim JI 37.8, 37.8a, 37.8b, 37.9, 37.9a, 37.10, 37.11 and 37.11a

The Committee proposes instructions M Crim JI 37.8, 37.8a, 37.8b, 37.9, 37.9a, 37.10, 37.11 and 37.11a, where the prosecutor has charged an offense found in MCL 750. 483a, which addresses withholding evidence, preventing the report of a crime, retaliating for reporting a crime, influencing a crime report, defenses, or evidence tampering. The instructions are entirely new.

July 30, 2020

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

RE: ADM File No. 2002-37 – Proposed Addition of MCR 2.226

Dear Clerk Royster:

At its July 24, 2020 meeting, the Board of Commissioners of the State Bar of Michigan (Board) considered the above-referenced proposed rule addition published for comment. In its review, the Board considered recommendations from the Civil Procedure & Courts Committee.

After this review, the Board voted unanimously to support the proposed new rule with the following amendments:

- In Section (C), rather than using the term “promptly,” set forth a specific number of days in which the receiving court must provide notice of refusal and return the case to the transferring court.
- In Section (D), modify the three-day time period to a seven-day time period to make it consistent with the Court’s efforts to modify time periods to be in seven-day increments.
- Provide chief judges authority to exercise their discretion to oversee and administer transfers to help ensure that courts are following the rules.
- Provide an electronic process for courts to submit transfer orders and refusals of those orders to help expedite the process.

We thank the Court for the opportunity to comment on the proposed rule addition.

Sincerely,



Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Dennis M. Barnes, President

July 30, 2020

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

RE: ADM File No. 2019-47 – Proposed Amendments of MCR 3.804, 5.140, and 5.404 and Proposed Addition of MCR 3.811

Dear Clerk Royster:

At its July 24, 2020 meeting, the Board of Commissioners of the State Bar of Michigan (Board) considered the above-referenced proposed rule amendments published for comment. In its review, the Board considered recommendations from the Access to Justice Policy Committee.

After this review, the Board voted unanimously to support the rule changes. These proposed amendments strike the appropriate balance in the use of video-technology in Indian Child Welfare Act (ICWA) and Michigan Indian Family Preservation Act (MIFPA) proceedings, by allowing video-technology in proceedings in which the permanent loss of parental rights is not at stake and prohibiting video-technology in matters that could result in the permanent loss of parental rights. In-person hearings are the best vehicle to allow courts to determine whether parents understand the rights at stake and the consequences of permanently releasing those rights. For these reasons, the ability to use video-technology should not be further extended to permanent voluntary release or termination of parental rights proceedings under ICWA or MIFPA.

We thank the Court for the opportunity to comment on the proposed rule amendments and rule addition.

Sincerely,



Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Dennis M. Barnes, President

July 30, 2020

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

RE: ADM File No. 2019-41 – Proposed Amendment of MCR 4.201

Dear Clerk Royster:

At its July 24, 2020 meeting, the Board of Commissioners of the State Bar of Michigan (Board) considered the above-referenced proposed rule amendment published for comment. In its review, the Board considered recommendations from the Access to Justice Policy Committee and the Civil Procedure & Courts Committee.

After this review, the Board voted unanimously to support the rule changes, as they improve access to courts by providing tenants with notice of their right to have the venue changed to the district court in which the rental property is located.

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

Sincerely,



Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Dennis M. Barnes, President

July 30, 2020

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

RE: ADM File No. 2020-04 – Proposed Amendment of Rule 4 of the Rules for the Board of Law Examiners

Dear Clerk Royster:

At its July 24, 2020 meeting, the Board of Commissioners of the State Bar of Michigan (Board) considered the above-referenced proposed rule amendment published for comment.

The Board supports the proposed rule amendment as it clarifies how long bar examination results are valid and makes the time frame consistent with the expiration of the character and fitness determination.

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

Sincerely,



Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Dennis M. Barnes, President

Order

Michigan Supreme Court
Lansing, Michigan

June 10, 2020

Bridget M. McCormack,
Chief Justice

ADM File No. 2020-11

David F. Viviano,
Chief Justice Pro Tem

Proposed Amendment of
Rule 2.108 of the Michigan
Court Rules

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

On order of the Court, this is to advise that the Court is considering an amendment of Rule 2.108 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 also will be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules 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 2.108 Time

(A)-(B) [Unchanged.]

(C) Effect of Particular Motions and Amendments. When a motion or an amended pleading is filed, the time for pleading set in subrule (A) is altered as follows, unless a different time is set by the court:

- (1) If a motion under MCR 2.115(A) or MCR 2.116 made before filing a responsive pleading is denied, the moving party must serve and file a responsive pleading within 21 days after notice of the denial. However, if the moving party, within 21 days, files an application for leave to appeal from the order, the time is extended until 21 days after the denial of the application unless the appellate court orders otherwise.

(2)-(4) [Unchanged.]

(D)-(F) [Unchanged.]

Staff comment: The proposed amendment of MCR 2.108 would provide a timeframe for a responsive pleading when a motion for more definite statement is denied.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an 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 sent to the Supreme Court Clerk in writing or electronically by October 1, 2020, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2020-11. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



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 10, 2020

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk

**Public Policy Position
ADM File No. 2020-11**

Support

Explanation

The committee voted unanimously to support the rule amendment, as it defines the number of days by which a responsive pleading must be filed if a motion for a more definite statement is denied.

Position Vote:

Voted For position: 22

Voted against position: 0

Abstained from vote: 0

Did not vote (due to absence): 5

Contact Person: Randy J. Wallace

Email: rwallace@olsmanlaw.com

Order

Michigan Supreme Court
Lansing, Michigan

June 10, 2020

Bridget M. McCormack,
Chief Justice

ADM File No. 2020-14

David F. Viviano,
Chief Justice Pro Tem

Amendment of Rule
4.202 of the Michigan
Court Rules

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

On order of the Court, this is to advise that the amendment of Rule 4.202 of the Michigan Court Rules is adopted, effectively immediately, during the public comment period. Concurrently, individuals are invited to comment on the form or the merits of the amendment. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules page](#).

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

Rule 4.202 Summary Proceedings: Land Contract Forfeiture

(A)-(G) [Unchanged.]

(H) Answer; Default.

(1) [Unchanged.]

(2) Default.

(a) If the defendant fails to appear, the court, on the plaintiff's motion, may enter a default and may hear the plaintiff's proofs in support of judgment. If satisfied that the complaint is accurate, the court must enter a default judgment under MCL 600.5741, and in accord with subrule (J). The plaintiff must mail the default judgment ~~must be mailed to the defendant and file a proof of service with the court. by the court clerk and~~ The default judgment must inform the defendant that (if applicable)

(i)-(ii) [Unchanged.]

(b)-(c) [Unchanged.]

(3) [Unchanged.]

(I)-(L) [Unchanged.]

Staff comment: The amendment of MCR 4.202(H) makes the rule consistent with the requirements of MCR 4.201(F)(4) by requiring the court clerk to mail defendant notice of entry of a default judgment. The rule was amended previously to require plaintiff to mail a default judgment to the defendant, unlike MCR 4.201(F)(4), which was not amended. Having two different procedures for matters that are both summary proceedings has caused confusion for courts. This amendment returns the language to its previous status and makes MCR 4.201 and MCR 4.202 consistent again.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an 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 sent to the Supreme Court Clerk in writing or electronically by October 1, 2020, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2020-14. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



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 10, 2020

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk

Public Policy Position
ADM File No. 2020-14

Support

Explanation:

The committee voted unanimously to support the proposed amendment to Rule 4.202. The proposed amendment puts the onus on the court - instead of on the plaintiff - to serve the judgement on the defendant. The committee supports the rule changes because they would bring Rule 4.202 into greater accord with other court rules and would better ensure service on defendants.

Position Vote:

Voted for position: 17

Voted against position: 0

Abstained from vote: 0

Did not vote (due to absence): 10

Contact Persons:

Lorray S.C. Brown lorryb@mplp.org

Valerie R. Newman vnewman@waynecounty.com

**Public Policy Position
ADM File No. 2020-14**

Support

Explanation

The committee voted unanimously to support the proposed amendment to Rule 4.202.

Position Vote:

Voted For position: 22

Voted against position: 0

Abstained from vote: 0

Did not vote (due to absence): 5

Contact Person: Randy J. Wallace

Email: rwallace@olsmanlaw.com



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

=====

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by October 1, 2020. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

=====

PROPOSED

The Committee proposes amending instruction M Crim JI 13.19 and adding a new instruction, M Crim JI 13.19a, to address offenses charged under MCL 750.411a, as amended, for making a false report of a crime (M Crim JI 13.19) or a false report of a medical or other emergency (M Crim JI 13.19a). With respect to amendments to M Crim JI 13.19, deleted language from the current instruction is in strikeout and added language is underlined; M Crim JI 13.19a is entirely new.

[AMENDED] M Crim JI 13.19 False Report of a Felony Crime

(1) The defendant is charged with making a false report ~~in connection with a felony~~ of a crime to the police. To prove this charge the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, the defendant [~~reported~~ / caused (another person / identify person who made report) to make a report] that a the crime of (identify crime reported) had been committed.

(3) Second, that the report was made to [a police officer or a police agency / a 9-1-1 operator / (identify government employee or contractor) if (he / she) was authorized to receive emergency reports].

(4) Third, that ~~this~~ the report was false as to either the fact that the crime was committed or the detail[s] of the crime.

(5) Fourth, that when the defendant [~~made the report / caused the report to be made~~], the defendant knew it was false.

(6) Fifth, that the defendant ~~intended to [make a~~ made the false report / caused the false report to be made ~~intentionally concerning a crime~~.

~~(6) Fifth, that the crime reported was a felony, i.e., an offense [punishable by more than one year incarceration / declared by statute to be a felony].~~

[Use the following where an aggravating factor has been charged.]

(7) Sixth, that the report resulted in a response to address the reported crime and [name injured person] suffered physical injury as a consequence of [his / her] lawful conduct arising out of the response.

(8) Sixth, that the report resulted in a response to address the reported crime and [name injured person] suffered serious impairment of a body function as a consequence of [his / her] lawful conduct arising out of the response.

(9) Sixth, that the report resulted in a response to address the reported crime and [name deceased person] died as a consequence of [his / her] lawful conduct arising out of the response.

Use Note

~~This instruction does not cover false report of bomb threats, which is addressed separately in the statute MCL 750.411a(2).~~

**[NEW] M Crim JI 13.19a False Report of Medical or Other
Emergency**

(1) The defendant is charged with making a false report of a medical emergency or other emergency to police or fire personnel.

(2) First, the defendant [reported / caused (another person / *identify person who made report*) to make a report] that there was a medical emergency or other emergency.

(3) Second, that the report was made to [a police officer or a police agency / a firefighter or fire department / a 9-1-1 operator / a medical first responder / (*identify government employee or contractor*) if (he / she) was authorized to receive emergency reports].

(4) Third, that the report was false.

(5) Fourth, that when the defendant [made the report / caused the report to be made], [he / she] knew it was false.

(6) Fifth, that the defendant [made the false report / caused the false report to be made] intentionally.

[Use the following where an aggravating factor has been charged.]

(7) Sixth, that the report resulted in a response to address the reported emergency and [*name injured person*] suffered physical injury as a consequence of [his / her] lawful conduct arising out of the response.

(8) Sixth, that the report resulted in a response to address the reported emergency and [*name injured person*] suffered serious impairment of a body function as a consequence of [his / her] lawful conduct arising out of the response.

(9) Sixth, that the report resulted in a response to address the reported emergency and [*name deceased person*] died as a consequence of [his / her] lawful conduct arising out of the response.

**Public Policy Position
M Crim JI 13.19 and 13.19a**

Support as Drafted

Explanation

The committee unanimously supported the proposed Model Criminal Jury Instructions 13.19 and 13.19a as drafted.

Position Vote:

Voted For position: 17

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 4

Contact Persons:

Mark A. Holsomback mahols@kalcounty.com

Sofia V. Nelson snelson@sado.org



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

=====

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by November 1, 2020. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov .

=====

The Committee on Model Criminal Jury Instructions proposes a revision of Chapter 15 (Traffic Offenses) of the Model Criminal Jury Instructions. Repeated statutory amendments over the past four decades have left the jury instructions for this chapter a hodgepodge and inconsistent in format with other chapters, especially the driving-while-intoxicated portion of Chapter 15. The Committee offers a rewrite that organizes the instructions according to the current statutory structure for driving offenses in a more consistent and comprehensive format.

The instructions are divided into four sets in hopes of making them more convenient to compare and review. The first set of instructions are the current instructions, M Crim JI 15.1 through 15.13, involving intoxicated driving. They are followed by the proposed amended instructions for intoxicated driving, M Crim JI 15.1 through 15.12, including three new instructions: M Crim JI 15.10 (Owner or Person in Control of Vehicle Permitting Operation By Another Person While Intoxicated or Impaired), 15.11 (Person Under 21 Operating With Any Alcohol in System) and 15.12 (Violation With a Person Under the Age of 16 in the Motor Vehicle). The next set of instructions are the current instructions for other driving offenses, M Crim JI 15.14 through 15.25. Those are followed by the proposed revised jury instructions for those offenses, M Crim JI 15.13 through 15.17a.

Again, comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

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Current intoxicated-driving jury instructions MCrimJI 15.1 through 15.13
are on following pages (pp 3-26)

M Crim JI 15.1 Operating While Intoxicated [OWI]

[The defendant is charged with / You may also consider the less serious charge of] operating a motor vehicle [*Choose from the following:*]

- (1) with an unlawful bodily alcohol level; [and/or]
- (2) while under the influence of alcohol; [or]
- (3) while under the influence of a controlled substance; [or]
- (4) while under the influence of an intoxicating substance; [or]
- (5) while under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance].¹

Use Note

¹Select the appropriate combination of alcohol/substances based on the evidence presented.

M Crim JI 15.1a Operating With High Bodily Alcohol Content [OWHBAC]

- (1) The defendant is charged with operating a motor vehicle with a high bodily alcohol content. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt.
- (2) First, that the defendant was operating a motor vehicle on or about [state date]. Operating means driving or having actual physical control of the vehicle.
- (3) Second, that the defendant was operating a vehicle on a highway or other place open to the public or generally accessible to motor vehicles [, including an area designated for parking vehicles].
- (4) Third, that the defendant operated the vehicle with a bodily alcohol content of 0.17 grams or more per [100 milliliters of blood / 210 liters of breath / 67 milliliters of urine].

Use Note

Lesser offense instructions for the offenses of operating while intoxicated and operating while visibly impaired involving the consumption of alcohol must be given. See appropriate provisions of M Crim JI 15.1, 15.2, 15.3 and 15.4.

M Crim JI 15.2 Elements Common to Operating While Intoxicated [OWI] and Operating While Visibly Impaired [OWVI]

To prove that the defendant operated while intoxicated [or while visibly impaired], the prosecutor must prove each of the following elements beyond a reasonable doubt:

- (1) First, that the defendant was operating a motor vehicle [on or about (*state date*)]. Operating means driving or having actual physical control of the vehicle.
- (2) Second, that the defendant was operating a vehicle on a highway or other place open to the public or generally accessible to motor vehicles.
- (3) Third, that the defendant was operating the vehicle in the [county / city] of _____.

M Crim JI 15.3 Specific Elements of Operating While Intoxicated [OWI]

(1) To prove that the defendant operated a motor vehicle while intoxicated, the prosecutor must also prove beyond a reasonable doubt that the defendant [*choose from the following*]:

- (a) operated the vehicle with a bodily alcohol level of 0.08 grams or more [per 100 milliliters of blood / 210 liters of breath / 67 milliliters of urine];¹
- (b) was under the influence of alcohol while operating the vehicle;
- (c) was under the influence of a controlled substance while operating the vehicle;
- (d) was under the influence of an intoxicating substance while operating the vehicle;
- (e) was under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance]² while operating the vehicle.

[*Choose (i), (ii), or (iii) as appropriate:*]

(i) [*Name substance*] is a controlled substance.

(ii) [*Name substance*] is an intoxicating substance.³

(iii) An intoxicating substance is a substance in any form, including but not limited to vapors and fumes, other than food, that was taken into the defendant's body in any manner, that is used in a manner or for a purpose for which it was not intended, and that may result in a condition of intoxication.

(2) [“Under the influence of alcohol” / “Under the influence of a controlled substance” / “Under the influence of an intoxicating substance”] means that because of [drinking alcohol / using or consuming a controlled substance / consuming or taking into (his / her) body an intoxicating substance], the defendant's ability to operate a motor vehicle in a normal manner was substantially lessened. To be under the influence, a person does not have to be falling down or hardly able to stand up. On the other hand, just because a person has [drunk alcohol or smells of alcohol / consumed or used a controlled substance / consumed or used an intoxicating substance] does not prove, by

itself, that the person is under the influence of [alcohol / a controlled substance / an intoxicating substance]. The test is whether, because of [drinking alcohol / using or consuming a controlled substance / consuming or taking into (his / her) body an intoxicating substance], the defendant's mental or physical condition was significantly affected and the defendant was no longer able to operate a vehicle in a normal manner.

Use Note

¹If the defendant is charged with OWI by virtue of bodily alcohol content only, use the appropriate bracketed material in this paragraph (1)(a) and do not use any of the following paragraphs (1)(b) through (e). If the defendant is charged with OWI by virtue of operating under the influence of alcohol, a controlled substance or an intoxicating substance only, do not use this paragraph (1)(a), but use the appropriate alternative paragraphs (1)(b)-(e) with the associated alternatives in paragraph (2). If the defendant is charged with OWI alternatively as having an unlawful bodily alcohol content or operating under the influence of alcohol or a substance, use the appropriate paragraphs based on the evidence presented.

² Select the appropriate combination of alcohol or substances based on the evidence presented.

³ Certain substances are intoxicating substances as a matter of law. The sources for determining those substances are found in MCL 257.625(25)(a)(i).

M Crim JI 15.3a Operating with Any Amount of Schedule 1 or 2 Controlled Substance

(1) The defendant is charged with the crime of operating a motor vehicle with a controlled substance in [his / her] body. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was operating a motor vehicle. “Operating” means driving or having actual physical control of the vehicle.

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

(4) Third, that while operating the vehicle, the defendant had any amount of [*state specific schedule 1 or 2 controlled substance alleged*] in [his / her] body.

(5) Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed or used a controlled substance.

M Crim JI 15.4 Specific Elements of Operating While Visibly Impaired [OWVI]

[The defendant is charged with / You may also consider the less serious charge of] operating a motor vehicle while visibly impaired. To prove that the defendant operated while visibly impaired, the prosecutor must prove beyond a reasonable doubt that, due to the [drinking of alcohol / use or consumption of a controlled substance / use or consumption of an intoxicating substance / use or consumption of a combination of (alcohol / a controlled substance / an intoxicating substance)¹], the defendant drove with less ability than would an ordinary careful driver. The defendant's driving ability must have been lessened to the point that it would have been noticed by another person.

Use Note

¹ Select the appropriate combination of alcohol/substances based on the evidence presented.

M Crim JI 15.5 Factors in Considering Operating While Intoxicated [OWI] and Operating While Visibly Impaired [OWVI]

As you consider the possible verdicts, you should think about the following:

[Choose appropriate paragraphs:]

(1) What was the mental and physical condition of the defendant at the time that [he / she] was operating the motor vehicle? Were the defendant's reflexes, ability to see, way of walking and talking, manner of driving, and judgment normal? If there was evidence that any of these things seemed abnormal, was this caused by [drinking alcohol / using or consuming a controlled substance / using or consuming an intoxicating substance / using or consuming a combination of (alcohol / a controlled substance / an intoxicating substance)¹]?

(2) You may also consider bodily alcohol content in reaching your verdict. In that regard, [was / were] the test(s) technically accurate? Was the equipment properly assembled and maintained and in good working order when the test(s) [was / were] given?

(3) Were the test results reliable? Was the test given correctly? Was the person who gave it properly trained? Did the circumstances under which the test was given affect the accuracy of the results?

(4) One way to determine whether a person is intoxicated is to measure how much alcohol is in [his / her] [blood / breath / urine]. There was evidence in this trial that a test was given to the defendant. The purpose of this test is to measure the amount of alcohol in a person's [blood / breath / urine].

[Choose (5)(a) or (5)(b):]

(5) If you find

(a) that there were 0.17 grams or more of alcohol [per 100 milliliters of blood / per 210 liters of breath / per 67 milliliters of urine] when [he / she] operated the vehicle, you may find that the defendant was operating a motor vehicle with a high bodily alcohol content, whether or not it affected the defendant's ability to operate a motor vehicle.

(b) that there were 0.08 grams or more of alcohol [per 100 milliliters of blood / per 210 liters of breath / per 67 milliliters of urine] when [he / she] operated the vehicle, you may find the defendant guilty of operating a motor vehicle with an unlawful bodily alcohol content, whether or not this alcohol content affected the defendant's ability to operate a motor vehicle.

(6) You may infer that the defendant's bodily alcohol content at the time of the test was the same as [his / her] bodily alcohol content at the time [he / she] operated the motor vehicle.²

(7) In considering the evidence and arriving at your verdict, you may give the test whatever weight you believe that it deserves. The results of a test are just one factor you may consider, along with all other evidence about the condition of the defendant at the time [he / she] was operating the motor vehicle.

Use Note

Read both (5)(a) and (5)(b) if operating with a high bodily alcohol content is charged. Otherwise, read only (5)(b).

¹ Where a combination of alcohol and other controlled or intoxicating substances is shown, select the appropriate combination of alcohol/substances based on the evidence presented.

² If the evidence warrants, the following can be added to this paragraph (6): "However, you have heard evidence that the defendant consumed alcohol after driving but before the [blood / breath / urine] test was administered. You may consider this evidence in determining whether to infer that the defendant's bodily alcohol content at the time of the test was the same as [his / her] bodily alcohol content at the time that [he / she] operated the motor vehicle."

M Crim JI 15.6 Possible Verdicts Where OWHBAC Is Not Charged

There are three possible verdicts:

(1) Not guilty, or

(2) Guilty of

[Choose appropriate paragraphs:]

(a) operating a motor vehicle with an unlawful bodily alcohol level;
[or]

(b) operating a motor vehicle while under the influence of alcohol; [or]

(c) operating a motor vehicle while under the influence of a controlled substance; [or]

(d) operating a motor vehicle while under the influence of an intoxicating substance; [or]

(e) operating a motor vehicle while under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance].¹

[(f) If you all agree that the defendant operated a motor vehicle either with an unlawful bodily alcohol level or while under the influence of [alcohol / a controlled substance / an intoxicating substance / a combination of (alcohol / a controlled substance / an intoxicating substance)¹], it is not necessary that you agree on which of these violations occurred. However, in order to return a verdict of guilty, you must all agree that one of those violations did occur.]²

[or]

(3) Guilty of operating a motor vehicle while visibly impaired.

Use Note

¹ Select the appropriate combination of alcohol/substances based on the evidence presented.

² Use bracketed paragraph (2)(f) only if the defendant is charged with both unlawful bodily alcohol level (UBAL) and operating while intoxicated (OWI). This paragraph specifically states that the jury need not be unanimous on which theory applies as long as all jurors agree that the defendant violated MCL 257.625 in at least one fashion. See *People v Nicolaidis*, 148 Mich App 100; 383 NW2d 620 (1985).

M Crim JI 15.6a Possible Verdicts Where OWHBAC Is Charged

There are four possible verdicts:

- (1) Not guilty, or
- (2) Guilty of operating a vehicle with a high bodily alcohol content, or
- (3) Guilty of

[Choose appropriate paragraphs:]

- (a) operating a motor vehicle with an unlawful bodily alcohol level; [or]
- (b) operating a motor vehicle while under the influence of alcohol; [or]
- (c) operating a motor vehicle while under the influence of a controlled substance; [or]
- (d) operating a motor vehicle while under the influence of an intoxicating substance; [or]
- (e) operating a motor vehicle while under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance].¹

[(f) If you all agree that the defendant operated a motor vehicle either with an unlawful bodily alcohol level or while under the influence of [alcohol / a controlled substance / an intoxicating substance / a combination of (alcohol / a controlled substance / an intoxicating substance)], it is not necessary that you agree on which of these violations occurred. However, in order to return a verdict of guilty, you must all agree that one of those violations did occur.]²

[or]

- (4) Guilty of operating a motor vehicle while visibly impaired.

Use Note

¹ Select the appropriate combination of alcohol/substances based on the evidence presented.

² Use bracketed paragraph (3)(f) only if the defendant is charged with both unlawful bodily alcohol level (UBAL) and operating while intoxicated (OWI). This paragraph specifically states that the jury need not be unanimous on which theory applies as long as all jurors agree that the defendant violated MCL 257.625 in at least one fashion. See *People v Nicolaidis*, 148 Mich App 100; 383 NW2d 620 (1985).

M Crim JI 15.7 Verdict Form Where OWHBAC Is Not Charged

Defendant: _____

POSSIBLE VERDICTS:

You may return only one verdict on this charge. Mark only (1), (2) or (3).

- (1) Not guilty
- (2) Guilty of Operating While Intoxicated
- (3) Guilty of the less serious offense of Operating While Visibly Impaired

M Crim JI 15.7a Verdict Form Where OWHBAC Is Charged

Defendant: _____

POSSIBLE VERDICTS:

You may return only one verdict on this charge. Mark only (1), (2), (3) or (4).

- (1) Not guilty
- (2) Guilty of Operating with a High Bodily Alcohol Content
- (3) Guilty of the less serious offense of Operating While Intoxicated
- (4) Guilty of the less serious offense of Operating While Visibly Impaired

M Crim JI 15.8 Verdict Form *[modified and renumbered 15.7 in 1993]*

[This instruction was modified and renumbered M Crim JI 15.7 as part of the 1993 revision of chapter 15.]

M Crim JI 15.9 Defendant's Decision to Forgo Chemical Testing

Evidence has been admitted in this case that the defendant refused to take a chemical test. If you find that the defendant did refuse, that evidence was admitted solely for the purpose of showing that a test was offered to the defendant. That evidence is not evidence of guilt.

Use Note

MCL 257.625a(9) provides: A person's refusal to submit to a chemical test as provided in subsection (6) is admissible in a criminal prosecution for a crime described in section 625c(1) only to show that a test was offered to the defendant, but not as evidence in determining the defendant's innocence or guilt. The jury shall be instructed accordingly.

M Crim JI 15.10 Felonious Driving [Use for Acts Occurring Before October 31, 2010] *[deleted]*

Note. This instruction was deleted May, 2010, due to the repeal of the felonious driving statute, MCL 257.626c, by 2008 PA 463, effective October 31, 2010. The offense previously covered by this instruction is dealt with in M Crim JI 15.17.

M Crim JI 15.11 Operating While Intoxicated [OWI] and Operating While Visibly Impaired [OWVI] Causing Death

(1) The defendant is charged with the crime of operating¹ a motor vehicle while intoxicated or while visibly impaired causing the death of another person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was operating a motor vehicle on or about [*state date*] in the [county / city] of [*state jurisdiction*]. Operating means driving or having actual physical control of the vehicle.

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

(4) Third, that while operating the vehicle, the defendant was intoxicated or visibly impaired.

(5) Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed [alcohol / a controlled substance / an intoxicating substance / a combination of (alcohol / a controlled substance / an intoxicating substance)²] and might be intoxicated or visibly impaired.

(6) Fifth, that the defendant's operation of the vehicle caused the victim's death. To "cause" the victim's death, the defendant's operation of the vehicle must have been a factual cause of the death, that is, but for the defendant's operation of the vehicle the death would not have occurred. In addition, operation of the vehicle must have been a proximate cause of death, that is, death or serious injury must have been a direct and natural result of operating the vehicle.

Use Note

¹ The term "operating" has been defined by the Michigan Supreme Court in *People v Wood*, 450 Mich 399, 538 NW2d 351 (1995). The court held that "[o]nce a person using a motor vehicle as a motor vehicle has put the vehicle in motion, or in a position posing a significant risk of causing a collision, such a person continues to operate it until the vehicle is returned to a position posing no such risk." □ *Id.* at 404-405. The holding in *Wood* was applied in *People v Lechleitner*, 291 Mich App

56, 804 NW2d 345 (2010), which held that the defendant was properly convicted under the operating-while-intoxicated-causing-death statute where he was intoxicated, operated his vehicle, and crashed it, with the result that it sat in the middle of the freeway at night creating a risk of injury or death to others, and a following car swerved to miss his stopped truck and killed another motorist on the side of the road.

If it is claimed that the defendant's operation of the vehicle was not a proximate cause of death because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439, 703 NW2d 774 (2005). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010).

² Select the appropriate combination of alcohol/substances based on the evidence presented.

M Crim JI 15.11a Operating with Any Amount of Schedule 1 Controlled Substance or Cocaine Causing Death

(1) The defendant is charged with the crime of operating a motor vehicle with a controlled substance in [his / her] body causing the death of another person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was operating a motor vehicle on or about [*state date*] in the [county / city] of [*state jurisdiction*]. Operating means driving or having actual physical control of the vehicle.

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

(4) Third, that while operating the vehicle, the defendant had any amount of [*state specific schedule 1 controlled substance or controlled substance in MCL 333.7214(a)(iv) alleged by the prosecutor*] in [his / her] body.

(5) Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed or used a controlled substance.

(6) Fifth, that the defendant's operation of the vehicle caused¹ the victim's death. To "cause" the victim's death, the defendant's operation of the vehicle must have been a factual cause of the death, that is, but for the defendant's operation of the vehicle the death would not have occurred. In addition, operation of the vehicle must have been a proximate cause of death, that is, death or serious injury must have been a direct and natural result of operating the vehicle.

Use Note

This instruction is intended to state the elements of the offense found at MCL 257.625(4) and (8).

1. If it is claimed that the defendant's operation of the vehicle was not a proximate cause of death because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439, 703 NW2d 774 (2005). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d

822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010).

M Crim JI 15.12 Operating While Intoxicated [OWI] and Operating While Visibly Impaired [OWVI] Causing Serious Impairment of a Body Function

(1) The defendant is charged with the crime of operating a motor vehicle while intoxicated or while visibly impaired causing serious impairment of a body function to another person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was operating a motor vehicle on or about [*state date*] in the [county / city] of [*state jurisdiction*]. Operating means driving or having actual physical control of the vehicle.

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

(4) Third, that while operating the vehicle, the defendant was intoxicated or visibly impaired.

(5) Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed [alcohol / a controlled substance / an intoxicating substance / a combination of (alcohol / a controlled substance / an intoxicating substance)¹] and might be intoxicated or visibly impaired.

(6) Fifth, that the defendant's operation of the vehicle caused² a serious impairment of a body function³ to [*name victim*]. To "cause" such injury, the defendant's operation of the vehicle must have been a factual cause of the injury, that is, but for the defendant's operation of the vehicle the injury would not have occurred. In addition, operation of the vehicle must have been a proximate cause of the injury, that is, the injury must have been a direct and natural result of operating the vehicle.

Use Note

¹ Select the appropriate combination of alcohol/substances based on the evidence presented.

² If it is claimed that the defendant's operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439, 703 NW2d

774 (2005) (a “causes death” case under MCL 257.625(4)). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010).

³ The statute, MCL 257.58c, provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

- (a) Loss of a limb or loss of use of a limb.
- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.
- (j) Loss of an organ.

M Crim JI 15.12a Operating With Any Amount of Schedule 1 Controlled Substance or Cocaine Causing Serious Impairment of a Body Function

(1) The defendant is charged with the crime of operating a motor vehicle with any amount of a controlled substance causing serious impairment of a body function to another person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was operating a motor vehicle on or about [*state date*] in the [county / city] of [*state jurisdiction*]. Operating means driving or having actual physical control of the vehicle.

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

(4) Third, that while operating the vehicle, the defendant had any amount of [*state specific schedule 1 controlled substance or controlled substance in MCL 333.7214(a)(iv) alleged by the prosecutor*] in [his / her] body.

(5) Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed or used a controlled substance.

(6) Fifth, that the defendant's operation of the vehicle caused¹ a serious impairment of a body function² to [*name victim*]. To "cause" such injury, the defendant's operation of the vehicle must have been a factual cause of the injury, that is, but for the defendant's operation of the vehicle the injury would not have occurred. In addition, operation of the vehicle must have been a proximate cause of the injury, that is, the injury must have been a direct and natural result of operating the vehicle.

Use Note

This instruction is intended to state the elements of the offense found at MCL 257.625(5) and (8).

1. If it is claimed that the defendant's operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439, 703 NW2d 774 (2005) (a "causes death" case under MCL 257.625(4)). *Schaefer* was modified

in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010).

2. The statute, MCL 257.58c, provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

- (a) Loss of a limb or loss of use of a limb.
- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.
- (j) Loss of an organ

M Crim JI 15.13 Operating a Commercial Vehicle with an Unlawful Bodily Alcohol Content [UBAL]

(1) The defendant is charged with the crime of operating a commercial motor vehicle with an unlawful bodily alcohol level. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was operating a commercial motor vehicle* on or about [*state date*] in the [county / city] of [*state jurisdiction*]. Operating means driving or having actual physical control of the vehicle.

(3) Second, that the defendant had a bodily alcohol content of 0.04 grams or more but less than 0.08 grams per 100 milliliters of blood [per 210 liters of breath or 67 milliliters of urine] when operating the commercial motor vehicle.

Use Note

*For the definition of *commercial motor vehicle*, see MCL 257.7a.

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Proposed intoxicated-driving jury instructions, MCrimJI 15.1 through 15.12,
begin on following page (pp 28-63)

M Crim JI 15.1 Operating While Intoxicated; High Bodily Alcohol Content [OWIHBAC]

(1) The defendant is charged with the crime of operating a motor vehicle with a high bodily alcohol content. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle.¹ To operate means to drive or have actual physical control of the vehicle.

(3) Second, that the defendant operated the vehicle on a highway or other place open to the public or generally accessible to motor vehicles [including any designated parking area].²

(4) Third, that the defendant operated the vehicle with a bodily alcohol level of 0.17 grams or more per [per 100 milliliters of blood / 210 liters of breath / 67 milliliters of urine].

Use Note

Lesser offenses of other forms of OWI and/or OWVI may be given. Use only the provisions for alcohol intoxication when instructing on the lesser offense(s) for this charge.

1. The term “motor vehicle” is defined in MCL 257.33.

2. A private driveway is “generally accessible to motor vehicles” and within the purview of the statute. *People v Rea*, 500 Mich 422; 902 NW2d 362 (2017).

M Crim JI 15.1a Operating While Intoxicated; High Bodily Alcohol Content Causing Death or Serious Impairment of a Body Function [OWIHBAC: Death or Serious Impairment]

(1) The defendant is charged with the crime of operating a motor vehicle while intoxicated with a high bodily alcohol content causing [death / serious impairment of a body function to another person].¹ To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle.² To *operate* means to drive or have actual physical control of the vehicle.

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

(4) Third, that the defendant operated the vehicle with a bodily alcohol level of 0.17 grams or more per [per 100 milliliters of blood / 210 liters of breath / 67 milliliters of urine].

(5) Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed alcohol.

(6) Fifth, that the defendant's operation of the vehicle caused⁴ [the death of (*name decedent*) / a serious impairment of a body function⁵ to (*name injured person*)]. To cause [the death / such injury], the defendant's operation of the vehicle must have been a factual cause of the [death / injury], that is, but for the defendant's operation of the vehicle, the [death / injury] would not have occurred. In addition, [death or serious injury / the injury] must have been a direct and natural result of operating the vehicle.

Use Notes

1. Lesser offenses of OWI and/or OWVI may be given. Use only the provisions for alcohol intoxication when instructing on the lesser offense(s).

2. The term *motor vehicle* is defined in MCL 257.33.

3. A private driveway is “generally accessible to motor vehicles” and within the purview of the statute. *People v Rea*, 500 Mich 422; 902 NW2d 362 (2017).

4 If it is claimed that the defendant’s operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439; 703 NW2d 774 (2005) (a “causes death” case under MCL 257.625(4)). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316; 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184; 783 NW2d 67 (2010).

5. MCL 257.58c provides that serious impairment of a body function includes but is not limited to one or more of the following:

- (a) Loss of a limb or loss of use of a limb.
- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.
- (j) Loss of an organ.

M Crim JI 15.2 Operating While Intoxicated [OWI]

(1) [The defendant is charged with the crime of operating a motor vehicle while intoxicated / You may also consider a less serious charge of] operating a motor vehicle while intoxicated]:

[Choose from the following:]

- (a) with an unlawful bodily alcohol level; [and/or]
- (b) while under the influence of alcohol; [or]
- (c) while under the influence of a controlled substance; [or]
- (d) while under the influence of an intoxicating substance; [or]
- (e) while under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance].

To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle.¹ To *operate* means to drive or have actual physical control of the vehicle.

(3) Second, that the defendant operated the vehicle on a highway or other place open to the public or generally accessible to motor vehicles [including any designated parking area].²

(4) Third, that the defendant was intoxicated. That is, the defendant [choose from the following]:

- (a) operated the vehicle with a bodily alcohol level of 0.08 grams or more per [100 milliliters of blood / 210 liters of breath / 67 milliliters of urine];
- (b) operated the vehicle while under the influence of alcohol;
- (c) operated the vehicle while under the influence of a controlled substance;
- (d) operated the vehicle while under the influence of an intoxicating substance;
- (e) operated the vehicle while under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance].

[Choose from the following alternatives where the charge is “under the influence”:]

(5) *Under the influence* of [alcohol / a controlled substance / an intoxicating substance] means that because of [drinking alcohol / using or consuming a controlled substance / consuming or taking into (his / her) body an intoxicating substance], the defendant's ability to operate a motor vehicle in a normal manner was substantially lessened. To be under the influence, a person does not have to be falling down or hardly able to stand up. On the other hand, just because a person has [drunk alcohol or smells of alcohol / consumed or used a controlled substance / consumed or used an intoxicating substance] does not prove, by itself, that the person is under the influence of [alcohol / a controlled substance / an intoxicating substance]. The test is whether, because of [drinking alcohol / using or consuming a controlled substance / consuming or taking into (his / her) body an intoxicating substance], the defendant's mental or physical condition was significantly affected and the defendant was no longer able to operate a vehicle in a normal manner.

(6) [Where the charge is "under the influence" of a substance other than alcohol choose (a), (b), or (c) as appropriate:]

(a) [Name substance] is a controlled substance.

(b) [Name substance] is an intoxicating substance.

(c) An *intoxicating substance* is a substance in any form, including but not limited to vapors and fumes, other than food, that was taken into the defendant's body in any manner, that is used in a manner or for a purpose for which it was not intended, and that may result in a condition of intoxication.

Use Note

The lesser offense of OWVI may be given.

1. The term *motor vehicle* is defined in MCL 257.33.

2. A private driveway is "generally accessible to motor vehicles" and within the purview of the statute. *People v Rea*, 500 Mich 422; 902 NW2d 362 (2017).

M Crim JI 15.2a Operating While Intoxicated Causing Death or Serious Impairment of a Body Function] [OWI: Death or Serious Impairment]

(1) The defendant is charged with the crime of operating a motor vehicle while intoxicated causing [death / serious impairment of a body function to another person].¹ To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle.² To *operate* means to drive or have actual physical control of the vehicle.

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

(4) Third, that the defendant was intoxicated. That is, the defendant [*choose from the following*]:

(a) operated the vehicle with a bodily alcohol level of 0.08 grams or more per [100 milliliters of blood / 210 liters of breath / 67 milliliters of urine];

(b) operated the vehicle while under the influence of alcohol;

(c) operated the vehicle while under the influence of a controlled substance;

(d) operated the vehicle while under the influence of an intoxicating substance;

(e) operated the vehicle while under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance].

[*Choose from the following alternatives where the charge is “under the influence”:*]

(5) *Under the influence* of [alcohol / a controlled substance / an intoxicating substance] means that because of [drinking alcohol / using or consuming a controlled substance / consuming or taking into (his / her) body an intoxicating substance], the defendant’s ability to operate a motor vehicle in a normal manner was substantially lessened. To be under the influence, a person does

not have to be falling down or hardly able to stand up. On the other hand, just because a person has [drunk alcohol or smells of alcohol / consumed or used a controlled substance / consumed or used an intoxicating substance] does not prove, by itself, that the person is under the influence of [alcohol / a controlled substance / an intoxicating substance]. The test is whether, because of [drinking alcohol / using or consuming a controlled substance / consuming or taking into (his / her) body an intoxicating substance], the defendant's mental or physical condition was significantly affected and the defendant was no longer able to operate a vehicle in a normal manner.

(6) [Where the charge is "under the influence" of a substance other than alcohol choose (a), (b), or (c) as appropriate:]

(a) [Name substance] is a controlled substance.

(b) [Name substance] is an intoxicating substance.

(c) An *intoxicating substance* is a substance in any form, including but not limited to vapors and fumes, other than food, that was taken into the defendant's body in any manner, that is used in a manner or for a purpose for which it was not intended, and that may result in a condition of intoxication.

(7) Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed [alcohol / a controlled substance / an intoxicating substance / a combination of (alcohol / a controlled substance / an intoxicating substance)]⁴ and might be intoxicated.

(8) Fifth, that the defendant's operation of the vehicle caused⁵ [the death of (*name decedent*) / a serious impairment of a body function⁶ to (*name injured person*)]. To cause [the death / such injury], the defendant's operation of the vehicle must have been a factual cause of the [death / injury], that is, but for the defendant's operation of the vehicle, the [death / injury] would not have occurred. In addition, [death or serious injury / the injury] must have been a direct and natural result of operating the vehicle.

Use Notes

1. Lesser offense(s) of OWI and OWVI may be given.

2. The term *motor vehicle* is defined in MCL 257.33.
3. A private driveway is “generally accessible to motor vehicles” and within the purview of the statute. *People v Rea*, 500 Mich 422; 902 NW2d 362 (2017).
4. Select the appropriate combination of alcohol/substances based on the evidence presented.
5. If it is claimed that the defendant’s operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439; 703 NW2d 774 (2005) (a “causes death” case under MCL 257.625(4)). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316; 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184; 783 NW2d 67 (2010).
6. MCL 257.58c provides that serious impairment of a body function includes but is not limited to one or more of the following:
 - (a) Loss of a limb or loss of use of a limb.
 - (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
 - (c) Loss of an eye or ear or loss of use of an eye or ear.
 - (d) Loss or substantial impairment of a bodily function.
 - (e) Serious visible disfigurement.
 - (f) A comatose state that lasts for more than 3 days.
 - (g) Measurable brain or mental impairment.
 - (h) A skull fracture or other serious bone fracture.
 - (i) Subdural hemorrhage or subdural hematoma.
 - (j) Loss of an organ.

M Crim JI 15.3 Operating While Visibly Impaired [OWVI]

(1) [The defendant is charged with the crime of / You may also consider the less serious charge of] operating a motor vehicle while visibly impaired. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle.¹ To *operate* means to drive or have actual physical control of the vehicle.

(3) Second, that the defendant operated the vehicle on a highway or other place open to the public or generally accessible to motor vehicles [including any designated parking area].²

(4) Third, that, due to the [drinking of alcohol / use or consumption of a controlled substance / use or consumption of an intoxicating substance / use or consumption of a combination of (alcohol / a controlled substance / an intoxicating substance)]³, the defendant drove with less ability than would an ordinary careful driver. The defendant's ability to drive must have been lessened to the point that it would have been noticed by another person. It is the defendant's ability to drive that must have been visibly lessened, not the defendant's manner of driving, though evidence of the defendant's manner of driving may be considered as evidence of the defendant's ability to drive.

Use Note

1. The term *motor vehicle* is defined in MCL 257.33.
2. A private driveway is “generally accessible to motor vehicles” and within the purview of the statute. *People v Rea*, 500 Mich 422; 902 NW2d 362 (2017).
3. Select the appropriate combination of alcohol/substances based on the evidence presented.

M Crim JI 15.3a Operating While Visibly Impaired Causing Death or Serious Impairment of a Body Function [OWVI: Death or Serious Impairment]

(1) The defendant is charged with the crime of operating a motor vehicle while visibly impaired causing [death / serious impairment of a body function to another person]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle.¹ To *operate* means to drive or have actual physical control of the vehicle.

(3) Second, that the defendant operated the vehicle on a highway or other place open to the public or generally accessible to motor vehicles [including any designated parking area].²

(4) Third, that, due to the [drinking of alcohol / use or consumption of a controlled substance / use or consumption of an intoxicating substance / use or consumption of a combination of (alcohol / a controlled substance / an intoxicating substance)]³, the defendant drove with less ability than would an ordinary careful driver. The defendant's ability to drive must have been lessened to the point that it would have been noticed by another person. It is the defendant's ability to drive that must have been visibly lessened, not the defendant's manner of driving, though evidence of the defendant's manner of driving may be considered as evidence of the defendant's ability to drive.

(5) Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed [alcohol / a controlled substance / an intoxicating substance / a combination of (alcohol / a controlled substance / an intoxicating substance)]³ and might be visibly impaired.

(6) Fifth, that the defendant's operation of the vehicle caused⁴ [the death of (*name decedent*) / a serious impairment of a body function⁵ to (*name injured person*)]. To cause [the death / such injury], the defendant's operation of the vehicle must have been a factual cause of the [death / injury], that is, but for the defendant's operation of the vehicle, the [death / injury] would not have occurred. In addition, [death or serious injury / the injury] must have been a direct and natural result of operating the vehicle.

Use Notes

1. The term *motor vehicle* is defined in MCL 257.33.
2. A private driveway is “generally accessible to motor vehicles” and within the purview of the statute. *People v Rea*, 500 Mich 422; 902 NW2d 362 (2017).
3. Select the appropriate combination of alcohol/substances based on the evidence presented.
4. If it is claimed that the defendant’s operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439; 703 NW2d 774 (2005) (a “causes death” case under MCL 257.625(4)). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316; 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184; 783 NW2d 67 (2010).
5. MCL 257.58c provides that serious impairment of a body function includes but is not limited to one or more of the following:
 - (a) Loss of a limb or loss of use of a limb.
 - (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
 - (c) Loss of an eye or ear or loss of use of an eye or ear.
 - (d) Loss or substantial impairment of a bodily function.
 - (e) Serious visible disfigurement.
 - (f) A comatose state that lasts for more than 3 days.
 - (g) Measurable brain or mental impairment.
 - (h) A skull fracture or other serious bone fracture.
 - (i) Subdural hemorrhage or subdural hematoma.
 - (j) Loss of an organ.

M Crim JI 15.4 Operating with Any Amount of Schedule 1 Controlled Substance or Cocaine [OWACS]

(1) The defendant is charged with the crime of operating a motor vehicle with any amount of a controlled substance in [his / her] body. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle.¹ To *operate* means to drive or have actual physical control of the vehicle.

(3) Second, that the defendant operated the vehicle on a highway or other place open to the public or generally accessible to motor vehicles [including any designated parking area].²

(4) Third, that while operating the vehicle, the defendant had any amount of [*state specific schedule 1 controlled substance or controlled substance in MCL 333.7214(a)(iv) alleged by the prosecutor*] in [his / her] body.

Use Note

1. The term *motor vehicle* is defined in MCL 257.33.

2. A private driveway is “generally accessible to motor vehicles” and within the purview of the statute. *People v Rea*, 500 Mich 422; 902 NW2d 362 (2017).

M Crim JI 15.4a Operating with Any Amount of Schedule 1 Controlled Substance or Cocaine Causing Death or Serious Impairment of a Body Function [OWACS: Death or Serious Impairment]

(1) The defendant is charged with the crime of operating a motor vehicle with a controlled substance in [his / her] body causing [death / serious impairment of a body function to another person]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle.¹ To *operate* means to drive or have actual physical control of the vehicle.

(3) Second, that the defendant operated the vehicle on a highway or other place open to the public or generally accessible to motor vehicles [including any designated parking area].²

(4) Third, that while operating the vehicle, the defendant had any amount of [*state specific schedule 1 controlled substance or controlled substance in MCL 333.7214(a)(iv) alleged by the prosecutor*] in [his / her] body.

(5) Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed or used a controlled substance.

(6) Fifth, that the defendant's operation of the vehicle caused³ [the death of (*name decedent*) / a serious impairment of a body function⁴ to (*name injured person*)]. To cause [the death / such injury], the defendant's operation of the vehicle must have been a factual cause of the [death / injury], that is, but for the defendant's operation of the vehicle, the [death / injury] would not have occurred. In addition, [death or serious injury / the injury] must have been a direct and natural result of operating the vehicle.

Use Notes

1. The term *motor vehicle* is defined in MCL 257.33.

2. A private driveway is “generally accessible to motor vehicles” and within the purview of the statute. *People v Rea*, 500 Mich 422; 902 NW2d 362 (2017).

3. If it is claimed that the defendant’s operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439; 703 NW2d 774 (2005) (a “causes death” case under MCL 257.625(4)). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316; 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184; 783 NW2d 67 (2010).

4. The statute, MCL 257.58c, provides that serious impairment of a body function includes but is not limited to one or more of the following:

- (a) Loss of a limb or loss of use of a limb.
- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.
- (j) Loss of an organ.

**M Crim JI 15.5 Factors in Considering Operating While Intoxicated
[OWI] and Operating While Visibly Impaired [OWVI]**

As you consider the possible verdicts, you should think about the following:

[Choose appropriate paragraphs:]

(1) What was the mental and physical condition of the defendant at the time that [he / she] operated the motor vehicle? Were the defendant's reflexes, ability to see, way of walking and talking, manner of driving, and judgment normal? If there was evidence that any of these things seemed abnormal, was this caused by [drinking alcohol / using or consuming a controlled substance / using or consuming an intoxicating substance / using or consuming a combination of (alcohol / a controlled substance / an intoxicating substance)¹]?

(2) You may also consider body alcohol content in reaching your verdict. In that regard, [was / were] the test(s) technically accurate? Was the equipment properly assembled and maintained and in good working order when the test(s) [was / were] given?

(3) Were the test results reliable? Was the test given correctly? Was the person who gave it properly trained? Did the circumstances under which the test was given affect the accuracy of the results?

(4) One way to determine whether a person is intoxicated is to measure how much alcohol is in [his / her] [blood / breath / urine]. There was evidence in this trial that a test was given to the defendant. The purpose of this test is to measure the amount of alcohol in a person's [blood / breath / urine].

*[Choose (5)(a) and/or (5)(b):]*²

(5) If you find

(a) that there were 0.17 grams or more of alcohol [per 100 milliliters of blood / per 210 liters of breath / per 67 milliliters of urine] when [he / she] operated the vehicle, you may find the defendant operated a motor vehicle while intoxicated with a high bodily alcohol content, whether or not it affected [his / her] ability to operate a motor vehicle.

(b) that there were 0.08 grams or more of alcohol [per 100 milliliters of the defendant's blood / per 210 liters of the defendant's breath / per 67 milliliters of the defendant's urine] when [he / she] operated the vehicle, you may find the defendant operated a motor vehicle with an unlawful bodily alcohol content, whether or not this alcohol content affected [his / her] ability to operate a motor vehicle.

(6) You may infer that the defendant's bodily alcohol content at the time of the test was the same as [his / her] bodily alcohol content at the time [he / she] operated the motor vehicle.³

(7) In considering the evidence and arriving at your verdict, you may give the test whatever weight you believe that it deserves. The results of a test are just one factor you may consider, along with all other evidence about the condition of the defendant at the time [he / she] operated the motor vehicle.

Use Notes

1. Where a combination of alcohol and other controlled or intoxicating substances is shown, select the appropriate combination of alcohol/substances based on the evidence presented.

2. Read both (5)(a) and (5)(b) if operating with a high body alcohol content is charged, and operating while intoxicated is being considered by the trier of fact as a lesser offense. Otherwise, read (5)(a) or (5)(b) according to the charge and the evidence.

3. If the evidence warrants, the following can be added to this paragraph (6): [However, you have heard evidence that the defendant consumed alcohol after driving but before the [blood / breath / urine] test was administered. You may consider this evidence in determining whether to infer that the defendant's body alcohol content at the time of the test was the same as [his / her] body alcohol content at the time that [he / she] operated the motor vehicle.]

M Crim JI 15.6 Possible Verdicts [OWIHBAC]

There are four possible verdicts:

- (1) not guilty, or
- (2) guilty of operating a motor vehicle with a high bodily alcohol content, or
- (3) guilty of operating a motor vehicle while

[Select appropriate possibilities:]

- (a) under the influence of alcohol;
- (b) under the influence of a controlled substance;
- (c) under the influence of an intoxicating substance;
- (d) under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance];
- (e) with an unlawful bodily alcohol level.

If you all agree that the defendant either operated a motor vehicle with an unlawful bodily alcohol level or while under the influence of [alcohol / a controlled substance / an intoxicating substance / a combination of (alcohol / a controlled substance / an intoxicating substance)], it is not necessary that you agree on which of these violations occurred. However, in order to return a verdict of guilty, you must all agree that one of those violations did occur.

- (4) guilty of operating a motor vehicle while visibly impaired.

M Crim JI 15.6a Possible Verdicts [for OWI]

There are three possible verdicts:

- (1) not guilty, or
- (2) guilty of operating a motor vehicle while

[Select appropriate possibilities:]

- (a) under the influence of alcohol;
- (b) under the influence of a controlled substance;
- (c) under the influence of an intoxicating substance;
- (d) under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance];
- (e) with an unlawful bodily alcohol level.

If you all agree that the defendant either operated a motor vehicle with an unlawful bodily alcohol level or while under the influence of [alcohol / a controlled substance / an intoxicating substance / a combination of (alcohol / a controlled substance / an intoxicating substance)], it is not necessary that you agree on which of these violations occurred. However, in order to return a verdict of guilty, you must all agree that one of those violations did occur.

or

- (3) guilty of operating a motor vehicle while visibly impaired.

M Crim JI 15.6b Possible Verdicts [for OWVI]

There are two possible verdicts:

- (1) not guilty, or
- (2) guilty of operating a motor vehicle while visibly impaired.

M Crim JI 15.6c Possible Verdicts [for OWACS]

There are two possible verdicts:

- (1) not guilty, or
- (2) guilty of operating a motor vehicle with any amount of [*state specific schedule 1 or 2 controlled substance alleged*].

M Crim JI 15.6d Possible Verdicts [OWIHBAC/OWI/OWVI/ Causing Death or Serious Impairment]

There are five possible verdicts:

- (1) not guilty, or
- (2) guilty of causing [death / serious impairment of a body function] while operating a motor vehicle with a high bodily alcohol content,
while

[Select any appropriate possibilities:]

- (a) under the influence of alcohol;
- (b) under the influence of a controlled substance;
- (c) under the influence of an intoxicating substance;
- (d) under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance];
- (e) with an unlawful bodily alcohol content.

or while impaired.

- (3) guilty of operating a motor vehicle with a high bodily alcohol content not causing [death / serious impairment of a body function], or
- (4) guilty of operating a motor vehicle while

[Select appropriate possibilities:]

- (a) under the influence of alcohol;
- (b) under the influence of a controlled substance;
- (c) under the influence of an intoxicating substance;
- (d) under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance];
- (e) with an unlawful bodily alcohol level;
but not causing [death / serious impairment of a body function]

If you all agree that the defendant either operated a motor vehicle with an unlawful bodily alcohol level or while under the influence of [alcohol / a controlled substance / an intoxicating substance / a combination of (alcohol / a controlled substance / an intoxicating substance)], it is not necessary that you agree on which of these violations occurred. However, in order to return a verdict of guilty, you must all agree that one of those violations did occur. Or,

(5) guilty of operating a motor vehicle while visibly impaired, but not causing [death / serious impairment of a body function].

M Crim JI 15.6e Possible Verdicts [OWACS Causing Death or Serious Impairment]

There are three possible verdicts:

- (1) not guilty, or
- (2) guilty of causing [death / serious impairment of a body function] while operating a motor vehicle with any amount of [*state specific schedule 1 or 2 controlled substance alleged*].
- (3) guilty of operating a motor vehicle with any amount of [*state specific schedule 1 or 2 controlled substance alleged*] not causing [death / serious impairment of a body function].

M Crim JI 15.7 Verdict Form [OWIHBAC]

Check only one of the following verdicts:

- (1) Not Guilty
- (2) Guilty of Operating with a High Bodily Alcohol Content
- (3) Guilty of the less serious offense of Operating While Intoxicated
- (4) Guilty of the less serious offense of Operating While Visibly Impaired

M Crim JI 15.7a Verdict Form [OWI]

Choose only one of the following verdicts:

- (1) Not Guilty
- (2) Guilty of Operating While Intoxicated
- (3) Guilty of the less serious offense of Operating While Visibly Impaired

M Crim JI 15.7b Verdict Form [OWVI]

Choose only one of the following verdicts:

- (1) Not Guilty
- (2) Guilty of Operating While Visibly Impaired

M Crim JI 15.7c Verdict Form [OWACS]

Check only one of the following verdicts:

- (1) Not Guilty
- (2) Guilty of Operating with Any Amount of a Controlled Substance

M Crim JI 15.7d Verdict Form [OWIHBAC/OWI/OWVI causing death/serious impairment]

Check only one of the following verdicts:

- (1) Not Guilty
- (2) Guilty of Operating with a High Bodily Alcohol Content, Operating While Intoxicated, or Operating While Visibly Impaired causing [death / serious impairment of a body function]
- (2) Guilty of the less serious offense of Operating with a High Bodily Alcohol Content, but not causing [death / serious impairment of a body function]
- (3) Guilty of the less serious offense of Operating While Intoxicated, but not causing [death / serious impairment of a body function]
- (4) Guilty of the less serious offense of Operating While Visibly Impaired, but not causing [death / serious impairment of a body function]

M Crim JI 15.7e Verdict Form [OWACS causing death/serious impairment]

Check only one of the following verdicts:

- (1) Not Guilty
- (2) Guilty of Operating with Any Amount of a Controlled Substance causing [death / serious impairment of a body function]
- (3) Guilty of the less serious offense of Operating with Any Amount of a Controlled Substance, but not causing [death / serious impairment of a body function]

M Crim JI 15.8 Defendant's Decision to Forgo Chemical Testing

Evidence has been admitted in this case that the defendant refused to take a chemical test. If you find that the defendant did refuse, that evidence was admitted solely for the purpose of showing that a test was offered to the defendant. That evidence is not evidence of guilt.

Use Note

MCL 257.625a(9) provides: A person's refusal to submit to a chemical test as provided in subsection (6) is admissible in a criminal prosecution for a crime described in section 625c(1) only to show that a test was offered to the defendant, but not as evidence in determining the defendant's innocence or guilt. The jury must be instructed accordingly.

M Crim JI 15.9 Operating a Commercial Vehicle with an Unlawful Bodily Alcohol Content [UBAL]

(1) The defendant is charged with the crime of operating a commercial motor vehicle with an unlawful bodily alcohol level. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a commercial motor vehicle.¹ To *operate* means to drive or have actual physical control of the vehicle.

(3) Second, that the defendant had a bodily alcohol content of 0.04 grams or more but less than 0.08 grams per 100 milliliters of blood [per 210 liters of breath or 67 milliliters of urine] when [he / she] operated the commercial motor vehicle.

Use Note

1. *Commercial motor vehicle* is defined in MCL 257.7a.

**[NEW] M Crim JI 15.10 Owner or Person in Control of Vehicle
Permitting Operation by Another Person
While Intoxicated or Impaired**

(1) The defendant is charged with the crime of knowingly authorizing or permitting a motor vehicle to be operated by another while that person was intoxicated or impaired. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was the owner of a motor vehicle,¹ or was in charge of or in control of the vehicle.

(2) Second, that the defendant knowingly authorized or permitted the motor vehicle to be operated by [*identify driver*]. To operate means to drive or have actual physical control of the vehicle.

(3) Third, that [*identify driver*] operated the vehicle on a highway or other place open to the public or generally accessible to motor vehicles [including any designated parking area].²

(4) Fourth, that [*identify driver*]:

[*Choose from the following alternatives:*]

(a) operated the vehicle with a bodily alcohol level of 0.08 grams or more [per 100 milliliters of blood / 210 liters of breath / 67 milliliters of urine];

(b) operated the vehicle while under the influence of alcohol;

(c) operated the vehicle while under the influence of a controlled substance;

(d) operated the vehicle while under the influence of an intoxicating substance;

(e) operated the vehicle while under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance]

[Choose from the following alternatives where the charge is “under the influence”:]

(5) *Under the influence* of [alcohol / a controlled substance / an intoxicating substance] means that because of [drinking alcohol / using or consuming a controlled substance / consuming or taking into (his / her) body an intoxicating substance], the defendant’s ability to operate a motor vehicle in a normal manner was substantially lessened. To be under the influence, a person does not have to be falling down or hardly able to stand up. On the other hand, just because a person has [drunk alcohol or smells of alcohol / consumed or used a controlled substance / consumed or used an intoxicating substance] does not prove, by itself, that the person is under the influence of [alcohol / a controlled substance / an intoxicating substance]. The test is whether, because of [drinking alcohol / using or consuming a controlled substance / consuming or taking into (his / her) body an intoxicating substance], the defendant’s mental or physical condition was significantly affected and the defendant was no longer able to operate a vehicle in a normal manner.

(6) [Where the charge is “under the influence” of a substance other than alcohol choose (a), (b), or (c) as appropriate:]

(a) [Name substance] is a controlled substance.

(b) [Name substance] is an intoxicating substance.

(c) An *intoxicating substance* is a substance in any form, including but not limited to vapors and fumes, other than food, that was taken into the defendant’s body in any manner, that is used in a manner or for a purpose for which it was not intended, and that may result in a condition of intoxication.

Use Note

1. The term *motor vehicle* is defined in MCL 257.33.

2. A private driveway is “generally accessible to motor vehicles” and within the purview of the statute. *People v Rea*, 500 Mich 422; 902 NW2d 362 (2017).

[NEW] M Crim JI 15.11 Person Under 21 Operating with Any Alcohol in System

(1) The defendant is charged with the crime of operating a motor vehicle while less than 21 years of age with any bodily alcohol content. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle.¹ To *operate* means to drive or have actual physical control of the vehicle.

(3) Second, that the defendant operated the vehicle on a highway or other place open to the public or generally accessible to motor vehicles [including any designated parking area].²

(3) Third, that at the time the defendant operated the motor vehicle [he / she] was under the age of 21.

(4) Fourth, that at the time the defendant operated the motor vehicle, [he / she]

[Choose from the following:]

(a) had a bodily alcohol content of 0.02 grams or more [per 100 milliliters of blood / per 210 liters of breath / per 67 milliliters of urine].

(b) had any presence of alcohol within their body resulting from the consumption of alcoholic liquor.

Where the alternative chosen is (b), where appropriate under the evidence:

[(5) Fifth, that the presence of alcohol in the defendant's body was not the result of the consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.]

Use Note

1. The term *motor vehicle* is defined in MCL 257.33.
2. A private driveway is “generally accessible to motor vehicles” and within the purview of the statute. *People v Rea*, 500 Mich 422; 902 NW2d 362 (2017).

**[NEW] M CRIM JI 15.12 Violation with a Person Under the Age of 16
in the Motor Vehicle**

[MCL 257.625(7)(a) and (b) prohibit operating a motor vehicle in violation of paragraphs (1), (3), (4), (5), (6), or (8) when the vehicle is occupied by someone who is under the age of 16, with different penalties than the underlying violation. In this circumstance, instruct on the underlying violation, and add at the end:

[Number of element], that at the time that the defendant operated the motor vehicle, a child under the age of 16 was present in the vehicle.

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Current jury instructions for non-intoxication driving offenses, MCrimJI 15.14 through 15.25, begin on the following page (pp 65-79).

M Crim JI 15.14 Leaving the Scene of an Accident

The defendant is charged with failing to stop after an accident involving [serious impairment of a body function or death / personal injury / property damage].¹ To prove this charge the prosecutor must prove each of the following elements beyond a reasonable doubt:

- (1) First, the defendant was the driver of a motor vehicle.
- (2) Second, the motor vehicle driven by the defendant was involved in an accident.
- (3) Third, the defendant knew or had reason to know that [he / she] had been involved in an accident on a public road or any property open to travel by the public.
- (4) Fourth, that the accident resulted in

[*Select (a), (b), or (c) as appropriate.*]¹

- (a) serious impairment of a body function or death.²
 - (b) personal injury to any individual.
 - (c) damage to a vehicle driven or attended by another.
- (5) Fifth, that the defendant failed to immediately stop [his / her] motor vehicle at the scene of the accident in order to render assistance and give information required by law, or to immediately report the accident to the nearest or most convenient police agency or officer if there was a reasonable and honest belief that remaining at the scene would result in further harm.³ The requirement that the driver “immediately stop” means that the driver must stop and park the car as soon as practicable and reasonable under the circumstances and without obstructing traffic more than is necessary.

Use Note

¹ Select the appropriate phrase to describe the violation alleged: serious impairment of a body function or death, MCL 257.617, a five-year felony; personal injury, MCL 257.617a, a one-year misdemeanor; or damage to an attended vehicle, MCL 257.618, a misdemeanor.

² The definition of “serious impairment of a body function” is at MCL 257.58c. See *Use Note* to M Crim JI 15.12.

³ MCL 257.619 describes the information that must be provided and the assistance that must be rendered.

M Crim JI 15.14a Leaving the Scene of an Accident Causing Death

The defendant is charged with failing to stop after causing an accident resulting in death. To prove this charge the prosecutor must prove each of the following elements beyond a reasonable doubt:

- (1) First, the defendant was the driver of a motor vehicle.
- (2) Second, the motor vehicle driven by the defendant was involved in an accident.
- (3) Third, the defendant knew or had reason to know that [he / she] was involved in an accident on a public road or any property open to travel by the public.
- (4) Fourth, that the accident resulted in death.
- (5) Fifth, that the defendant caused the accident.
- (6) Sixth, that the defendant failed to immediately stop [his / her] motor vehicle at the scene of the accident in order to render assistance and give information required by law.¹ The requirement that the driver “immediately stop” means that the driver must stop and park the car as soon as practicable and reasonable under the circumstances and without obstructing traffic more than is necessary.

Use Notes

¹ MCL 257.619 describes the information that must be provided and the assistance that must be rendered.

M Crim JI 15.15 Reckless Driving

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

(2) First, that the defendant drove a motor vehicle on a highway² or other place open to the public [or generally accessible to motor vehicles, including a designated parking area].

(3) Second, that the defendant drove the motor vehicle in willful or wanton disregard for the safety of persons or property. “Willful or wanton disregard” means more than simple carelessness but does not require proof of an intent to cause harm. It means knowingly disregarding the possible risks to the safety of people or property.

Use Notes

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

² A “highway” is the entire area between the boundary lines of a publicly maintained roadway, any part of which is open for automobile travel. *People v Bartel*, 213 Mich App 726, 728-729, 540 NW2d 491 (1995).

M Crim JI 15.15 Reckless Driving

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

(2) First, that the defendant drove a motor vehicle on a highway² or other place open to the public [or generally accessible to motor vehicles, including a designated parking area].

(3) Second, that the defendant drove the motor vehicle in willful or wanton disregard for the safety of persons or property. “Willful or wanton disregard” means more than simple carelessness but does not require proof of an intent to cause harm. It means knowingly disregarding the possible risks to the safety of people or property.

Use Notes

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

² A “highway” is the entire area between the boundary lines of a publicly maintained roadway, any part of which is open for automobile travel. *People v Bartel*, 213 Mich App 726, 728-729, 540 NW2d 491 (1995).

M Crim JI 15.17 Reckless Driving Causing Serious Impairment of a Body Function [Use for Acts Committed on or After October 31, 2010]

(1) [The defendant is charged with the crime of / You may also consider the lesser charge of¹] reckless driving causing serious impairment of a body function to another person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant drove a motor vehicle on a highway² or other place open to the public [or generally accessible to motor vehicles, including a designated parking area].

(3) Second, that the defendant drove the motor vehicle in willful or wanton disregard for the safety of persons or property. “Willful or wanton disregard” means more than simple carelessness but does not require proof of an intent to cause harm. It means knowingly disregarding the possible risks to the safety of people or property.

(4) Third, that the defendant’s operation of the vehicle caused³ a serious impairment of a body function⁴ to [*name victim*]. To “cause” such injury, the defendant’s operation of the vehicle must have been a factual cause of the injury, that is, but for the defendant’s operation of the vehicle the injury would not have occurred. In addition, operation of the vehicle must have been a proximate cause of the injury, that is, the injury must have been a direct and natural result of operating the vehicle.

Use Note

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

² A “highway” is the entire area between the boundary lines of a publicly maintained roadway, any part of which is open for automobile travel. *People v Bartel*, 213 Mich App 726, 728-729, 540 NW2d 491 (1995).

³ If it is claimed that the defendant’s operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439, 703 NW2d 774 (2005) (a “causes death” case under MCL 257.625(4)). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010)).

⁴The statute, MCL 257.58c, provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

- (a) Loss of a limb or loss of use of a limb.
- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.
- (j) Loss of an organ.

M Crim JI 15.18 Moving Violation Causing Death or Serious Impairment of a Body Function

(1) [The defendant is charged with the crime / You may consider the lesser charge¹] of committing a moving traffic violation that caused [death / serious impairment of a body function]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle. To operate means to drive or have actual physical control of the vehicle.

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

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

(5) Fourth, that by committing the moving violation, the defendant caused [the death of (*name deceased*) / (*name injured person*) to suffer a serious impairment of a body function²]. To cause [the death of (*name deceased*) / such injury to (*name injured person*)], the defendant's moving violation must have been a factual cause of the [death / injury], that is, but for committing the moving violation the [death / injury] would not have occurred. In addition, the [death / injury] must have been a direct and natural result of committing the moving violation.

Use Note

1. Use when instructing on this crime as a lesser offense.
2. MCL 257.58c, provides that serious impairment of a body function includes, but is not limited to, one or more of the following:
 - (a) Loss of a limb or loss of use of a limb.
 - (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
 - (c) Loss of an eye or ear or loss of use of an eye or ear.
 - (d) Loss or substantial impairment of a bodily function.
 - (e) Serious visible disfigurement.
 - (f) A comatose state that lasts for more than 3 days.
 - (g) Measurable brain or mental impairment.
 - (h) A skull fracture or other serious bone fracture.
 - (i) Subdural hemorrhage or subdural hematoma.
 - (j) Loss of an organ.

M Crim JI 15.19 Moving Violation Causing Serious Impairment of a Body Function [Use for Acts Committed on or After October 31, 2010] [deleted]

Note. This instruction was deleted by the committee in September, 2019, because it was combined with M Crim JI 15.18.

M Crim JI 15.20 Driving While License Suspended or Revoked

The defendant is charged with driving while [his / her] operator's license is suspended or revoked. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

- (1) First, that the defendant was operating a motor vehicle. "Operating" means driving or having actual physical control of the vehicle.
- (2) Second, that the defendant was operating that vehicle on a highway or other place open to the general public [*or generally accessible to motor vehicles, including any area designated for the parking of motor vehicles*].
- (3) Third, that at the time the defendant's operator's license was suspended or revoked.
- (4) Fourth, that the Secretary of State gave notice of the suspension or revocation by first-class, United States Postal Service mail addressed to the defendant at the address shown by the record of the Secretary of State at least five days before the date of the alleged offense.

M Crim JI 15.21 Driving While License Suspended / Revoked Causing Death

(1) The defendant is charged with driving while [his / her] operator's license is suspended or revoked causing death. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

- (2) First, that the defendant was operating a motor vehicle. "Operating" means driving or having actual physical control of the vehicle.¹

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

(4) Third, that, at the time, the defendant's operator's license was suspended or revoked.²

(5) Fourth, that the defendant's operation of the vehicle caused the victim's death. To "cause" the victim's death, the defendant's operation of the vehicle must have been a factual cause of the death, that is, but for the defendant's operation of the vehicle, the death would not have occurred. In addition, operation of the vehicle must have been a proximate cause of death, that is, death must have been a direct and natural result of operating the vehicle.³

Use Note

¹ The term "operating" has been defined by the Michigan Supreme Court in *People v Wood*, 450 Mich 399, 538 NW2d 351 (1995). The court held that "[o]nce a person using a motor vehicle as a motor vehicle has put the vehicle in motion, or in a position posing a significant risk of causing a collision, such a person continues to operate it until the vehicle is returned to a position posing no such risk." *Id.* at 404-405. The holding in *Wood* was applied in *People v Lechleitner*, 291 Mich App 56, 804 NW2d 345 (2010), which held that the defendant was properly convicted under the operating-while-intoxicated-causing-death statute where he was intoxicated, operated his vehicle, and crashed it, with the result that it sat in the middle of the freeway at night creating a risk of injury or death to others, and a following car swerved to miss his stopped truck and killed another motorist on the side of the road.

² The court should alter this element where one of the alternatives found in MCL 257.904(1) applies: where the defendant had a suspended or revoked "chauffer's license," where the defendant's application for a license was denied, or where the defendant never applied for a license.

³ If it is claimed that the defendant's operation of the vehicle was not a proximate cause of death because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439, 703 NW2d 774 (2005). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d

822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010).

M Crim JI 15.22 Driving While License Suspended / Revoked Causing Serious Impairment of Body Function

(1) The defendant is charged with driving while [his / her] operator's license is suspended or revoked causing serious impairment of body function. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was operating a motor vehicle. "Operating" means driving or having actual physical control of the vehicle.¹

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

(4) Third, that, at the time, the defendant's operator's license was suspended or revoked.

(5) Fourth, that the defendant's operation of the vehicle caused a serious impairment of a body function to [*name victim*].³ To "cause" such injury, the defendant's operation of the vehicle must have been a factual cause of the injury, that is, but for the defendant's operation of the vehicle the injury would not have occurred. In addition, operation of the vehicle must have been a proximate cause of the injury, that is, the injury must have been a direct and natural result of operating the vehicle.⁴

Use Note

¹ The term "operating" has been defined by the Michigan Supreme Court in *People v Wood*, 450 Mich 399, 538 NW2d 351 (1995). The court held that "[o]nce a person using a motor vehicle as a motor vehicle has put the vehicle in motion, or in a position posing a significant risk of causing a collision, such a person continues to operate it until the vehicle is returned to a position posing no such risk." *Id.* at 404-405. The holding in *Wood* was applied in *People v Lechleitner*,

291 Mich App 56, 804 NW2d 345 (2010), which held that the defendant was properly convicted under the operating-while-intoxicated-causing-death statute where he was intoxicated, operated his vehicle, and crashed it, with the result that it sat in the middle of the freeway at night creating a risk of injury or death to others, and a following car swerved to miss his stopped truck and killed another motorist on the side of the road.

2 The court should alter this element where one of the alternatives found in MCL 257.904(1) applies: where the defendant had a suspended or revoked “chauffer’s license,” where the defendant’s application for a license was denied, or where the defendant never applied for a license.

3 The statute, MCL 257.58c, provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

- (a) Loss of a limb or loss of use of a limb.
- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.
- (j) Loss of an organ.

⁴ If it is claimed that the defendant’s operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439, 703 NW2d 774 (2005) (a “causes death” case under MCL 257.625(4)). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010).

M Crim JI 15.24 Permitting Another Person to Drive Motor Vehicle While License Suspended / Revoked Causing Serious Impairment of a Body Function

(1) The defendant is charged with permitting another person to drive [his / her] motor vehicle knowing the other person had [a (suspended / revoked) operator's license / (his / her) application for an operator's license denied / never applied for an operator's license] causing serious impairment of a body function. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name of other person*] was operating a motor vehicle. "Operating" means driving or having actual physical control of the vehicle.¹

(3) Second, defendant owned the motor vehicle that [*name of other person*] was operating.²

(4) Third, [*name of other person*] was operating that vehicle [on a highway / in another place open to the general public / in a place generally accessible to motor vehicles, including any area designated for the parking of motor vehicles].

(5) Fourth, that, at the time, [*name of other person*] had [a (suspended / revoked) operator's license / (his / her) application for an operator's license denied / never applied for an operator's license].

(6) Fifth, that the defendant permitted [*name of other person*] to operate the vehicle.

(7) Sixth, that, at the time, defendant knew that [*name of other person*] had [a (suspended / revoked) operator's license / (his / her) application for an operator's license denied / never applied for an operator's license].

(8) Seventh, that [*name of other person*]'s operation of the vehicle caused a serious impairment of a body function to [*name victim*].³ To "cause" such injury, [*name of other person*]'s operation of the vehicle must have been a factual cause of the injury, that is, but for [*name of other person*]'s operation of the vehicle the injury would not have occurred. In addition, operation of the vehicle must have been a proximate cause of the injury, that is, the injury must have been a direct and natural result of operating the vehicle.⁴

Use Note

1. The term “operating” has been defined by the Michigan Supreme Court in *People v Wood*, 450 Mich 399, 538 NW2d 351 (1995). The court held that “[o]nce a person using a motor vehicle as a motor vehicle has put the vehicle in motion, or in a position posing a significant risk of causing a collision, such a person continues to operate it until the vehicle is returned to a position posing no such risk.” *Id.* at 404-405. The holding in *Wood* was applied in *People v Lechleitner*, 291 Mich App 56, 804 NW2d 345 (2010), which held that the defendant was properly convicted under the operating-while-intoxicated-causing-death statute where he was intoxicated, operated his vehicle, and crashed it, with the result that it sat in the middle of the freeway at night creating a risk of injury or death to others, and a following car swerved to miss his stopped truck and killed another motorist on the side of the road.

2. “Owner” is defined in MCL 257.37. This element may be worded differently to accommodate the defendant’s possessory interest under appropriate circumstances.

3. The statute, MCL 257.58c, provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

- (a) Loss of a limb or loss of use of a limb.
- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.
- (j) Loss of an organ.

4. If it is claimed that the other person’s operation of the vehicle was not a proximate cause of serious impairment of a bodily function because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439,

703 NW2d 774 (2005), a “causes death” case under MCL 257.625(4). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010).

M Crim JI 15.25 Permitting Another Person to Drive Motor Vehicle While License Suspended / Revoked Causing Death

(1) The defendant is charged with permitting another person to drive [his / her] motor vehicle knowing the other person had [a (suspended / revoked) operator's license / (his / her) application for an operator's license denied / never applied for an operator's license] causing death. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name of other person*] was operating a motor vehicle. "Operating" means driving or having actual physical control of the vehicle.¹

(3) Second, defendant owned the motor vehicle that [*name of other person*] was operating.²

(4) Third, [*name of other person*] was operating that vehicle [on a highway / in another place open to the general public / in a place generally accessible to motor vehicles, including any area designated for the parking of motor vehicles].

(5) Fourth, that, at the time, [*name of other person*] had [a (suspended / revoked) operator's license / (his / her) application for an operator's license denied / never applied for an operator's license].

(6) Fifth, that the defendant permitted [*name of other person*] to operate the vehicle.

(7) Sixth, that, at the time, defendant knew that [*name of other person*] had [a (suspended / revoked) operator's license / (his / her) application for operator's license denied / never applied for an operator's license].

(8) Seventh, that [*name of other person*]'s operation of the vehicle caused the victim's death. To "cause" the victim's death, the [*name of other person*]'s operation of the vehicle must have been a factual cause of the death, that is, but for the [*name of other person*]'s operation of the vehicle, the death would not have occurred. In addition, operation of the vehicle must have been a proximate cause of death, that is, death must have been a direct and natural result of operating the vehicle.³

Use Note

1. The term “operating” has been defined by the Michigan Supreme Court in *People v Wood*, 450 Mich 399, 538 NW2d 351 (1995). The court held that “[o]nce a person using a motor vehicle as a motor vehicle has put the vehicle in motion, or in a position posing a significant risk of causing a collision, such a person continues to operate it until the vehicle is returned to a position posing no such risk.” *Id.* at 404-405. The holding in *Wood* was applied in *People v Lechleitner*, 291 Mich App 56, 804 NW2d 345 (2010), which held that the defendant was properly convicted under the operating-while-intoxicated-causing-death statute where he was intoxicated, operated his vehicle, and crashed it, with the result that it sat in the middle of the freeway at night creating a risk of injury or death to others, and a following car swerved to miss his stopped truck and killed another motorist on the side of the road.

2. “Owner” is defined in MCL 257.37. This element may be worded differently to accommodate the defendant’s possessory interest under appropriate circumstances.

3. If it is claimed that the other person’s operation of the vehicle was not a proximate cause of death because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439, 703 NW2d 774 (2005). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010).

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Proposed jury instructions for non-intoxication driving offenses, M Crim JI 15.13 through 15.17a begin on the following page (pp 81-97).

M Crim JI 15.13 Leaving the Scene of an Accident

The defendant is charged with the crime of failing to stop after an accident. To prove this charge the prosecutor must prove each of the following elements beyond a reasonable doubt:

- (1) First, the defendant was the driver of a motor vehicle.¹
- (2) Second, the motor vehicle driven by the defendant was involved in an accident with another vehicle operated or attended by another person.
- (3) Third, the defendant knew or had reason to know that [he / she] had been involved in an accident.
- (4) Fourth, that the defendant failed to immediately stop [his / her] motor vehicle at the scene of the accident in order to render assistance and give information required by law, or to immediately report the accident to the nearest or most convenient police agency or officer if there was a reasonable and honest belief that remaining at the scene would result in further harm.² The requirement that the driver immediately stop means that the driver must stop and park the car as soon as practicable and reasonable under the circumstances and without obstructing traffic more than is necessary.

Use Note

1. The term *motor vehicle* is defined in MCL 257.33.
2. MCL 257.619 describes the information that must be provided and the assistance that must be rendered.

M Crim JI 15.13a Leaving the Scene of an Accident Resulting in Vehicle Damage, Injury, Serious Impairment of a Body Function, or Death

(1) The defendant is charged with the crime of failing to stop after an accident that resulted in [vehicle damage / injury / serious impairment of a body function / death]. To prove this charge the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was the driver of a motor vehicle.¹

(3) Second, that the motor vehicle driven by the defendant was involved in an accident on public or private property that is open to travel by the public.

(4) Third, that the defendant knew or had reason to know that [he / she] had been involved in an accident.

(5) Fourth, that the accident resulted in [damage to a vehicle driven or attended by another / personal injury to any individual / serious impairment of a body function² / death].

(6) Fifth, that the defendant failed to immediately stop [his / her] motor vehicle at the scene of the accident in order to render assistance and give information required by law, or to immediately report the accident to the nearest or most convenient police agency or officer if there was a reasonable and honest belief that remaining at the scene would result in further harm.³ The requirement that the driver immediately stop means that the driver must stop and park the car as soon as practicable and reasonable under the circumstances and without obstructing traffic more than is necessary.

Use Note

1. The term *motor vehicle* is defined in MCL 257.33.

2. The statute, MCL 257.58c, provides that serious impairment of a body function includes but is not limited to one or more of the following:

(a) Loss of a limb or loss of use of a limb.

- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.
- (j) Loss of an organ.

3. MCL 257.619 describes the information that must be provided and the assistance that must be rendered.

M Crim JI 15.13b Leaving the Scene of an Accident Caused by Defendant Resulting in Death

(1) The defendant is charged with the crime of failing to stop after causing an accident that resulted in death. To prove this charge the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was the driver of a motor vehicle.¹

(3) Second, that the motor vehicle driven by the defendant was involved in an accident on public or private property that is open to travel by the public.

(4) Third, that the defendant knew or had reason to know that [he / she] had been involved in an accident.

(5) Fourth, that the defendant caused the accident.

(6) Fifth, that the accident resulted in the death of [*identify decedent*].

(7) Sixth, that the defendant failed to immediately stop [his / her] motor vehicle at the scene of the accident in order to render assistance and give information required by law, or to immediately report the accident to the nearest or most convenient police agency or officer if there was a reasonable and honest belief that remaining at the scene would result in further harm.² The requirement that the driver immediately stop means that the driver must stop and park the car as soon as practicable and reasonable under the circumstances and without obstructing traffic more than is necessary.

Use Note

1. The term *motor vehicle* is defined in MCL 257.33.

2. MCL 257.619 describes the information that must be provided and the assistance that must be rendered.

M Crim JI 15.14 Reckless Driving

(1) [The defendant is charged with the crime of / You may also consider the lesser charge of¹] reckless driving. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant drove a motor vehicle² on a highway³ or other place open to the public or generally accessible to motor vehicles [including any designated parking area].

(3) Second, that the defendant drove the motor vehicle in willful or wanton disregard for the safety of persons or property. Willful or wanton disregard means more than simple carelessness but does not require proof of an intent to cause harm. It means knowingly disregarding the possible risks to the safety of people or property.

Use Notes

1. Use when instructing on this crime as a lesser included offense.
2. The term *motor vehicle* is defined in MCL 257.33.
3. A *highway* is the entire area between the boundary lines of a publicly maintained roadway, any part of which is open for automobile travel. *People v Bartel*, 213 Mich App 726, 728-729; 540 NW2d 491 (1995).

M Crim JI 15.14a Reckless Driving Causing Death or Serious Impairment of a Body Function

(1) [The defendant is charged with the crime of / You may also consider the lesser charge of¹] reckless driving causing [death / serious impairment of body function to another person]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant drove a motor vehicle² on a highway³ or other place open to the public or generally accessible to motor vehicles [including any designated parking area].

(3) Second, that the defendant drove the motor vehicle in willful or wanton disregard for the safety of persons or property. Willful or wanton disregard means more than simple carelessness but does not require proof of an intent to cause harm. It means knowingly disregarding the possible risks to the safety of people or property.

(4) Third, that the defendant's operation of the vehicle caused [the death of / a serious impairment of a body function⁴ to] [*identify decedent or injured person*]. To [cause the death / such injury], the defendant's operation of the vehicle must have been a factual cause of the [death / injury], that is, but for the defendant's operation of the vehicle the [death / injury] would not have occurred. In addition, [death or serious injury / the injury] must have been a direct and natural result of operating the vehicle.⁵

Use Note

1. Use when instructing on this crime as a lesser included offense.
2. The term *motor vehicle* is defined in MCL 257.33.
3. A *highway* is the entire area between the boundary lines of a publicly maintained roadway, any part of which is open for automobile travel. *People v Bartel*, 213 Mich App 726, 728-729; 540 NW2d 491 (1995).

4. The statute, MCL 257.58c, provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

- (a) Loss of a limb or loss of use of a limb.
- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.
- (j) Loss of an organ.

5. If it is claimed that the defendant's operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause, the court may wish to review *People v Schaefer*, 473 Mich 418, 438-439; 703 NW2d 774 (2005) (a "causes death" case under MCL 257.625(4)). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316; 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184; 783 NW2d 67 (2010).

M Crim JI 15.15 Moving Violation Causing Death or Serious Impairment of a Body Function

(1) [The defendant is charged with the crime / You may consider the lesser charge¹] of committing a moving traffic violation that caused [death / serious impairment of a body function]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle.² To *operate* means to drive or have actual physical control of the vehicle.

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

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

(5) Fourth, that by committing the moving violation, the defendant caused [the death of (*name deceased*) / (*name injured person*) to suffer a serious impairment of a body function⁴]. To cause [the death of (*name deceased*) / such injury to (*name injured person*)], the defendant's moving violation must have been a factual cause of the [death / injury], that is, but for committing the moving violation, the [death / injury] would not have occurred. In addition, the [death / injury] must have been a direct and natural result of committing the moving violation.⁵

Use Note

1. Use when instructing on this crime as a lesser offense.
2. The term *motor vehicle* is defined in MCL 257.33.
3. A *highway* is the entire area between the boundary lines of a publicly maintained roadway, any part of which is open for automobile travel. *People v Bartel*, 213 Mich App 726, 728-729; 540 NW2d 491 (1995).
4. MCL 257.58c, provides that serious impairment of a body function includes but is not limited to one or more of the following:
 - (a) Loss of a limb or loss of use of a limb.

- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.
- (j) Loss of an organ.

5. If it is claimed that the defendant's operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause, the court may wish to review *People v Schaefer*, 473 Mich 418, 438-439; 703 NW2d 774 (2005) (a "causes death" case under MCL 257.625(4)). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316; 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184; 783 NW2d 67 (2010).

M Crim JI 15.16

Driving While License Suspended or Revoked

(1) The defendant is charged with the crime of driving while [his / her] operator's license is suspended or revoked. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle.¹ To *operate* means to drive or have actual physical control of the vehicle.

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

(4) Third, that at the time the defendant's operator's license was suspended or revoked.

[Use the following element only where the charge involves a commercial carrier with a vehicle group designation:]

(5) Fourth, that the Secretary of State gave notice of the [suspension / revocation] to the defendant at least five days before the alleged offense.²

Use Note

1. The term "motor vehicle" is defined in MCL 257.33.
2. See MCL 257.904(16) and 257.212.

**M Crim JI 15.16a Driving While License Suspended or Revoked
Causing Death or Serious Impairment of a Body
Function**

(1) The defendant is charged with the crime of driving while [his / her] operator's license is suspended or revoked causing [the death of another person / serious impairment of body function to another person]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle.¹ To *operate* means to drive or have actual physical control of the vehicle.

(3) Second, that the defendant operated that vehicle on a highway or other place open to the general public or generally accessible to motor vehicles [including any designated parking area].²

(4) Third, that at the time the defendant's operator's license was suspended or revoked.³

(5) Fourth, that the defendant's operation⁴ of the vehicle caused [the death of / a serious impairment of a body function⁵ to] [*identify decedent or injured person*]. To cause [the death / such injury], the defendant's operation of the vehicle must have been a factual cause of the [death / injury], that is, but for the defendant's operation of the vehicle, the [death / injury] would not have occurred. In addition, [death or serious injury / the injury] must have been a direct and natural result of operating the vehicle.⁶

[*Use the following element only where the charge involves a commercial carrier with a vehicle group designation:*]

(6) Fifth, that the Secretary of State gave notice of the [suspension / revocation] to the defendant at least five days before the alleged offense.⁷

Use Notes

1. The term *motor vehicle* is defined in MCL 257.33.

2. A *highway* is the entire area between the boundary lines of a publicly maintained roadway, any part of which is open for automobile travel. *People v Bartel*, 213 Mich App 726, 728-729; 540 NW2d 491 (1995).

3. The court should alter this element where one of the alternatives found in MCL 257.904(1) applies: where the defendant had a suspended or revoked “chauffer’s license,” where the defendant’s application for a license was denied, or where the defendant never applied for a license.

4. *Operating* is defined by statute as being in actual physical control of a vehicle. MCL 257.35a. *See also People v Wood*, 450 Mich 399; 538 NW2d 351 (1995); *People v Lechleitner*, 291 Mich App 56; 804 NW2d 345 (2010).

5. The statute, MCL 257.58c, provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

- (a) Loss of a limb or loss of use of a limb.
- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.
- (j) Loss of an organ.

6. If it is claimed that the defendant’s operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause the court may wish to review *People v Schaefer*, 473 Mich 418, 438-439; 703 NW2d 774 (2005) (a “causes death” case under MCL 257.625(4)). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316; 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184; 783 NW2d 67 (2010).

7. *See* MCL 257.904(16) and 257.212.

**M Crim JI 15.17 Permitting Another Person to Drive Motor Vehicle
While License Suspended / Revoked**

(1) The defendant is charged with the crime of permitting another person to drive [his / her] motor vehicle knowing the other person had [a (suspended / revoked) operator's license / (his / her) application for an operator's license denied / never applied for an operator's license]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name of other person*] operated a motor vehicle.¹ To *operate* means to drive or have actual physical control of the vehicle.²

(3) Second, that the defendant was the owner of the motor vehicle that [*name of other person*] operated.³

(4) Third, that [*name of other person*] operated that vehicle on a highway or other place open to the public or generally accessible to motor vehicles [including any designated parking area].⁴

(5) Fourth, that, at the time, [*name of other person*] [had a (suspended / revoked) operator's license / (his / her) application for an operator's license had been denied / never applied for an operator's license].

(6) Fifth, that the defendant permitted [*name of other person*] to operate the vehicle.

(7) Sixth, that, at the time, defendant knew that [*name of other person*] [had a (suspended / revoked) operator's license / (his / her) application for operator's license had been denied / never applied for an operator's license].

Use Notes

1. The term *motor vehicle* is defined in MCL 257.33.

2. *Operating* is defined by statute as being in actual physical control of a vehicle. MCL 257.35a. *See also People v Wood*, 450 Mich 399, 538 NW2d 351 (1995); *People v Lechleitner*, 291 Mich App 56, 804 NW2d 345 (2010).

3. *Owner* is defined in MCL 257.37. This element may be worded differently to accommodate the defendant's possessory interest under appropriate circumstances.

4. A *highway* is the entire area between the boundary lines of a publicly maintained roadway, any part of which is open for automobile travel. *People v Bartel*, 213 Mich App 726, 728-729; 540 NW2d 491 (1995).

M Crim JI 15.17a Permitting Another Person to Drive Motor Vehicle While License Suspended / Revoked Causing Death or Serious Impairment of a Body Function

(1) The defendant is charged with the crime of permitting another person to drive [his / her] motor vehicle knowing the other person [had a (suspended / revoked) operator's license / (his / her) application for an operator's license denied / never applied for an operator's license] causing [the death of another person / serious impairment of a body function to another person]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name of other person*] operated a motor vehicle.¹ To *operate* means to drive or have actual physical control of the vehicle.²

(3) Second, that the defendant owned the motor vehicle that [*name of other person*] operated.³

(4) Third, that [*name of other person*] operated that vehicle on a highway or other place open to the public or generally accessible to motor vehicles [including any designated parking area].⁴

(5) Fourth, that, at the time, [*name of other person*] [had a (suspended / revoked) operator's license / (his / her) application for an operator's license had been denied / never applied for an operator's license].

(6) Fifth, that the defendant permitted [*name of other person*] to operate the vehicle.

(7) Sixth, that, at the time, the defendant knew that [*name of other person*] [had a (suspended / revoked) operator's license / (his / her) application for operator's license had been denied / never applied for an operator's license].

(8) Seventh, that [*name of other person*]'s operation of the vehicle caused [the death of / a serious impairment of a body function⁵ to] [*identify decedent or injured person*]. To cause [the death / such injury], [*name of other person*]'s operation of the vehicle must have been a factual cause of the [death / injury], that is, but for [*name of other person*]'s operation of the vehicle the [death / injury] would not have

occurred. In addition, [death or serious injury / the injury] must have been a direct and natural result of operating the vehicle.⁶

Use Note

1. The term *motor vehicle* is defined in MCL 257.33.
2. *Operating* is defined by statute as being in actual physical control of a vehicle. MCL 257.35a. See also *People v Wood*, 450 Mich 399; 538 NW2d 351 (1995); *People v Lechleitner*, 291 Mich App 56; 804 NW2d 345 (2010). This subdivision applies regardless of whether or not the person is licensed under this act as an operator or chauffeur.
3. *Owner* is defined in MCL 257.37. This element may be worded differently to accommodate the defendant's possessory interest under appropriate circumstances.
4. A *highway* is the entire area between the boundary lines of a publicly maintained roadway, any part of which is open for automobile travel. *People v Bartel*, 213 Mich App 726, 728-729; 540 NW2d 491 (1995).
5. The statute, MCL 257.58c, provides that serious impairment of a body function includes but is not limited to one or more of the following:
 - (a) Loss of a limb or loss of use of a limb.
 - (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
 - (c) Loss of an eye or ear or loss of use of an eye or ear.
 - (d) Loss or substantial impairment of a bodily function.
 - (e) Serious visible disfigurement.
 - (f) A comatose state that lasts for more than 3 days.
 - (g) Measurable brain or mental impairment.
 - (h) A skull fracture or other serious bone fracture.
 - (i) Subdural hemorrhage or subdural hematoma.
 - (j) Loss of an organ.
6. If it is claimed that the driver's operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause the court may wish to review *People v Schaefer*, 473 Mich 418, 438-439; 703 NW2d 774 (2005) (a "causes

death” case under MCL 257.625(4)). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316; 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184; 783 NW2d 67 (2010).

**Public Policy Position
M Crim JI Chapter 15**

Support as Drafted

Explanation

The committee voted unanimously to support the revised Criminal Jury Instructions Chapter 15 as drafted.

Position Vote:

Voted For position: 17

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 4

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