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Legal Defense

Award winning Criminal Defense Trial Attorney whose firm is focused on marijuana legislative and legal issues as well as cannabis business licensing and services.

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Attorney

Michael Komorn

Attorney Michael Komorn

Michael Komorn is a Trial Lawyer practicing in Michigan for over 27 years. He is the founder of Komorn Law PLLC, and his practice has provided an opportunity to be involved in cases throughout the State of Michigan, Ohio, Illinois, California and various Federal Courts.

While the bulk of his practice for the last 27 years has been in Criminal Defense, since 2016 his practice has included several civil litigation matters regarding the Medical and Adult Use of Cannabis. These civil litigation matters include Professional Licensing, Litigation against Cities regarding Cannabis Licensing, and disputes between licensed entities. This past year he represented 2 families in a 1983 Civil Rights matter that resulted in a favorable settlement.

Since 2008, Komorn Law PLLC has primarily focused on cannabis clients and cases, providing both business advice and legal counseling as well as criminal defense in marijuana cases throughout Michigan. Since passage of the Michigan Medical Marihuana Act in 2008, the practice
has rapidly grown to include not only business clients and issues, but also contract, real estate, employment, drug testing, probation, family law, landlord-tenant, intellectual property, and other issues surrounding cannabis.

Komorn Law PLLC's client list includes patients, caregivers, clubs, collectives, dispensaries, garden supply stores, physicians, nurses, publishers, inventors, and other medical marijuana entrepreneurs. Komorn Law PLLC has additionally served in " of counsel" relationships with other lawyers, assisting them in their marihuana cases.

Over the past 14 years he has had the opportunity to represent many patients and caregivers, throughout the State of Michigan, arguing successfully section 4 Immunity and Section 8 affirmative Defenses, resulting in dismissal of charges and the return of personal and real property seized pursuant to forfeiture.

Some of those matters include;

- *People v Joslin,* COA Case No. 341554
- *People v Carruthers,* COA Case No. 309987
- *People v Darling,* COA Case No. 349947
- *People v Tasselmyer,* COA Case No. 353404
- *People v Thue,* COA Case No. 353978

Since 2008 Komorn Law PLLC has primarily focused on and litigated issues related to:

- Michigan's medical marihuana law (the MMMA and the MMFLA).
- The adult use and the legalization of marijuana legalization matters.
- Cannabis business licensing, licensing appeals, professional licensing.

- Civil Litigation regarding Licensed Business Entities.
- Criminal Defense Legal Services.

2010 – Present: Attorney Michael Komorn has been President of the Michigan Medical Marijuana Association which provides legal advocacy for medical marijuana patients and caregivers as well as a forum for those to share their experience and discuss related issues.

2017 – Present: Attorney Michael Komorn has been member of the Cannabis Law Section, Serving as Chairman of the Section as well as chair of the Amicus Committee. (previously Marijuana Law Section).

Media

Michael Komorn is recognized as one of Michigan's most knowledgeable attorneys regarding Michigan's Medical Marihuana Act (MMMA), Michigan's Licensing Facilities Act (MMFLA), Michigan's Recreational/ Adult Use Law (MRTMA), his perspectives have appeared throughout news, including, but not limited to: *The Detroit New, Detroit Free Press,* WWJ News Radio 950, WJR-AM, *The Oakland Press,* WJRT-TV, WDET-FM, WMYD-TV 20, the Michigan State Bar Association and *Michigan's Lawyer's Weekly.*

Associations

Attorney Michael Komorn is a member of the American Bar Association (ABA), National Association of Criminal Defense Lawyers (NACDL), and Recorder's Court Bar Association, State Bar of Michigan (SBM) , State Appellate Defenders Office (SADO) , Michigan Association of OWI Attorneys (MIAOWIA), and Criminal Defense Attorneys of Michigan (CDAM) and the National Cannabis Bar Association.

Awards and Reviews:

2016 – Criminal Defense Attorneys of Michigan (CDAM) - Right to Counsel AwardThis award recognizes the amazing contributions of a group or individual in the form of legal representation or other extraordinary service

2016 - Michigan Norml Gaitwood-Galbraith Attorney of the Year Award

2021 Komorn Law PLLC was recognized and awarded the Cannabis Law Firm of the Year Award by the MMR Report.

Additional Speaking Engagements and Involvement

Michael has presented at numerous nationwide and state conferences on topics related to criminal defense, including presenting at conferences organized by the Legislature, Criminal Defense Attorneys of Michigan, Wayne County CAP, State Bar of Michigan, MIOWIA Michigan OWI Attorneys, and the Institute for Continuing Legal Education.

- Participated in the Michigan Medical Marihuana meetings and workgroup with the Legislature and staff, and other interested parties. (2011)
- Testified before the Legislative house Judiciary Committee regarding proposed amendments to the Michigan Medical Marihuana Act (2012)
- Presented at the Criminal Advocacy Program, Wayne County- “The Michigan Medical Marihuana Act- Immunity and Affirmative Defenses” (December 2015).
- Presented at the Michigan Association of OWI Attorneys Spring Seminar (May 2017).
- Presented at the Criminal Defense Attorneys of Michigan (May 2017).
- Published in the Marijuana Law Section Journal (February 2017).
- Educator/Instructor/Speaker:
    - Cannabis Law Section 2021- Seminar regarding *People v Michael Thue.*
    - Cannabis Law Section 2020- *Daubert* Hearings, and admission of Expert Testimony.
    - Marijuana Law Section 2017, Speaker- Medical Marijuana Criminal Defense Workshop.
    - Seminars at University of Oakland, (2010)
    - CLE International “Medical Marijuana” July 26, 2010
    - Cooley Law School, Student Bar Association Medical Cannabis (2012)
    - University of Detroit Mercy, along side Dr. Mike Whitty (2012).

AVVO Review Link

MICHIGAN MEDICAL MARIJUANA ACT

(MMMA)

MICHIGAN MEDICAL MARIHUANA ACT
Initiated Law 1 of 2008

AN INITIATION of Legislation to allow under state law the medical use of marihuana; to provide protections for the medical use of marihuana; to provide for a system of registry identification cards for qualifying patients and primary caregivers; to impose a fee for registry application and renewal; to make an appropriation; to provide for the promulgation of rules; to provide for the administration of this act; to provide for enforcement of this act; to provide for affirmative defenses; and to provide for penalties for violations of this act.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008;—Am. 2016, Act 283, Eff. Dec. 20, 2016.

Compiler's note: For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

The People of the State of Michigan enact:

333.26421 Short title.

1. Short Title.

Sec. 1. This act shall be known and may be cited as the Michigan Medical Marihuana Act.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

333.26422 Findings, declaration.

2. Findings.

Sec. 2. The people of the State of Michigan find and declare that:

(a) Modern medical research, including as found by the National Academy of Sciences' Institute of Medicine in a March 1999 report, has discovered beneficial uses for marihuana in treating or alleviating the pain, nausea, and other symptoms associated with a variety of debilitating medical conditions.

(b) Data from the Federal Bureau of Investigation Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately 99 out of every 100 marihuana arrests in the United States are made under state law, rather than under federal law. Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marihuana.

(c) Although federal law currently prohibits any use of marihuana except under very limited circumstances, states are not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law. The laws of Alaska, California, Colorado, Hawaii, Maine, Montana, Nevada, New Mexico, Oregon, Vermont, Rhode Island, and Washington do not penalize the medical use and cultivation of marihuana. Michigan joins in this effort for the health and welfare of its citizens.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

***** *333.26423 THIS SECTION IS AMENDED EFFECTIVE OCTOBER 11, 2021: See 333.26423.amended* *****

333.26423 Definitions.

3. Definitions.

Sec. 3. As used in this act:

(a) "Bona fide physician-patient relationship" means a treatment or counseling relationship between a physician and patient in which all of the following are present:

(1) The physician has reviewed the patient's relevant medical records and completed a full assessment of

the patient's medical history and current medical condition, including a relevant, in-person, medical evaluation of the patient.

(2) The physician has created and maintained records of the patient's condition in accord with medically accepted standards.

(3) The physician has a reasonable expectation that he or she will provide follow-up care to the patient to monitor the efficacy of the use of medical marihuana as a treatment of the patient's debilitating medical condition.

(4) If the patient has given permission, the physician has notified the patient's primary care physician of the patient's debilitating medical condition and certification for the medical use of marihuana to treat that condition.

(b) "Debilitating medical condition" means 1 or more of the following:

(1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of these conditions.

(2) A chronic or debilitating disease or medical condition or its treatment that produces 1 or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including but not limited to those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis.

(3) Any other medical condition or its treatment approved by the department, as provided for in section 6(k).

(c) "Department" means the department of licensing and regulatory affairs.

(d) "Enclosed, locked facility" means a closet, room, or other comparable, stationary, and fully enclosed area equipped with secured locks or other functioning security devices that permit access only by a registered primary caregiver or registered qualifying patient. Marihuana plants grown outdoors are considered to be in an enclosed, locked facility if they are not visible to the unaided eye from an adjacent property when viewed by an individual at ground level or from a permanent structure and are grown within a stationary structure that is enclosed on all sides, except for the base, by chain-link fencing, wooden slats, or a similar material that prevents access by the general public and that is anchored, attached, or affixed to the ground; located on land that is owned, leased, or rented by either the registered qualifying patient or a person designated through the departmental registration process as the primary caregiver for the registered qualifying patient or patients for whom the marihuana plants are grown; and equipped with functioning locks or other security devices that restrict access to only the registered qualifying patient or the registered primary caregiver who owns, leases, or rents the property on which the structure is located. Enclosed, locked facility includes a motor vehicle if both of the following conditions are met:

(1) The vehicle is being used temporarily to transport living marihuana plants from 1 location to another with the intent to permanently retain those plants at the second location.

(2) An individual is not inside the vehicle unless he or she is either the registered qualifying patient to whom the living marihuana plants belong or the individual designated through the departmental registration process as the primary caregiver for the registered qualifying patient.

(e) "Marihuana" means that term as defined in section 7106 of the public health code, 1978 PA 368, MCL 333.7106.

(f) "Marihuana-infused product" means a topical formulation, tincture, beverage, edible substance, or similar product containing any usable marihuana that is intended for human consumption in a manner other than smoke inhalation. Marihuana-infused product shall not be considered a food for purposes of the food law, 2000 PA 92, MCL 289.1101 to 289.8111.

(g) "Marihuana plant" means any plant of the species Cannabis sativa L.

(h) "Medical use of marihuana" means the acquisition, possession, cultivation, manufacture, extraction, use, internal possession, delivery, transfer, or transportation of marihuana, marihuana-infused products, or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

(i) "Physician" means an individual licensed as a physician under part 170 of the public health code, 1978 PA 368, MCL 333.17001 to 333.17084, or an osteopathic physician under part 175 of the public health code, 1978 PA 368, MCL 333.17501 to 333.17556.

(j) "Plant" means any living organism that produces its own food through photosynthesis and has observable root formation or is in growth material.

(k) "Primary caregiver" or "caregiver" means a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana and who has not been convicted of any felony within the past 10 years and has never been convicted of a felony involving illegal drugs or a felony that is an assaultive

crime as defined in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a.

(*l*) "Qualifying patient" or "patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

(m) "Registry identification card" means a document issued by the department that identifies a person as a registered qualifying patient or registered primary caregiver.

(n) "Usable marihuana" means the dried leaves, flowers, plant resin, or extract of the marihuana plant, but does not include the seeds, stalks, and roots of the plant.

(o) "Usable marihuana equivalent" means the amount of usable marihuana in a marihuana-infused product that is calculated as provided in section 4(c).

(p) "Visiting qualifying patient" means a patient who is not a resident of this state or who has been a resident of this state for less than 30 days.

(q) "Written certification" means a document signed by a physician, stating all of the following:

(1) The patient's debilitating medical condition.

(2) The physician has completed a full assessment of the patient's medical history and current medical condition, including a relevant, in-person, medical evaluation.

(3) In the physician's professional opinion, the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008;—Am. 2012, Act 512, Eff. Apr. 1, 2013;—Am. 2016, Act 283, Eff. Dec. 20, 2016.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

Enacting section 2 of Act 283 of 2016 provides:

"Enacting section 2. This amendatory act clarifies ambiguities in the law in accordance with the original intent of the people, as expressed in section 2(b) of the Michigan medical marihuana act, 2008 IL 1, MCL 333.26422:

"(b) Data from the Federal Bureau of Investigation Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately 99 out of every 100 marihuana arrests in the United States are made under state law, rather than under federal law. *Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marihuana."*. [Emphasis added.]

This amendatory act is curative and applies retroactively as to the following: clarifying the quantities and forms of marihuana for which a person is protected from arrest, precluding an interpretation of "weight" as aggregate weight, and excluding an added inactive substrate component of a preparation in determining the amount of marihuana, medical marihuana, or usable marihuana that constitutes an offense. Retroactive application of this amendatory act does not create a cause of action against a law enforcement officer or any other state or local governmental officer, employee, department, or agency that enforced this act under a good-faith interpretation of its provisions at the time of enforcement."

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

***** *333.26423.amended THIS AMENDED SECTION IS EFFECTIVE OCTOBER 11, 2021* *****

333.26423.amended Definitions.

3. Definitions.

Sec. 3. As used in this act:

(a) "Bona fide physician-patient relationship" means a treatment or counseling relationship between a physician and patient in which all of the following are present:

(1) The physician has reviewed the patient's relevant medical records and completed a full assessment of the patient's medical history and current medical condition, including a relevant medical evaluation of the patient.

(2) The physician has created and maintained records of the patient's condition in accord with medically accepted standards.

(3) The physician has a reasonable expectation that he or she will provide follow-up care to the patient to monitor the efficacy of the use of medical marihuana as a treatment of the patient's debilitating medical condition.

(4) If the patient has given permission, the physician has notified the patient's primary care physician of the patient's debilitating medical condition and certification for the medical use of marihuana to treat that condition.

(b) "Debilitating medical condition" means 1 or more of the following:

(1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of these conditions.

(2) A chronic or debilitating disease or medical condition or its treatment that produces 1 or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including but not limited to those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis.

(3) Any other medical condition or its treatment approved by the marijuana regulatory agency, as provided for in section 6(k).

(c) "Department" means the department of licensing and regulatory affairs.

(d) "Enclosed, locked facility" means a closet, room, or other comparable, stationary, and fully enclosed area equipped with secured locks or other functioning security devices that permit access only by a registered primary caregiver or registered qualifying patient. Marihuana plants grown outdoors are considered to be in an enclosed, locked facility if they are not visible to the unaided eye from an adjacent property when viewed by an individual at ground level or from a permanent structure and are grown within a stationary structure that is enclosed on all sides, except for the base, by chain-link fencing, wooden slats, or a similar material that prevents access by the general public and that is anchored, attached, or affixed to the ground; located on land that is owned, leased, or rented by either the registered qualifying patient or a person designated through the marijuana regulatory agency's registration process as the primary caregiver for the registered qualifying patient or patients for whom the marihuana plants are grown; and equipped with functioning locks or other security devices that restrict access to only the registered qualifying patient or the registered primary caregiver who owns, leases, or rents the property on which the structure is located. Enclosed, locked facility includes a motor vehicle if both of the following conditions are met:

(1) The vehicle is being used temporarily to transport living marihuana plants from 1 location to another with the intent to permanently retain those plants at the second location.

(2) An individual is not inside the vehicle unless he or she is either the registered qualifying patient to whom the living marihuana plants belong or the individual designated through the marijuana regulatory agency's registration process as the primary caregiver for the registered qualifying patient.

(e) "Marihuana" means that term as defined in section 3 of the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27953.

(f) "Marihuana-infused product" means a topical formulation, tincture, beverage, edible substance, or similar product containing any usable marihuana that is intended for human consumption in a manner other than smoke inhalation. Marihuana-infused product shall not be considered a food for purposes of the food law, 2000 PA 92, MCL 289.1101 to 289.8111.

(g) "Marihuana plant" means any plant of the species *Cannabis sativa* L.

(h) "Marijuana regulatory agency" means the marijuana regulatory agency created under Executive Reorganization Order No. 2019-2, MCL 333.27001.

(i) "Medical use of marihuana" means the acquisition, possession, cultivation, manufacture, extraction, use, internal possession, delivery, transfer, or transportation of marihuana, marihuana-infused products, or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

(j) "Physician" means an individual licensed as a physician under part 170 of the public health code, 1978 PA 368, MCL 333.17001 to 333.17084, or an osteopathic physician under part 175 of the public health code, 1978 PA 368, MCL 333.17501 to 333.17556.

(k) "Plant" means any living organism that produces its own food through photosynthesis and has observable root formation or is in growth material.

(*l*) "Primary caregiver" or "caregiver" means a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana and who has not been convicted of any felony within the past 10 years and has never been convicted of a felony involving illegal drugs or a felony that is an assaultive crime as defined in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a.

(m) "Qualifying patient" or "patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

(n) "Registry identification card" means a document issued by the marijuana regulatory agency that identifies a person as a registered qualifying patient or registered primary caregiver.

(o) "Usable marihuana" means the dried leaves, flowers, plant resin, or extract of the marihuana plant, but does not include the seeds, stalks, and roots of the plant.

(p) "Usable marihuana equivalent" means the amount of usable marihuana in a marihuana-infused product that is calculated as provided in section 4(c).

(q) "Visiting qualifying patient" means a patient who is not a resident of this state or who has been a resident of this state for less than 30 days.

(r) "Written certification" means a document signed by a physician, stating all of the following:

(1) The patient's debilitating medical condition.

(2) The physician has completed a full assessment of the patient's medical history and current medical condition, including a relevant medical evaluation.

(3) In the physician's professional opinion, the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008;—Am. 2012, Act 512, Eff. Apr. 1, 2013;—Am. 2016, Act 283, Eff. Dec. 20, 2016;—Am. 2021, Act 62, Eff. Oct. 11, 2021.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

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Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

Enacting section 2 of Act 283 of 2016 provides:

"Enacting section 2. This amendatory act clarifies ambiguities in the law in accordance with the original intent of the people, as expressed in section 2(b) of the Michigan medical marihuana act, 2008 IL 1, MCL 333.26422:

"(b) Data from the Federal Bureau of Investigation Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately 99 out of every 100 marihuana arrests in the United States are made under state law, rather than under federal law. *Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marihuana."*. [Emphasis added.]

This amendatory act is curative and applies retroactively as to the following: clarifying the quantities and forms of marihuana for which a person is protected from arrest, precluding an interpretation of "weight" as aggregate weight, and excluding an added inactive substrate component of a preparation in determining the amount of marihuana, medical marihuana, or usable marihuana that constitutes an offense. Retroactive application of this amendatory act does not create a cause of action against a law enforcement officer or any other state or local governmental officer, employee, department, or agency that enforced this act under a good-faith interpretation of its provisions at the time of enforcement."

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

333.26424 Qualifying patient or primary caregiver; arrest, prosecution, or penalty prohibited; conditions; privilege from arrests; presumption; compensation; physician subject to arrest, prosecution, or penalty prohibited; marihuana paraphernalia; person in presence or vicinity of medical use of marihuana; registry identification card issued outside of department; sale of marihuana as felony; penalty; marihuana-infused product.

4. Protections for the Medical Use of Marihuana.

Sec. 4. (a) A qualifying patient who has been issued and possesses a registry identification card is not subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marihuana in accordance with this act, provided that the qualifying patient possesses an amount of marihuana that does not exceed a combined total of 2.5 ounces of usable marihuana and usable marihuana equivalents, and, if the qualifying patient has not specified that a primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility. Any incidental amount of seeds, stalks, and unusable roots shall also be allowed under state law and shall not be included in this amount. The privilege from arrest under this subsection applies only if the qualifying patient presents both his or her registry identification card and a valid driver license or government-issued identification card that bears a photographic image of the qualifying patient.

(b) A primary caregiver who has been issued and possesses a registry identification card is not subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for assisting a qualifying patient to whom he or she is connected through the department's registration process with the medical use of marihuana in accordance with this act. The privilege from arrest under this subsection applies only if the primary caregiver presents both his or her registry identification card and a valid driver license or government-issued identification card that bears a photographic image of the primary caregiver. This subsection applies only if the primary caregiver possesses marihuana in forms and amounts that do not exceed any of the following:

(1) For each qualifying patient to whom he or she is connected through the department's registration process, a combined total of 2.5 ounces of usable marihuana and usable marihuana equivalents.

(2) For each registered qualifying patient who has specified that the primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility.

(3) Any incidental amount of seeds, stalks, and unusable roots.

(c) For purposes of determining usable marihuana equivalency, the following shall be considered equivalent to 1 ounce of usable marihuana:

(1) 16 ounces of marihuana-infused product if in a solid form.

(2) 7 grams of marihuana-infused product if in a gaseous form.

(3) 36 fluid ounces of marihuana-infused product if in a liquid form.

(d) A person shall not be denied custody or visitation of a minor for acting in accordance with this act, unless the person's behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and substantiated.

(e) There is a presumption that a qualifying patient or primary caregiver is engaged in the medical use of marihuana in accordance with this act if the qualifying patient or primary caregiver complies with both of the following:

(1) Is in possession of a registry identification card.

(2) Is in possession of an amount of marihuana that does not exceed the amount allowed under this act. The presumption may be rebutted by evidence that conduct related to marihuana was not for the purpose of alleviating the qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition, in accordance with this act.

(f) A registered primary caregiver may receive compensation for costs associated with assisting a registered qualifying patient in the medical use of marihuana. Any such compensation does not constitute the sale of controlled substances.

(g) A physician shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by the Michigan board of medicine, the Michigan board of osteopathic medicine and surgery, or any other business or occupational or professional licensing board or bureau, solely for providing written certifications, in the course of a bona fide physician-patient relationship and after the physician has completed a full assessment of the qualifying patient's medical history, or for otherwise stating that, in the physician's professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms associated with the serious or debilitating medical condition, provided that nothing shall prevent a professional licensing board from sanctioning a physician for failing to properly evaluate a patient's medical condition or otherwise violating the standard of care for evaluating medical conditions.

(h) A person shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for providing a registered qualifying patient or a registered primary caregiver with marihuana paraphernalia for purposes of a qualifying patient's medical use of marihuana.

(i) Any marihuana, marihuana paraphernalia, or licit property that is possessed, owned, or used in connection with the medical use of marihuana, as allowed under this act, or acts incidental to such use, shall not be seized or forfeited.

(j) A person shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, solely for being in the presence or vicinity of the medical use of marihuana in accordance with this act, or for assisting a registered qualifying patient with using or administering marihuana.

(k) A registry identification card, or its equivalent, that is issued under the laws of another state, district, territory, commonwealth, or insular possession of the United States that allows the medical use of marihuana by a visiting qualifying patient, or to allow a person to assist with a visiting qualifying patient's medical use of marihuana, shall have the same force and effect as a registry identification card issued by the department.

(*l*) Any registered qualifying patient or registered primary caregiver who sells marihuana to someone who is not allowed the medical use of marihuana under this act shall have his or her registry identification card revoked and is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both, in addition to any other penalties for the distribution of marihuana.

(m) A person shall not be subject to arrest, prosecution, or penalty in any manner or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for manufacturing a marihuana-infused product if the person is any of the following:

(1) A registered qualifying patient, manufacturing for his or her own personal use.

(2) A registered primary caregiver, manufacturing for the use of a patient to whom he or she is connected through the department's registration process.

(n) A qualifying patient shall not transfer a marihuana-infused product or marihuana to any individual.

(o) A primary caregiver shall not transfer a marihuana-infused product to any individual who is not a qualifying patient to whom he or she is connected through the department's registration process.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008;—Am. 2012, Act 512, Eff. Apr. 1, 2013;—Am. 2016, Act 283, Eff. Dec. 20, 2016.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

Enacting section 2 of Act 283 of 2016 provides:

"Enacting section 2. This amendatory act clarifies ambiguities in the law in accordance with the original intent of the people, as expressed in section 2(b) of the Michigan medical marihuana act, 2008 IL 1, MCL 333.26422:

"(b) Data from the Federal Bureau of Investigation Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately 99 out of every 100 marihuana arrests in the United States are made under state law, rather than under federal law. *Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marihuana."*. [Emphasis added.]

This amendatory act is curative and applies retroactively as to the following: clarifying the quantities and forms of marihuana for which a person is protected from arrest, precluding an interpretation of "weight" as aggregate weight, and excluding an added inactive substrate component of a preparation in determining the amount of marihuana, medical marihuana, or usable marihuana that constitutes an offense. Retroactive application of this amendatory act does not create a cause of action against a law enforcement officer or any other state or local governmental officer, employee, department, or agency that enforced this act under a good-faith interpretation of its provisions at the time of enforcement."

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

333.26424a Registered qualifying patient or registered primary caregiver; arrest, prosecution, or penalty, or denial of right or privilege prohibited; conditions.

Sec. 4a. (1) This section does not apply unless the medical marihuana facilities licensing act is enacted.

(2) A registered qualifying patient or registered primary caregiver shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for any of the following:

(a) Transferring or purchasing marihuana in an amount authorized by this act from a provisioning center licensed under the medical marihuana facilities licensing act.

(b) Transferring or selling marihuana seeds or seedlings to a grower licensed under the medical marihuana facilities licensing act.

(c) Transferring marihuana for testing to and from a safety compliance facility licensed under the medical marihuana facilities licensing act.

History: Add. 2016, Act 283, Eff. Dec. 20, 2016.

Compiler's note: Enacting section 2 of Act 283 of 2016 provides:

"Enacting section 2. This amendatory act clarifies ambiguities in the law in accordance with the original intent of the people, as expressed in section 2(b) of the Michigan medical marihuana act, 2008 IL 1, MCL 333.26422:

"(b) Data from the Federal Bureau of Investigation Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately 99 out of every 100 marihuana arrests in the United States are made under state law, rather than under federal law. *Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marihuana."*. [Emphasis added.]

This amendatory act is curative and applies retroactively as to the following: clarifying the quantities and forms of marihuana for which a person is protected from arrest, precluding an interpretation of "weight" as aggregate weight, and excluding an added inactive substrate component of a preparation in determining the amount of marihuana, medical marihuana, or usable marihuana that constitutes an offense. Retroactive application of this amendatory act does not create a cause of action against a law enforcement officer or any other state or local governmental officer, employee, department, or agency that enforced this act under a good-faith interpretation of its provisions at the time of enforcement."

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

333.26424b Transporting or possessing marihuana-infused product; violation; fine.

Sec. 4b. (1) Except as provided in subsections (2) to (4), a qualifying patient or primary caregiver shall not transport or possess a marihuana-infused product in or upon a motor vehicle.

(2) This section does not prohibit a qualifying patient from transporting or possessing a marihuana-infused product in or upon a motor vehicle if the marihuana-infused product is in a sealed and labeled package that is carried in the trunk of the vehicle or, if the vehicle does not have a trunk, is carried so as not to be readily accessible from the interior of the vehicle. The label must state the weight of the marihuana-infused product in ounces, name of the manufacturer, date of manufacture, name of the person from whom the marihuana-infused product was received, and date of receipt.

(3) This section does not prohibit a primary caregiver from transporting or possessing a marihuana-infused product in or upon a motor vehicle if the marihuana-infused product is accompanied by an accurate marihuana transportation manifest and enclosed in a case carried in the trunk of the vehicle or, if the vehicle does not have a trunk, is enclosed in a case and carried so as not to be readily accessible from the interior of the vehicle. The manifest form must state the weight of each marihuana-infused product in ounces, name and address of the manufacturer, date of manufacture, destination name and address, date and time of departure, estimated date and time of arrival, and, if applicable, name and address of the person from whom the product was received and date of receipt.

(4) This section does not prohibit a primary caregiver from transporting or possessing a marihuana-infused product in or upon a motor vehicle for the use of his or her child, spouse, or parent who is a qualifying patient if the marihuana-infused product is in a sealed and labeled package that is carried in the trunk of the vehicle or, if the vehicle does not have a trunk, is carried so as not to be readily accessible from the interior of the vehicle. The label must state the weight of the marihuana-infused product in ounces, name of the manufacturer, date of manufacture, name of the qualifying patient, and, if applicable, name of the person from whom the marihuana-infused product was received and date of receipt.

(5) For purposes of determining compliance with quantity limitations under section 4, there is a rebuttable presumption that the weight of a marihuana-infused product listed on its package label or on a marihuana transportation manifest is accurate.

(6) A qualifying patient or primary caregiver who violates this section is responsible for a civil fine of not more than $250.00.

History: Add. 2016, Act 283, Eff. Dec. 20, 2016.

Compiler's note: Enacting section 2 of Act 283 of 2016 provides:

"Enacting section 2. This amendatory act clarifies ambiguities in the law in accordance with the original intent of the people, as expressed in section 2(b) of the Michigan medical marihuana act, 2008 IL 1, MCL 333.26422:

"(b) Data from the Federal Bureau of Investigation Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately 99 out of every 100 marihuana arrests in the United States are made under state law, rather than under federal law. *Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marihuana.*". [Emphasis added.]

This amendatory act is curative and applies retroactively as to the following: clarifying the quantities and forms of marihuana for which a person is protected from arrest, precluding an interpretation of "weight" as aggregate weight, and excluding an added inactive substrate component of a preparation in determining the amount of marihuana, medical marihuana, or usable marihuana that constitutes an offense. Retroactive application of this amendatory act does not create a cause of action against a law enforcement officer or any other state or local governmental officer, employee, department, or agency that enforced this act under a good-faith interpretation of its provisions at the time of enforcement."

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

333.26425 Rules.

5. Department to Promulgate Rules.

Sec. 5. (a) Not later than 120 days after the effective date of this act, the department shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, that govern the manner in which the department shall consider the addition of medical conditions or treatments to the list of debilitating medical conditions set forth in section 3(a) of this act. In promulgating rules, the department shall allow for petition by the public to include additional medical conditions and treatments. In considering such petitions, the department shall include public notice of, and an opportunity to comment in a public hearing upon, such petitions. The department shall, after hearing, approve or deny such petitions within 180 days of the submission of the petition. The approval or denial of such a petition shall be considered a final department action, subject to judicial review pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Jurisdiction and venue for judicial review are vested in the circuit court for the county of Ingham.

(b) Not later than 120 days after the effective date of this act, the department shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, that govern the manner in which it shall consider applications for and renewals of registry identification cards for qualifying patients and primary caregivers. The department's rules shall establish application and renewal fees that generate revenues sufficient to offset all expenses of implementing and administering this act. The department may establish a sliding scale of application and renewal fees based upon a qualifying patient's family income. The department may accept gifts, grants, and other donations from private sources in order to reduce the application and renewal fees.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

333.26426 Administration and enforcement of rules by marijuana regulatory agency; transfer of funds.

6. Administering the Marijuana Regulatory Agency's Rules.

Sec. 6. (a) The marijuana regulatory agency shall issue registry identification cards to qualifying patients who submit all of the following, in accordance with the marijuana regulatory agency's rules:

(1) A written certification.

(2) Application or renewal fee.

(3) Name, address, and date of birth of the qualifying patient, except that if the applicant is homeless, no address is required.

(4) Name, address, and telephone number of the qualifying patient's physician.

(5) Name, address, and date of birth of the qualifying patient's primary caregiver, if any.

(6) Proof of Michigan residency. For the purposes of this subdivision, a person is considered to have proved legal residency in this state if any of the following apply:

(*i*) The person provides a copy of a valid, lawfully obtained Michigan driver license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or an official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300.

(*ii*) The person provides a copy of a valid Michigan voter registration.

(7) If the qualifying patient designates a primary caregiver, a designation as to whether the qualifying patient or primary caregiver will be allowed under state law to possess marihuana plants for the qualifying patient's medical use.

(b) The marijuana regulatory agency shall not issue a registry identification card to a qualifying patient who is under the age of 18 unless all of the following conditions are met:

(1) The qualifying patient's physician has explained the potential risks and benefits of the medical use of marihuana to the qualifying patient and to his or her parent or legal guardian.

(2) The qualifying patient's parent or legal guardian submits a written certification from 2 physicians.

(3) The qualifying patient's parent or legal guardian consents in writing to do all of the following:

(A) Allow the qualifying patient's medical use of marihuana.

(B) Serve as the qualifying patient's primary caregiver.

(C) Control the acquisition of the marihuana, the dosage, and the frequency of the medical use of marihuana by the qualifying patient.

(c) The marijuana regulatory agency shall verify the information contained in an application or renewal submitted pursuant to this section, and shall approve or deny an application or renewal within 15 business days after receiving it. The marijuana regulatory agency may deny an application or renewal only if the applicant did not provide the information required pursuant to this section, or if the marijuana regulatory agency determines that the information provided was falsified. Rejection of an application or renewal is considered a final marijuana regulatory agency action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the circuit court for the county of Ingham.

(d) The marijuana regulatory agency shall issue a registry identification card to the primary caregiver, if any, who is named in a qualifying patient's approved application. However, each qualifying patient can have not more than 1 primary caregiver, and a primary caregiver may assist not more than 5 qualifying patients with their medical use of marihuana.

(e) The marijuana regulatory agency shall issue registry identification cards within 5 business days after approving an application or renewal. A registry identification card expires 2 years after the date it is issued. Registry identification cards must contain all of the following:

(1) Name, address, and date of birth of the qualifying patient.

(2) Name, address, and date of birth of the primary caregiver, if any, of the qualifying patient.

(3) The date of issuance and expiration date of the registry identification card.

(4) A random identification number.

(5) A photograph, if the marijuana regulatory agency requires one by rule.

(6) A clear designation showing whether the primary caregiver or the qualifying patient will be allowed under state law to possess the marihuana plants for the qualifying patient's medical use, which shall be

determined based solely on the qualifying patient's preference.

(f) If a registered qualifying patient's certifying physician notifies the marijuana regulatory agency in writing that the patient has ceased to suffer from a debilitating medical condition, the card becomes null and void upon notification by the marijuana regulatory agency to the patient.

(g) Possession of, or application for, a registry identification card shall not constitute probable cause or reasonable suspicion, nor shall it be used to support the search of the person or property of the person possessing or applying for the registry identification card, or otherwise subject the person or property of the person to inspection by any local, county, or state governmental agency.

(h) The following confidentiality rules apply:

(1) Subject to subdivisions (3) and (4), applications and supporting information submitted by qualifying patients, including information regarding their primary caregivers and physicians, are confidential.

(2) The marijuana regulatory agency shall maintain a confidential list of the persons to whom the marijuana regulatory agency has issued registry identification cards. Except as provided in subdivisions (3) and (4), individual names and other identifying information on the list are confidential and are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(3) The marijuana regulatory agency shall verify to law enforcement personnel and to the necessary database created in the marihuana tracking act as established by the medical marihuana facilities licensing act whether a registry identification card is valid, without disclosing more information than is reasonably necessary to verify the authenticity of the registry identification card.

(4) A person, including an employee, contractor, or official of the marijuana regulatory agency or another state agency or local unit of government, who discloses confidential information in violation of this act is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than $1,000.00, or both. Notwithstanding this provision, marijuana regulatory agency employees may notify law enforcement about falsified or fraudulent information submitted to the marijuana regulatory agency.

(i) The marijuana regulatory agency shall submit to the legislature an annual report that does not disclose any identifying information about qualifying patients, primary caregivers, or physicians, but does contain, at a minimum, all of the following information:

(1) The number of applications filed for registry identification cards.

(2) The number of qualifying patients and primary caregivers approved in each county.

(3) The nature of the debilitating medical conditions of the qualifying patients.

(4) The number of registry identification cards revoked.

(5) The number of physicians providing written certifications for qualifying patients.

(j) The marijuana regulatory agency may enter into a contract with a private contractor to assist the marijuana regulatory agency in performing its duties under this section. The contract may provide for assistance in processing and issuing registry identification cards, but the marijuana regulatory agency shall retain the authority to make the final determination as to issuing the registry identification card. Any contract must include a provision requiring the contractor to preserve the confidentiality of information in conformity with subsection (h).

(k) Not later than 6 months after April 1, 2013, the marijuana regulatory agency shall appoint a panel to review petitions to approve medical conditions or treatments for addition to the list of debilitating medical conditions under the rules. The panel shall meet at least twice each year and shall review and make a recommendation to the marijuana regulatory agency concerning any petitions that have been submitted that are completed and include any documentation required by rule. All of the following apply to the panel:

(1) A majority of the panel members must be licensed physicians, and the panel shall provide recommendations to the marijuana regulatory agency regarding whether the petitions should be approved or denied.

(2) All meetings of the panel are subject to the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(*l*) The marihuana registry fund is created within the state treasury. All fees collected under this act shall be deposited into the fund. The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. Money in the fund at the close of the fiscal year must remain in the fund and must not lapse to the general fund. The marijuana regulatory agency shall be the administrator of the fund for auditing purposes. The marijuana regulatory agency shall expend money from the fund, upon appropriation, for the operation and oversight of the Michigan medical marihuana program. For the fiscal year ending September 30, 2016, $8,500,000.00 is appropriated from the marihuana registry fund to the department for its initial costs of implementing the medical marihuana facilities licensing act and the marihuana tracking act. For the fiscal year ending September 30, 2021, $24,000,000.00 of the money in the marihuana registry fund is transferred to and must be deposited into the Michigan set aside fund created

under section 1i of 1965 PA 213, MCL 780.621i.

(m) As used in this section, "marijuana regulatory agency" means the marijuana regulatory agency created under Executive Reorganization Order No. 2019-2, MCL 333.27001.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008;—Am. 2012, Act 514, Eff. Apr. 1, 2013;—Am. 2016, Act 283, Eff. Dec. 20, 2016;—Am. 2020, Act 400, Imd. Eff. Jan. 4, 2021.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

Enacting section 2 of Act 283 of 2016 provides:

"Enacting section 2. This amendatory act clarifies ambiguities in the law in accordance with the original intent of the people, as expressed in section 2(b) of the Michigan medical marihuana act, 2008 IL 1, MCL 333.26422:

"(b) Data from the Federal Bureau of Investigation Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately 99 out of every 100 marihuana arrests in the United States are made under state law, rather than under federal law. *Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marihuana."*. [Emphasis added.]

This amendatory act is curative and applies retroactively as to the following: clarifying the quantities and forms of marihuana for which a person is protected from arrest, precluding an interpretation of "weight" as aggregate weight, and excluding an added inactive substrate component of a preparation in determining the amount of marihuana, medical marihuana, or usable marihuana that constitutes an offense. Retroactive application of this amendatory act does not create a cause of action against a law enforcement officer or any other state or local governmental officer, employee, department, or agency that enforced this act under a good-faith interpretation of its provisions at the time of enforcement."

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

333.26427 Scope of act; limitations.

7. Scope of Act.

Sec. 7. (a) The medical use of marihuana is allowed under state law to the extent that it is carried out in accordance with the provisions of this act.

(b) This act does not permit any person to do any of the following:

(1) Undertake any task under the influence of marihuana, when doing so would constitute negligence or professional malpractice.

(2) Possess marihuana, or otherwise engage in the medical use of marihuana at any of the following locations:

(A) In a school bus.

(B) On the grounds of any preschool or primary or secondary school.

(C) In any correctional facility.

(3) Smoke marihuana at any of the following locations:

(A) On any form of public transportation.

(B) In any public place.

(4) Operate, navigate, or be in actual physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while under the influence of marihuana.

(5) Use marihuana if that person does not have a serious or debilitating medical condition.

(6) Separate plant resin from a marihuana plant by butane extraction in any public place or motor vehicle, or inside or within the curtilage of any residential structure.

(7) Separate plant resin from a marihuana plant by butane extraction in a manner that demonstrates a failure to exercise reasonable care or reckless disregard for the safety of others.

(c) Nothing in this act shall be construed to require any of the following:

(1) A government medical assistance program or commercial or non-profit health insurer to reimburse a person for costs associated with the medical use of marihuana.

(2) An employer to accommodate the ingestion of marihuana in any workplace or any employee working while under the influence of marihuana.

(3) A private property owner to lease residential property to any person who smokes or cultivates marihuana on the premises, if the prohibition against smoking or cultivating marihuana is in the written lease.

(d) Fraudulent representation to a law enforcement official of any fact or circumstance relating to the medical use of marihuana to avoid arrest or prosecution is punishable by a fine of $500.00, which is in addition to any other penalties that may apply for making a false statement or for the use of marihuana other than use undertaken pursuant to this act.

(e) All other acts and parts of acts inconsistent with this act do not apply to the medical use of marihuana as provided for by this act.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008;—Am. 2016, Act 283, Eff. Dec. 20, 2016;—Am. 2016, Act 546, Eff. Apr. 10, 2017.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

Enacting section 2 of Act 283 of 2016 provides:

"Enacting section 2. This amendatory act clarifies ambiguities in the law in accordance with the original intent of the people, as expressed in section 2(b) of the Michigan medical marihuana act, 2008 IL 1, MCL 333.26422:

"(b) Data from the Federal Bureau of Investigation Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately 99 out of every 100 marihuana arrests in the United States are made under state law, rather than under federal law. *Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marihuana."*. [Emphasis added.]

This amendatory act is curative and applies retroactively as to the following: clarifying the quantities and forms of marihuana for which a person is protected from arrest, precluding an interpretation of "weight" as aggregate weight, and excluding an added inactive substrate component of a preparation in determining the amount of marihuana, medical marihuana, or usable marihuana that constitutes an offense. Retroactive application of this amendatory act does not create a cause of action against a law enforcement officer or any other state or local governmental officer, employee, department, or agency that enforced this act under a good-faith interpretation of its provisions at the time of enforcement."

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

333.26428 Defenses.

8. Affirmative Defense and Dismissal for Medical Marihuana.

Sec. 8. (a) Except as provided in section 7(b), a patient and a patient's primary caregiver, if any, may assert the medical purpose for using marihuana as a defense to any prosecution involving marihuana, and this defense shall be presumed valid where the evidence shows that:

(1) A physician has stated that, in the physician's professional opinion, after having completed a full assessment of the patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition;

(2) The patient and the patient's primary caregiver, if any, were collectively in possession of a quantity of marihuana that was not more than was reasonably necessary to ensure the uninterrupted availability of marihuana for the purpose of treating or alleviating the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition; and

(3) The patient and the patient's primary caregiver, if any, were engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marihuana or paraphernalia relating to the use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition.

(b) A person may assert the medical purpose for using marihuana in a motion to dismiss, and the charges shall be dismissed following an evidentiary hearing where the person shows the elements listed in subsection (a).

(c) If a patient or a patient's primary caregiver demonstrates the patient's medical purpose for using marihuana pursuant to this section, the patient and the patient's primary caregiver shall not be subject to the following for the patient's medical use of marihuana:

(1) disciplinary action by a business or occupational or professional licensing board or bureau; or

(2) forfeiture of any interest in or right to property.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008;—Am. 2012, Act 512, Eff. Apr. 1, 2013.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

333.26429 Failure of department to adopt rules or issue valid registry identification card.

9. Enforcement of this Act.

Sec. 9. (a) If the department fails to adopt rules to implement this act within 120 days of the effective date of this act, a qualifying patient may commence an action in the circuit court for the county of Ingham to compel the department to perform the actions mandated pursuant to the provisions of this act.

(b) If the department fails to issue a valid registry identification card in response to a valid application or

renewal submitted pursuant to this act within 20 days of its submission, the registry identification card shall be deemed granted, and a copy of the registry identification application or renewal shall be deemed a valid registry identification card.

(c) If at any time after the 140 days following the effective date of this act the department is not accepting applications, including if it has not created rules allowing qualifying patients to submit applications, a notarized statement by a qualifying patient containing the information required in an application, pursuant to section 6(a)(3)-(6) together with a written certification, shall be deemed a valid registry identification card.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

333.26430 Severabilty.

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

MICHIGAN REGULATE & TAX MARIJUANA ACT (MRTMA)

MICHIGAN REGULATION AND TAXATION OF MARIHUANA ACT (EXCERPT)
Initiated Law 1 of 2018

333.27953 Definitions.

Sec. 3. As used in this act:

(a) "Cultivate" means to propagate, breed, grow, harvest, dry, cure, or separate parts of a marihuana plant by manual or mechanical means.

(b) "Department" means the department of licensing and regulatory affairs.

(c) "Industrial hemp" means any of the following:

(*i*) A plant of the genus *Cannabis*, whether growing or not, with a THC concentration of 0.3% or less on a dry-weight basis.

(*ii*) A part of a plant of the genus *Cannabis*, whether growing or not, with a THC concentration of 0.3% or less on a dry-weight basis.

(*iii*) The seeds of a plant of the genus *Cannabis* with a THC concentration of 0.3% or less on a dry-weight basis.

(*iv*) If it has a THC concentration of 0.3% or less on a dry-weight basis, a compound, manufacture, derivative, mixture, preparation, extract, cannabinoid, acid, salt, isomer, or salt of an isomer of any of the following:

(A) A plant of the genus *Cannabis*.

(B) A part of a plant of the genus *Cannabis*.

(*v*) A product to which 1 of the following applies:

(A) If the product is intended for human or animal consumption, the product, in the form in which it is intended for sale to a consumer, meets both of the following requirements:

(I) Has a THC concentration of 0.3% or less on a dry-weight or per volume basis.

(II) Contains a total amount of THC that is less than or equal to the limit established by the marijuana regulatory agency under section 8(1)(n).

(B) If the product is not intended for human or animal consumption, the product meets both of the following requirements:

(I) Contains a substance listed in subparagraph (*i*), (*ii*), (*iii*), or (*iv*).

(II) Has a THC concentration of 0.3% or less on a dry-weight basis.

(d) "Licensee" means a person holding a state license.

(e) "Marihuana" means any of the following:

(*i*) A plant of the genus *Cannabis*, whether growing or not.

(*ii*) A part of a plant of the genus *Cannabis*, whether growing or not.

(*iii*) The seeds of a plant of the genus *Cannabis*.

(*iv*) Marihuana concentrate.

(*v*) A compound, manufacture, salt, derivative, mixture, extract, acid, isomer, salt of an isomer, or preparation of any of the following:

(A) A plant of the genus *Cannabis*.

(B) A part of a plant of the genus *Cannabis*.

(C) The seeds of a plant of the genus *Cannabis*.

(D) Marihuana concentrate.

(*vi*) A marihuana-infused product.

(*vii*) A product with a THC concentration of more than 0.3% on a dry-weight or per volume basis in the form in which it is intended for sale to a consumer.

(*viii*) A product that is intended for human or animal consumption and that contains, in the form in which it is intended for sale to a consumer, a total amount of THC that is greater than the limit established by the marijuana regulatory agency under section 8(1)(n).

(f) Except for marihuana concentrate extracted from any of the following, "marihuana" does not include any of the following:

(*i*) The mature stalks of a plant of the genus *Cannabis*.

(*ii*) Fiber produced from the mature stalks of a plant of the genus *Cannabis*.

(*iii*) Oil or cake made from the seeds of a plant of the genus *Cannabis*.

(*iv*) A compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks of a plant of the genus *Cannabis*.

(*v*) Industrial hemp.

(*vi*) An ingredient combined with marihuana to prepare topical or oral administrations, food, drink, or other products.

(*vii*) A drug for which an application filed in accordance with 21 USC 355 is approved by the Food and Drug Administration.

(g) "Marihuana accessories" means any equipment, product, material, or combination of equipment, products, or materials, that is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marihuana into the human body.

(h) "Marihuana concentrate" means the resin extracted from any part of a plant of the genus *Cannabis*.

(i) "Marihuana establishment" means a marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, or any other type of marihuana-related business licensed by the marijuana regulatory agency.

(j) "Marihuana grower" means a person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.

(k) "Marihuana-infused product" means a topical formulation, tincture, beverage, edible substance, or similar product containing marihuana and other ingredients and that is intended for human consumption.

(*l*) "Marihuana microbusiness" means a person licensed to cultivate not more than 150 marihuana plants; process and package marihuana; and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a marihuana safety compliance facility, but not to other marihuana establishments.

(m) "Marihuana processor" means a person licensed to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments.

(n) "Marihuana retailer" means a person licensed to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are 21 years of age or older.

(o) "Marihuana secure transporter" means a person licensed to obtain marihuana from marihuana establishments in order to transport marihuana to marihuana establishments.

(p) "Marihuana safety compliance facility" means a person licensed to test marihuana, including certification for potency and the presence of contaminants.

(q) "Marijuana regulatory agency" means the marijuana regulatory agency created under Executive Reorganization Order No. 2019-2, MCL 333.27001.

(r) "Municipal license" means a license issued by a municipality pursuant to section 16 that allows a person to operate a marihuana establishment in that municipality.

(s) "Municipality" means a city, village, or township.

(t) "Person" means an individual, corporation, limited liability company, partnership of any type, trust, or other legal entity.

(u) "Process" or "processing" means to separate or otherwise prepare parts of a marihuana plant and to compound, blend, extract, infuse, or otherwise make or prepare marihuana concentrate or marihuana-infused products.

(v) "State license" means a license issued by the marijuana regulatory agency that allows a person to operate a marihuana establishment.

(w) "THC" means any of the following:

(*i*) Tetrahydrocannabinolic acid.

(*ii*) Unless excluded by the marijuana regulatory agency under section 8(2)(c), a tetrahydrocannabinol, regardless of whether it is artificially or naturally derived.

(*iii*) A tetrahydrocannabinol that is a structural, optical, or geometric isomer of a tetrahydrocannabinol described in subparagraph (*ii*).

(x) "Unreasonably impracticable" means that the measures necessary to comply with the rules or ordinances adopted pursuant to this act subject licensees to unreasonable risk or require such a high investment of money, time, or any other resource or asset that a reasonably prudent businessperson would not operate the marihuana establishment.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018;—Am. 2020, Act 208, Imd. Eff. Oct. 15, 2020;—Am. 2021, Act 56, Eff. Oct. 11, 2021.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

MICHIGAN REGULATION AND TAXATION OF MARIHUANA ACT
Initiated Law 1 of 2018

An initiation of legislation to allow under state law the personal possession and use of marihuana by persons 21 years of age or older; to provide for the lawful cultivation and sale of marihuana and industrial hemp by persons 21 years of age or older; to permit the taxation of revenue derived from commercial marihuana facilities; to permit the promulgation of administrative rules; and to prescribe certain penalties for violations of this act. If not enacted by the Michigan State Legislature in accordance with the Michigan Constitution of 1963, the proposed legislation is to be voted on at the General Election, November 6, 2018.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

The People of the State of Michigan enact:

333.27951 Short title.

Sec. 1. This act shall be known and may be cited as the Michigan Regulation and Taxation of Marihuana Act.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

333.27952 Purpose and intent.

Sec. 2. The purpose of this act is to make marihuana legal under state and local law for adults 21 years of age or older, to make industrial hemp legal under state and local law, and to control the commercial production and distribution of marihuana under a system that licenses, regulates, and taxes the businesses involved. The intent is to prevent arrest and penalty for personal possession and cultivation of marihuana by adults 21 years of age or older; remove the commercial production and distribution of marihuana from the illicit market; prevent revenue generated from commerce in marihuana from going to criminal enterprises or gangs; prevent the distribution of marihuana to persons under 21 years of age; prevent the diversion of marihuana to illicit markets; ensure the safety of marihuana and marihuana-infused products; and ensure security of marihuana establishments. To the fullest extent possible, this act shall be interpreted in accordance with the purpose and intent set forth in this section.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

***** *333.27953 THIS SECTION IS AMENDED EFFECTIVE OCTOBER 11, 2021: See 333.27953.amended* *****

333.27953 Definitions.

Sec. 3. As used in this act:

(a) "Cultivate" means to propagate, breed, grow, harvest, dry, cure, or separate parts of the marihuana plant by manual or mechanical means.

(b) "Department" means the department of licensing and regulatory affairs.

(c) "Industrial hemp" means a plant of the genus *Cannabis* and any part of that plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of 0.3% or less on a dry-weight basis or per volume or

weight of marihuana-infused product, or for which the combined percent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant, regardless of moisture content, is 0.3% or less.

(d) "Licensee" means a person holding a state license.

(e) "Marihuana" means all parts of the plant of the genus *Cannabis*, growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including marihuana concentrate and marihuana-infused products. Marihuana does not include any of the following:

(*i*) The mature stalks of the plant, fiber produced from the mature stalks, oil or cake made from the seeds of the plant, or any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks.

(*ii*) Industrial hemp.

(*iii*) Any other ingredient combined with marihuana to prepare topical or oral administrations, food, drink, or other products.

(f) "Marihuana accessories" means any equipment, product, material, or combination of equipment, products, or materials, that is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marihuana into the human body.

(g) "Marihuana concentrate" means the resin extracted from any part of the plant of the genus *Cannabis*.

(h) "Marihuana establishment" means a marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, or any other type of marihuana-related business licensed by the marijuana regulatory agency.

(i) "Marihuana grower" means a person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.

(j) "Marihuana-infused product" means a topical formulation, tincture, beverage, edible substance, or similar product containing marihuana and other ingredients and that is intended for human consumption.

(k) "Marihuana microbusiness" means a person licensed to cultivate not more than 150 marihuana plants; process and package marihuana; and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a marihuana safety compliance facility, but not to other marihuana establishments.

(*l*) "Marihuana processor" means a person licensed to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments.

(m) "Marihuana retailer" means a person licensed to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are 21 years of age or older.

(n) "Marihuana secure transporter" means a person licensed to obtain marihuana from marihuana establishments in order to transport marihuana to marihuana establishments.

(o) "Marihuana safety compliance facility" means a person licensed to test marihuana, including certification for potency and the presence of contaminants.

(p) "Marijuana regulatory agency" means the marijuana regulatory agency created under Executive Reorganization Order No. 2019-2, MCL 333.27001.

(q) "Municipal license" means a license issued by a municipality pursuant to section 16 that allows a person to operate a marihuana establishment in that municipality.

(r) "Municipality" means a city, village, or township.

(s) "Person" means an individual, corporation, limited liability company, partnership of any type, trust, or other legal entity.

(t) "Process" or "processing" means to separate or otherwise prepare parts of the marihuana plant and to compound, blend, extract, infuse, or otherwise make or prepare marihuana concentrate or marihuana-infused products.

(u) "State license" means a license issued by the marijuana regulatory agency that allows a person to operate a marihuana establishment.

(v) "Unreasonably impracticable" means that the measures necessary to comply with the rules or ordinances adopted pursuant to this act subject licensees to unreasonable risk or require such a high investment of money, time, or any other resource or asset that a reasonably prudent businessperson would not operate the marihuana establishment.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018;—Am. 2020, Act 208, Imd. Eff. Oct. 15, 2020.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

***** *333.27953.amended THIS AMENDED SECTION IS EFFECTIVE OCTOBER 11, 2021* *****

333.27953.amended Definitions.

Sec. 3. As used in this act:

(a) "Cultivate" means to propagate, breed, grow, harvest, dry, cure, or separate parts of a marihuana plant by manual or mechanical means.

(b) "Department" means the department of licensing and regulatory affairs.

(c) "Industrial hemp" means any of the following:

(*i*) A plant of the genus *Cannabis*, whether growing or not, with a THC concentration of 0.3% or less on a dry-weight basis.

(*ii*) A part of a plant of the genus *Cannabis*, whether growing or not, with a THC concentration of 0.3% or less on a dry-weight basis.

(*iii*) The seeds of a plant of the genus *Cannabis* with a THC concentration of 0.3% or less on a dry-weight basis.

(*iv*) If it has a THC concentration of 0.3% or less on a dry-weight basis, a compound, manufacture, derivative, mixture, preparation, extract, cannabinoid, acid, salt, isomer, or salt of an isomer of any of the following:

(A) A plant of the genus *Cannabis*.

(B) A part of a plant of the genus *Cannabis*.

(*v*) A product to which 1 of the following applies:

(A) If the product is intended for human or animal consumption, the product, in the form in which it is intended for sale to a consumer, meets both of the following requirements:

(I) Has a THC concentration of 0.3% or less on a dry-weight or per volume basis.

(II) Contains a total amount of THC that is less than or equal to the limit established by the marijuana regulatory agency under section 8(1)(n).

(B) If the product is not intended for human or animal consumption, the product meets both of the following requirements:

(I) Contains a substance listed in subparagraph (*i*), (*ii*), (*iii*), or (*iv*).

(II) Has a THC concentration of 0.3% or less on a dry-weight basis.

(d) "Licensee" means a person holding a state license.

(e) "Marihuana" means any of the following:

(*i*) A plant of the genus *Cannabis*, whether growing or not.

(*ii*) A part of a plant of the genus *Cannabis*, whether growing or not.

(*iii*) The seeds of a plant of the genus *Cannabis*.

(*iv*) Marihuana concentrate.

(*v*) A compound, manufacture, salt, derivative, mixture, extract, acid, isomer, salt of an isomer, or preparation of any of the following:

(A) A plant of the genus *Cannabis*.

(B) A part of a plant of the genus *Cannabis*.

(C) The seeds of a plant of the genus *Cannabis*.

(D) Marihuana concentrate.

(*vi*) A marihuana-infused product.

(*vii*) A product with a THC concentration of more than 0.3% on a dry-weight or per volume basis in the form in which it is intended for sale to a consumer.

(*viii*) A product that is intended for human or animal consumption and that contains, in the form in which it is intended for sale to a consumer, a total amount of THC that is greater than the limit established by the marijuana regulatory agency under section 8(1)(n).

(f) Except for marihuana concentrate extracted from any of the following, "marihuana" does not include any of the following:

(*i*) The mature stalks of a plant of the genus *Cannabis*.

(*ii*) Fiber produced from the mature stalks of a plant of the genus *Cannabis*.

(*iii*) Oil or cake made from the seeds of a plant of the genus *Cannabis*.

(*iv*) A compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks of a plant of the genus *Cannabis*.

(*v*) Industrial hemp.

(*vi*) An ingredient combined with marihuana to prepare topical or oral administrations, food, drink, or other products.

(*vii*) A drug for which an application filed in accordance with 21 USC 355 is approved by the Food and Drug Administration.

(g) "Marihuana accessories" means any equipment, product, material, or combination of equipment, products, or materials, that is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marihuana into the human body.

(h) "Marihuana concentrate" means the resin extracted from any part of a plant of the genus *Cannabis*.

(i) "Marihuana establishment" means a marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, or any other type of marihuana-related business licensed by the marijuana regulatory agency.

(j) "Marihuana grower" means a person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.

(k) "Marihuana-infused product" means a topical formulation, tincture, beverage, edible substance, or similar product containing marihuana and other ingredients and that is intended for human consumption.

(*l*) "Marihuana microbusiness" means a person licensed to cultivate not more than 150 marihuana plants; process and package marihuana; and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a marihuana safety compliance facility, but not to other marihuana establishments.

(m) "Marihuana processor" means a person licensed to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments.

(n) "Marihuana retailer" means a person licensed to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are 21 years of age or older.

(o) "Marihuana secure transporter" means a person licensed to obtain marihuana from marihuana establishments in order to transport marihuana to marihuana establishments.

(p) "Marihuana safety compliance facility" means a person licensed to test marihuana, including certification for potency and the presence of contaminants.

(q) "Marijuana regulatory agency" means the marijuana regulatory agency created under Executive Reorganization Order No. 2019-2, MCL 333.27001.

(r) "Municipal license" means a license issued by a municipality pursuant to section 16 that allows a person to operate a marihuana establishment in that municipality.

(s) "Municipality" means a city, village, or township.

(t) "Person" means an individual, corporation, limited liability company, partnership of any type, trust, or other legal entity.

(u) "Process" or "processing" means to separate or otherwise prepare parts of a marihuana plant and to compound, blend, extract, infuse, or otherwise make or prepare marihuana concentrate or marihuana-infused products.

(v) "State license" means a license issued by the marijuana regulatory agency that allows a person to operate a marihuana establishment.

(w) "THC" means any of the following:

(*i*) Tetrahydrocannabinolic acid.

(*ii*) Unless excluded by the marijuana regulatory agency under section 8(2)(c), a tetrahydrocannabinol, regardless of whether it is artificially or naturally derived.

(*iii*) A tetrahydrocannabinol that is a structural, optical, or geometric isomer of a tetrahydrocannabinol described in subparagraph (*ii*).

(x) "Unreasonably impracticable" means that the measures necessary to comply with the rules or ordinances adopted pursuant to this act subject licensees to unreasonable risk or require such a high investment of money, time, or any other resource or asset that a reasonably prudent businessperson would not operate the marihuana establishment.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018;—Am. 2020, Act 208, Imd. Eff. Oct. 15, 2020;—Am. 2021, Act 56, Eff. Oct. 11, 2021.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana

regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

333.27954 Scope of act; unauthorized activities with marihuana and marihuana accessories; limitations; application of privileges, rights, immunities, and defenses under other marihuana laws; employer rights; property owner rights.

Sec. 4. 1. This act does not authorize:

(a) operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while under the influence of marihuana;

(b) transfer of marihuana or marihuana accessories to a person under the age of 21;

(c) any person under the age of 21 to possess, consume, purchase or otherwise obtain, cultivate, process, transport, or sell marihuana;

(d) separation of plant resin by butane extraction or another method that utilizes a substance with a flashpoint below 100 degrees Fahrenheit in any public place, motor vehicle, or within the curtilage of any residential structure;

(e) consuming marihuana in a public place or smoking marihuana where prohibited by the person who owns, occupies, or manages the property, except for purposes of this subdivision a public place does not include an area designated for consumption within a municipality that has authorized consumption in designated areas that are not accessible to persons under 21 years of age;

(f) cultivating marihuana plants if the plants are visible from a public place without the use of binoculars, aircraft, or other optical aids or outside of an enclosed area equipped with locks or other functioning security devices that restrict access to the area;

(g) consuming marihuana while operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat, or smoking marihuana within the passenger area of a vehicle upon a public way;

(h) possessing marihuana accessories or possessing or consuming marihuana on the grounds of a public or private school where children attend classes in preschool programs, kindergarten programs, or grades 1 through 12, in a school bus, or on the grounds of any correctional facility; or

(i) Possessing more than 2.5 ounces of marihuana within a person's place of residence unless the excess marihuana is stored in a container or area equipped with locks or other functioning security devices that restrict access to the contents of the container or area.

2. This act does not limit any privileges, rights, immunities, or defenses of a person as provided in the Michigan medical marihuana act, 2008 IL 1, MCL 333.26421 to 333.26430, the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801, or any other law of this state allowing for or regulating marihuana for medical use.

3. This act does not require an employer to permit or accommodate conduct otherwise allowed by this act in any workplace or on the employer's property. This act does not prohibit an employer from disciplining an employee for violation of a workplace drug policy or for working while under the influence of marihuana. This act does not prevent an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that person's violation of a workplace drug policy or because that person was working while under the influence of marihuana.

4. This act allows a person to prohibit or otherwise regulate the consumption, cultivation, distribution, processing, sale, or display of marihuana and marihuana accessories on property the person owns, occupies, or manages, except that a lease agreement may not prohibit a tenant from lawfully possessing and consuming marihuana by means other than smoking.

5. All other laws inconsistent with this act do not apply to conduct that is permitted by this act.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

333.27955 Lawful activities by person 21 years of age or older; terms, conditions, limitations, and restrictions; denial of custody or visitation prohibited.

Sec. 5. 1. Notwithstanding any other law or provision of this act, and except as otherwise provided in

section 4 of this act, the following acts by a person 21 years of age or older are not unlawful, are not an offense, are not grounds for seizing or forfeiting property, are not grounds for arrest, prosecution, or penalty in any manner, are not grounds for search or inspection, and are not grounds to deny any other right or privilege:

(a) except as permitted by subdivision (b), possessing, using or consuming, internally possessing, purchasing, transporting, or processing 2.5 ounces or less of marihuana, except that not more than 15 grams of marihuana may be in the form of marihuana concentrate;

(b) within the person's residence, possessing, storing, and processing not more than 10 ounces of marihuana and any marihuana produced by marihuana plants cultivated on the premises and cultivating not more than 12 marihuana plants for personal use, provided that no more than 12 marihuana plants are possessed, cultivated, or processed on the premises at once;

(c) assisting another person who is 21 years of age or older in any of the acts described in this section; and

(d) giving away or otherwise transferring without remuneration up to 2.5 ounces of marihuana, except that not more than 15 grams of marihuana may be in the form of marihuana concentrate, to a person 21 years of age or older, as long as the transfer is not advertised or promoted to the public.

2. Notwithstanding any other law or provision of this act, except as otherwise provided in section 4 of this act, the use, manufacture, possession, and purchase of marihuana accessories by a person 21 years of age or older and the distribution or sale of marihuana accessories to a person 21 years of age or older is authorized, is not unlawful, is not an offense, is not grounds for seizing or forfeiting property, is not grounds for arrest, prosecution, or penalty in any manner, and is not grounds to deny any other right or privilege.

3. A person shall not be denied custody of or visitation with a minor for conduct that is permitted by this act, unless the person's behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and substantiated.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

333.27956 Adoption or enforcement of ordinances by municipality; marihuana establishment local license; annual fee; restrictions on transportation or other facilities prohibited.

Sec. 6. 1. Except as provided in section 4, a municipality may completely prohibit or limit the number of marihuana establishments within its boundaries. Individuals may petition to initiate an ordinance to provide for the number of marihuana establishments allowed within a municipality or to completely prohibit marihuana establishments within a municipality, and such ordinance shall be submitted to the electors of the municipality at the next regular election when a petition is signed by qualified electors in the municipality in a number greater than 5% of the votes cast for governor by qualified electors in the municipality at the last gubernatorial election. A petition under this subsection is subject to section 488 of the Michigan election law, 1954 PA 116, MCL 168.488.

2. A municipality may adopt other ordinances that are not unreasonably impracticable and do not conflict with this act or with any rule promulgated pursuant to this act and that: ·

(a) establish reasonable restrictions on public signs related to marihuana establishments;

(b) regulate the time, place, and manner of operation of marihuana establishments and of the production, manufacture, sale, or display of marihuana accessories;

(c) authorize the sale of marihuana for consumption in designated areas that are not accessible to persons under 21 years of age, or at special events in limited areas and for a limited time; and

(d) designate a violation of the ordinance and provide for a penalty for that violation by a marihuana establishment, provided that such violation is a civil infraction and such penalty is a civil fine of not more than $500.

3. A municipality may adopt an ordinance requiring a marihuana establishment with a physical location within the municipality to obtain a municipal license, but may not impose qualifications for licensure that conflict with this act or rules promulgated by the department.

4. A municipality may charge an annual fee of not more than $5,000 to defray application, administrative, and enforcement costs associated with the operation of the marihuana establishment in the municipality.

5. A municipality may not adopt an ordinance that restricts the transportation of marihuana through the municipality or prohibits a marihuana grower, a marihuana processor, and a marihuana retailer from operating

within a single facility or from operating at a location shared with a marihuana facility operating pursuant to the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

333.27957 Implementation, administration, and enforcement by department; powers; duties; public meetings; annual report.

Sec. 7. 1. The department is responsible for implementing this act and has the powers and duties necessary to control the commercial production and distribution of marihuana. The department shall employ personnel and may contract with advisors and consultants as necessary to adequately perform its duties. No person who is pecuniarily interested, directly or indirectly, in any marihuana establishment may be an employee, advisor, or consultant involved in the implementation, administration, or enforcement of this act. An employee, advisor, or consultant of the department may not be personally liable for any action at law for damages sustained by a person because of an action performed or done in the performance of their duties in the implementation, administration, or enforcement of this act. The department of state police shall cooperate and assist the department in conducting background investigations of applicants. Responsibilities of the department include:

(a) promulgating rules pursuant to section 8 of this act that are necessary to implement, administer, and enforce this act;

(b) granting or denying each application for licensure and investigating each applicant to determine eligibility for licensure, including conducting a background investigation on each person holding an ownership interest in the applicant;

(c) ensuring compliance with this act and the rules promulgated thereunder by marihuana establishments by performing investigations of compliance and regular inspections of marihuana establishments and by taking appropriate disciplinary action against a licensee, including prescribing civil fines for violations of this act or rules and suspending, restricting, or revoking a state license;

(d) holding at least 4 public meetings each calendar year for the purpose of hearing complaints and receiving the views of the public with respect to administration of this act;

(e) collecting fees for licensure and fines for violations of this act or rules promulgated thereunder, depositing all fees collected in the marihuana regulation fund established by section 14 of this act, and remitting all fines collected to be deposited in the general fund; and

(f) submitting an annual report to the governor covering the previous year, which report shall include the number of state licenses of each class issued, demographic information on licensees, a description of enforcement and disciplinary actions taken against licensees, and a statement of revenues and expenses of the department related to the implementation, administration, and enforcement of this act.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

***** *333.27958 THIS SECTION IS AMENDED EFFECTIVE OCTOBER 11, 2021: See 333.27958.amended* *****

333.27958 Rules; limitations.

Sec. 8. (1) The marijuana regulatory agency shall promulgate rules to implement and administer this act that include all of the following:

(a) Procedures for issuing a state license pursuant to section 9 and for renewing, suspending, and revoking a state license.

(b) A schedule of fees in amounts not more than necessary to pay for implementation, administration, and enforcement costs of this act and that relate to the size of each licensee or the volume of business conducted

by the licensee.

(c) Qualifications for licensure that are directly and demonstrably related to the operation of a marihuana establishment. However, a prior conviction solely for a marihuana-related offense does not disqualify an individual or otherwise affect eligibility for licensure, unless the offense involved distribution of a controlled substance to a minor.

(d) Requirements and standards for safe cultivation, processing, and distribution of marihuana by marihuana establishments, including health standards to ensure the safe preparation of marihuana-infused products and prohibitions on pesticides that are not safe for use on marihuana.

(e) Testing, packaging, and labeling standards, procedures, and requirements for marihuana, including, but not limited to, all of the following:

(*i*) A maximum tetrahydrocannabinol level for marihuana-infused products.

(*ii*) A requirement that a representative sample of marihuana be tested by a marihuana safety compliance facility.

(*iii*) A requirement that the amount of marihuana or marihuana concentrate contained within a marihuana-infused product be specified on the product label.

(*iv*) A requirement that all marihuana sold through marihuana retailers and marihuana microbusinesses include on the exterior of the marihuana packaging the following warning printed in clearly legible type and surrounded by a continuous heavy line:

WARNING: USE BY PREGNANT OR BREASTFEEDING WOMEN, OR BY WOMEN PLANNING TO BECOME PREGNANT, MAY RESULT IN FETAL INJURY, PRETERM BIRTH, LOW BIRTH WEIGHT, OR DEVELOPMENTAL PROBLEMS FOR THE CHILD.

(f) Security requirements, including lighting, physical security, and alarm requirements, and requirements for securely transporting marihuana between marihuana establishments. The requirements described in this subdivision must not prohibit cultivation of marihuana outdoors or in greenhouses.

(g) Record keeping requirements for marihuana establishments and monitoring requirements to track the transfer of marihuana by licensees.

(h) Requirements for the operation of marihuana secure transporters to ensure that all marihuana establishments are properly serviced.

(i) Reasonable restrictions on advertising, marketing, and display of marihuana and marihuana establishments.

(j) A plan to promote and encourage participation in the marihuana industry by people from communities that have been disproportionately impacted by marihuana prohibition and enforcement and to positively impact those communities.

(k) Penalties for failure to comply with any rule promulgated pursuant to this section or for any violation of this act by a licensee, including civil fines and suspension, revocation, or restriction of a state license.

(*l*) Informational pamphlet standards for marihuana retailers and marihuana microbusinesses, including, but not limited to, a requirement to make available to every customer at the time of sale a pamphlet measuring 3.5 inches by 5 inches that includes safety information related to marihuana use by minors and the poison control hotline number.

(m) Procedures and standards for approving an appointee to operate a marihuana establishment under section 9a.

(2) The marijuana regulatory agency may promulgate rules to do any of the following:

(a) Provide for the issuance of additional types or classes of state licenses to operate marihuana-related businesses, including licenses that authorize any of the following:

(*i*) Limited cultivation, processing, transportation, delivery, storage, sale, or purchase of marihuana.

(*ii*) Consumption of marihuana within designated areas.

(*iii*) Consumption of marihuana at special events in limited areas and for a limited time.

(*iv*) Cultivation for purposes of propagation.

(*v*) Facilitation of scientific research or education.

(b) Regulate the cultivation, processing, distribution, and sale of industrial hemp.

(3) The marijuana regulatory agency shall not promulgate a rule that does any of the following:

(a) Establishes a limit on the number of any type of state licenses that may be granted.

(b) Requires a customer to provide a marihuana retailer with identifying information other than identification to determine the customer's age or requires the marihuana retailer to acquire or record personal information about customers other than information typically required in a retail transaction.

(c) Prohibits a marihuana establishment from operating at a shared location of a marihuana facility operating pursuant to the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to

333.27801, or prohibits a marihuana grower, marihuana processor, or marihuana retailer from operating within a single facility.

(d) Is unreasonably impracticable.

(4) A rule promulgated under this act must be promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018;—Am. 2020, Act 31, Imd. Eff. Feb. 20, 2020;—Am. 2020, Act 208, Imd. Eff. Oct. 15, 2020.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

For the transfer of powers and duties of the department of licensing and regulatory affairs to promulgate rules to regulate industrial hemp to the department of agriculture and rural development by type II transfer, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

****** 333.27958.amended THIS AMENDED SECTION IS EFFECTIVE OCTOBER 11, 2021 ******

333.27958.amended Rules; limitations.

Sec. 8. (1) The marijuana regulatory agency shall promulgate rules to implement and administer this act that include all of the following:

(a) Procedures for issuing a state license pursuant to section 9 and for renewing, suspending, and revoking a state license.

(b) A schedule of fees in amounts not more than necessary to pay for implementation, administration, and enforcement costs of this act and that relate to the size of each licensee or the volume of business conducted by the licensee.

(c) Qualifications for licensure that are directly and demonstrably related to the operation of a marihuana establishment. However, a prior conviction solely for a marihuana-related offense must not disqualify an individual or otherwise affect eligibility for licensure, unless the offense involved distribution of a controlled substance to a minor.

(d) Requirements and standards for safe cultivation, processing, and distribution of marihuana by marihuana establishments, including health standards to ensure the safe preparation of marihuana-infused products and prohibitions on pesticides that are not safe for use on marihuana.

(e) Testing, packaging, and labeling standards, procedures, and requirements for marihuana, including, but not limited to, all of the following:

(*i*) A maximum THC level for marihuana-infused products.

(*ii*) A requirement that a representative sample of marihuana be tested by a marihuana safety compliance facility.

(*iii*) A requirement that the amount of marihuana or marihuana concentrate contained within a marihuana-infused product be specified on the product label.

(*iv*) A requirement that all marihuana sold through marihuana retailers and marihuana microbusinesses include on the exterior of the marihuana packaging the following warning printed in clearly legible type and surrounded by a continuous heavy line:

WARNING: USE BY PREGNANT OR BREASTFEEDING WOMEN, OR BY
WOMEN PLANNING TO BECOME PREGNANT, MAY RESULT IN FETAL
INJURY, PRETERM BIRTH, LOW BIRTH WEIGHT, OR DEVELOPMENTAL
PROBLEMS FOR THE CHILD.

(f) Security requirements, including lighting, physical security, and alarm requirements, and requirements for securely transporting marihuana between marihuana establishments. The requirements described in this subdivision must not prohibit cultivation of marihuana outdoors or in greenhouses.

(g) Record keeping requirements for marihuana establishments and monitoring requirements to track the transfer of marihuana by licensees.

(h) Requirements for the operation of marihuana secure transporters to ensure that all marihuana establishments are properly serviced.

(i) Reasonable restrictions on advertising, marketing, and display of marihuana and marihuana establishments.

(j) A plan to promote and encourage participation in the marihuana industry by people from communities that have been disproportionately impacted by marihuana prohibition and enforcement and to positively impact those communities.

(k) Penalties for failure to comply with a rule promulgated pursuant to this section or for a violation of this act by a licensee, including civil fines and suspension, revocation, or restriction of a state license.

(*l*) Informational pamphlet standards for marihuana retailers and marihuana microbusinesses, including, but not limited to, a requirement to make available to every customer at the time of sale a pamphlet measuring 3.5 inches by 5 inches that includes safety information related to marihuana use by minors and the poison control hotline number.

(m) Procedures and standards for approving an appointee to operate a marihuana establishment under section 9a.

(n) A limit on the total amount of THC that a product described in section 3(c)(*v*)(A) may contain.

(2) The marijuana regulatory agency may promulgate rules to do any of the following:

(a) Provide for the issuance of additional types or classes of state licenses to operate marihuana-related businesses, including licenses that authorize any of the following:

(*i*) Limited cultivation, processing, transportation, delivery, storage, sale, or purchase of marihuana.

(*ii*) Consumption of marihuana within designated areas.

(*iii*) Consumption of marihuana at special events in limited areas and for a limited time.

(*iv*) Cultivation for purposes of propagation.

(*v*) Facilitation of scientific research or education.

(b) Regulate the cultivation, processing, distribution, and sale of industrial hemp.

(c) Exclude from the definition of THC in section 3 a tetrahydrocannabinol if, after the marijuana regulatory agency makes findings with respect to each of the following factors, the marijuana regulatory agency determines that the tetrahydrocannabinol does not have a potential for abuse:

(*i*) The actual or relative potential for abuse of the tetrahydrocannabinol.

(*ii*) The scientific evidence of the tetrahydrocannabinol's pharmacological effect, if known.

(*iii*) The state of current scientific knowledge regarding the tetrahydrocannabinol.

(*iv*) The history and current pattern of abuse of the tetrahydrocannabinol.

(*v*) The scope, duration, and significance of abuse of the tetrahydrocannabinol.

(*vi*) The tetrahydrocannabinol's risk to the public health.

(*vii*) The potential of the tetrahydrocannabinol to produce psychic or physiological dependence liability.

(3) The marijuana regulatory agency shall not promulgate a rule that does any of the following:

(a) Establishes a limit on the number of any type of state license that may be granted.

(b) Requires a customer to provide a marihuana retailer with identifying information other than identification to determine the customer's age or requires the marihuana retailer to acquire or record personal information about customers other than information typically required in a retail transaction.

(c) Prohibits a marihuana establishment from operating at a shared location of a marihuana facility operating pursuant to the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801, or prohibits a marihuana grower, marihuana processor, or marihuana retailer from operating within a single facility.

(d) Is unreasonably impracticable.

(4) A rule promulgated under this act must be promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018;—Am. 2020, Act 31, Imd. Eff. Feb. 20, 2020;—Am. 2020, Act 208, Imd. Eff. Oct. 15, 2020;—Am. 2021, Act 56, Eff. Oct. 11, 2021.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

For the transfer of powers and duties of the department of licensing and regulatory affairs to promulgate rules to regulate industrial hemp to the department of agriculture and rural development by type II transfer, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

333.27959 License to operate a marihuana establishment; application; qualifications; issuance; disclosure.

Sec. 9. 1. Each application for a state license must be submitted to the department. Upon receipt of a complete application and application fee, the department shall forward a copy of the application to the municipality in which the marihuana establishment is to be located, determine whether the applicant and the premises qualify for the state license and comply with this act, and issue the appropriate state license or send the applicant a notice of rejection setting forth specific reasons why the department did not approve the state

license application within 90 days.

2. The department shall issue the following state license types: marihuana retailer; marihuana safety compliance facility; marihuana secure transporter; marihuana processor; marihuana microbusiness; class A marihuana grower authorizing cultivation of not more than 100 marihuana plants; class B marihuana grower authorizing cultivation of not more than 500 marihuana plants; and class C marihuana grower authorizing cultivation of not more than 2,000 marihuana plants.

3. Except as otherwise provided in this section, the department shall approve a state license application and issue a state license if:

(a) the applicant has submitted an application in compliance with the rules promulgated by the department, is in compliance with this act and the rules, and has paid the required fee;

(b) the municipality in which the proposed marihuana establishment will be located does not notify the department that the proposed marihuana establishment is not in compliance with an ordinance consistent with section 6 of this act and in effect at the time of application;

(c) the property where the proposed marihuana establishment is to be located is not within an area zoned exclusively for residential use and is not within 1,000 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, unless a municipality adopts an ordinance that reduces this distance requirement;

(d) no person who holds an ownership interest in the marihuana establishment applicant:

(1) will hold an ownership interest in both a marihuana safety compliance facility or in a marihuana secure transporter and in a marihuana grower, a marihuana processor, a marihuana retailer, or a marihuana microbusiness;

(2) will hold an ownership interest in both a marihuana microbusiness and in a marihuana grower, a marihuana processor, a marihuana retailer, a marihuana safety compliance facility, or a marihuana secure transporter; and

(3) will hold an ownership interest in more than 5 marihuana growers or in more than 1 marihuana microbusiness, except that the department may approve a license application from a person who holds an ownership interest in more than 5 marihuana growers or more than 1 marihuana microbusiness if, after January 1, 2023, the department promulgates a rule authorizing an individual to hold an ownership interest in more than 5 marihuana growers or in more than 1 marihuana microbusiness.

4. If a municipality limits the number of marihuana establishments that may be licensed in the municipality pursuant to section 6 of this act and that limit prevents the department from issuing a state license to all applicants who meet the requirements of subsection 3 of this section, the municipality shall decide among competing applications by a competitive process intended to select applicants who are best suited to operate in compliance with this act within the municipality.

5. All state licenses are effective for 1 year, unless the department issues the state license for a longer term. A state license is renewed upon receipt of a complete renewal application and a renewal fee from any marihuana establishment in good standing.

6. The department shall begin accepting applications for marihuana establishments within 12 months after the effective date of this act. Except as otherwise provided in this section, for 24 months after the department begins to receive applications for marihuana establishments, the department may only accept applications for licensure: for a class A marihuana grower or for a marihuana microbusiness, from persons who are residents of Michigan; for a marihuana retailer, marihuana processor, class B marihuana grower, class C marihuana grower, or a marihuana secure transporter, from persons holding a state operating license pursuant to the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801; and for a marihuana safety compliance facility, from any applicant. One year after the department begins to accept applications pursuant to this section, the department shall begin accepting applications from any applicant if the department determines that additional state licenses are necessary to minimize the illegal market for marihuana in this state, to efficiently meet the demand for marihuana, or to provide for reasonable access to marihuana in rural areas.

7. Information obtained from an applicant related to licensure under this act is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018..

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

333.27959a Operation of a marihuana establishment; approval; marijuana regulatory agency; notice of violation.

Sec. 9a. (1) The marijuana regulatory agency may approve the operation of a marihuana establishment by any of the following:

(a) A court-appointed personal representative, guardian, or conservator of an individual who holds a state license or has an interest in a person that holds a state license.

(b) A court-appointed receiver or trustee.

(2) If an individual approved to operate a marihuana establishment under subsection (1) receives notice from the marijuana regulatory agency that the marihuana establishment the individual is operating is in violation of this act or the rules promulgated under this act, the individual shall notify the court that appointed the individual of the notice of violation within 2 days after receiving the notice of violation.

History: Add. 2020, Act 208, Imd. Eff. Oct. 15, 2020.

333.27960 Lawful activities by marihuana grower, processor, transporter, or retailer; limitations; contracts related to operation of marihuana establishments.

Sec. 10. 1. Notwithstanding any other law or provision of this act, and except as otherwise provided in section 4 of this act or the rules promulgated thereunder, the following acts are not unlawful, are not an offense, are not grounds for seizing or forfeiting property, are not grounds for arrest, prosecution, or penalty in any manner, are not grounds for search or inspection except as authorized by this act, and are not grounds to deny any other right or privilege:

(a) a marihuana grower or an agent acting on behalf of a marihuana grower who is 21 years of age or older, cultivating not more than the number of marihuana plants authorized by the state license class; possessing, packaging, storing, or testing marihuana; acquiring marihuana seeds or seedlings from a person who is 21 years of age or older; selling or otherwise transferring, purchasing or otherwise obtaining, or transporting marihuana to or from a marihuana establishment; or receiving compensation for goods or services;

(b) a marihuana processor or agent acting on behalf of a marihuana processor who is 21 years of age or older, possessing, processing, packaging, storing, or testing marihuana; selling or otherwise transferring, purchasing or otherwise obtaining, or transporting marihuana to or from a marihuana establishment; or receiving compensation for goods or services;

(c) a marihuana secure transporter or an agent acting on behalf of a marihuana secure transporter who is 21 years of age or older, possessing or storing marihuana; transporting marihuana to or from a marihuana establishment; or receiving compensation for services;

(d) a marihuana safety compliance facility or an agent acting on behalf of a marihuana safety compliance facility who is 21 years of age or older, testing, possessing, repackaging, or storing marihuana; transferring, obtaining, or transporting marihuana to or from a marihuana establishment; or receiving compensation for services;

(e) a marihuana retailer or an agent acting on behalf of a marihuana retailer who is 21 years of age or older, possessing, storing, or testing marihuana; selling or otherwise transferring, purchasing or otherwise obtaining, or transporting marihuana to or from a marihuana establishment; selling or otherwise transferring marihuana to a person 21 years of age or older; or receiving compensation for goods or services; or

(f) a marihuana microbusiness or an agent acting on behalf of a marihuana microbusiness who is 21 years of age or older, cultivating not more than 150 marihuana plants; possessing, processing, packaging, storing, or testing marihuana from marihuana plants cultivated on the premises; selling or otherwise transferring marihuana cultivated or processed on the premises to a person 21 years of age or older; or receiving compensation for goods or services.

(g) leasing or otherwise allowing the use of property owned, occupied, or managed for activities allowed under this act;

(h) enrolling or employing a person who engages in marihuana-related activities allowed under this act;

(i) possessing, cultivating, processing, obtaining, transferring, or transporting industrial hemp; or

(j) providing professional services to prospective or licensed marihuana establishments related to activity under this act.

2. A person acting as an agent of a marihuana retailer who sells or otherwise transfers marihuana or marihuana accessories to a person under 21 years of age is not subject to arrest, prosecution, forfeiture of property, disciplinary action by a professional licensing board, denial of any right or privilege, or penalty in any manner, if the person reasonably verified that the recipient appeared to be 21 years of age or older by means of government-issued photographic identification containing a date of birth, and the person complied with any rules promulgated pursuant to this act.

3. It is the public policy of this state that contracts related to the operation of marihuana establishments be enforceable.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

333.27961 Marihuana establishments; requirements; limitations.

Sec. 11. (a) A marihuana establishment may not allow cultivation, processing, sale, or display of marihuana or marihuana accessories to be visible from a public place outside of the marihuana establishment without the use of binoculars, aircraft, or other optical aids.

(b) A marihuana establishment may not cultivate, process, test, or store marihuana at any location other than a physical address approved by the department and within an enclosed area that is secured in a manner that prevents access by persons not permitted by the marihuana establishment to access the area.

(c) A marihuana establishment shall secure every entrance to the establishment so that access to areas containing marihuana is restricted to employees and other persons permitted by the marihuana establishment to access the area and to agents of the department or state and local law enforcement officers and emergency personnel and shall secure its inventory and equipment during and after operating hours to deter and prevent theft of marihuana and marihuana accessories.

(d) No marihuana establishment may refuse representatives of the department the right during the hours of operation to inspect the licensed premises or to audit the books and records of the marihuana establishment.

(e) No marihuana establishment may allow a person under 21 years of age to volunteer or work for the marihuana establishment.

(f) No marihuana establishment may sell or otherwise transfer marihuana that was not produced, distributed, and taxed in compliance with this act.

(g) A marihuana grower, marihuana retailer, marihuana processor, marihuana microbusiness, or marihuana testing facility or agents acting on their behalf may not transport more than 15 ounces of marihuana or more than 60 grams of marihuana concentrate at one time.

(h) A marihuana secure transporter may not hold title to marihuana.

(i) No marihuana processor may process and no marihuana retailer may sell edible marihuana-infused candy in shapes or packages that are attractive to children or that are easily confused with commercially sold candy that does not contain marihuana.

(j) No marihuana retailer may sell or otherwise transfer marihuana that is not contained in an opaque, resealable, child-resistant package designed to be significantly difficult for children under 5 years of age to open and not difficult for normal adults to use properly as defined by 16 C.F.R. 1700.20 (1995), unless the marihuana is transferred for consumption on the premises where sold.

(k) No marihuana establishment may sell or otherwise transfer tobacco.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

****** 333.27961a.added THIS ADDED SECTION IS EFFECTIVE OCTOBER 11, 2021 ******

333.27961a.added Direct sale or transfer of marihuana to minor or intoxicated individual; prohibition; right of action; indemnification; defenses; rebuttable presumption; damages; insurance coverage required; civil action; definitions.

Sec. 11a. (1) A licensee authorized to sell or otherwise transfer marihuana under this act or a rule promulgated under this act shall not directly, or by a clerk, agent, or servant, sell or otherwise transfer marihuana to a minor or to an individual who, at the time of the sale or transfer, is visibly intoxicated.

(2) Except as otherwise provided in this section, an individual who suffers damage or is personally injured by a minor or visibly intoxicated person as a result of a violation of subsection (1), if the violation is a

proximate cause of the damage or personal injury or death, shall have a right of action in his or her name against the licensee that sold or transferred the marihuana.

(3) An action under this section must be instituted within 2 years after the injury or death. A person shall give written notice to all defendants within 120 days after entering an attorney-client relationship for the purposes of pursuing a claim for damages under this section. Failure to give written notice to the licensee within that time period is grounds for dismissal of the claim unless the licensee could not be identified within that time period with reasonable diligence. If the licensee is identified after that time period, failure to give written notice within 120 days thereafter is grounds for dismissal. In the event of the death of either party, the right of action under this section survives to or against his or her personal representative.

(4) An action under this section shall not be commenced unless the minor or alleged visibly intoxicated individual is a named defendant and is retained in the action until the litigation is concluded by final action or the licensee is dismissed with prejudice.

(5) A licensee described in subsection (2) has the right to full indemnification from the minor or alleged visibly intoxicated individual for all damages awarded against the licensee.

(6) All defenses of the minor or alleged visibly intoxicated individual are available to the licensee. In an action alleging a violation of subsection (1) involving a minor, proof that the licensee demanded and was shown a government-issued photographic identification appearing to be genuine and showing the minor to be 21 years of age or older, is a complete defense to the action.

(7) It is presumed that a licensee, other than the licensee that last sold or transferred marihuana to a minor or visibly intoxicated person, is not a proximate cause of an injury that gave rise to a cause of action under subsection (2). This presumption may be overcome by clear and convincing evidence.

(8) A minor or alleged visibly intoxicated individual does not have a cause of action under this section. A person does not have a cause of action against a licensee for any loss or damage sustained resulting from the injury or death of the minor or visibly intoxicated person.

(9) An individual who suffers damage or who is personally injured by a minor or visibly intoxicated person as a result of a violation of subsection (1) has the right to recover actual damages in a sum of not less than $50.00 in each case in which the court or jury determines that intoxication was a proximate cause of the damage, injury, or death.

(10) A licensee authorized to sell or otherwise transfer marihuana under this act or a rule promulgated under this act must maintain insurance coverage provided by a licensed and admitted insurance company in Michigan in a minimum amount of $50,000.00 for actions brought under subsection (2).

(11) This section provides the exclusive remedy for money damages against a licensee and the licensee's clerks, agents, and employees arising out of a violation of subsection (1). This subsection does not apply to a remedy available under law to lawful users of marihuana for liability resulting from the manufacture, distribution, transportation, or sale of adulterated marihuana.

(12) Except as otherwise provided in this section, a civil action against a licensee is subject to the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

(13) As used in this section:

(a) "Adulterated marihuana" means a product sold as marihuana that contains any unintended substance or chemical or biological matter other than marihuana that causes adverse reaction after ingestion or consumption.

(b) "Minor" means an individual who is younger than 21 years of age.

(c) "Visibly intoxicated" means displaying obvious, objective, and visible evidence of intoxication that would be apparent to an ordinary observer.

(d) "Written notice" means a communication in writing that does all of the following:

(*i*) Identifies the minor or alleged visibly intoxicated person by name and address.

(*ii*) States all of the following:

(A) The date of the alleged violation of subsection (1).

(B) The name and address of the injured or killed individual.

(C) The location and circumstances of the accident or event that caused injury or death.

(D) The date of retention of the person or law firm giving the notice.

History: Add. 2021, Act 55, Eff. Oct. 11, 2021.

333.27962 Deduction of certain expenses from income.

Sec. 12. In computing net income for marihuana establishments, deductions from state taxes are allowed for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying out a trade or business.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

333.27963 Imposition of excise tax.

Sec. 13. 1. In addition to all other taxes, an excise tax is imposed on each marihuana retailer and on each marihuana microbusiness at the rate of 10% of the sales price for marihuana sold or otherwise transferred to anyone other than a marihuana establishment.

2. Except as otherwise provided by a rule promulgated by the department of treasury, a product subject to the tax imposed by this section may not be bundled in a single transaction with a product or service that is not subject to the tax imposed by this section.

3. The department of treasury shall administer the taxes imposed under this act and may promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to MCL 24.328, that prescribe a method and manner for payment of the tax to ensure proper tax collection under this act.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

333.27964 Marihuana regulation fund; creation; administration; allocation of expenditures.

Sec. 14. 1. The marihuana regulation fund is created in the state treasury. The department of treasury shall deposit all money collected under section 13 of this act and the department shall deposit all fees collected in the fund. The state treasurer shall direct the investment of the fund and shall credit the fund interest and earnings from fund investments. The department shall administer the fund for auditing purposes. Money in the fund shall not lapse to the general fund.

2. Funds for the initial activities of the department to implement this act shall be appropriated from the general fund. The department shall repay any amount appropriated under this subsection from proceeds in the fund.

3. The department shall expend money in the fund first for the implementation, administration, and enforcement of this act, and second, until 2022 or for at least two years, to provide $20 million annually to one or more clinical trials that are approved by the United States food and drug administration and sponsored by a non-profit organization or researcher within an academic institution researching the efficacy of marihuana in treating the medical conditions of United States armed services veterans and preventing veteran suicide. Upon appropriation, unexpended balances must be allocated as follows:

(a) 15% to municipalities in which a marihuana retail store or a marihuana microbusiness is located, allocated in proportion to the number of marihuana retail stores and marihuana microbusinesses within the municipality;

(b) 15% to counties in which a marihuana retail store or a marihuana microbusiness is located, allocated in proportion to the number of marihuana retail stores and marihuana microbusinesses within the county;

(c) 35% to the school aid fund to be used for K-12 education; and

(d) 35% to the Michigan transportation fund to be used for the repair and maintenance of roads and bridges.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

333.27965 Violations; penalties.

Sec. 15. A person who commits any of the following acts, and is not otherwise authorized by this act to conduct such activities, may be punished only as provided in this section and is not subject to any other form

of punishment or disqualification, unless the person consents to another disposition authorized by law:

1. Except for a person who engaged in conduct described in sections 4(1)(a), 4(1)(b), 4(1)(c), 4(1)(d), 4(1)(g), or 4(1)(h), a person who possesses not more than the amount of marihuana allowed by section 5, cultivates not more than the amount of marihuana allowed by section 5, delivers without receiving any remuneration to a person who is at least 21 years of age not more than the amount of marihuana allowed by section 5, or possesses with intent to deliver not more than the amount of marihuana allowed by section 5, is responsible for a civil infraction and may be punished by a fine of not more than $100 and forfeiture of the marihuana.

2. Except for a person who engaged in conduct described in section 4, a person who possesses not more than twice the amount of marihuana allowed by section 5, cultivates not more than twice the amount of marihuana allowed by section 5, delivers without receiving any remuneration to a person who is at least 21 years of age not more than twice the amount of marihuana allowed by section 5, or possesses with intent to deliver not more than twice the amount of marihuana allowed by section 5:

(a) for a first violation, is responsible for a civil infraction and may be punished by a fine of not more than $500 and forfeiture of the marihuana;

(b) for a second violation, is responsible for a civil infraction and may be punished by a fine of not more than $1,000 and forfeiture of the marihuana;

(c) for a third or subsequent violation, is guilty of a misdemeanor and may be punished by a fine of not more than $2,000 and forfeiture of the marihuana.

3. Except for a person who engaged in conduct described by section 4(1)(a), 4(1)(d), or 4(1)(g), a person under 21 years of age who possesses not more than 2.5 ounces of marihuana or who cultivates not more than 12 marihuana plants:

(a) for a first violation, is responsible for a civil infraction and may be punished as follows:

(1) if the person is less than 18 years of age, by a fine of not more than $100 or community service, forfeiture of the marihuana, and completion of 4 hours of drug education or counseling; or

(2) if the person is at least 18 years of age, by a fine of not more than $100 and forfeiture of the marihuana.

(b) for a second violation, is responsible for a civil infraction and may be punished as follows:

(1) if the person is less than 18 years of age, by a fine of not more than $500 or community service, forfeiture of the marihuana, and completion of 8 hours of drug education or counseling; or

(2) if the person is at least 18 years of age, by a fine of not more than $500 and forfeiture of the marihuana.

4. Except for a person who engaged in conduct described in section 4, a person who possesses more than twice the amount of marihuana allowed by section 5, cultivates more than twice the amount of marihuana allowed by section 5, or delivers without receiving any remuneration to a person who is at least 21 years of age more than twice the amount of marihuana allowed by section 5, shall be responsible for a misdemeanor, but shall not be subject to imprisonment unless the violation was habitual, willful, and for a commercial purpose or the violation involved violence.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

333.27966 Failure to act by department; application to municipality.

Sec. 16. 1. If the department does not timely promulgate rules as required by section 8 of this act or accept or process applications in accordance with section 9 of this act, beginning one year after the effective date of this act, an applicant may submit an application for a marihuana establishment directly to the municipality where the marihuana establishment will be located.

2. If a marihuana establishment submits an application to a municipality under this section, the municipality shall issue a municipal license to the applicant within 90 days after receipt of the application unless the municipality finds and notifies the applicant that the applicant is not in compliance with an ordinance or rule adopted pursuant to this act.

3. If a municipality issues a municipal license pursuant to this section:

(a) the municipality shall notify the department that the municipal license has been issued;

(b) the municipal license has the same force and effect as a state license; and

(c) the holder of the municipal license is not subject to regulation or enforcement by the department during the municipal license term.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

333.27967 Construction of act; effect of federal law; severability.

Sec. 17. This act shall be broadly construed to accomplish its intent as stated in section 2 of this act. Nothing in this act purports to supersede any applicable federal law, except where allowed by federal law. All provisions of this act are self-executing. Any section of this act that is found invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

Industrial Hemp Growers Act

INDUSTRIAL HEMP GROWERS ACT
Act 220 of 2020

AN ACT to create an industrial hemp program; to authorize certain activities involving industrial hemp to require the registration of persons engaged in certain activities; to provide for the sampling and testing of industrial hemp; to provide for the collection of fees; to create certain funds; to provide for the powers and duties of certain state departments and officers and state agencies and officials; to prohibit certain acts; to prescribe civil sanctions; and to repeal acts and parts of acts.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

The People of the State of Michigan enact:

CHAPTER I
General Provisions

333.29101 Short title.

Sec. 101. This act shall be known and may be cited as the "industrial hemp growers act".

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

***** *333.29103 THIS SECTION IS AMENDED EFFECTIVE OCTOBER 11, 2021: See 333.29103.amended* *****

333.29103 Definitions.

Sec. 103. As used in this act:

(a) "Acceptable THC level" means the application of the measurement of uncertainty to the reported total delta-9-THC concentration level on a dry weight basis that produces a distribution or range that includes 0.3% or less total delta-9-THC.

(b) "Applicant" means a person that submits an application for a registration.

(c) "Cannabis" means the plant *Cannabis sativa*L. and any part of that plant, whether growing or not.

(d) "Compliance monitoring testing facility" means a laboratory that meets both of the following requirements:

(*i*) Is registered with the DEA to conduct chemical analysis of controlled substances under 21 CFR 1301.13.

(*ii*) Performs routine compliance monitoring testing of unofficial hemp samples throughout the growing season.

(e) "Controlled substance felony" means a felony violation of the laws of any state having to do with controlled substances or a felony violation of federal law having to do with controlled substances.

(f) "Conviction" means a plea of guilty or nolo contendere, or a finding of guilt related to a controlled substance felony, unless 1 of the following applies:

(*i*) The finding of guilt is subsequently expunged.

(*ii*) The finding of guilt is set aside under 1965 PA 213, MCL 780.621 to 780.624, or otherwise expunged.

(*iii*) The individual is pardoned.

(g) "Corrective action plan" means a plan created under section 601.

(h) "Criminal history record information" means that term as defined in section 1a of 1925 PA 289, MCL 28.241a.

(i) "Criminal history report" means a report that meets all of the following requirements:

(*i*) Is prepared by the United States Federal Bureau of Investigation or another authority approved by the department.

(*ii*) Includes fingerprint-based criminal history record information.

(*iii*) Is completed not more than 60 days before an application is submitted under section 201.

(j) "Culpable mental state greater than negligence" means to act intentionally, knowingly, willfully, or recklessly.

(k) "DEA" means the United States Drug Enforcement Administration.

(*l*) "Department" means the department of agriculture and rural development.

(m) "Designated sampling agent" means a federal, state, or local law enforcement agent authorized by the department to collect official samples under section 401.

(n) "Dispose" means an activity that transitions industrial hemp into a nonretrievable or noningestible form of industrial hemp under section 407.

(o) "Dry weight basis" means the ratio of the amount of moisture in cannabis to the amount of solid in cannabis.

(p) "Dwelling" means a house, building, tent, trailer, vehicle, or other shelter that is occupied in whole or in part as a home, residence, living place, or sleeping place for 1 or more individuals either permanently or transiently, or any portion thereof.

(q) "Fund" means the industrial hemp fund created in section 107.

(r) "Good standing" means all fees or fines owed under this act are paid and there are no outstanding fees or fines owed to the department.

(s) "GPS coordinates" means latitude and longitude coordinates derived from a global positioning system that are taken from a central point within a growing area or structure and that include decimal degrees to 6 places after the decimal.

(t) "Grow" or "growing", unless the context requires otherwise, means to plant, propagate, cultivate, or harvest live plants or viable seed. Grow or growing includes drying and storing harvested industrial hemp, possessing live industrial hemp plants or viable seed on a premises where the live industrial hemp plants or viable seed are grown, growing industrial hemp for the purposes of conducting research, and selling harvested industrial hemp to a processor-handler licensed under the industrial hemp research and development act, 2014 PA 547, MCL 286.841 to 286.859, or processor licensed under the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801, as authorized under this act. Grow or growing does not include selling an intermediary, in-process, or finished industrial hemp product or smokable hemp flower.

(u) "Grower" means a person that is required to be registered under section 201.

(v) "Industrial hemp" means that term as defined in section 7106 of the public health code, 1978 PA 368, MCL 333.7106.

(w) "Industrial hemp plan" means the plan created under section 105.

(x) "Key participant" means a person that has a direct or indirect financial interest in the person or business producing hemp or a person in a corporate entity at an executive level that is regularly responsible for decision making impacting the growing of industrial hemp. A key participant includes, but is not limited to, any of the following:

(*i*) For a sole proprietorship, a sole proprietor.

(*ii*) For a partnership, a partner.

(*iii*) For a corporation, an individual with executive managerial control including, but not limited to, a chief executive officer, a chief operating officer, or a chief financial officer.

(y) Key participant does not include positions such as farm, field, or shift managers.

(z) "Lot" means either of the following:

(*i*) A contiguous area in a field, greenhouse, or other indoor growing area that contains the same variety or strain of cannabis throughout.

(*ii*) A farm, tract, field, or subfield as these terms are defined in 7 CFR 718.2.

(aa) "Marihuana" means that term as defined in section 7106 of the public health code, 1978 PA 368, MCL 333.7106.

(bb) "Measurement of uncertainty" means the parameter associated with the result of a measurement that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to the measurement.

(cc) "Negligence" means the failure to exercise the level of care that a reasonably prudent person would exercise in the same or similar circumstances.

(dd) "Noncompliant industrial hemp" means industrial hemp that is not in compliance with this act or the rules promulgated under this act.

(ee) "Official hemp sample" means a sample of an industrial hemp lot that is collected by a designated sampling agent under section 401 in accordance with department sampling protocols and is tested by a regulatory testing facility.

(ff) "Percentage of THC on a dry weight basis" means the percentage, by weight, of THC in cannabis after excluding the moisture from the cannabis.

(gg) "Person" means an individual, partnership, corporation, association, college or university, or other legal entity.

(hh) "Postdecarboxylation test" means a test of cannabis for delta-9-THC after a carboxyl group is eliminated from delta-9-THC acid.

(ii) "Program" means the industrial hemp program established by this act.

(jj) "Registration" means a grower registration granted under this act.

(kk) "Regulatory testing facility" means a laboratory that meets all of the following requirements:

(*i*) Is registered with the DEA.

(*ii*) Is authorized to conduct chemical analysis of controlled substances pursuant to 21 CFR 1301.13.

(*iii*) Meets the requirements under section 403.

(*iv*) Conducts testing of official hemp samples.

(*ll*) "Remediate" means an activity that transitions noncompliant industrial hemp into industrial hemp that is in compliance with this act and the rules promulgated under this act under section 407.

(mm) "THC" means tetrahydrocannabinol.

(nn) "Total delta-9-THC" means the total available tetrahydrocannabinol measured as the sum of delta-9-tetrahydrocannabinol and 87.7% of the delta-9-tetrahydrocannabinol acid reported on a dry weight basis.

(oo) "Unofficial hemp sample" means a sample of industrial hemp collected by a grower for routine compliance monitoring testing throughout the growing season for testing by a compliance monitoring testing facility.

(pp) "USDA" means the United States Department of Agriculture.

(qq) "Variety" means a subdivision of a species that has the following characteristics:

(*i*) The subdivision is uniform, in the sense that variations between the subdivision and other subdivisions in essential and distinctive characteristics are describable.

(*ii*) The subdivision is distinct, in the sense that the subdivision can be differentiated by 1 or more identifiable morphological, physiological, or other characteristics from all other known subdivisions.

(*iii*) The subdivision is stable, in the sense that the subdivision will remain uniform and distinct if reproduced.

(rr) "Viable seed" means seed that has a germination rate of greater than 0.0%.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

***** *333.29103.amended THIS AMENDED SECTION IS EFFECTIVE OCTOBER 11, 2021* *****

333.29103.amended Definitions.

Sec. 103. As used in this act:

(a) "Acceptable THC level" means the application of the measurement of uncertainty to the reported total delta-9-THC concentration level on a dry weight basis that produces a distribution or range that includes 0.3% or less total delta-9-THC.

(b) "Applicant" means a person that submits an application for a registration.

(c) "Cannabis" means the plant *Cannabis sativa* L. and any part of that plant, whether growing or not.

(d) "Compliance monitoring testing facility" means a laboratory that meets both of the following requirements:

(*i*) Is registered with the DEA to conduct chemical analysis of controlled substances under 21 CFR 1301.13.

(*ii*) Performs routine compliance monitoring testing of unofficial hemp samples throughout the growing season.

(e) "Controlled substance felony" means a felony violation of the laws of any state having to do with controlled substances or a felony violation of federal law having to do with controlled substances.

(f) "Conviction" means a plea of guilty or nolo contendere, or a finding of guilt related to a controlled substance felony, unless 1 of the following applies:

(*i*) The finding of guilt is subsequently expunged.

(*ii*) The finding of guilt is set aside under 1965 PA 213, MCL 780.621 to 780.624, or otherwise expunged.

(*iii*) The individual is pardoned.

(g) "Corrective action plan" means a plan created under section 601.

(h) "Criminal history record information" means that term as defined in section 1a of 1925 PA 289, MCL 28.241a.

(i) "Criminal history report" means a report that meets all of the following requirements:

(*i*) Is prepared by the United States Federal Bureau of Investigation or another authority approved by the department.

(*ii*) Includes fingerprint-based criminal history record information.

(*iii*) Is completed not more than 60 days before an application is submitted under section 201.

(j) "Culpable mental state greater than negligence" means to act intentionally, knowingly, willfully, or recklessly.

(k) "DEA" means the United States Drug Enforcement Administration.

(*l*) "Department" means the department of agriculture and rural development.

(m) "Designated sampling agent" means a federal, state, or local law enforcement agent authorized by the

department to collect official samples under section 401.

(n) "Dispose" means an activity that transitions industrial hemp into a nonretrievable or noningestible form of industrial hemp under section 407.

(o) "Dry weight basis" means the ratio of the amount of moisture in cannabis to the amount of solid in cannabis.

(p) "Dwelling" means a house, building, tent, trailer, vehicle, or other shelter that is occupied in whole or in part as a home, residence, living place, or sleeping place for 1 or more individuals either permanently or transiently, or any portion thereof.

(q) "Fund" means the industrial hemp fund created in section 107.

(r) "Good standing" means all fees or fines owed under this act are paid and there are no outstanding fees or fines owed to the department.

(s) "GPS coordinates" means latitude and longitude coordinates derived from a global positioning system that are taken from a central point within a growing area or structure and that include decimal degrees to 6 places after the decimal.

(t) "Grow" or "growing", unless the context requires otherwise, means to plant, propagate, cultivate, or harvest live plants or viable seed. Grow or growing includes drying and storing harvested industrial hemp, possessing live industrial hemp plants or viable seed on a premises where the live industrial hemp plants or viable seed are grown, growing industrial hemp for the purposes of conducting research, and selling harvested industrial hemp to a processor-handler licensed under the industrial hemp research and development act, 2014 PA 547, MCL 286.841 to 286.859, or processor licensed under the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801, as authorized under this act. Grow or growing does not include selling an intermediary, in-process, or finished industrial hemp product or smokable hemp flower.

(u) "Grower" means a person that is required to be registered under section 201.

(v) "Industrial hemp" means that term as defined in section 3 of the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27953.

(w) "Industrial hemp plan" means the plan created under section 105.

(x) "Key participant" means a person that has a direct or indirect financial interest in the person or business producing hemp or a person in a corporate entity at an executive level that is regularly responsible for decision making impacting the growing of industrial hemp. A key participant includes, but is not limited to, any of the following:

(*i*) For a sole proprietorship, a sole proprietor.

(*ii*) For a partnership, a partner.

(*iii*) For a corporation, an individual with executive managerial control including, but not limited to, a chief executive officer, a chief operating officer, or a chief financial officer.

(y) Key participant does not include positions such as farm, field, or shift managers.

(z) "Lot" means either of the following:

(*i*) A contiguous area in a field, greenhouse, or other indoor growing area that contains the same variety or strain of cannabis throughout.

(*ii*) A farm, tract, field, or subfield as these terms are defined in 7 CFR 718.2.

(aa) "Marihuana" means that term as defined in section 3 of the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27953.

(bb) "Measurement of uncertainty" means the parameter associated with the result of a measurement that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to the measurement.

(cc) "Negligence" means the failure to exercise the level of care that a reasonably prudent person would exercise in the same or similar circumstances.

(dd) "Noncompliant industrial hemp" means industrial hemp that is not in compliance with this act or the rules promulgated under this act.

(ee) "Official hemp sample" means a sample of an industrial hemp lot that is collected by a designated sampling agent under section 401 in accordance with department sampling protocols and is tested by a regulatory testing facility.

(ff) "Percentage of THC on a dry weight basis" means the percentage, by weight, of THC in cannabis after excluding the moisture from the cannabis.

(gg) "Person" means an individual, partnership, corporation, association, college or university, or other legal entity.

(hh) "Postdecarboxylation test" means a test of cannabis for delta-9-THC after a carboxyl group is eliminated from delta-9-THC acid.

(ii) "Program" means the industrial hemp program established by this act.

(jj) "Registration" means a grower registration granted under this act.

(kk) "Regulatory testing facility" means a laboratory that meets all of the following requirements:

(*i*) Is registered with the DEA.

(*ii*) Is authorized to conduct chemical analysis of controlled substances pursuant to 21 CFR 1301.13.

(*iii*) Meets the requirements under section 403.

(*iv*) Conducts testing of official hemp samples.

(*ll*) "Remediate" means an activity that transitions noncompliant industrial hemp into industrial hemp that is in compliance with this act and the rules promulgated under this act under section 407.

(mm) "THC" means that term as defined in section 3 of the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27953.

(nn) "Total delta-9-THC" means the total available tetrahydrocannabinol measured as the sum of delta-9-tetrahydrocannabinol and 87.7% of the delta-9-tetrahydrocannabinol acid reported on a dry weight basis.

(oo) "Unofficial hemp sample" means a sample of industrial hemp collected by a grower for routine compliance monitoring testing throughout the growing season for testing by a compliance monitoring testing facility.

(pp) "USDA" means the United States Department of Agriculture.

(qq) "Variety" means a subdivision of a species that has the following characteristics:

(*i*) The subdivision is uniform, in the sense that variations between the subdivision and other subdivisions in essential and distinctive characteristics are describable.

(*ii*) The subdivision is distinct, in the sense that the subdivision can be differentiated by 1 or more identifiable morphological, physiological, or other characteristics from all other known subdivisions.

(*iii*) The subdivision is stable, in the sense that the subdivision will remain uniform and distinct if reproduced.

(rr) "Viable seed" means seed that has a germination rate of greater than 0.0%.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021;—Am. 2021, Act 58, Eff. Oct. 11, 2021

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333.29105 Industrial hemp program; USDA approval.

Sec. 105. (1) The department shall establish, operate, and administer an industrial hemp program.

(2) The department shall develop and submit to the USDA for approval an industrial hemp plan for this state that complies with 7 USC 1639o to 1639s. Upon approval, the department shall use the industrial hemp plan to implement the program.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

333.29107 Industrial hemp fund.

Sec. 107. (1) The industrial hemp fund is created within the state treasury.

(2) The state treasurer may receive the fees collected under section 511 for deposit into the fund. The state treasurer may also receive money or other assets from any other source for deposit into the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year remains in the fund and does not lapse to the general fund.

(4) The department is the administrator of the fund for auditing purposes.

(5) The department shall expend money from the fund to establish, operate, and enforce the program.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

CHAPTER II

Application and Registration

333.29201 Grower registration; application; requirements.

Sec. 201. (1) A person shall not grow industrial hemp in this state unless the person is a grower.

(2) A person applying for a registration under this section shall do so on an application and in a manner provided by the department. The applicant shall include with the application all of the following information:

(a) The applicant's full name, date of birth, mailing address, telephone number, and electronic mail address. If the applicant is not an individual, the application must include the EIN number of the applicant and for each key participant, his or her full name, date of birth, title, and electronic mail address.

(b) The total acreage and greenhouse or other indoor square footage where industrial hemp will be grown.

(c) The address and legal description of and GPS coordinates for each field, greenhouse, building, or other

location where industrial hemp will be grown.

(d) Maps depicting each field, greenhouse, building, or other location where industrial hemp will be grown that indicate entrances, field boundaries, and specific locations corresponding to the GPS coordinates provided under subdivision (c).

(e) A criminal history report for the applicant, or, if the applicant is not an individual, a criminal history report for each key participant.

(3) The department shall grant an applicant described in this section a registration to grow industrial hemp if the applicant does all of the following:

(a) Submits a completed application under subsection (2).

(b) Pays the applicable fees under section 511.

(c) Meets the qualifications for registration.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

333.29211 Initial registration; expiration; renewal; nontransferability.

Sec. 211. (1) An initial registration granted by the department under this act expires at midnight on January 31 immediately following the date on which the registration is granted.

(2) Other than a registration granted under subsection (1), a registration is valid for 1 year beginning on February 1 and expiring at midnight on the following January 31.

(3) To renew a registration, an applicant must do all of the following:

(a) Submit an application on a form and in a manner provided by the department.

(b) If the application is submitted on or before January 31, pay the registration fee under section 511.

(c) If an application is submitted after January 31, pay the registration fee under section 511 and a late fee of $250.00.

(4) If an applicant provides express written consent to disclose personal information on an application, the applicant's name, email address, and telephone number may be disclosed to a grower, a processor-handler licensed under the industrial hemp research and development act, 2014 PA 547, MCL 286.841 to 286.859, or a processor licensed under the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801. If the applicant does not provide express written consent to disclose personal information on the application, any information submitted by the applicant to the department on the application is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. This subsection does not apply to the disclosure of personal information to a law enforcement agency.

(5) A registration is nontransferable.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29213 Denial of application; notification.

Sec. 213. (1) The department shall approve or deny an application for a registration within 120 days after the completed application is submitted.

(2) The department shall deny an application for a registration if any of the following apply:

(a) The application is incomplete.

(b) If the applicant is an individual, the applicant is under the age of 18.

(c) The applicant's location for growing industrial hemp is not located in this state.

(d) The applicant has not demonstrated, as determined by the department, a willingness to comply with this act or rules promulgated under this act.

(e) The applicant has unpaid fees or civil fines owed to this state under this act.

(f) The applicant has made a false statement or representation, as determined by the department, to the department or a law enforcement agency.

(g) The applicant had a registration revoked in the immediately preceding 5-year period.

(h) The applicant or, if the applicant is not an individual, a key participant of the applicant was convicted of a controlled substance felony in the immediately preceding 10-year period. This subdivision does not apply if both of the following conditions are met:

(*i*) The applicant or key participant grew industrial hemp before December 20, 2018, as a pilot program participant under the agricultural act of 2014, Public Law 113-79.

(*ii*) The applicant's or key participant's conviction occurred before December 20, 2018.

(3) If the department denies an application because it is incomplete, the department shall notify the applicant of the denial within 120 days after the application is submitted, by letter or by electronic mail, and state the deficiency and request additional information.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

333.29215 Documentation of registration.

Sec. 215. The department shall issue a document to a grower that evidences the granting of a registration.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

333.29217 Appeal of denied application; hearing.

Sec. 217. (1) If the department denies an application for a registration, the applicant may appeal the denial by submitting a written request for a hearing to the department. The applicant must submit the request to the department not more than 15 days after the date of the denial.

(2) The department shall conduct a hearing requested under this section pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

CHAPTER III

Grower Registration

333.29301 Report to USDA Farm Service Agency; grower duties.

Sec. 301. (1) After a grower is granted a registration under chapter II and not more than 60 days before the grower plants any industrial hemp, the grower shall report the following information to the USDA Farm Service Agency:

(a) The address and total acreage of and GPS coordinates for each field, greenhouse, building, or other location where industrial hemp will be grown.

(b) The grower's registration number.

(2) A grower shall do all of the following:

(a) Allow the department or a law enforcement agency to enter onto and inspect all premises where industrial hemp is or will be located, with or without cause and with or without advance notice.

(b) On request from the department or a law enforcement agency, produce a copy of the grower's registration for inspection.

(c) Contact the department to collect an official hemp sample under section 401.

(d) Harvest the industrial hemp lot within 30 days after an official hemp sample is collected under section 401.

(e) Dispose of or remediate under section 407, without compensation, any industrial hemp lot determined to be noncompliant under section 405.

(f) Dispose of the following, without compensation, under section 407:

(*i*) Industrial hemp that is at a location that is not disclosed on the grower's application under section 201.

(*ii*) Industrial hemp that is grown in violation of this act.

(g) Report all of the following information to the department by November 30 of each year:

(*i*) Total acreage of industrial hemp that the grower grew in the immediately preceding growing season.

(*ii*) Total acreage of industrial hemp that the grower harvested in the immediately preceding growing season.

(*iii*) Total acreage of industrial hemp that the grower disposed of in the immediately preceding growing season.

(h) Use only a compliance monitoring testing facility to test unofficial hemp samples for compliance monitoring to determine whether the industrial hemp is in compliance with this act.

(i) If the department is inspecting or investigating a complaint, the grower or the grower's authorized agent must be present and do all of the following:

(*i*) Allow the department to have access to all structures directly related to the production of industrial hemp including, but not limited to, a barn, machine shed, greenhouse, or storage area.

(*ii*) Provide business records including books, accounts, records, files, and any other documents in print or electronic media that the department determines is relevant or necessary for the inspection or investigation.

(*iii*) Allow a law enforcement agency to accompany the department during an inspection or investigation.

(*iv*) Allow the department to collect official hemp samples for the purpose of completing an inspection or investigation.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29303 Prohibitions on grower.

Sec. 303. A grower shall not do any of the following:

(a) Grow industrial hemp that is not in compliance with the grower's registration.

(b) Grow industrial hemp in a location that is not disclosed on the grower's application under section 201.

(c) Grow industrial hemp in a location that is not owned or completely controlled by the grower. As used in this subdivision, "completely controlled" means to be solely responsible for all of the industrial hemp grown at a location.

(d) Grow industrial hemp in a dwelling.

(e) Grow a variety of industrial hemp that is on the list created under section 505.

(f) Sell or transport, or permit the sale or transport of, viable industrial hemp plants or viable seed.

(g) Harvest industrial hemp before an official hemp sample is collected under section 401.

(h) Sell raw industrial hemp to a person in this state that is not licensed as a processor-handler under the industrial hemp research and development act, 2014 PA 547, MCL 286.841 to 286.859, or as a processor under the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801, as authorized under this act.

(i) Dispose of industrial hemp without submitting a notice of intent to dispose to the department under section 407(6)(a). This subdivision does not apply to a grower that disposes of industrial hemp affected by poor health, pests, disease, or weather or to prevent cross-pollination of male or hermaphrodite industrial hemp plants.

(j) Sell an intermediary, in-process, or finished industrial hemp product or smokable hemp flower, unless the grower is licensed as a processor-handler under the industrial hemp research and development act, 2014 PA 547, MCL 286.841 to 286.859, or as a processor under the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29305 Sign posting requirements.

Sec. 305. (1) A grower shall post signage in a conspicuous location at each boundary line of each location where industrial hemp is grown. The signage must include all of the following:

(a) The statement, "Industrial Hemp Registered with the Michigan Department of Agriculture and Rural Development".

(b) The grower's name.

(c) The grower's registration number.

(2) The signage described under subsection (1) must meet all of the following requirements:

(a) Be a minimum of 8 inches by 10 inches.

(b) Use print that is clearly legible and not smaller than 3/8 inch tall.

(c) Be made of weather-resistant material.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29307 Record of sale of raw industrial hemp.

Sec. 307. A grower shall provide a record of sale of raw industrial hemp to a processor-handler licensed under the industrial hemp research and development act, 2014 PA 547, MCL 286.841 to 286.859, or a processor licensed under the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801. The record of sale must contain all of the following information:

(a) The name and license number of the processor-handler or processor purchasing the industrial hemp.

(b) The total weight of industrial hemp purchased.

(c) The total sale price of the industrial hemp.

(d) The date of the sale.

(e) The certified report of the total delta-9-THC testing under section 405 for each variety of industrial hemp purchased.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29309 Maintenance of records.

Sec. 309. (1) A grower shall maintain records that contain all of the following information:

(a) Each record of sale generated under section 307.

(b) The name and mailing address of any person from whom the grower purchased viable industrial hemp.

(c) The name of each variety of industrial hemp the grower grows.

(d) Evidence that the information required to be reported under section 301 was submitted and received by the USDA Farm Service Agency.

(e) A notice of disposal generated under section 407(6)(b), if applicable.

(2) A grower shall maintain the records under subsection (1) for 5 years and make the records available to the department on request.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29311 Growing locations; approval required.

Sec. 311. (1) Before implementing a modification to a growing location listed in a registration, the grower must submit a growing location modification request on a form provided by the department and the required fee under section 511, and obtain written approval from the department.

(2) The department shall not approve a growing location modification request under this section unless the grower has paid the growing location modification fee in full.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29313 Sale of industrial hemp to processor.

Sec. 313. A grower may sell industrial hemp to a processor that is licensed under the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

CHAPTER IV

Sampling, Testing, and Disposal

333.29401 Harvesting of industrial hemp crop; sampling requirements.

Sec. 401. (1) A grower that intends to harvest an industrial hemp lot shall contact the department not more than 30 days or less than 20 days before the grower's anticipated harvest to collect an official hemp sample of each lot of industrial hemp grown. A designated sampling agent shall collect an official hemp sample before the grower's anticipated harvest, and the grower or the grower's authorized representative must be present.

(2) When a designated sampling agent collects an official hemp sample, the grower shall provide the designated sampling agent with complete and unrestricted access to both of the following during normal business hours:

(a) All cannabis.

(b) All acreage, greenhouses, indoor square footage, fields, buildings, or other locations, including any location listed in the application under section 201, where cannabis is growing or stored.

(3) The department shall transport or cause to be transported an official hemp sample collected under this section to a regulatory testing facility for total delta-9-THC testing under section 403.

(4) A grower that requests the collection of an official hemp sample under this section must be in good standing. An official hemp sample will not be collected until any outstanding fee or fine under this act is paid.

(5) A grower may collect an unofficial hemp sample and submit the unofficial hemp sample to a compliance monitoring testing facility for compliance monitoring at any time to determine whether the industrial hemp is in compliance with this act.

(6) The department may use performance-based sampling that allows for reduced or no regulatory sampling of specific certified seed, varieties yielding consistently compliant hemp, lots used for academic research by a college or university, historical performance of the grower, or other factors, which have the potential to ensure at a confidence level of 95% that no more than 1% of the plants in each lot would be noncompliant.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29403 Regulatory testing facility or compliance monitoring testing facility; requirements; duties; report.

Sec. 403. (1) A regulatory testing facility that performs total delta-9-THC testing must do all of the following:

(a) Adopt a laboratory quality assurance program that ensures the validity and reliability of the total delta-9-THC test results.

(b) Adopt an analytical method selection, validation, and verification procedure that ensures that the total delta-9-THC testing method is appropriate.

(c) Demonstrate that the total delta-9-THC testing ensures consistent and accurate analytical performance.

(d) Adopt method performance selection specifications that ensure that the total delta-9-THC testing methods are sufficient to detect the total delta-9-THC as required under this act.

(e) Report the measurement of uncertainty on the certified report of the total delta-9-THC test.

(f) Adopt a total delta-9-THC testing method that includes a postdecarboxylation test or other similar method.

(2) A compliance monitoring testing facility or regulatory testing facility that performs total delta-9-THC testing shall do both of the following:

(a) Ensure that an official hemp sample or unofficial hemp sample is not commingled with any other official hemp sample or unofficial hemp sample.

(b) Assign a sample identification number to each official hemp sample or unofficial hemp sample.

(3) A regulatory testing facility or compliance monitoring testing facility shall report all of the following information to the grower for each test performed:

(a) The grower's full name and mailing address.

(b) The grower's registration number.

(c) Each sample identification number assigned under subsection (1)(h).

(d) The testing facility's name and DEA registration number, if applicable.

(e) The date the total delta-9-THC testing was completed.

(f) The total delta-9-THC.

(4) The requirement for regulatory testing facilities and compliance monitoring testing facilities to be registered with the DEA is effective on December 31, 2022.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

Compiler's note: In subsection (3)(c), the reference to "subsection (1)(h)" evidently should read "subsection (2)(b)".

333.29405 Testing results; certified report; harvesting timeline.

Sec. 405. (1) If the results of the total delta-9-THC test of an official hemp sample indicate a total delta-9-THC concentration of not more than the acceptable THC level, the regulatory testing facility shall provide to the grower and the department a certified report that states the results of the total delta-9-THC test.

(2) If the results of the total delta-9-THC test of an official hemp sample indicate a total delta-9-THC concentration that is greater than the acceptable THC level, the regulatory testing facility shall provide the grower and the department a certified report that states the results of the total delta-9-THC test, and the grower must dispose of or remediate the noncompliant industrial hemp lot under section 407.

(3) A grower shall harvest an industrial hemp lot within 30 days after an official hemp sample is collected under section 401. If the grower is unable to harvest the industrial hemp lot within the 30-day period because of any of the following, the grower may submit a request to the department to collect a second official hemp sample under section 401:

(a) Weather.

(b) Agricultural practices.

(c) Equipment failure.

(d) Any other reason approved by the department.

(4) A second official hemp sample collected under subsection (3) must be tested under section 403, and the grower must harvest the remaining industrial hemp lot within 30 days after the second official sample is collected under section 401. A grower shall not request the department to collect a second official sample for testing under subsection (3) unless both of the following apply:

(a) The grower is in good standing with the department.

(b) The request to collect a second official sample is not for the purpose of delaying the harvest to increase cannabinoid concentration.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29407 Destruction or remediation of noncompliant hemp; timeline; methods; grower duties; exceptions.

Sec. 407. (1) A grower that receives a certified report under section 405(2) shall, within 30 days after receiving the certified report, dispose of the noncompliant hemp lot under subsection (2) or remediate the noncompliant industrial hemp lot under subsection (3).

(2) Except as provided in subsection (8), a grower shall dispose of a noncompliant industrial hemp lot using 1 of the following methods:

(a) Plowing under using a curved plow blade to rotate the subsoil to the surface and bury the industrial hemp below the subsoil.

(b) Mulching, disking, or composting the industrial hemp and blending the industrial hemp with existing soil, manure, or other biomass material.

(c) Mowing, deep burial, or burning.

(3) Except as provided in subsection (8), a grower shall remediate a noncompliant industrial hemp lot using 1 of the following methods:

(a) Removing all of the floral material and disposing of the floral material under subsection (2).

(b) Shredding the industrial hemp plant into a biomass-like material.

(4) If a grower remediates a noncompliant industrial hemp lot under subsection (3), the grower shall

contact the department to collect an official hemp sample of the industrial hemp lot under section 401. The official hemp sample must be tested by a regulatory testing facility under section 403. If the results of the total delta-9-THC test indicate a total delta-9-THC concentration of not more than the acceptable THC level, the grower must harvest the industrial hemp lot within 30 days after the official hemp sample is collected under section 401. If the results of the total delta-9-THC test indicate a total delta-9-THC concentration that is greater than the acceptable THC level, the grower must dispose of the industrial hemp lot under subsection (2). The regulatory testing facility shall provide the grower and the department a certified report that states the results of any total delta-9-THC test completed under this subsection.

(5) The industrial hemp disposed of under subsection (2) must be rendered nonretrievable or noningestible.

(6) A grower that disposes of industrial hemp under subsection (2) shall do both of the following:

(a) Submit a notice of intent to dispose to the department at least 48 hours before disposing of the industrial hemp. The grower shall submit the notice of intent to dispose on a form and in a manner provided by the department.

(b) Submit a notice of disposal to the department within 48 hours after the industrial hemp is disposed of under subsection (2) that contains all of the following information:

(*i*) The date of the disposal.

(*ii*) The method of disposal.

(*iii*) The total acreage or square footage disposed of.

(*iv*) The reason for disposal.

(*v*) Photographic or video evidence of the disposal.

(7) The grower shall allow an agent of the department to be present during any disposal or remediation activities conducted under this section.

(8) Industrial hemp that is disposed of for any of the following reasons is not subject to the disposal requirements under this section:

(a) Poor health.

(b) Pests.

(c) Disease.

(d) Weather.

(e) To prevent cross-pollination of male or hermaphrodite industrial hemp plants.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29409 Effective date of Chapter IV.

Sec. 409. The provisions of this chapter are effective beginning November 1, 2020.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

CHAPTER V
Administration

333.29501 Rules.

Sec. 501. The department may promulgate rules to implement this act under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

333.29503 Department reporting requirements.

Sec. 503. (1) By the first of each month, the department shall report all of the following to the USDA:

(a) For each grower, the information provided on an application submitted under section 201.

(b) Each grower's registration number.

(c) The status of each grower registration.

(d) Any changes or updates to a grower's information provided under subdivision (a).

(e) An indication that there were no changes or updates to the reports previously submitted under this subsection, if applicable.

(f) The date for which the information contained in subdivisions (a), (b), (c), and (d) is current.

(g) The period covered by the report.

(2) If a grower is required to dispose of an industrial hemp lot under section 407, by the first of each month, the department shall report all of the following to the USDA:

(a) The information provided on the grower's application submitted under section 201.

(b) The grower's registration number.

(c) The total acreage or square footage of industrial hemp that was disposed of.

(d) The date on which the industrial hemp was destroyed.

(3) Not later than December 15 of each year, the department shall report all of the following information to the USDA:

(a) The total acreage of industrial hemp that was grown in the immediately preceding growing season.

(b) The total acreage of industrial hemp that was harvested in the immediately preceding growing season.

(c) The total acreage of industrial hemp that was disposed of in the immediately preceding growing season.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29505 List of prohibited industrial hemp varieties; website; enforcement response policy.

Sec. 505. (1) The department may create and maintain on its website a list of prohibited industrial hemp varieties.

(2) The department shall develop an enforcement response policy for use under chapter VI. The enforcement response policy must provide for consideration and application of all of the following factors:

(a) Whether a grower has committed 1 or more violations under chapter VI.

(b) The severity of a violation under chapter VI.

(c) Whether a person has had previous contact with the department about violations or attempted violations under chapter VI.

(d) Past enforcement actions under chapter VI.

(e) Any other circumstances as determined by the department.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29507 Application maintenance.

Sec. 507. The department shall maintain an application submitted under section 201 for 5 years.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

333.29509 Official regulatory testing facility.

Sec. 509. (1) The department's laboratory is the official regulatory testing facility for testing official hemp samples under chapter IV.

(2) The department may contract with a third-party laboratory to conduct the testing of official hemp samples under chapter IV. A third-party laboratory must meet all of the following requirements:

(a) Be registered with the DEA.

(b) Meet the standards under chapter IV.

(c) Provide copies of any certified report that states the results of a total delta-9-THC test completed under section 403 to the department within 24 hours after the total delta-9-THC test is completed.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29511 Grower fees.

Sec. 511. (1) A grower is subject to the following fees, as applicable:

(a) A registration fee of $1,250.00.

(b) A growing location modification fee of $50.00 for each growing location modification request form submitted under section 311.

(2) A grower shall pay a fee required under this act at the time an application is submitted under section 201 or at the time the growing location modification request form is submitted under section 311. The fee must be paid using a method prescribed by the department.

(3) A fee required under this act is nonrefundable and nontransferable.

(4) A grower shall pay a fee charged for total delta-9-THC testing under chapter IV within 15 days after receiving the invoice. A fee under this subsection is limited to the reasonable costs of conducting the testing.

(5) A grower shall pay a fee charged for the collection of an official hemp sample within 15 days after receiving the invoice. A fee under this subsection is limited to the reasonable costs of collecting the official hemp sample.

(6) The department may refer a fee charged under subsection (4) or (5) that remains unpaid for more than 180 days to the department of treasury for collection.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29513 Local rule, regulation, code, or ordinance; prohibited.

Sec. 513. A political subdivision of this state shall not adopt a rule, regulation, code, or ordinance that restricts or limits the requirements under this act.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

333.29515 Annual inspection.

Sec. 515. The department shall conduct an annual inspection of randomly selected growers to verify that industrial hemp is grown in compliance with this act.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

CHAPTER VI

Violations and Penalties

333.29601 Negligent violations of this act; notice; corrective action plan; penalties.

Sec. 601. (1) A grower negligently violates this act if the grower does any of the following:

(a) Fails to provide a legal description for each field, greenhouse, building, or other location where industrial hemp will be grown under section 201.

(b) Fails to obtain a registration.

(c) Grows industrial hemp that exceeds the acceptable THC level but does not have more than 1.0% total delta-9-THC on a dry weight basis.

(d) Any other violation that the department determines is negligent under subsection (7).

(2) If a grower violates subsection (1), the department shall issue the grower a notice of violation and the terms of a corrective action plan. The grower must comply with the terms of the corrective action plan.

(3) The department shall develop a corrective action plan under subsection (2) or (7) that includes the following terms:

(a) A reasonable date by which the grower will correct the negligent violation.

(b) A requirement that for not less than 2 years after a violation under subsection (1), the grower shall make periodic reports to the department about the grower's progress and compliance with the requirements of the corrective action plan.

(4) A grower that negligently violates this act 3 times in a 5-year period is ineligible to register as a grower for 5 years from the date of the third violation.

(5) A negligent violation under this section is not subject to criminal enforcement.

(6) A grower is not subject to more than 1 negligent violation under subsection (1) per growing season.

(7) In addition to a negligent violation listed in subsection (1), the department may determine that any other violation of this act is a negligent violation. If the department determines that a grower negligently violated this act, the department shall issue the grower a notice of violation and the terms of a corrective action plan. The grower must comply with the terms of the corrective action plan. The department shall use the enforcement response policy created under section 505 to determine whether a violation of this act is a negligent violation.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29602 Violations of this act.

Sec. 602. Except for a negligent violation under section 601(1), a person violates this act if the person does any of the following:

(a) Intentionally grows or is in possession of cannabis with a total delta-9-THC content greater than the acceptable THC level.

(b) Makes a false or misleading statement, as determined by the department, to the department or a law enforcement agency.

(c) Fails to comply with an order from the department or a law enforcement agency.

(d) Materially falsifies information required under section 201.

(e) Commits any other violation of this act, a rule promulgated under this act, or an order issued under this act.

History: Add. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29603 Investigations; registration suspension; notice.

Sec. 603. (1) If a grower violates or is suspected of violating section 602(a), (b), (c), or (e), the department shall investigate and may suspend the grower's registration for not more than 60 days.

(2) If the department suspends a registration under this section, the department shall notify the grower in writing that the registration is suspended.

(3) If a registration is suspended under this section, the grower shall not harvest or remove industrial hemp from the location where the industrial hemp was located at the time the department issued the notice of suspension, except as authorized in writing by the department.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29605 Revocation of registration; hearing; suspension removal; effect on other registrations.

Sec. 605. (1) The department shall not permanently revoke a registration suspended under section 603 unless the department notifies the grower of the allegation against the grower and gives the grower an opportunity for a hearing to appeal the revocation.

(2) The department shall schedule a hearing on a revocation under subsection (1) for a date as soon as practicable that is not more than 60 days after the date of notification of a registration suspension.

(3) The department shall conduct the hearing required under this section pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(4) If the department finds by a preponderance of the evidence that a person committed a violation under section 602(a), (b), (c), or (e) is true, the department shall revoke the registration. The revocation is effective immediately, and the department or a law enforcement agency must order the grower to dispose of all cannabis that is in the grower's possession under section 407.

(5) The department or a law enforcement agency shall not compensate or indemnify the value of the cannabis that is destroyed or confiscated under this section.

(6) If the department revokes a registration, the grower is barred from participating in the program in any capacity for a minimum of 5 years from the date on which the registration was revoked.

(7) If the department does not find by a preponderance of the evidence that a person committed a violation under section 602(a), (b), (c), or (e) is true, the department shall remove the suspension imposed under section 603 within 24 hours of the department's determination.

(8) If a grower commits a violation under section 602(a), (b), (c), or (e) 3 times within a 5-year period, the grower is barred from participating in the program in any capacity for a minimum of 5 years from the date of the grower's third violation.

(9) A suspension, revocation, or denial of a registration of a person who is an individual may result in the suspension, revocation, or denial of any other registration held or applied for by that individual under this act. The registration of a corporation, partnership, or other association may by suspended when a registration or registration application of a partner, trustee, director or officer, member, or a person exercising control of the corporation, partnership, or other association is suspended, revoked, or denied.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29607 Violation of MCL 333.29602; misdemeanor.

Sec. 607. A grower that commits a violation under section 602 is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $5,000.00, or both.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29609 Violation of MCL 333.29601 or 333.29602; administrative fine and penalties; civil action; affirmative defense.

Sec. 609. (1) A grower that commits a violation under section 601 or 602 may be subject to an administrative fine. On the request of a person to whom an administrative fine is issued, the department shall conduct a hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The department shall impose an administrative fine authorized under this section as follows:

(a) For a first violation, an administrative fine of not less than $100.00 or more than $500.00, plus the actual costs of the investigation and double the amount of any economic benefit associated with the violation.

(b) For a second violation that occurs within 5 years after a violation under subdivision (a), an administrative fine of not less than $500.00 or more than $1,000.00, plus the actual costs of the investigation and double the amount of any economic benefit associated with the violation.

(c) For a third or subsequent violation that occurs within 5 years after a violation under subdivision (a), an administrative fine of not less than $1,000.00 or more than $2,000.00, plus the actual costs of the investigation and double the amount of any economic benefit associated with the violation.

(2) A grower that commits a violation under section 602(d) is ineligible to participate in the program.

(3) In addition to imposing an administrative fine under subsection (1), the department may do any of the following:

(a) Issue a cease and desist order, either orally or in writing. The department must inform the grower of the reasons for the cease and desist order. A cease and desist order issued under this subdivision is effective immediately, and failure to comply may subject the grower to an administrative fine under subsection (1).

(b) Bring an action to enjoin a violation or attempted violation under section 602 in the county in which the

violation occurs or is about to occur.

(c) Bring a civil action to restrain, by temporary or permanent injunction, a violation under section 602. The action may be brought in the circuit court for the county where the violation occurred. The court may issue a temporary or permanent injunction and issue other equitable orders or judgments.

(4) The attorney general may file a civil action for a violation under section 602. A person that commits or attempts to commit a violation under section 602 may be ordered to pay a civil fine of not more than $5,000.00 for each violation or attempted violation. In addition, the attorney general may bring an action in circuit court to recover the reasonable costs of the investigation from a grower that committed or attempted to commit a violation under section 602. Money recovered under this subsection must be forwarded to the state treasurer for deposit into the fund.

(5) A decision of the department under this section is subject to judicial review as provided by law.

(6) The department shall advise the attorney general of the failure of any person to pay an administrative fine imposed under subsection (1). The attorney general shall bring an action to recover the fine.

(7) Any administrative fine, investigation costs, or recovery of an economic benefit associated with a violation that is collected under this section must be paid to the state treasury and deposited into the fund.

(8) A person that violates this act is liable for all damages sustained by a purchaser of a product sold in violation of this act. In an enforcement action, a court may order, in addition to other sanctions provided by law, restitution to a party injured by the purchase of a product sold in violation of this act.

(9) As an affirmative defense to any action filed under this section, in addition to any other lawful defense, a grower may present evidence that, at the time of the alleged violation or attempted violation, the grower was in compliance with this act and the rules promulgated under this act.

(10) If the department determines that a grower individually, or by the action of an agent or employee, or as the agent or employee of another, committed a violation under section 602, that did not result in significant harm to public health or the environment, the department may issue a warning instead of imposing an administrative fine under subsection (1).

(11) The applicable provisions of the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948, apply to civil actions filed under this section.

(12) The department shall report to the United States Attorney General, the USDA, and the chief law enforcement officer of this state any violation under this chapter committed with a culpable mental state greater than negligence.

(13) The department shall use the enforcement response policy in determining what actions to pursue under this section.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

CHAPTER VII
Emergency Rule Codification

333.29701 Repealed. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

Compiler's note: The repealed section pertained to growers registered under the industrial hemp research and development act.

CHAPTER VIII
Colleges and Universities

****** 333.29801.added THIS ADDED SECTION DOES NOT TAKE EFFECT UNLESS ACT 547 OF 2014 IS REPEALED. (See enacting section 2 of Act 4 of 2021.) ******

333.29801.added Colleges or universities; growing of industrial hemp for research; requirements; "college or university" defined.

Sec. 801. (1) A college or university that grows industrial hemp for the purpose of conducting research shall do all of the following:

(a) Register as a grower under chapter II.

(b) Collect samples of each lot of industrial hemp and complete a total delta-9-THC test as required under chapter IV. If the college or university adopts alternative methods for collecting a sample and completing a total delta-9-THC test, the college or university does not have to comply with the requirements of chapter IV. A total delta-9-THC test conducted under this subdivision must achieve a confidence level of 95% with respect to the acceptable THC level.

(c) Dispose of noncompliant industrial hemp under section 407.

(2) As used in this section, "college or university" means a college or university described in section 4, 5,

or 6 of article VIII of the state constitution of 1963 or a junior college or community college described in section 7 of article VIII of the state constitution of 1963.

History: Add. 2021, Act 4, Eff. (pending).

Compiler's note: Enacting section 2 of Act 4 of 2021 provides:

"Enacting section 2. Section 801 of the industrial hemp growers act, 2020 PA 220, MCL 333.29801, does not take effect unless the industrial hemp research and development act, 2014 PA 547, MCL 286.841 to 286.859, is repealed."

House Bill 4741

2021

Act No. 58
Public Acts of 2021
Approved by the Governor
July 13, 2021
Filed with the Secretary of State
July 13, 2021
EFFECTIVE DATE: October 11, 2021

STATE OF MICHIGAN
101ST LEGISLATURE
REGULAR SESSION OF 2021

Introduced by Reps. Clements, Hertel and Lilly

ENROLLED HOUSE BILL No. 4741

AN ACT to amend 2020 PA 220, entitled "An act to create an industrial hemp program; to authorize certain activities involving industrial hemp to require the registration of persons engaged in certain activities; to provide for the sampling and testing of industrial hemp; to provide for the collection of fees; to create certain funds; to provide for the powers and duties of certain state departments and officers and state agencies and officials; to prohibit certain acts; to prescribe civil sanctions; and to repeal acts and parts of acts," by amending section 103 (MCL 333.29103), as amended by 2021 PA 4.

The People of the State of Michigan enact:

Sec. 103. As used in this act:

(a) "Acceptable THC level" means the application of the measurement of uncertainty to the reported total delta-9-THC concentration level on a dry weight basis that produces a distribution or range that includes 0.3% or less total delta-9-THC.

(b) "Applicant" means a person that submits an application for a registration.

(c) "Cannabis" means the plant *Cannabis sativa* L. and any part of that plant, whether growing or not.

(d) "Compliance monitoring testing facility" means a laboratory that meets both of the following requirements:

(*i*) Is registered with the DEA to conduct chemical analysis of controlled substances under 21 CFR 1301.13.

(*ii*) Performs routine compliance monitoring testing of unofficial hemp samples throughout the growing season.

(e) "Controlled substance felony" means a felony violation of the laws of any state having to do with controlled substances or a felony violation of federal law having to do with controlled substances.

(f) "Conviction" means a plea of guilty or nolo contendere, or a finding of guilt related to a controlled substance felony, unless 1 of the following applies:

(*i*) The finding of guilt is subsequently expunged.

(*ii*) The finding of guilt is set aside under 1965 PA 213, MCL 780.621 to 780.624, or otherwise expunged.

(*iii*) The individual is pardoned.

(g) "Corrective action plan" means a plan created under section 601.

(h) "Criminal history record information" means that term as defined in section 1a of 1925 PA 289, MCL 28.241a.

(i) "Criminal history report" means a report that meets all of the following requirements:

(*i*) Is prepared by the United States Federal Bureau of Investigation or another authority approved by the department.

(*ii*) Includes fingerprint-based criminal history record information.

(*iii*) Is completed not more than 60 days before an application is submitted under section 201.

(j) "Culpable mental state greater than negligence" means to act intentionally, knowingly, willfully, or recklessly.

(k) "DEA" means the United States Drug Enforcement Administration.

(*l*) "Department" means the department of agriculture and rural development.

(m) "Designated sampling agent" means a federal, state, or local law enforcement agent authorized by the department to collect official samples under section 401.

(n) "Dispose" means an activity that transitions industrial hemp into a nonretrievable or noningestible form of industrial hemp under section 407.

(o) "Dry weight basis" means the ratio of the amount of moisture in cannabis to the amount of solid in cannabis.

(p) "Dwelling" means a house, building, tent, trailer, vehicle, or other shelter that is occupied in whole or in part as a home, residence, living place, or sleeping place for 1 or more individuals either permanently or transiently, or any portion thereof.

(q) "Fund" means the industrial hemp fund created in section 107.

(r) "Good standing" means all fees or fines owed under this act are paid and there are no outstanding fees or fines owed to the department.

(s) "GPS coordinates" means latitude and longitude coordinates derived from a global positioning system that are taken from a central point within a growing area or structure and that include decimal degrees to 6 places after the decimal.

(t) "Grow" or "growing", unless the context requires otherwise, means to plant, propagate, cultivate, or harvest live plants or viable seed. Grow or growing includes drying and storing harvested industrial hemp, possessing live industrial hemp plants or viable seed on a premises where the live industrial hemp plants or viable seed are grown, growing industrial hemp for the purposes of conducting research, and selling harvested industrial hemp to a processor-handler licensed under the industrial hemp research and development act, 2014 PA 547, MCL 286.841 to 286.859, or processor licensed under the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801, as authorized under this act. Grow or growing does not include selling an intermediary, in-process, or finished industrial hemp product or smokable hemp flower.

(u) "Grower" means a person that is required to be registered under section 201.

(v) "Industrial hemp" means that term as defined in section 3 of the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27953.

(w) "Industrial hemp plan" means the plan created under section 105.

(x) "Key participant" means a person that has a direct or indirect financial interest in the person or business producing hemp or a person in a corporate entity at an executive level that is regularly responsible for decision making impacting the growing of industrial hemp. A key participant includes, but is not limited to, any of the following:

(*i*) For a sole proprietorship, a sole proprietor.

(*ii*) For a partnership, a partner.

(*iii*) For a corporation, an individual with executive managerial control including, but not limited to, a chief executive officer, a chief operating officer, or a chief financial officer.

(y) Key participant does not include positions such as farm, field, or shift managers.

(z) "Lot" means either of the following:

(*i*) A contiguous area in a field, greenhouse, or other indoor growing area that contains the same variety or strain of cannabis throughout.

(*ii*) A farm, tract, field, or subfield as these terms are defined in 7 CFR 718.2.

(aa) "Marihuana" means that term as defined in section 3 of the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27953.

(bb) "Measurement of uncertainty" means the parameter associated with the result of a measurement that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to the measurement.

(cc) "Negligence" means the failure to exercise the level of care that a reasonably prudent person would exercise in the same or similar circumstances.

(dd) "Noncompliant industrial hemp" means industrial hemp that is not in compliance with this act or the rules promulgated under this act.

(ee) "Official hemp sample" means a sample of an industrial hemp lot that is collected by a designated sampling agent under section 401 in accordance with department sampling protocols and is tested by a regulatory testing facility.

(ff) "Percentage of THC on a dry weight basis" means the percentage, by weight, of THC in cannabis after excluding the moisture from the cannabis.

(gg) "Person" means an individual, partnership, corporation, association, college or university, or other legal entity.

(hh) "Postdecarboxylation test" means a test of cannabis for delta-9-THC after a carboxyl group is eliminated from delta-9-THC acid.

(ii) "Program" means the industrial hemp program established by this act.

(jj) "Registration" means a grower registration granted under this act.

(kk) "Regulatory testing facility" means a laboratory that meets all of the following requirements:

(*i*) Is registered with the DEA.

(*ii*) Is authorized to conduct chemical analysis of controlled substances pursuant to 21 CFR 1301.13.

(*iii*) Meets the requirements under section 403.

(*iv*) Conducts testing of official hemp samples.

(*ll*) "Remediate" means an activity that transitions noncompliant industrial hemp into industrial hemp that is in compliance with this act and the rules promulgated under this act under section 407.

(mm) "THC" means that term as defined in section 3 of the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27953.

(nn) "Total delta-9-THC" means the total available tetrahydrocannabinol measured as the sum of delta-9-tetrahydrocannabinol and 87.7% of the delta-9-tetrahydrocannabinol acid reported on a dry weight basis.

(oo) "Unofficial hemp sample" means a sample of industrial hemp collected by a grower for routine compliance monitoring testing throughout the growing season for testing by a compliance monitoring testing facility.

(pp) "USDA" means the United States Department of Agriculture.

(qq) "Variety" means a subdivision of a species that has the following characteristics:

(*i*) The subdivision is uniform, in the sense that variations between the subdivision and other subdivisions in essential and distinctive characteristics are describable.

(*ii*) The subdivision is distinct, in the sense that the subdivision can be differentiated by 1 or more identifiable morphological, physiological, or other characteristics from all other known subdivisions.

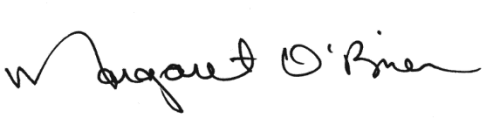
(*iii*) The subdivision is stable, in the sense that the subdivision will remain uniform and distinct if reproduced.

(rr) "Viable seed" means seed that has a germination rate of greater than 0.0%.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

This act is ordered to take immediate effect.

Clerk of the House of Representatives



Secretary of the Senate

Approved_____

_____

Governor

PUBLIC HEALTH CODES

Chapter 333

HEALTH

Act 281 of 2016	Statute	MEDICAL MARIHUANA FACILITIES LICENSING ACT (333.27101 - 333.27801) ***** 333.27102.amended THIS AMENDED SECTION IS EFFECTIVE OCTOBER 11, 2021 ***** ***** 333.27102 THIS SECTION IS AMENDED EFFECTIVE OCTOBER 11, 2021: See 333.27102.amended *****
Act 282 of 2016	Statute	MARIHUANA TRACKING ACT (333.27901 - 333.27904) ***** 333.27902.amended THIS AMENDED SECTION IS EFFECTIVE OCTOBER 11, 2021 ***** ***** 333.27902 THIS SECTION IS AMENDED EFFECTIVE OCTOBER 11, 2021: See 333.27902.amended *****
Initiated Law 1 of 2018	Statute	MICHIGAN REGULATION AND TAXATION OF MARIHUANA ACT (333.27951 - 333.27967) ***** 333.27953.amended THIS AMENDED SECTION IS EFFECTIVE OCTOBER 11, 2021 ***** ***** 333.27953 THIS SECTION IS AMENDED EFFECTIVE OCTOBER 11, 2021: See 333.27953.amended *****
Act 137 of 2020	Statute	Repealed-INDUSTRIAL HEMP GROWERS ACT (333.28101 - 333.28101)
Act 220 of 2020	Statute	INDUSTRIAL HEMP GROWERS ACT (333.29101 - 333.29801.added) ***** 333.29801.added THIS ADDED SECTION DOES NOT TAKE EFFECT UNLESS ACT 547 OF 2014 IS REPEALED. (See enacting section 2 of Act 4 of 2021.) ***** ***** 333.29103.amended THIS AMENDED SECTION IS EFFECTIVE OCTOBER 11, 2021 ***** ***** 333.29103 THIS SECTION IS AMENDED EFFECTIVE OCTOBER 11, 2021: See 333.29103.amended *****

House Bill 5301

Legal Analysis

2021

Legislative Analysis

Phone: (517) 373-8080
http://www.house.mi.gov/hfa

LICENSED SPECIALTY MEDICAL GROWERS

Analysis available at
http://www.legislature.mi.gov

House Bill 5300 as introduced
Sponsor: Rep. TC Clements

House Bill 5301 as introduced
Sponsor: Rep. Rep. Jim Lilly

House Bill 5302 as introduced
Sponsor: Rep. Richard M. Steenland

House Bills 5319 and 5321 as introduced
Sponsor: Rep. Ronnie D. Petersen

House Bill 5320 as introduced
Sponsor: Rep. Gary Howell

Committee: Regulatory Reform
Complete to 10-5-21

BRIEF SUMMARY:

House Bills 5300 to 5302 would amend different acts that regulate the medical marijuana market. Among other things, the bills would do all of the following:

- Regulate licensed specialty medical growers.
- Require the statewide monitoring system that tracks medical marijuana sales and transfers between licensees and registered primary caregivers and registered qualified patients to track certain information pertaining to licensed specialty medical growers.
- Prohibit transfers of marijuana from a licensed specialty medical grower to a licensee in the recreational marijuana market.
- Prohibit a licensed grower, processor, secure transporter, or safety compliance facility licensee from also being licensed as a licensed specialty medical grower.
- Reduce, from five to one, the number of registered qualified patients a registered primary caregiver may assist.
- Eliminate provisions barring a registered qualified patient from transferring marijuana or a marijuana-infused product to any individual and making selling marijuana to someone who is not a registered qualifying patient a felony offense.
- No longer exclude an applicant from meeting the conditions for automatic registration or licensure due to a felony based solely on a marijuana-related offense committed during the ten years immediately preceding an application as a registered primary caregiver or licensed specialty medical grower.

House Bill 5320 would revise a citation in the Public Health Code to account for changes made to the Michigan Medical Marijuana Act by HB 5301.

House Bills 5319 and 5321 would respectively amend the Use Tax Act and the General Sales Tax Act to exempt the sale of marijuana by a registered primary caregiver or licensed specialty medical grower to a registered qualified patient from the use and sales taxes.

DETAILED SUMMARY:

House Bill 5301 would amend the Michigan Medical Marihuana Act to establish a regulatory framework for a new category of medical marijuana licensees designated as a licensed specialty medical grower. Many provisions that currently apply to registered primary caregivers ("caregivers"), registered qualified patients ("patients"), or licensed state operators also would apply to a licensed specialty medical grower, including regulatory provisions, rights and privileges, the license application process, protection from criminal penalties if complying with the act, and certain departmental rules. The following are some of the substantive differences that apply to a licensed specialty medical grower, as well as other revisions proposed by the bill:

- The bill would prescribe an application process similar to other licenses under the act. The license would not be transferable and would expire one year after the date it is granted.
- A patient would have to designate on his or her application form who would cultivate his or her marijuana—the patient, a caregiver, or a licensed specialty medical grower. A patient could be connected through the registration process either to a caregiver or to a licensed specialty medical grower, but not to both at the same time.
- The parent of a patient who is a minor could serve as the minor patient's caregiver or licensed specialty medical grower or could approve a caregiver or licensed specialty medical grower.
- Currently, a caregiver may assist up to five patients. Beginning March 21, 2022, a caregiver could assist only one patient with his or her medical use of marijuana. The bill does not specify how many patients a licensed specialty medical grower could assist.
- A caregiver and a licensed specialty medical grower each would be allowed to apply to the Marijuana Regulatory Agency (MRA) to designate no more than two authorized individuals to assist them in cultivating marijuana for a patient.
- The bill would eliminate a prohibition on a patient transferring marijuana or a marijuana-infused product to any individual.
- A licensed specialty medical grower's license could be suspended without notice or hearing if the safety or health of patients or members of the public were jeopardized by the licensee's continued operation. The bill details the process for a postsuspension hearing or for a hearing requested by a party aggrieved by an action taken by the MRA regarding a license sanction or fine.
- The MRA could disclose to the Department of State Police or a local law enforcement agency the address of the location where a caregiver or licensed specialty medical grower cultivates or manufactures marijuana.
- The conditions requiring the MRA to issue a registry ID card to an individual named as a patient's primary caregiver would remain the same, except that, beginning March 21, 2022, the condition that the individual not have been convicted of a felony in the immediately preceding 10 years would not apply to a conviction based solely on a marijuana-related offense unless the offense involved distribution of marijuana to a minor.
- The bill would require the MRA to include the number of applications filed for specialty medical grower licenses, as well as the number of licenses granted in each county and the number revoked, in the annual report it must submit to the legislature.

- The bill would revise the prohibition on using butane extraction to separate plant resin from marijuana to instead prohibit using a hydrocarbon solvent or any other flammable substance to separate plant resin from marijuana.

Eligibility for a specialty medical grower license

The bill would require the MRA to issue an initial or renewal certificate of licensure to an individual if all of the following apply:

- A complete application is submitted and an application fee of $500 is paid.
- The individual does not have an ownership interest in a safety compliance facility or secure transporter licensed under the act or a marijuana safety compliance facility or marijuana secure transporter licensed under the Michigan Regulation and Taxation of Marihuana Act, which regulates the recreational marijuana market.
- The individual has not been convicted of a felony in the immediately preceding 10 years. This would not apply to a conviction based solely on a marijuana-related offense unless the offense involved distribution of marijuana to a minor.
- The individual has not violated the Michigan Medical Marihuana Act, the Medical Marihuana Facilities Licensing Act, the Marihuana Tracking Act, or the Michigan Regulation and Taxation of Marihuana Act in the immediately preceding five years.

Permitted conduct by a licensed specialty medical grower

A licensed specialty medical grower could do any of the following:

- Cultivate or manufacture marijuana in compliance with the act and the Marijuana Tracking Act to assist a patient, or sell or transfer marijuana to a patient, to whom the grower is connected through the MRA's registration process. The sale or transfer would have to be entered into the statewide monitoring system as required under the Marihuana Tracking Act, the package would have to include a label with certain information, and the marijuana would have to be tested by a licensed safety compliance facility before the sale or transfer.
- Sell or transfer ***overages*** to a licensed grower if certain conditions were met.
- Purchase marijuana from a licensed provisioning center for the purpose of assisting a patient or selling or transferring marijuana to the patient.

Overage would mean either an amount of marijuana cultivated by a patient in excess of that required by the patient or an amount cultivated by a caregiver or licensed specialty medical grower in excess of the amount transferred or sold to a caregiver's or licensed specialty medical grower's patient. A caregiver could not transfer or sell overages to any person.

The bill also would provide the conditions under which a licensed specialty medical grower must cultivate or manufacture marijuana, provide that the location must be zoned for agricultural or industrial use or unzoned, and allow inspections (with or without notice) by law enforcement or the MRA.

Penalties and sanctions

Currently, a patient or caregiver who sells marijuana to someone who is not allowed the medical use of marijuana under the act must have his or her registry ID card revoked and is guilty of a felony punishable by imprisonment for up to two years or a fine of up to $2,000, or both, in addition to any other penalties for the distribution of marijuana. The bill would

eliminate the criminal penalty and instead provide that a patient or caregiver who sells *or transfers* marijuana to a person not authorized to obtain marijuana under the act must have his or her registry ID card revoked by the MRA.

Currently, a patient or caregiver who violates the act is responsible for a civil fine of up to $250. The bill would also apply this penalty to a licensed specialty medical grower.

Finally, the MRA, local law enforcement, or the Department of State Police could confiscate or destroy any marijuana or equipment used to cultivate or manufacture marijuana by a licensed specialty medical grower in violation of the act, departmental rules, or the Marihuana Tracking Act or if the grower ceased to meet certain requirements for licensure. The MRA could suspend, revoke, or restrict the grower's license or deny the grower's application for licensure.

MCL 333.26423 et seq.

House Bill 5300 would amend the Medical Marihuana Facilities Licensing Act to do all of the following:

- Define *licensed specialty medical grower* as that term is defined in the Michigan Medical Marihuana Act and revise the definitions of *safety compliance facility* and *secure transporter* to include a licensed specialty medical grower as an entity from which the licensee may be able to receive or transport marijuana, respectively.
- Include purchasing, receiving, selling, transporting, or transferring marijuana to a licensed specialty medical grower in the activities performed under a state operating license for which protection is afforded from criminal and civil prosecutions or other sanctions.
- Allow a licensed specialty medical grower to transfer marijuana to a licensed grower only by means of a secure transporter and provide that a secure transporter license authorizes the licensee to transport marijuana and money associated with the purchase or sale of marijuana between a licensed specialty medical grower and a grower. However, the bill would provide that a secure transporter license does not authorize transport to a licensed specialty medical grower.
- Allow a licensed specialty medical grower to sell or transfer seeds, seedlings, or tissue cultures to a grower without using a secure transporter.
- Allow the MRA to establish a limit on the amount of marijuana that a licensed specialty medical grower may transfer to a grower.
- Prohibit the transfer of marijuana from a licensed specialty medical grower to a person licensed under the Michigan Regulation and Taxation of Marihuana Act.
- Prohibit a grower or processor from also being licensed, or from employing a person who is also licensed, as a licensed specialty medical grower. Similarly, a secure transporter or safety compliance facility licensee could not also be a licensed specialty medical grower.
- Allow a safety compliance facility licensee to take marijuana from, test it for, and return it to a licensed specialty medical grower. A safety compliance facility licensee also could collect a random sample of marijuana for testing at the location where a licensed specialty medical grower is authorized to cultivate or manufacture marijuana under the Michigan Medical Marihuana Act.

MCL 333.27102 et seq.

House Bill 5302 would amend the Marihuana Tracking Act. The bill would require that the system created under the act to store and provide access to information regarding the validity of registry identification cards and a record of the sale or transfer of marijuana to a registered qualifying patient or registered primary caregiver must also allow for the verification that a specialty medical grower license is current and valid and had not been suspended, revoked, or denied and that a record of sales and transfers of marijuana to a licensed specialty medical grower is retained.

The bill also would amend, to include licensed specialty medical growers, a provision that requires the MRA to promulgate rules to govern the process incorporating certain information that must be included and maintained in the statewide monitoring system that now applies to information concerning registry identification card renewal, revocation, suspension, and changes applicable to licensees, registered primary caregivers, and registered qualified patients.

MCL 333.27902 and MCL 333.27903

House Bills 5319 and 5321 would respectively amend the Use Tax Act and the General Sales Tax Act to provide that the sale of marijuana from a registered primary caregiver or licensed specialty medical grower to a registered qualifying patient as authorized under the Michigan Medical Marihuana Act is exempt from the tax imposed by the appropriate act. The terms *licensed specialty medical grower, marihuana, registered primary caregiver*, and *registered qualifying patient* would be defined as they are in the Michigan Medical Marihuana Act.

Proposed MCL 205.94ii (HB 5019)
Proposed MCL 205.54ii (HB 5021)

House Bill 5320 would amend the Public Health Code. That act includes marijuana as a Schedule 2 controlled substance, but only for the purpose of treating a *debilitating medical condition* as that term is defined in section 3(b) of the Michigan Medical Marihuana Act. The bill would instead simply cite section 3 of the Michigan Medical Marihuana Act to account for changes to that section that would be made by HB 5301.

MCL 333.7214

Tie-bars
House Bills 5300, 5301, 5302, 5319, and 5321 are all tie-barred to one another, which means that none of those bills could take effect unless all of them were enacted. House Bill 5320 is tie-barred to HB 5301, which means that it could not take effect unless HB 5301 were enacted.

FISCAL IMPACT:

House Bill 5300 would not have a fiscal impact on the Marijuana Regulatory Agency within the Department of Licensing and Regulatory Affairs or on any other unit of state or local government.

House Bill 5301 would have significant revenue and expenditure implications for the Marijuana Regulatory Agency within the Department of Licensing and Regulatory Affairs. The bill would expand the scope of the agency's regulatory activities, by necessitating the regulation of licensed specialty medical growers and "authorized individuals," as defined in the bill. These activities would include processing applications and other materials, monitoring

compliance, pursuing applicable disciplinary actions (including license suspensions and revocations), and conducting administrative hearings. The volume of these activities would depend on the expansion of the population of regulated individuals, which is presently indeterminate. The bill would provide for a $500 application fee for specialty medical grower licenses, and this revenue would be deposited to the Marihuana Registry Fund, a state restricted fund that is utilized for the implementation of the Michigan Medical Marihuana Act. The amount of this revenue would depend on the volume of licensees, and thus the amount of projected revenue is indeterminate.

In addition, House Bill 5301 would have an indeterminate fiscal impact on the courts and on state and local corrections systems. Depending on the number of individuals that would no longer be charged with a felony under the bill, the bill could result in a decrease in costs for the state and for local units of government. Reduced felony charges would result in reduced costs related to state prisons and state probation supervision. In fiscal year 2020, the average cost of prison incarceration in a state facility was roughly $42,200 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about $4,300 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. There could also be a decrease in penal fine revenues, which would decrease funding for public and county law libraries, the constitutionally designated recipients of those revenues. Also, under the bill, including licensed specialty medical growers could result in an increase in the number of civil fines issued, which would increase funding for public and county law libraries.

House Bill 5302 would have an indeterminate fiscal impact on the Department of Licensing and Regulatory Affairs, as the bill may require Information Technology modifications, which could necessitate a modest expenditure.

House Bills 5319 and 5321 would result in an indeterminate reduction in sales and/or use tax revenue. The data necessary to determine a precise fiscal estimate are not available. Approximately 73% of sales tax revenue is earmarked to the School Aid Fund, and roughly an additional 10% is dedicated to constitutional revenue sharing to cities, villages, and townships. The majority of the remainder accrues to the general fund. One-third of use tax revenue is dedicated to the School Aid Fund, while the remaining two-thirds accrues to the Local Community Stabilization Authority and the state general fund. Although the split between forgone sales and use taxes is not known, it is assumed that the majority of the revenue loss would come from sales tax collections.

House Bill 5320 would not have a fiscal impact on any unit of state or local government.

Legislative Analyst: Susan Stutzky
Fiscal Analysts: Marcus Coffin
Robin Risko
Jim Stansell

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

FORFEITURE

PUBLIC HEALTH CODE (EXCERPT)
Act 368 of 1978

Part 75
ENFORCEMENT AND ADMINISTRATION

Document	Type	Description
Section 333.7501	Section	Arrest without warrant.
Section 333.7502	Section	Powers of agents.
Section 333.7504	Section	Administrative inspection warrants; issuance; execution; oath or affirmation showing probable cause; seizure of property; existence of probable cause; affidavit; contents of warrant.
Section 333.7505	Section	Contents, execution, and return of warrant; copy of warrant and receipt for property seized; inventory of property taken; delivering copy of inventory; filing warrant with copy of return and papers returnable.
Section 333.7507	Section	Administrative inspections of controlled premises.
Section 333.7511	Section	Restraining or enjoining violation; trial by jury.
Section 333.7515	Section	Cooperation with federal and other state agencies; relying and acting upon results, information, and evidence.
Section 333.7516	Section	Name or identity of patient, research, or individual.
Section 333.7521	Section	Property subject to forfeiture; burden of proof; "imitation controlled substance" defined.
Section 333.7521a	Section	Civil asset forfeiture; conditions, requirements, and limitations.
Section 333.7522	Section	Property subject to forfeiture; seizure; process; seizure without process.
Section 333.7523	Section	Seizure under MCL 333.7522; forfeiture proceedings; procedure; property subject to

		section or to order and judgment of court; powers of seizing agency; determining title to forfeited real property; forfeiture of real property encumbered by bona fide security interest; examination of money.
Section 333.7523a	Section	Stay of civil forfeiture during pending criminal proceedings; forfeiture hearing; burden of proof; return of property.
Section 333.7524	Section	Disposition of forfeited property; donation of lights and scales for educational purposes; appointment, compensation, and authority of receiver to dispose of forfeited real property; expenses of forfeiture proceedings; court order.
Section 333.7524a	Section	Repealed. 2015, Act 148, Eff. Feb. 1, 2016.
Section 333.7524b	Section	Report by agency of seizure and forfeiture activities under uniform forfeiture reporting act.
Section 333.7525	Section	Controlled substance as contraband; seizure and summary forfeiture; seizure and forfeiture of species of plants.
Section 333.7527	Section	Destruction of controlled substance seized as evidence.
Section 333.7531	Section	Burden of proof of exemption or exception; presumption as to license or order form; burden of rebutting presumption; liability not imposed for lawful performance of duties.
Section 333.7533	Section	Judicial review.
Section 333.7541	Section	Educational programs; powers of administrator.
Section 333.7543	Section	Research and enforcement; duties of administrator.
Section 333.7544	Section	Authorization to withhold names and other identifying characteristics of individuals who are subjects of research; authorization of

		persons engaged in research to possess and distribute controlled substances; exemption from prosecution.
Section 333.7545	Section	Contracts for educational and research activities.

PUBLIC HEALTH CODE (EXCERPT)
Act 368 of 1978

333.7521 Property subject to forfeiture; burden of proof; "imitation controlled substance" defined.

Sec. 7521.

(1) The following property is subject to forfeiture:

(a) A prescription form, controlled substance, an imitation controlled substance, a controlled substance analogue, or other drug that has been manufactured, distributed, dispensed, used, possessed, or acquired in violation of this article.

(b) A raw material, product, or equipment of any kind that is used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting a controlled substance, a controlled substance analogue, or other drug in violation of this article; or a raw material, product, or equipment of any kind that is intended for use in manufacturing, compounding, processing, delivering, importing, or exporting an imitation controlled substance in violation of section 7341.

(c) Property that is used, or intended for use, as a container for property described in subdivision (a) or (b).

(d) Except as provided in subparagraphs (i) to (iv), a conveyance, including an aircraft, vehicle, or vessel used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision (a) or (b):

(i) A conveyance used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this article.

(ii) A conveyance is not subject to forfeiture by reason of any act or omission established by the owner of that conveyance to have been committed or omitted without the owner's knowledge or consent.

(iii) A conveyance is not subject to forfeiture for a violation of section 7403(2)(c) or (d), section 7404, or section 7341(4).

(iv) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party who neither had

knowledge of nor consented to the act or omission.

(e) Books, records, and research products and materials, including formulas, microfilm, tapes, and data used, or intended for use, in violation of this article.

(f) Any thing of value that is furnished or intended to be furnished in exchange for a controlled substance, an imitation controlled substance, or other drug in violation of this article that is traceable to an exchange for a controlled substance, an imitation controlled substance, or other drug in violation of this article or that is used or intended to be used to facilitate any violation of this article including, but not limited to, money, negotiable instruments, or securities. To the extent of the interest of an owner, a thing of value is not subject to forfeiture under this subdivision by reason of any act or omission that is established by the owner of the item to have been committed or omitted without the owner's knowledge or consent. Any money that is found in close proximity to any property that is subject to forfeiture under subdivision (a), (b), (c), (d), or (e) is presumed to be subject to forfeiture under this subdivision. This presumption may be rebutted by clear and convincing evidence.

(g) Any other drug paraphernalia not described in subdivision (b) or (c).

(2) The plaintiff in a forfeiture action under this article has the burden of proving a violation of this article by clear and convincing evidence. This subsection applies to forfeiture proceedings commenced under this article on or after the effective date of the amendatory act that added this subsection.

(3) As used in this section, "imitation controlled substance" means that term as defined in section 7341.

333.7521a Civil asset forfeiture; conditions, requirements, and limitations.

Sec. 7521a.

(1) Except as otherwise provided in this section, property may be seized as provided in section 7522 for a violation of this article, but is not subject to forfeiture under section 7521 or disposition under section 7524 unless a criminal proceeding involving or relating to the property has been completed and the defendant pleads guilty to or is convicted of a violation of this article.

(2) A criminal conviction or guilty plea under subsection (1) is not required if 1 or more of the following apply:

(a) No person claims any interest in the property as provided under section 7523 or the owner of the property withdraws his or her claim in the property.

(b) The owner of the property waives the criminal conviction or plea requirement under subsection (1) and elects to proceed with the civil forfeiture proceeding.

(c) A criminal charge has been filed and 1 or both of the following apply:

(i) The defendant is outside this state and cannot reasonably be extradited or brought back to the state for prosecution.

(ii) Reasonable efforts have been made by law enforcement authorities to locate and arrest the defendant, but the defendant has not been located.

(3) If a person withdraws his or her claim under subsection (2)(a), the prosecuting attorney for the county in which the property was seized or, if the attorney general is actively handling a case involving or related to the property, the attorney general, must review the seizure of the property and approve the forfeiture of the property before the property may be forfeited.

(4) Subsection (1) does not prohibit the immediate destruction of property that may not be lawfully possessed by any person or that is dangerous to the health or safety of the public regardless of whether the person is convicted of a violation of this article.

(5) This section applies to forfeiture proceedings that are initiated on or after the effective date of this amendatory act.

(6) This section does not apply to forfeiture proceedings in which the aggregate fair market value of the property and currency seized exceeds $50,000.00, excluding the value of contraband.

PUBLIC HEALTH CODE (EXCERPT)
Act 368 of 1978

333.7523 Seizure under MCL 333.7522; forfeiture proceedings; procedure; property subject to section or to order and judgment of court; powers of seizing agency; determining title to forfeited real property; forfeiture of real property encumbered by bona fide security interest; examination of money.

Sec. 7523.

(1) Subject to section 7521a, if property is seized under section 7522, forfeiture proceedings must be instituted promptly. If the property is seized without process under section 7522, and the total value of the property seized does not exceed $50,000.00, the following procedure must be used:

(a) The local unit of government that seized the property or, if the property was seized by this state, the state shall notify the owner of the property that the property has been seized and, if charges have been filed against a person for a crime, the person charged, and that the local unit of government or, if applicable, the state intends to forfeit and dispose of the property by delivering a written notice to the owner of the property or by sending the notice to the owner by certified mail. If the name and address of the owner are not reasonably ascertainable, or delivery of the notice cannot be reasonably accomplished, the notice must be published on the local unit of government's or the department of the attorney general's public website and in a newspaper of general circulation in the county in which the property was seized, for 10 successive publishing days.

(b) Unless all criminal proceedings involving or relating to the property have been completed, the seizing agency shall immediately notify the prosecuting attorney for the county in which the property was seized or, if the attorney general is actively handling a case involving or relating to the property, the attorney general of the seizure of the property and the intention to forfeit and dispose of the property.

(c) Any person claiming an interest in property that is the subject of a notice under subdivision (a) may, within 20 days after receipt of the notice or of the date of the first publication of the notice, file a written claim signed by the claimant with the local unit of government or the state expressing his or her interest in the property and any objection to forfeiture. A claim or an

objection under this subsection must be written, verified, and signed by the claimant, and include a detailed description of the property and the property interest asserted. The verification must include a certification under the penalty of perjury stating that the undersigned has examined the claim and believes it to be, to the best of the claimant's knowledge, true and complete. A written claim under this subsection must be made on the form developed by the state court administrative office as required under subsection (2). Upon the filing of the claim, the local unit of government or, if applicable, this state shall transmit the claim with a list and description of the property seized to the attorney general, the prosecuting attorney for the county, or the city or township attorney for the local unit of government in which the seizure was made. The attorney general, the prosecuting attorney, or the city or township attorney shall promptly institute forfeiture proceedings after the expiration of the 20-day period. However, unless all criminal proceedings involving or relating to the property have been completed, a city or township attorney shall not institute forfeiture proceedings without the consent of the prosecuting attorney or, if the attorney general is actively handling a case involving or relating to the property, the attorney general.

(d) If no claim is filed within the 20-day period as described in subdivision (c), the local unit of government or this state shall declare the property forfeited and shall dispose of the property as provided under section 7524. However, unless all criminal proceedings involving or relating to the property have been completed, the local unit of government or the state shall not dispose of the property under this subdivision without the written consent of the prosecuting attorney or, if the attorney general is actively handling a case involving or relating to the property, the attorney general.

(2) The state court administrative office shall develop and make available to law enforcement agencies, courts, and the public a form for asserting an ownership interest in seized property under subsection (1)(c). The form must require a claimant to provide a detailed description of the property, the claimant's ownership interest in the property, and a signed attestation that the claimant has a bona fide ownership interest in the property.

(3) Property taken or detained under this article is not subject to an action to recover personal property, but is deemed to be in the custody of the seizing agency subject only to this section or an order and judgment of the

court having jurisdiction over the forfeiture proceedings. When property is seized under this article, the seizing agency may do any of the following:

(a) Place the property under seal.

(b) Remove the property to a place designated by the court.

(c) Require the administrator to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(d) Deposit money seized under this article into an interest-bearing account in a financial institution. As used in this subdivision, "financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office located in this state under the laws of this state or the United States.

(4) Title to real property forfeited under this article must be determined by a court of competent jurisdiction. A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party who neither had knowledge of nor consented to the act or omission.

(5) An attorney for a person who is charged with a crime involving or related to the money seized under this article must be afforded a period of 60 days within which to examine that money. This 60-day period begins to run after notice is given under subsection (1)(a) but before the money is deposited into a financial institution under subsection (3)(d). If the attorney general, prosecuting attorney, or city or township attorney fails to sustain his or her burden of proof in forfeiture proceedings under this article, the court shall order the return of the money, including any interest earned on money deposited into a financial institution under subsection (3)(d).

Trial Court Funding Commission Final Report

Trial Court Funding Commission Final Report

09.06.19

STATE OF MICHIGAN

TRIAL COURT FUNDING COMMISSION

LANSING

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Judge Beth Ann Gibson
Milton L. Mack
Richard B. Poling
Thomas C. Rombach
Shannon Schlegel
Valerie Ann Thornburg
Patrick J. Williams

Staff Support

Department of Treasury
Wendy Lamphier

Public Sector Consultants
Scott Dzurka
James Durian
Patrick Lyons
Pam Sanders

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Executive Summary

Michigan residents going to court should not face a judge who needs money from a defendant to satisfy demands for court operating expenses. The recommendations contained in this report are designed to address the historic problem with money's influence on the justice system as manifested in Michigan.

The Michigan Legislature created the Trial Court Funding Commission (TCFC), through Act 65 of 2017, to review Michigan's trial court funding system and make recommendations. This legislation was enacted in response to *People v. Cunningham*, a Michigan Supreme Court decision that determined state law does not provide courts with the authority to impose costs upon criminal defendants to fund the day-to-day operation of the courts.

The TCFC first reviewed the existing trial court funding system with presentations from experts on circuit, probate, and district courts. This information was used to create a comprehensive survey of stakeholder groups to determine the nature and extent of existing problems with the trial court funding system. The TCFC next identified a set of principles to guide recommendations for change. A list of principles was created by the TCFC membership and then compared to national norms to establish a final set of governing principles.

The TCFC has been mindful of the timeliness of this work. Michigan's trial courts are facing the possibility of a financial emergency due to changes in financing methods brought on by *People v. Cameron*, a case which was recently decided in the Michigan Supreme Court, in which the defendant directly challenged the constitutionality of the assessment of court operational costs as part of his sentence. Further, the United States Supreme Court in *Timbs v. Indiana*, issued February 20, 2019, questioned the use of courts to generate revenue, a conclusion that could impact future court funding. Finally, the TCFC reviewed the United States Department of Justice's report and actions in response to the civil unrest in Ferguson, Missouri, where excessive police and court enforcement were used to provide municipal revenue.

In the midst of these challenges, the TCFC examined Michigan's historic and existing trial court funding system, national innovations, and best practices, as well as some cautionary examples. After extensive review and evaluation, the commission has unanimously concluded that the existing system is broken, and it is imperative to create a stable and consistent funding source for Michigan trial courts that removes trial court judges from the role of raising money for the operation of the courts.

The recommendations outlined in this report are intended to address the following problems:

- A real or perceived conflict of interest between a judge's impartiality and the obligation to use the courts to generate revenue;
- Inadequate funding from all sources due to excessive dependence on local government funding; and
- Unequal access to justice harming those who are most vulnerable and have the least access to financial resources.

With this framework in mind, the TCFC makes the following recommendations for the governor, Michigan Legislature, and the Michigan Supreme Court to consider.

Recommendation One: Establish a Stable Court Funding System

A balanced state and local partnership is necessary to ensure that Michigan's residents have equal access to justice. To fulfill this responsibility, the state must create the Trial Court Fund for receipt of all trial court assessments and state general fund payments. The Trial Court Fund must then distribute appropriate monies to fund trial courts based on operational requirements. Decisions about local trial court operations must remain local.

Recommendation Two: Provide All Court Technology Needs

The State of Michigan must make available and fund all of the technology needs of the courts, including case and document management services, and also supply and manage technology products and services for all courts, including hardware, software, infrastructure, training, and ongoing technology support. The State will bear the cost of all technology it provides and create a uniform system throughout Michigan.

Recommendation Three: Establish Uniform Assessments and Centralized Collections

The State Court Administrative Office (SCAO) must establish a system of uniform assessments and centralized collections to be implemented for all trial courts. This system will maintain judicial discretion for ordering fines within the limits set by law and determination of ability to pay. Centralization of some court business functions will reduce cost overall, promote efficiency, and eliminate the ethical dilemma of trial court judges being incentivized to maximize revenue from court users for budget support. Centralizing court collections will achieve greater efficiency and achieve a higher level of uniform customer service.

Recommendation Four: Move Toward a Uniform Employment System

There are inefficiencies and inequality in the current payment system for trial court judges' salaries and benefits. The State pays these judicial salaries in part directly and in part by reimbursement to local government. Benefits are paid through local government and vary widely. Making the trial court judges direct employees of the state eliminates issues of dual employment and allows all trial court judges to be treated equally in salaries and fringe and retirement benefits, while removing a considerable cost burden from local governments' budgets. Referees and magistrates should also become state employees to allow for common training, easier coordination, and for potential synergies. Over time, state and local governments should consider working together to transition other court personnel into state employment while being respectful of existing bargaining units and labor agreements.

Recommendation Five: Establish a Transition Plan for the New Court Funding Model

In order to implement a new court funding model, there must be a plan for the systematic transition of finances and the promotion of funding sustainability. Success will depend on thoughtful planning and a phased implementation over a period of years. A task force, led by the SCAO, must be created to develop a plan for transition to the new trial court funding model, which must include a timeline for short-term, intermediate, and long-term objectives and milestones to be achieved. The transition plan must also include technical assistance and funding for local units of government for any shortfall in operating funds

due to implementation. Once the model is implemented, a Michigan Judicial Council must be established to exercise administrative policymaking authority to ensure continued progress toward a unified Michigan court system.

With the implementation of these recommendations, we will lead Michigan's court system well into the future. This new trial court system will eliminate real or perceived conflict of interests, ensure adequate funding and guarantees access to justice.

Overview

Michigan trial courts are funded through a complex collection of general tax revenue and monies assessed and collected by the courts. A comprehensive study conducted by the Trial Court Funding Commission shows that it costs up to $1.44 billion each year to operate Michigan's trial courts. This total is the sum of funds:

- Transferred from the state (22.7 percent)
- From federal sources (7.2 percent)
- From local funding sources (43.9 percent)
- Generated by the trial courts (26.2 percent)

A significant proportion of the funds generated by the trial courts are assessments on criminal defendants as part of sentencing. The TCFC estimates that these assessments directly account for as high as $291 million annually in support (most of the 26.2 percent generated). Additionally, approximately $127 million of the annual funds transferred from the State originate from court assessments at sentencing. When totaled, Michigan trial courts are supported, in significant part, by over $418 million assessed to criminal defendants.

This number is concerning, considering the fact that assessing the cost for the day-to-day operation of the courts to criminal defendants was not legal until 2014. Beginning in 1835 with Michigan's first constitution and carrying through to the current one, the State of Michigan requires penal fines to be allocated to library funding—not the courts. However, money worked its way into the system and has called into question the independence of judicial decision makers. Groups, including the Michigan Municipal League, called on the 1962 Constitutional Convention to prohibit "any member of the judicial branch of government from being compensated out of fees earned by the court over which he presides." The drafters of Michigan's current constitution recognized the potential for conflict of interest in judges benefiting from the proceeds of their work and prohibited compensation for judges through the existing fee system. One result of this concern was the creation of local government-funded district courts in 1968 (1968 PA 154).

The constitutional separation of courts and the revenue they produce through the creation of the district courts failed shortly after their creation. For example, by 1980, the percentage of court-generated revenue in Saginaw County going to libraries sank to 11 percent. The libraries sued and the Michigan Court of Appeals (COA) concluded that the libraries were not promised a specific amount of money. However, the COA also made it clear that the costs "cannot include the cost of daily operations of the courts or other governmental costs". However, the Michigan Legislature had granted authority to assess convicted defendants with costs associated with their arrest and prosecution, including "any cost in addition to the minimum state cost . . . " (MCL 769.1k(1)(b)(ii)). Courts also began to impose costs on convicted defendants to fund court operations (contrary to the COA's decision in the Saginaw libraries case). This chain of events and court decisions eventually led to the challenges raised in *People v. Cunningham* (496 Mich 145 2014), where the higher courts once again declared that trial courts could not impose court costs to fund their operation.

Cunningham, the Legislature, and the Creation of the TCFC

In *People v. Cunningham*, the Michigan Supreme Court ruled that state law does not provide courts with the authority to impose costs upon criminal defendants to fund the day-to-day operation of the courts. Instead, state law only provides courts with the authority to assess costs the Legislature has specifically authorized and there was no such authority concerning the cost of court operation. This ruling directly eliminated the authority to assess monies that pay for roughly 26 percent of trial court expenses. The result was a push for swift legislative action to allow the assessing of costs.

In 2017, the Michigan Legislature, with the enactment of Public Act (PA) 64 of 2017, responded to *Cunningham* by authorizing trial courts to assess criminal defendants the cost of court operations related to their case. However, in consideration of the relevant history and calls for caution, a sunset provision was included, meaning that authority to assess these costs would exist for only 36 months. Subsequently, this sunset was extended to October 2020 and the TCFC was created to review Michigan's trial court funding system and make recommendations to improve its effectiveness, including any changes to the methods by which courts impose and allocate fees and costs.

Defining the Problem

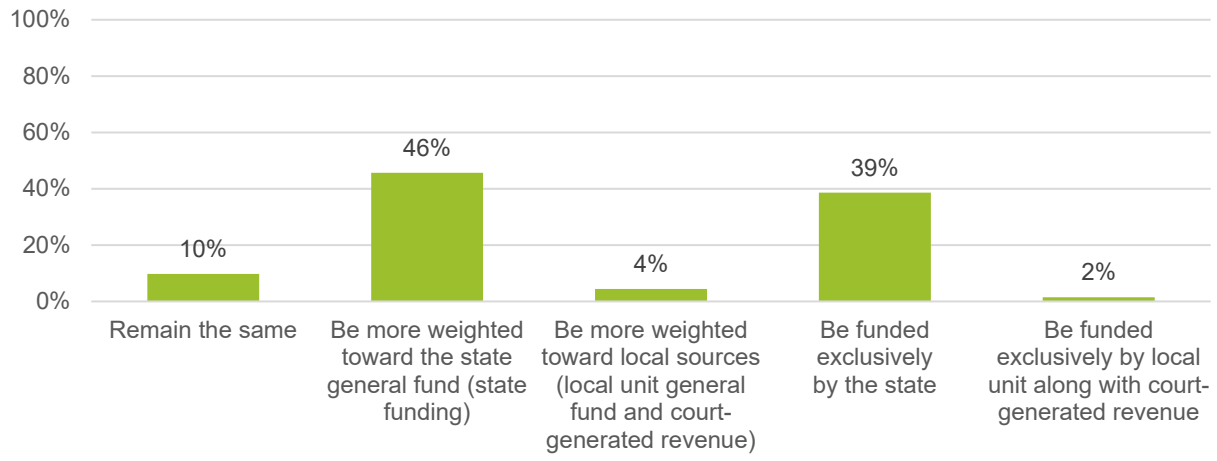
The TCFC is comprised of 14 commissioners appointed by the governor, representing a variety of stakeholders in the operation and financing of trial courts. The commission dedicated itself to an open-minded review of Michigan's current trial court funding system before developing any recommended changes.

Over the past 14 months, the TCFC engaged state and national experts, conducted research, engaged stakeholders, and conducted a variety of surveys and analyses to better understand the strengths and weaknesses of the existing court funding system in Michigan. The commission identified the following key barriers to an effective trial court funding system:

- A real or perceived conflict of interest between a judge's impartiality and the obligation to use the courts to generate operating revenue;
- Inadequate funding from all sources due to excessive dependence on local government funding; and
- Unequal access to justice, harming those who are most vulnerable and have the least access to financial resources.

In order to better understand the problem, and identify potential solutions, the TCFC conducted a survey of stakeholders that received 1,097 responses and also conducted interviews with 14 groups of stakeholders. Generally, there was agreement from stakeholders on the importance of implementing a more unified court funding system. Stakeholders believe a more unified system could deliver services more effectively and achieve greater equity in the administration of justice. However, there were concerns regarding the centralization of certain services under state government and the potential for the disruption of ongoing court services during implementation. The strongest support from stakeholders was for a partially unified system, where the state and SCAO provide services (like e-filing, document management, and technology) while local communities retain operational control. Exhibit 1 below provides a summary of responses from stakeholders regarding how the trial courts should be funded.

EXHIBIT 1. Future Trial Court Funding Source



Source: TCFC Stakeholder Survey

The TCFC heard from many stakeholders concerned that the courts are under increasing pressure from state and local governments to increase revenue. Some stakeholders believe that even the perception that judges are considering revenues when making judicial decisions can undermine the public trust in the court system.

The TCFC focused on those policy solutions that are most effective in addressing these problems while also being reasonable and actionable in Michigan's current political and financial environment. These recommendations are provided in this report along with the rationale to support them and best strategies for implementation. In order to understand the legal and political environment under which these recommendations are being considered, it is important to note the impact of a pending Michigan Supreme Court case (*People v. Cameron*) and a recent U.S. Supreme Court case (*Timbs v. Indiana*).

People v. Cameron

On July 10, 2019, the Michigan Supreme Court considered *People v. Cameron*, which challenged the constitutionality of trial courts assessing criminal defendants the cost of court operations related to their case on two technical grounds. The Supreme Court allowed a lower court decision rejecting *Cameron's* challenges to stand. In a concurring opinion, the chief justice agreed to deny leave because Cameron failed to prove either of the technical defects he alleged.

The chief justice's opinion warned that the *Cameron* decision is limited to these specific challenges and that the trial court funding system may still be constitutionally flawed. She noted, "the United States Supreme Court has consistently overturned convictions where the presiding judge had any form of pecuniary interest in a defendant's conviction. She questioned whether the appearance of impropriety can be avoided where local funding units pressure judges to tax criminal defendants to finance court operations. Significantly, the chief justice noted that the potential conflict-of-interest issues were not before the court in *Cameron*, "[b]ut I expect we will see them brought directly to us before long." (*People v. Cameron*)

The recommendations contained in this report address the systemic trial court funding problems identified by the TCFC regardless of how *Cameron* was decided. The chief justice acknowledged the TCFC in *Cameron* and urged the legislature to take seriously these recommendations.

Caliste v. Cantrell

Court funding challenges are not unique to Michigan. On August 29, 2019, the U.S. Court of Appeals for the Fifth Circuit decided *Adrian Caliste and Brian Gisclair v. Harry E. Cantrell*. The court found unconstitutional a court financing structure in Louisiana that relied in part on revenue from bonds set by magistrate judges. The court held that the judge received significant nonmonetary benefits from the monies generated by his bond determinations. These benefits included helping fund critical pieces of a well-functioning chambers. The court also noted, "if an elected judge is unable to perform the duties of the job, the job may be at risk." (*Caliste v. Cantrell*) In Michigan, judges who assess costs receive similar nonmonetary benefits. The court concluded, "it may well turn out that the only way to eliminate unconstitutional temptation is to sever the direct link between the money the criminal court generates and the Judicial Expense Fund that supports its operations." (*Caliste v. Cantrell*)

The Role of *Timbs*

The United States Supreme Court unanimously decided *Timbs v. Indiana* on February 20, 2019. Narrowly, the *Timbs* decision provides that the "excessive fines" provision of the Eighth Amendment to the U.S. Constitution applies to the states through the 14th Amendment's due process clause. However, the discussion in *Timbs* confirms that the TCFC's identification of problems with the Michigan trial court funding system are well-founded.

The Supreme Court's analysis in determining whether or not the "excessive fines" provision of the Eighth Amendment applies to the states begins with the question of whether the prohibition on excessive fines is fundamental to the American scheme of ordered liberty and deeply rooted in our history and tradition. In the *Timbs* case, the court then discussed America's legal heritage dating back to 1215 and the Magna Carta's call for proportionate consequences and admonition against unaffordable sanctions. The term "fine" was discussed expansively, like the definition of assessment as used by the TCFC. The court went on to note that money has had a corrupting influence throughout history, citing as far back as the Stuart kings (17th century), who were criticized for using large fines to raise revenue.

Finally, the *Timbs* court discussed the potential risk in allowing excessive assessments in criminal cases by referencing a previous decision that criticizes such assessments, saying that even absent a political motive, fines may be employed in a measure out of accord with the penal goals of retribution and deterrence, for fines are a source of revenue, while other forms of punishment cost a state money.

Michigan's Landscape

To grasp the complexity of the court funding challenge, it is necessary to first understand how Michigan's court system is structurally divided as well as where and how funding is currently allocated, and how reform efforts have been building to improve the trial court funding system.

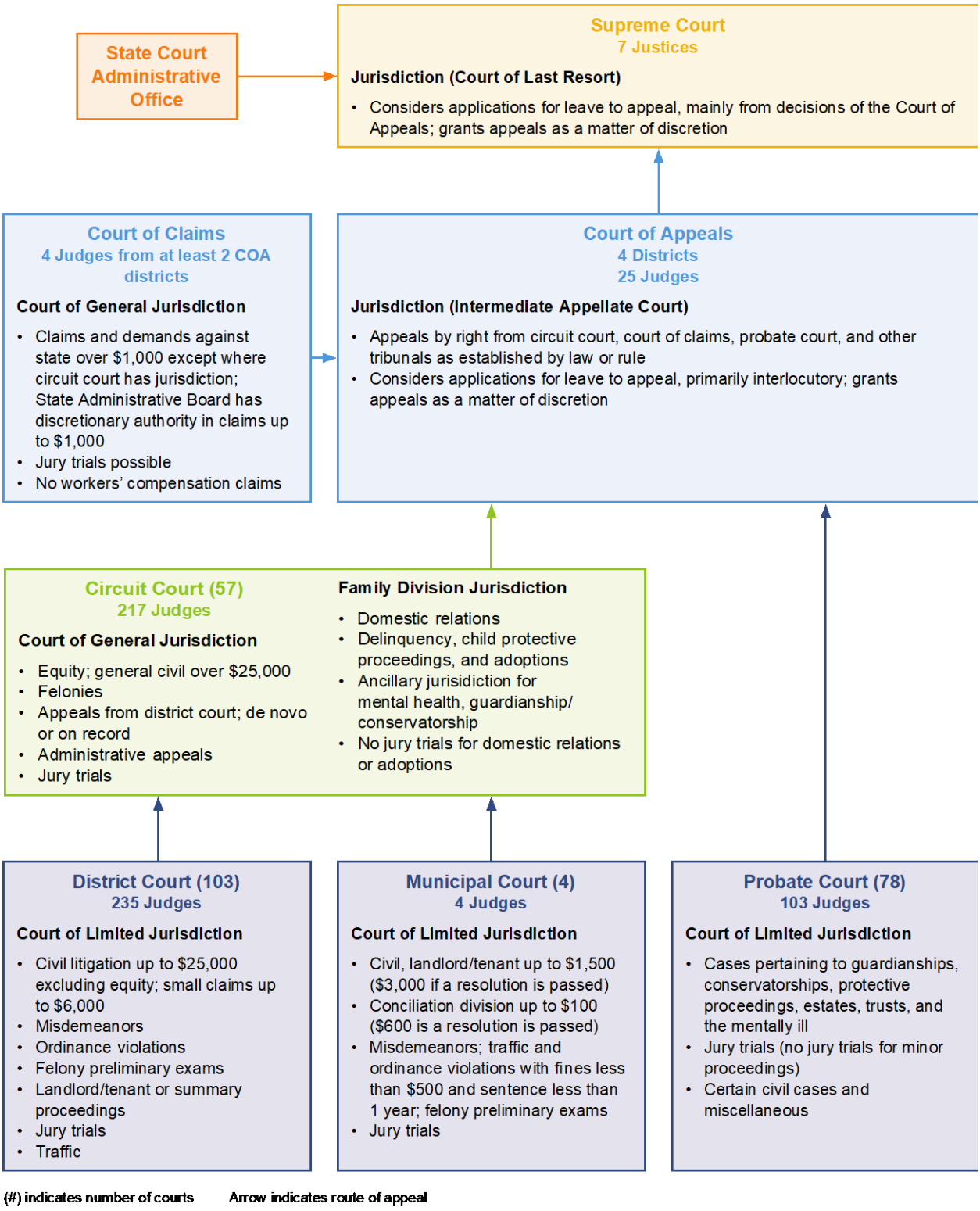
Court Structure

Over the years, Michigan has struggled to achieve a more unified court system. A paradigm shift occurred with Michigan's 1963 constitution, which introduced the concept that Michigan was a single court with several divisions, each devoting attention to a certain level of judicial administration. The Michigan Constitution provides that:

> The judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house. (Mich. Const. 1963, art. VI, § 1)

In Michigan, in addition to a supreme court and a court of appeals, there are currently 242 trial courts, which include 57 circuit courts, 78 probate courts, 103 district courts, and four municipal courts. There are currently 559 total circuit, district, probate, and municipal judges in Michigan. Exhibit 2 below provides additional details regarding the structure of Michigan's trial courts.

EXHIBIT 2. Michigan Judicial Branch



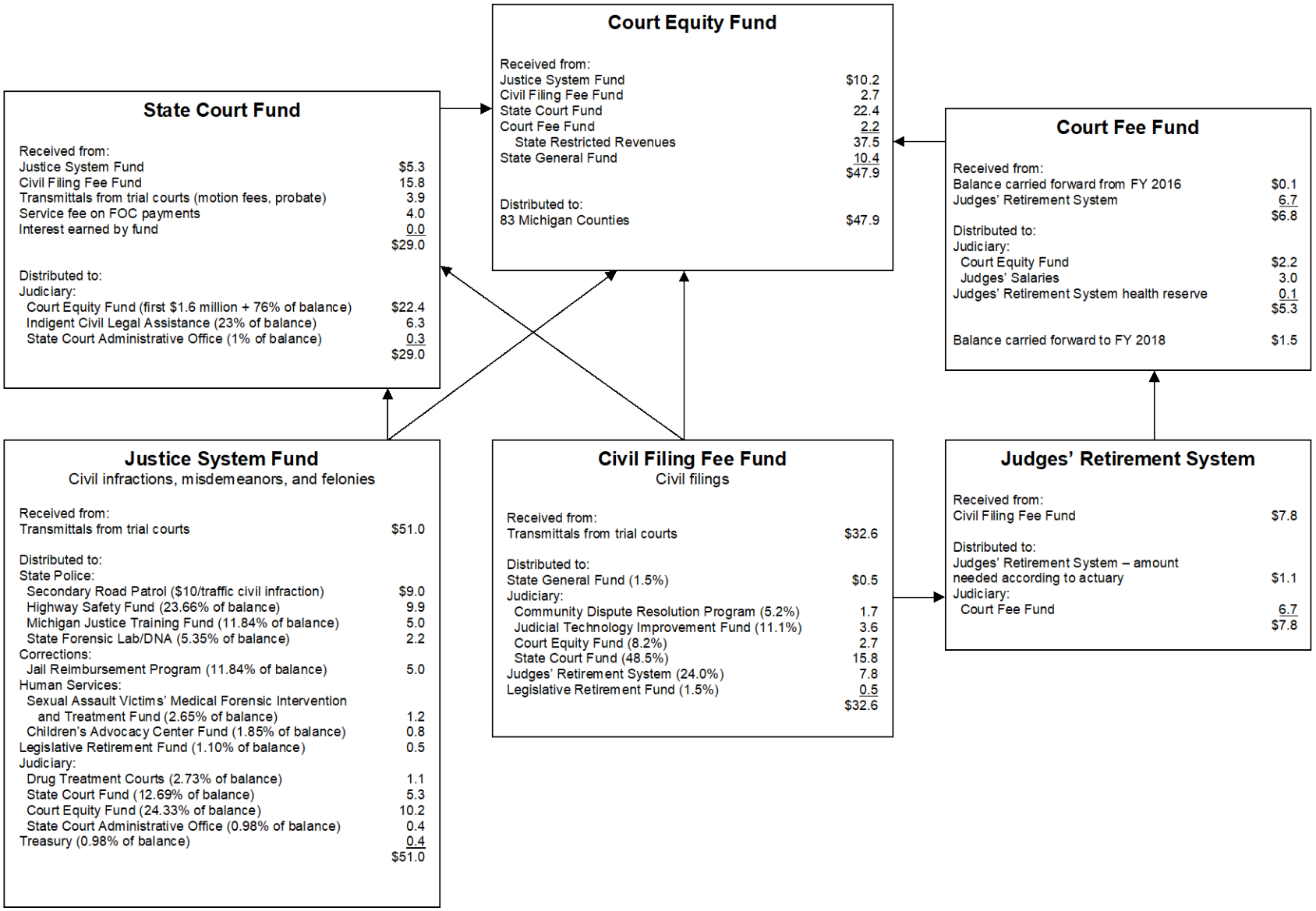
Our constitution is a product of the 1960s when court unification was popular. However, in the 1980s, courts began shifting the lens of judicial reform from unification to examination of individual court performance. This has opened a more nuanced view of unification that focuses on individual elements, which may have more positive outcomes than a comprehensive state-centralized approach. For example, studies show that a State-provided, unified information technology system could prove beneficial in terms of efficiency and would leave control of other court infrastructure to local government. Centralizing all court functions under the State may be problematic but targeting certain specific areas including court technology and collections could lead to more efficient and equitable outcomes.

Court Funding

In recent years, Michigan's courts have struggled to deliver justice with diminishing resources, and recent court decisions further threaten to remove existing court funding streams. To better understand these challenges, the TCFC also sought to determine the amount of resources currently spent within all trial court systems. Michigan lacks a system to determine all local court revenues and expenses, as that information must be gathered from each of the 165 separate court funding units. Exhibit 3 below provides a graphic of the complexity of our current court funding system. The TCFC collaborated with the local court funding units to collect accurate financial data as of 2017 to understand the resources used by the courts and make policy recommendations based upon those findings.

Before reviewing local revenues and expenses, it is important to understand the financial resources that state government contributes to Michigan's court system. The state judiciary budget is comprised of 2 percent ($192.6 million) of the total state general fund budget. The state government funds both the supreme court and court of appeals entirely in its budget. Of the $192.6 million of general fund expenditures within the state judiciary budget, almost 50 percent ($93.5 million) supports justices' and judges' compensation. The state reimburses local units for all trial court judge salaries and a minor portion of the benefits. While these are sizeable resources to support local courts, it is important to understand the level that other funding sources are contributing to Michigan's court system.

EXHIBIT 3. 2017 Court Equity Funding Sources (in millions)



Sources of Funding

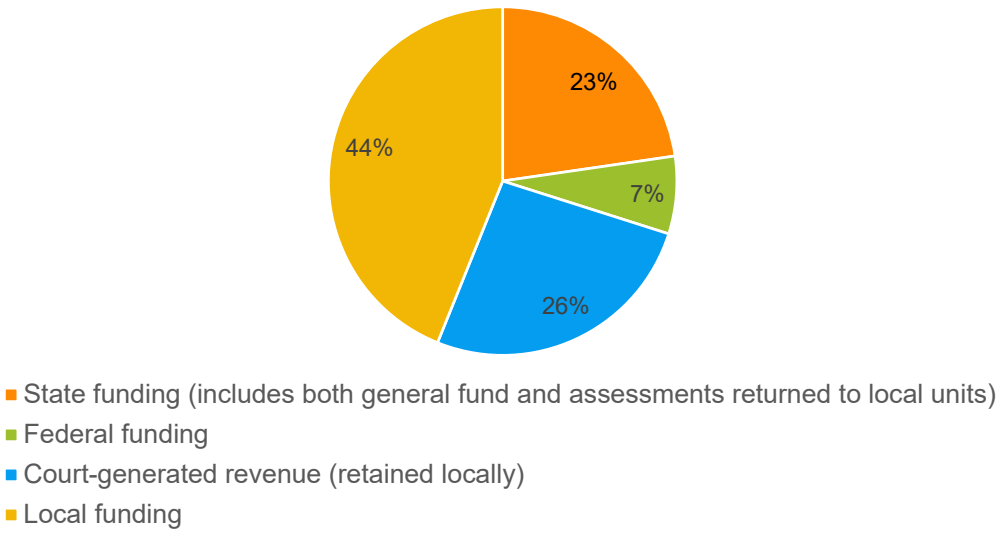
The current system is dependent upon court assessments (fees, fines, and costs) to generate substantial revenues to fund roughly one-third of court operations. The balance comes primarily from local general operating funds with the remaining portions from state and federal payments and grants. Exhibit 4, below, provides a summary of sources of funding of Michigan's trial courts. This is a challenge of Michigan's current system—as local general funds are pressured, the temptation rises to increase court revenues through court assessments.

While a significant portion of the court assessments are sent to state government, very little is ultimately appropriated from the state's general fund to actually fund the trial court system. Tens of millions of dollars are transferred to other state functions that do not directly support courts. Exhibit 3 provides a breakdown of where these court assessment funds are directed.

State support to the courts is 26.2 percent of all funding. Of this amount, a considerable portion is made up of court assessments that are from local courts. Courts and local funding units remit back to the state $127 million. When removing the $127 million that is sent back to the state from local court assessments, the state share of funding is greatly reduced. Local government units are the largest source of funding for trial courts. Exhibit 5 illustrates the amount of state resources that support local judicial systems.

While these percentages are in total across the state, it should be noted that the range of percentage contributions varies greatly. Each local unit varies in its percentages based upon what courts the unit may house. For example, most counties have circuit, district, and probate courts. In six Michigan counties (Ingham, Kent, Macomb, Oakland, Wayne, and Washtenaw), local municipalities (cities, townships) provide for a district court. Given that most user fee revenues are collected in district courts, those local units only housing a district court will have a greater portion of their expenses covered by court assessments instead of the local funding unit.

EXHIBIT 4. Source of Local Court Resources



Source: TCFC Financial Survey

EXHIBIT 5. State Contributions to Local Trial Courts

State grants/payments sent to local funding units:	$96,647,493
Court equity fund payments:	$48,697,247
Total	**$145,344,740**
Remittances from local units paid to the state:	$127,754,717
Difference (amount of state general fund contribution to local units):	$17,590,023
Percentage of local court operations expenses covered by state general fund:	2.24%

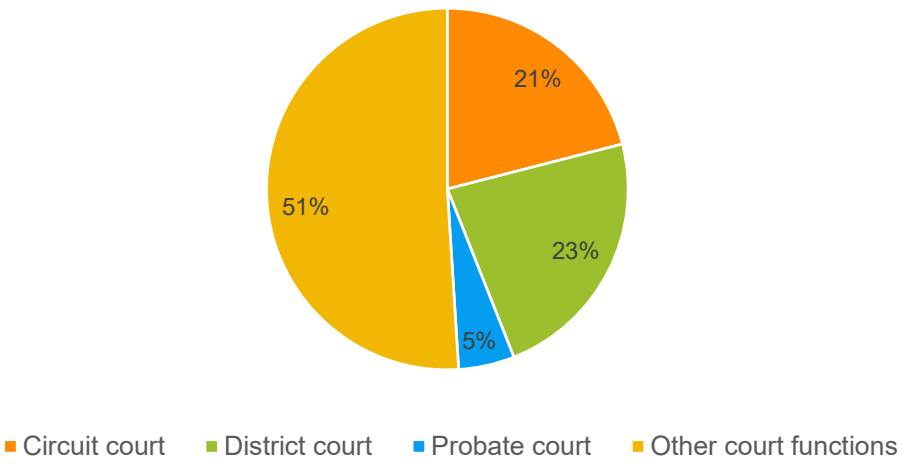
Source: SCAO Court Payments and Remittances FY 2018 and TCFC Financial Survey

EXHIBIT 6. Financial Data Survey Results

Court Function	Projected Expense Range	Range Mean
Circuit court	$284,167,824 to $301,456,974	$292,812,399
District court	$208,139,180 to $328,251,257	$268,195,219
Probate court	$46,617,237 to $64,261,713	$55,439,475
Other court functions	$546,439,015 to $885,971,608	$716,205,312
Total	**$1,141,847,711 to $1,436,139,681**	**$1,288,993,696**

Source: TCFC Financial Survey (see Appendix B for more information)

EXHIBIT 7. Court Expenditures, by Court Type



Source: TCFC Financial Survey

Expenditures

The TCFC gathered considerable data from each court and funding unit on its expenditures. A survey of local funding units was conducted, and the data was compiled and confirmed for accuracy. Findings from the survey of local funding units show that the total cost of Michigan's court system (outside of the supreme court and court of appeals) amounts to between $1.14 billion and $1.44 billion. For purposes of this report, calculations use the average of that range (1.29 billion). See Appendix B for a further explanation of court expenditures. In addition, Exhibit 6 and 7 provide a breakdown of local trial court expenses.

Court Funding System Reform

There have been recent efforts in Michigan to address ongoing challenges to the court funding system. These efforts have been led by the State Bar of Michigan (SBM), working with other key stakeholders to improve the system. The TCFC is building upon these valuable efforts.

The SBM, court staff, and other key stakeholders have been working to address challenges in court funding and improve court performance and the administration of justice. In 2011, the SBM Judicial Crossroads Task Force published a report (*Delivering Justice in the Face of Diminishing Resources*) that concluded, "urgent and purposeful action needed to be taken" because the state could no longer afford its current court system. The report asserted that the tools exist to change the system and that spending of tax dollars must occur more strategically, and that these recommended system changes could be implemented without a substantial increase in funding.

More recently, in 2016, the *SBM 21st Century Practice Task Force Report* established a roadmap for shedding antiquated court customs and applying technology and business process thinking to legal practice and court operations. The task force concluded that adopting technology and new analytical tools to deliver affordable, quality legal services could improve court efficiency and increase access to legal services. The TCFC has incorporated the ideas and lessons learned from these previous efforts and concurs with these prior recommendations.

There has been progress since the publication of these reports and the TCFC seeks to build upon that momentum. Changes so far include reform of indigency defense, creation of the business court, expansion of concurrent jurisdiction and the reduction of 35 judge positions (as of the report date), and expansion of case and document management and technology services for courts across the state.

National Landscape

In addition to engaging Michigan experts and stakeholders to better understand the Michigan system, the TCFC also researched the national landscape. Over the past 14 months, the commission consulted with a select group of experts from across the country to gather insight on how best to design a court funding system that promotes efficiency, equitable outcomes, and the effective administration of justice. Challenges other states encountered were also outlined.

The National Center for State Courts (NCSC) provided a national perspective on court funding and assisted the TCFC in developing guiding principles. The NCSC discussed various funding and expenditure sources for trial courts, the history of how courts were funded, budget principle management,

adequate funding principles, and the effects of state financing. In addition to these broader principles of court administration, principles surrounding fines, fees, and bail practices have become increasingly important in guiding the effective administration of justice. A variety of studies and news stories have highlighted examples of the harm that can result from unfair or unconstitutional practices as they relate to pretrial detention and the imposition of costs, fines, and fees. In order to draw attention to these challenges and promote improvements, in 2016, the Conference of Chief Justices and the Conference of State Court Administrators established the National Task Force on Fines, Fees, and Bail Practices (National Task Force). This group developed recommendations that promote the fair and efficient enforcement of the law and created resources for courts to ensure that individuals have access to justice.

Also, representatives from a variety of states provided key information to the TCFC on best practices and lessons learned. Minnesota was identified as a best practice based on its effective transition into a unified court funding system. Minnesota's judicial branch went through a decade-long transition process to a unified state system and has been state funded for 13 years. Minnesota's counties typically are responsible for building and security costs. Other incurred expenses are negotiated with the state.

Arizona was also identified as a best practice even though their court system is not as centralized as Minnesota's. Arizona's trial court system has a hybrid funding system, where its strengths are court order enforcement and a centralized collections program. In addition, the roles and responsibilities of municipal court governance are clearly communicated within that model.

Lessons Learned

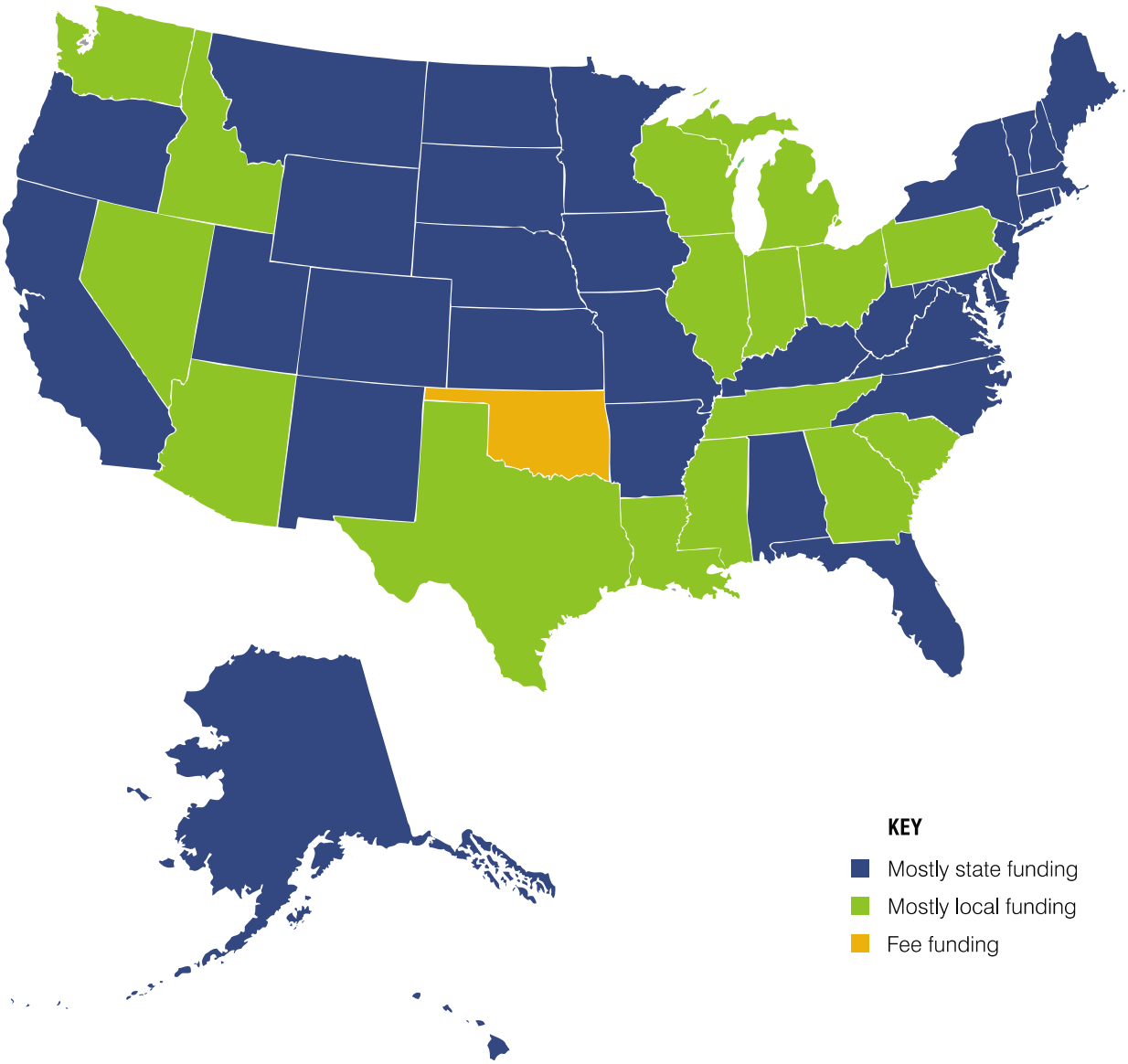
Kansas, Ohio, and California were viewed as states where important cautionary lessons could be learned regarding court system funding. Statewide funding appears to work well in Minnesota. However, Kansas shows there may be a downside to centralized statewide funding. The centralized statewide funding model may subject the courts to political conflict unrelated to court funding. For example, a series of court decisions concerning school funding increased tensions between the judicial and legislative branches of government with the legislature responding with several attempts to limit the funding of the judicial branch.

Ohio is not a unified judiciary and the TCFC learned that within the judicial system, the various courts do not effectively coordinate efforts. Ohio is working to better coordinate its judicial system and seeking additional assistance from the state in promoting a more unified approach.

California experienced challenges to transitioning to a state funding system, and there have been ongoing issues in funding court infrastructure and facilities. As a result of not defining roles and obligations related to court facilities, those facilities are not being properly maintained.

Exhibit 8 below distinguishes between those states that are mostly state funded as opposed to those that are mostly locally funded.

EXHIBIT 8. Court Funding in the 50 States



In addition to learning about the strengths and weaknesses of state funding structures, the TCFC also analyzed the impact court funding schemes can have on communities. The TCFC was provided a background summary of the events that occurred in Ferguson Missouri on August 9, 2014. In the Ferguson case, an unarmed teenager was shot and killed by the police, causing long-term unrest in the community. In March 2015, after an investigation, the U.S. Department of Justice called on Ferguson to overhaul its criminal justice system, as courts in the city were accused of using law enforcement and the court system to generate revenue, specifically through the issuing of expensive citations. This approach to generating revenue for noncourt purposes caused constitutionality issues and damaged the trust between the community and the local government, courts, and police. To exacerbate the problem, courts did not take into consideration the ability to pay. This practice violates principle 1.5 of the National Task Force's report on the *Principles on Fines, Fees, and Bail Practices*, and violates individual due process rights.

A New Court Funding System for Michigan

The TCFC's review of the current state of Michigan's court funding system and comparison of it to national best practices has found that the current system must be overhauled to produce the justice outcomes the people of Michigan deserve.

The TCFC was charged with reviewing existing funding mechanisms and recommending changes that would improve efficiency, the administration of justice, and justice outcomes. Commissioners unanimously agreed that any and all changes must be based on established principles and tested best practices. The TCFC reviewed and incorporated ideas from two sets of principles: the *Principles for Judicial Administration* articulated by the NCSC and the National Task Force *Principles on Fines, Fees, and Bail Practices*. The NCSC has compiled its principles to help guide state-level leaders as they restructure court services and secure adequate funding. The National Task Force developed its principles to be used as a basis for promoting more fair, transparent, and efficient judicial practices. Building from these two sets of national principles, the TCFC adopted key principles to drive the establishment of a new court funding system and guide policymakers and transition teams as they implement the TCFC's recommendations. The TCFC guiding principles are prescribed below in Exhibit 9.

EXHIBIT 9. Guiding Principles

TCFC Guiding Principles	NCSC Principles	National Task Force on Fines, Fees, and Bail
Reasonable, necessary, uniform, and sustainable funding: A standardized system of fees and costs that generates a revenue stream resulting in stable and consistent court funding	6, 11, 16, 19, 23, 20	1.5, 1.6, 2.3, 3.3, 6.1, 6.2
Streamlined operations: The use of centralization, technology, and consolidation to improve efficiency	5, 6, 11, 23	1.3, 1.10, 2.1, 2.3, 3.2, 3.5, 6.3, 6.7, 6.8
Rational court organization: A process driven by best practices, data, outcomes, and accountability	1, 4, 15, 16, 17, 20	2.1, 3.3, 3.4, 4.3
Judicial independence: A separation of courtroom decisions from operating budgets	10, 13, 19, 25	1.5, 1.6, 1.8, 6.1, 6.2, 6.3, 6.8
Equity and inclusion: Principles that ensure the courts are impartial and fair to all community members	14, 25, 12	1.1, 1.4, 1.6, 3.3, 3.5, 4.1, 4.3, 5.1, 5.2, 5.3, 6.5, 6.6
Court professionalism: Education and training to continuously improve the performance of court staff and judicial officers	7	1.8, 6.4, 6.7, 7.1
Preservation of procedural due process: Importance of promoting procedural fairness, access to justice, and court safety	8, 12, 13, 14, 22	3.3

The TCFC envisions a court system focused on administering justice, ensuring public safety, and upholding a high level of public confidence. Justice, not revenue, is the desired outcome.

Consistent, predictable, and proportional resources across Michigan's courts are essential in providing due process and judicial independence, thereby ensuring the integrity of the court and just outcomes for the people of Michigan. This will also provide a platform for accelerating innovation to ensure that the evolution of the justice system keeps pace with Michigan's progress.

This vision can be achieved by clearly defining and streamlining a new financing model administered by the state that includes new state investment into the trial court system. This new court funding system will improve justice outcomes by creating opportunities for local governments to increase investment in improved law enforcement, criminal justice deferral programs, assistance for mental health services, and other innovative programs.

Recommendations

The TCFC arrived at five recommendations to implement its vision for a new funding system for Michigan's trial courts. These recommendations are based on sound principles of judicial administration, best practices from other states, information about Michigan's court system, as well as a practical understanding of what can be realistically achieved. These recommendations resolve the issues raised by *Cunningham*; meet Act 64 of 2017 obligations; and establish a new court funding system that is more efficient, fair, and equitable.

Recommendation One: Establish a Stable Court Funding System

Summary

The TCFC recommends establishing a stable court funding model to invest in improved justice and performance outcomes, building on existing resources. Rebalancing funding between state and local government is essential to ensure ongoing and sustainable funding. Establishing a funding model that is consistent, and predictable, with proportional resources across courts is essential in providing due process and judicial independence. This new funding model will ensure the integrity of the courts and just outcomes for all the people of Michigan.

Description

The state must accept responsibility and act to ensure adequate funding for trial courts with local government continuing to play a role in providing funding and support of the judiciary. A rebalanced state/local partnership is necessary to meet the fundamental duty that everyone has equal access to justice. To fulfill this responsibility, the state must create a Trial Court Fund for receipt of all trial court collections and receipt of state general fund payments. The Trial Court Fund must distribute necessary and appropriate monies to fund trial courts. All functions that support this principle should be state funded and managed.

Court revenues must not be redirected to any noncourt expenses, either within state government or local government, including fines which currently fund libraries. In addition, any and all trial court revenues must be sent to the Trial Court Fund for distribution to cover court expenses. This requires the state to recognize its responsibility to finally fund the trial courts, in partnership with the local funding units.

When state funding is established, decisions about local trial court operations must continue to be made by chief judges. Discretion over the administration of the court will remain with the chief judge in conjunction with the normal budgetary appropriation process that occurs with the local funding unit. These officials are best positioned to respond to their community's needs.

The Trial Court Fund must distribute funds to local governments that fund trial courts according to a Court Operations Resources Report (CORR). Similar to the current Judicial Resources Report (SCAO's report of judicial personnel needed), the CORR will be based on a weighted caseload study and appropriate allocation for local facility expenses. Case weights should be determined by a thorough statewide study to determine how much staff time is needed to fulfill each core function of a court's work. Differential cost of living, and therefore employee compensation, must be done on a regional basis (either by SCAO region or state government prosperity regions). The state must determine and ensure that a minimum level of staffing, such as district court probation personnel, exists at every trial court since the CORR could result in a smaller number of staff than is needed to efficiently operate an office and serve the public. Nothing should prohibit a local community from increasing its contribution to ensure a locally appropriate level of service. Such additional local funds must not reduce the payment from the Trial Court Fund, as established by the CORR.

Local governments that fund trial courts must maintain their current level of general fund spending (based on the average actual expenditures for the three years preceding legislative creation of the Trial Court Fund). The state must fully fund the cost of technology, including but not limited to, case management, e-filing, and video conferencing. Additionally, the state must fully fund the court collections function and total compensation expenses related to judges, one judicial assistant per judge, magistrates, court administrators, and probate registrars, with no assessment or cost sharing with the local funding unit for these costs. The sum of these expenses must be deducted from the required local government's current level of general fund spending.

Each court facility is the responsibility of the local government that funds the trial courts that use that facility. If a local government has existing debt for a court facility, the CORR must incorporate that annual cost into the formula to determine annual payments to local funding units. If no bonded indebtedness exists at the time of legislative creation of the Trial Court Fund, the CORR must include a fixed percentage of identified facility operating costs. Once a local unit ceases to have debt for a court facility, the CORR must then include a fixed percentage of operating costs for facilities for that local funding unit. "Existing debt" as used in this section means facilities constructed prior to legislative creation of the Trial Court Fund for which debt remains outstanding. A local unit may use facility funds for facility operating costs or capital replacement costs.

Clearly defined roles and obligations related to court facilities are essential to successful transition in Michigan. Minimum standards for court facilities should be established in advance and reviewed every five years.

Consistent, predictable, and proportional resources for all trial courts will improve justice outcomes, as these courts and their local funding units will be able to focus on justice, not revenue. This change in focus will motivate trial courts to meet quality and performance metrics that will improve outcomes. This recommendation will establish a baseline for trial court functions, including probation interventions, that will ensure equitable access to justice services. The TCFC supports the performance measures created by the NCSC, many of which have already been adopted by the SCAO. The CORR must be administered

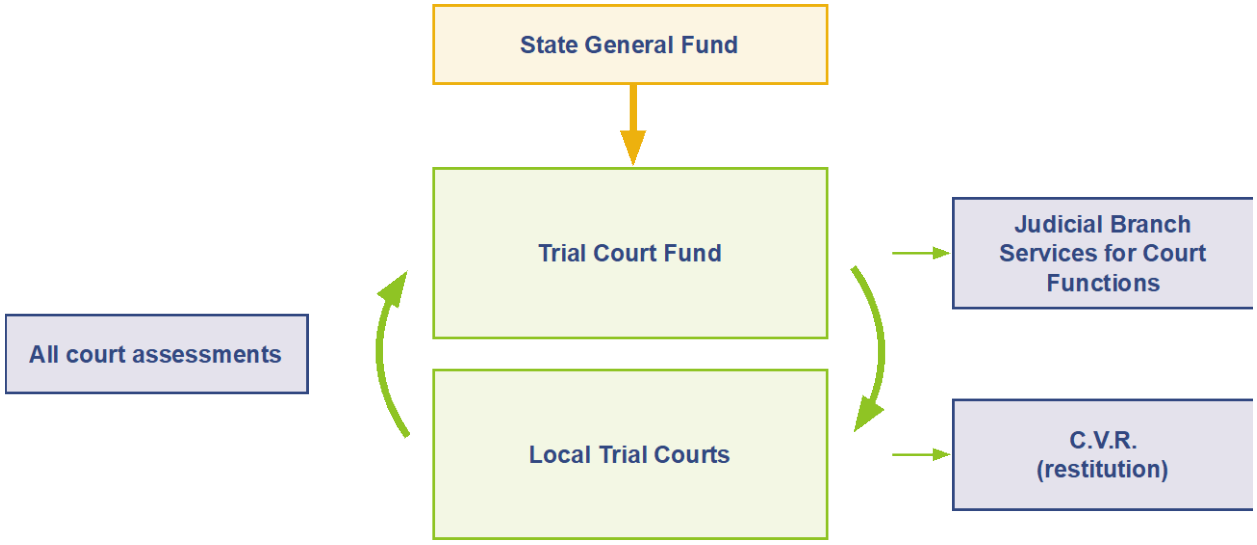
in such a way as to promote the highest achievement on these performance measures. The SCAO should be provided additional flexibility through state general fund appropriations to promote innovation and continue the growth of problem-solving courts (e.g., veterans treatment, drug and sobriety, eviction diversion, and mental health courts).

Expanded court innovations and efficiencies will help resolve some court funding challenges. The TCFC further recommends expanding upon the innovation and success of problem-solving courts and other promising innovations. These include: online dispute resolution, programs providing access to justice to low-income and other vulnerable court users, community and peer dispute resolution, presumptive bonds, and other emerging initiatives. Each of these has the promise of improving justice outcomes.

Each year the SCAO will be responsible for working with the governor to develop recommended Trial Court Fund expenditures for inclusion in the executive budget recommendation. The SCAO will be responsible for presentation and explanation of the Trial Court Fund expenditures to the Legislature. The Legislature must appropriate the funds necessary to meet the requirements of the CORR as defined by the SCAO. The SCAO will then administer Trial Court Fund distribution to each local government that funds a trial court. It is understood that the SCAO operates under the supervision of the supreme court, and it is anticipated that the supreme court will agree with these requirements.

The TCFC is aware that the redirection of court costs as a funding stream will have a negative impact on the budgets of certain local funding units. Certain courts currently have revenues in excess of their costs, but most do not. As the recommendations set forth by the TCFC are implemented, the intent is to level the playing field for all parties. As a result of this change, there may be up to a $27 million shortfall for these communities' general fund budgets. Exhibit 10 below provides a representation of this new funding system.

EXHIBIT 10. New Court Funding Model



Rationale/Findings

Separating courts from the revenue they create is imperative and fundamental concept in Michigan. The first Michigan Constitution in 1835 provided that all penal fines shall be paid to support libraries. This directive has remained consistent in each of the state's constitutions. The current constitution from 1963 states, "All fines assessed and collected in the several counties, townships, and cities for any breach of the penal laws shall be exclusively applied to the support of such public libraries, and county law libraries as provided by law." If the recommendations in this report are implemented, this diversion of court revenue will no longer be needed to separate courts from the revenue they create.

The TCFC has determined that Michigan's existing trial court funding system is a broken collection of assessments and transfers that does not achieve sustainability or equity throughout the state. The new trial court funding model will first seek to more equitably share the costs of funding the trial court system. It is recognized that this can only be accomplished by the state increasing its investment in the trial court system. It is recognized the importance of court costs to the current budget of local funding units.

It is important to develop a system where funding for the court is predictable, sustainable, sufficient, uniform, and fair. Currently, over $30 million per year in local trial court revenues are diverted to other non-court state functions, such as corrections, Michigan State Police, Secondary Road Patrol, and the state forensic laboratory. Courts should not serve as tax assessors and collectors for the benefit of other programs and organizations. Instead, court revenues should be committed to the operations of the courts. Reinvesting diverted court revenues in Michigan courts will make up a significant percentage of any funding deficit caused by removing pressure on judges to fund their court.

Implementation Plan

Short Term

Creation of the Trial Court Fund would require legislation. The legislation should authorize a distribution formula according to the Court Operations Resources Report based on a weighted caseload study and appropriate allocation for local facility expenses. The fund will include local ordinance revenue as well. A careful transition plan must be established in order to minimize disruption to local municipalities resulting from the change in funding. Each and every statute that transfers money to or from a trial court must be amended. These amendments shall implement the new funding model. Statutes needing amendment have been identified by the Trial Court Funding Commission, see Appendix E (Dillon 2018; Haskamp 2018; Norton 2018; and Oeffner 2018).

Long Term

Legislation requiring local governments to maintain their general fund spending will be needed once the Trial Court Fund is providing local revenues. In addition, policies to define minimum court facility standards will be needed. CORR will also need to establish any performance measures for local trial courts. Ongoing legislative appropriations to maintain the Trial Court Fund will be needed.

Recommendation Two: The State Shall Offer to Provide All Court Technology Needs

Summary

To create a uniform system and alleviate burden on court funding units, the State of Michigan must provide and fund, through the SCAO, all court technology needs, including case and document management services, and must also supply and manage technology products and services, including hardware, software, infrastructure, training, and ongoing technology support.

Description

Michigan's trial courts currently use 20 different case management systems and 150 different computer systems. In order to aggregate data, each of the trial courts must gather data and transmit it to the SCAO. A unified technology system would enable courts to discontinue the use of staff to prepare these reports. More significantly, a unified system would enable broader use of online court services and resource sharing, would eliminate the cost to provide those services, and would reduce demands on staff, resulting in further savings. Technology can enable resource sharing as well, including aspects such as interpreters, secure digital court recording, and transcription. The system must, however, continue to protect certain confidential proceedings. All of this would result in reduced cost to local government while improving service to the public.

The state already provides courtroom video conferencing, resulting in over $7.4 million in annual savings for the Department of Corrections. Local law enforcement is also benefiting by conducting arraignments and other proceedings from jail, which provides greater security and reduced transportation costs. The SCAO is currently deploying e-filing in all of Michigan's courts. Providing for all of the technology needs for Michigan's courts will bring greater efficiency and better service to the people of Michigan.

A unified system will support consistent case processing and record management statewide. The State should complete and enhance the new electronic document management system because many courts currently lack the resources to effectively and efficiently adapt to new digital systems. This initiative would provide a unified platform for document management and eliminate duplicative efforts at the local level, providing a tool for the SCAO to manage data in a single location, rather than collect it from individual courts, thereby eliminating the necessity for multiple reports.

A common technology platform will also support the expansion of online dispute resolution. It will be less expensive to taxpayers to support a single system than the myriad systems currently supported by local funding units. Today, multiple systems create duplication of effort and systemic waste. The purchasing power of the state, along with the expertise to assess the value and quality of technology systems, will improve the overall quality of the experience of the courts and the users.

Rationale/Findings

In a data-driven world, a common data collection point is vital for service improvement. With a common system, trial courts would no longer be required to prepare reports from different data management systems that make report generation time consuming and difficult. Additionally, the likelihood of error would be reduced if the SCAO could collect the data from the system directly. With a single system, the likelihood of the data being accurate, reliable, and consistent is improved.

The SCAO reports that there was resistance to performance measures in Michigan when they were originally proposed. Today, judges accept those measures and expect the data that supports those measures to be used for improving court operations. Trial courts routinely provide these reports to local media to demonstrate how well the court is performing.

Research also suggests that more state dollars to support in-service training, a statewide personnel system, and a statewide information technology (IT) system are cost-saving measures of unification. This unification will also improve access to services, improve the customer experience, and drive improvement in system performance. For example, online dispute resolution supported by a statewide IT system greatly increases access to court—over 50 percent of the public that uses online dispute resolution report that they could not have participated in the proceedings at all without this service.

In relation to this accessibility improvement, TCFC research found dramatically unequal resource allocation between courts and, therefore, vastly different court experiences for those using the system. The State must act to provide a uniform experience for all court users and provide transparency in the governance of the judicial branch. Uniformity in reporting and understanding of court performance across all communities must be achieved. All courts should be able to opt in to a standard technology platform. Currently, the various court systems provide inconsistent and inefficient reporting.

These challenges should be addressed by the SCAO providing technology to ensure equity in resources for all courts while also improving court efficiency. This leadership role will allow the SCAO to partner through agreements with their IT staffs of local funding units as well.

The SCAO must bear the cost of all technology enhancements. State general funds must be appropriated to the Trial Court Fund to meet this need. This will create efficiencies and a better model to further improve the court system.

Implementation Plan

Short Term

Statutory authority will be needed to designate court technology to be paid for from the Trial Court Fund. Once statutory authority is established, a legislative appropriation for court technology will be needed. The state must fund this service either through the state general fund or through civil filing fees or a combination. Any filing fee must remain as low as practical and funds received through this fee must be transmitted to the Trial Court Fund like all other trial court revenue.

A comprehensive technology plan needs to be developed by the SCAO incorporating all the technology elements contained within the recommendation. This plan will include a transition plan for all local courts to use the state unified technology system. Through its technology plan for courts, the state will provide case management services to all courts and continue its development of e-filing across the state.

Long Term

Based on the technology plan, the SCAO must supply and manage all technology products and services for the courts. Ongoing legislative appropriations will be needed to support technology in trial courts.

Recommendation Three: Establish Uniform Assessments and Centralized Collections

Summary

The TCFC recommends that a system of uniform assessments and centralized collections be implemented for all courts as a function of the SCAO. This system will maintain judicial discretion for ordering fines within the limits set by law and determining indigence (ability to pay). This new system will help ensure that the administration of justice is separate from the business function of the court.

Description

A variety of court business functions can be performed centrally that will reduce cost overall, promote efficiency, and eliminate the ethical dilemma of judges being incentivized to maximize revenue from parties to support their budgets. This new uniform system, administered by the SCAO, would build public confidence in the impartiality of the justice system and improve efficiency.

Efficiency in overall court operations will be enhanced with centralized core court business functions. Within each local court system an individual collection system exists. Centralizing court collections will achieve greater efficiency and achieve a higher level of uniform customer service. It is essential that the business function of court collections be removed from the trial courts and transferred to the state to ensure that administration of justice is the courts' sole function.

The best way to achieve this goal is through mandates from the supreme court and legislation that requires this focused standardization of the business functions of the court. An element of the centralized collection process is to eliminate all non-court-related assessments and create greater uniformity.

Standardizing fees and costs will prevent judicial and/or government abuse of the system by disincentivizing the use of courts to generate revenue as opposed to administer justice. However, judicial discretion should be available when assessing fines to allow a court to consider specific circumstances in reference to the matter pending before the court.

Court fines and costs must be assessed upon and subject to an individual's ability to pay. Important functions of a logical court funding model are to streamline the courts and require them to follow the same guidelines when determining fee amounts or an individual's ability to pay. Thus, having uniformity and consistency for revenue generation and distribution is critical to establishing a system that is perceived as fair for all involved. In its collection practices, the state shall comply with appropriate state and federal law. By centralizing collections, Michigan can reduce the cost to local units and increase the efficiency of collections, eliminating incentives for generating revenue. All court revenues must be subject to this new state collections program.

The SCAO must establish the appropriate actual cost for civil infraction and criminal cases. Costs assessed to an individual defendant must be based on a sliding scale and ability to pay, as established by the SCAO.

Rationale/Findings

This new uniform assessment and centralized collections policy will eliminate the ethical dilemma judges face as well as the public perception that judges fine individuals in order to fund their courts. Additionally, this policy will separate judicial function from revenue collection, eliminating a conflict of interest.

A judge's decision to impose a legal financial obligation should be entirely unrelated to the use of revenue generated from the imposition of such obligations (Principle 1.5, Principles on Fines, Fees, and Bail Practices, December 2017). Centralizing judicial collections will streamline judicial function, as collections are a poor use of judicial time and court resources. Creating consistency of collections around the state will also help ensure equal treatment of offenders.

For example, the collection of restitution for crime victims is a priority of trial court collections, and transferring this responsibility to the state will allow greater collection opportunities by the department to collect on behalf of the victims. Ensuring that victims receive funding and support must remain a priority.

Court assessments would be based on a cost allocation plan calculated using the standards in OMB Circular A-87 and calculated by an independent party every five years. This circular provides principles and standards for determining costs for grants, awards, and other agreements with state and local governments.

Implementation Plan

Short Term

Legislation is needed to authorize SCAO to create standardized court assessments. This legislation will provide judicial discretion to reduce court assessments based on ability to pay. Once legislation is passed, rules will be needed authorizing the SCAO to establish a fixed schedule for court assessments that are based on actual costs, which will be implemented across all courts in phases. The SCAO will also need to develop the appropriate forms and the technology to deliver them.

Legislation is also needed authorizing the Michigan Department of Treasury (Treasury) to collect assessments for each court. The Treasury will then need to implement rules and procedures on the transmittal of assessments from local courts to the Treasury. The Treasury will also need to establish its procedures for collecting assessments. It is important to require that the Treasury consider ability to pay as a criteria for collection and include an opportunity for community service if a person does not have the financial resources to pay for court assessments.

Legislative action on these recommendations must be adopted prior to the sunset of Act 64 of 2017. The Legislature should extend the statute allowing for fines and costs to be imposed in criminal cases until the state acts to replace this court-generated revenue with state general fund support.

Long Term

Once the system is in place for state collections through the Michigan Department of Treasury, local courts will transfer outstanding collections to the state. Legislation will be needed to make this transfer. Policies from Minnesota could be looked at as a best practice for centralizing court payment processing.

Several pieces of legislation will be needed to move existing revenues directed to noncourt expenses to the Trial Court Fund (see Exhibit 2 for a listing of existing revenues). Once the State decides on an alternative funding stream for libraries, a constitutional amendment should be pursued to provide penal fines to the Trial Court Fund.

Recommendation Four: Move Toward a Uniform Employment System

Summary

Michigan lacks a uniform system of justice due in large part to disparate and unequal local funding. All court employees, beginning with trial court judges, referees, and magistrates, should be transitioned to state employment, which would provide for uniform compensation, wages, and benefits as well as standardized qualifications for nonjudicial personnel, training, and conduct requirements. This is a long-term goal that should incrementally progress after other recommendations are enacted.

Description

The transition to state employment should begin with trial court judges, as they are currently both state and local employees. The initial transition should also include referees and magistrates. Ultimately, this transition would make all trial court judges, referees, and magistrates solely state employees for all purposes, including salary, compensation, liability, healthcare, and retirement benefits. Additionally, the change would result in equal compensation and benefits for trial court judges, referees, and magistrates across the state. Current trial court judges, referees, and magistrates should be allowed an opportunity to continue with existing compensation, benefits, and expense programs. This would be similar to the transition from defined benefit pensions to defined contribution programs for state employees in 1997.

The SCAO should be assigned the responsibility of developing a plan for phasing in all other court employees. The TCFC recommends transitioning by categories of court employees, such as court administrators, probate registers, probation officers, and clerks on a set schedule. This process will also include establishing uniform standards for compensation, benefits, qualifications, training, and conduct, with the intent of improving the performance of court employees.

It is important to focus on the uniform employment concept from both organizational and administrative perspectives. All court employees should be under a single employer instead of the current decentralized and inconsistent system. Employees are currently compensated and managed under a vast array of standards based on the policies and resources of each local unit of government and court, which results in a myriad of challenges and essentially no uniformity of court employees across the state.

Rationale/Findings

Currently, the State pays trial court judges' salaries—part directly to the trial court judge and part as a reimbursement to the funding unit. With the added processes of payment and reimbursement, as well as dual employment, this method of salary payment is inefficient. Making trial court judges, referees, and magistrates state employees would:

- Standardize salaries, fringe benefits, and retirement benefits so that there is equal treatment
- Transfer the cost of visiting judges from funding units to the state
- Allow for more direct control over temporary assignments if help is needed in other courts
- Provide for easier and more uniform training and education
- Eliminate considerable costs for the local communities and funding agencies
- Eliminate dual employment concerns

- Help maintain the separation of the three branches of government as well as judicial independence
- Allow for consolidation or elimination of judgeships where demand for the service is less

Courtroom personnel, in assisting trial court judges, should be directly supervised by the judge.

Implementation Plan

Short Term

Legislation is needed to transition judges, referees, and magistrates to direct employees of the State of Michigan, including moving them to state benefits. Current trial court judges, referees, and magistrates must be given the option to continue with existing compensation, benefits, and expense programs. The State should transition trial court judges, referees, and magistrates to state employment to begin to build a more streamlined and clearer organizational structure for the courts under the judicial branch.

After trial court judges, referees, and magistrates become state employees, the SCAO will develop a transition plan to move court administrators and probate registers into state employment. This will occur once the Trial Court Fund is providing adequate funding for trial courts. Legislation is needed to transition these employees.

Long Term

Eventually, all court personnel will become employees of the State of Michigan. The Michigan Supreme Court will develop a plan to transition court employees into a single employer under the state, with the goal of uniformity within local trial courts.

Recommendation Five: Establish a Transition Plan for the New Court Funding Model

Summary

In order to implement a new court funding model, there must be a plan for the systematic transition of finances and the promotion of funding sustainability. Success will depend on thoughtful planning of a phased implementation that recognizes it will take time to fully achieve the goals laid out in these recommendations. The SCAO must lead the drafting of this transition plan, which must include technical assistance and funding to local units of government to cover the residual burdens of local support for the courts throughout the implementation.

Description

In order to implement a new court funding model, there must be a plan for systematic transition of finances and funding sustainability that is thoughtful and deliberate in order to minimize disruption to local courts and funding units. The plan must address how functional areas of operation in IT (including case management), facilities, assessments, collections, uniform employment, and other court operations will be transitioned under the recommendations from the TCFC. It is important that this transition plan hold local governments harmless (i.e., no additional funding is required from local funding units to cover the costs of a transition to a new funding model). The basis for this position is the current funding model and the unequal funding obligation currently residing with local funding units supporting the state court system. The state government should provide all funding and resources necessary to cover transition plan costs. The SCAO must be provided with a funding appropriation to begin the implementation and operation phase of the transition plan based upon their expertise in understanding what will be required for success.

The transition plan must lay out a timeline for short-term, intermediate, and long-term objectives to be achieved. To assist and support the SCAO, a legislatively created task force must be established to implement the recommendations and lead the transition. Membership of the task force must include key stakeholders from the Michigan Department of Treasury; the Michigan Legislature; the Executive Office of the Governor; Department of Technology, Management, and Budget; Michigan Association of Counties; Michigan Municipal League; Michigan Townships Association; judicial associations; county clerk associations; Prosecuting Attorneys Association of Michigan; State Bar of Michigan; practicing attorneys; court administrators; and the general public. The primary purpose of the transition task force is to ensure the TCFC's vision is realized through the implementation of a new model to fund Michigan's trial courts.

Once the new trial court funding model has been implemented, a Michigan Judicial Council shall be created. The council will be made up of court system stakeholders and housed under the Michigan Supreme Court. The council will explore and prioritize with the SCAO the additional actions that must be taken to continue implementing TCFC recommendations. In collaboration with SCAO, the council must include an evaluation component to measure the timely and effective implementation of each of the TCFC recommendations to ensure they are achieving the intended outcomes.

As new technologies are introduced, the council must ensure that legislation, rules, and practices are modified to take advantage of these new tools to support court services. Beyond applications that include e-filing and benefits of unified case management, efforts should include strengthening the overall value of technology to make better use of court resources and ensure success through rigorous pilot programs

and testing ahead of statewide implementation. As the state continues providing services to Michigan residents in the information age and beyond, it is essential that court services have a central focus in leading technologies that may assist in providing additional avenues to promote timely access to the justice system.

A system for funding trial courts that is simpler than the current model will save both overall costs and enhance transparency in the allocation of resources and the sources of funding. The Michigan Judicial Council must adopt a schedule of consistent and uniform assessment of costs and ensure there is an equitable range of costs across all courts. Standardized fines, fees, and costs within a reasonable range to assist in preventing judicial or government abuse of the system must be implemented. These fines, fees, and costs should allow for trial court judges to have discretion when assessing fines so that a court can consider the specific circumstances in reference to the matter pending before the court, including a limit on costs and fines in relation to an individual's ability to pay. An important element of a logical court funding model is for all courts to follow the same rules and guidelines. Having uniformity and consistency for court collections is critical to establishing a system that is perceived as fair for all involved.

Rationale/Findings

The TCFC recognizes that court operations must change to successfully realize these recommendations. The changes will allow for an improved funding model and overall enhancements to the Michigan court system so court services may be more equitably delivered to Michigan's residents.

The legislatively created task force would drive the full transition plan, understanding the time required to successfully implement TCFC recommendations. The task force will develop a realistic structure and schedule for transition implementation and oversight, initially focusing on achieving the goals of the new court funding model. The task force will then create the Michigan Judicial Council to facilitate the long-term implementation effort. This task force will report annually to the legislature on progress in conjunction with making requests for adequate appropriations for sustainable funding.

Implementation Plan

Short Term

Legislation must be enacted to establish an implementation task force of key stakeholders authorized to create a transition action plan, in conjunction with the SCAO, and oversee implementation of the new court funding model transition. This task force will report annually to the legislature on its progress. The SCAO, with guidance from the task force, will establish a formula based on case weights to be used to distribute and fund the trial courts. Variances must be made to ensure staff is funded appropriately in order to meet basic operational needs of each court. It will be essential to appropriate funding for the SCAO to administer the implementation plan and provide for its success.

If court costs are eliminated as a source of trial court funding prior to the case weight formula being developed and implemented, the SCAO must be authorized to devise an allocation formula based on existing data. Funds necessary to meet this shortfall must be appropriated by the legislature.

Long Term

After the task force has completed its planning and a new funding model is in place, rules are needed to create the Michigan Judicial Council under the judicial branch. The council will address ongoing and longer-term implementation and action efforts, and will also monitor outcomes and make suggestions or take appropriate action to modify the TCFC's core recommendations if unintended outcomes occur.

In conjunction with the supreme court, the Michigan Judicial Council will develop a plan to align all court employees under a single state employer following the transition of trial court judges and court administrators. Alignment of the employment structure should occur through a long-term approach and be completed in phases, with careful consideration for uniformity of organizational structures, workload and staffing match, and local adjustment for equitable compensation.

Appendix A: Definitions/Terms

- **State court system:** The state court system is divided into the constitutionally created supreme court, court of appeals, a trial court of general jurisdiction known as the circuit court, a probate court, and the legislatively created district court (Const 1963, art 6, §1 and the Revised Judicature Act of 1961, MCL 600.101 et seq).
- **Court administrator:** Includes the highest-level administrator, or director of the court, who functions under the general direction of the chief justice or chief judge
- **Court assessments:** All monies authorized by statute to be paid to the court. These assessments are defined as follows:
    - Restitution: Money collected by the court to be paid directly to a victim of a crime
    - Fees: Imposed on an individual for a service provided directly to that individual (e.g., court-appointed attorney fees)
    - Fines: Imposed on an individual for a violation of statute or ordinance
        - Statutory fines: Imposed for a state penal law violation or civil infraction
        - Ordinance fines: Imposed for a violation of a municipality's ordinance
    - Court costs: Any cost reasonably related to the actual costs incurred by the trial court without separately calculating those costs involved in the particular case, including, but not limited to:
        - Salaries and benefits for relevant court personnel
        - Goods and services necessary for the operation of the court
        - Necessary expenses for the operation and maintenance of court buildings and facilities
- **Court expenses:** Costs of operating a trial court (including compensation for all judicial employees and court facilities), restitution paid directly to a victim, funds paid directly to crime victims pursuant to the William Van Regenmorter Crime Victim Rights Act, records retention and archival programs, supportive programs within the judicial branch (e.g., Michigan Judicial Institute), access to justice programs and civil legal assistance to low-income individuals, and community dispute resolution centers
- **Court technology:** Capital equipment used to operate the court, including computer hardware and software, training, court video systems to record proceedings and to allow remote access communication/participation, audio recording and amplification equipment
- **Case weight:** The average number of minutes necessary to perform certain tasks associated with a case
- **Case load:** The number of cases filed in a court
- **Justice outcomes:** The sum of the experience an individual has with the court system that, taken together with all cases before the court, creates community safety and well-being and reduces reoffence (includes access to the court, representation, trial process, diversion opportunities, sentencing, supervision, probation, and the performance of the courts across the state according to SCAO standards)

- **Problem solving courts:** Evidence-based probationary programs to address specific needs for enhanced supervision and treatment designed to reduce recidivism (e.g., drug court, sobriety court, mental health court, and veterans treatment court)

Appendix B: Financial Information Summary

Local trial court financial information is not collected by the State of Michigan. Some past studies have attempted to project local court expenses, but the data is outdated. To determine local finances, the TCFC surveyed all local funding units and courts requesting all revenue and expenditure information from their last audited fiscal year. The data collected for court revenue and expenses includes all local unit court types (circuit, probate, and district) as well as data for other court functions including friend of the court, child care fund, security services, clerk costs covered by the county clerk, and all specialty courts (see Exhibit 12 for a breakdown of these expenses). The 83 counties and 47 municipalities with local courts were surveyed with a total maximum response number of 130. A total of 109 local funding units provided responses to the survey, which represents responses from 95.8 percent of Michigan's population covered by those courts.

The survey response data was compiled by Public Sector Consultants (PSC) and confirmed against known totals including Court Equity Fund payments and state remittances as provided by the SCAO for accuracy. Using the data set, several models were constructed to estimate total court funding by projecting those data elements to the state as a whole. The model took into consideration both court size (based upon the number of judges and population served) as well as court type (circuit, district, and probate court) to project a single statewide total. Finally, the model data and the survey results were used to calculate 95 percent confidence intervals around the statewide total. This is the data used for any calculations in this study:

EXHIBIT 11. Projected Local Trial Court Expenses, Assessments, and State Remittances

Line Item	Projection (Range Mean)	Range with 95 Percent Confidence
Total court expenditures	$1,288,993,696	$1,141,847,711 to $1,436,139,681
Total court assessments (retained by the local unit)	$255,121,674	$218,814,209 to $291,429,139
Total state remittances	$134,549,943	$132,662,336 to $136,437,549

Findings from the survey of local funding units using the projection model show that the total expenses of Michigan's local trial court system is between $1.14 billion and $1.44 billion. For purposes of this report, calculations use the average of that range ($1.29 billion).

The same model was used to produce expense ranges for each of the court types (circuit, district, probate, and other court functions). The mean for each of these ranges is used for any calculations in this report. Included in this table is the proportion of expenses based on both the range and the proportions from the actual data collected from the local courts. Given the high level of responses to the survey, this comparison assisted in demonstrating the accuracy of the model calculations. For purposes of this report, the actual expense proportions are used.

EXHIBIT 12. Projected Local Trial Court Expenses by Court Type

Court Type	Projection (Range Mean)	Range with 95 Percent Confidence	Proportion of Projected Range	Actual Proportion of Expenses
Circuit court	$292,812,399	$284,167,824 to $301,456,974	18% to 23%	21%
District court	$268,195,219	$208,139,180 to $328,251,257	20% to 26%	23%
Probate court	$55,439,475	$46,617,237 to $64,261,713	4.1% to 4.5%	4.8%
Other court functions*	$716,205,312	$546,439,015 to $885,971,608	48% to 62%	51%

*Other court functions include friend of the court, child care fund, security services, clerk costs covered by the county clerk, and all specialty courts.

The data from the survey responses also provided calculations of the sources of funding based on the total expenses. The TCFC survey collected data for all court functions, including the county child care fund, which falls outside of the operations of the court (a small amount of the county child care fund does fund operations in the juvenile division). To better assess the funding streams for court operations, the TCFC also compared the funding sources for court operations only (i.e., total court expenses minus county child care fund). The following table provides the funding source percentages based on total expenditures as provided by the actual data:

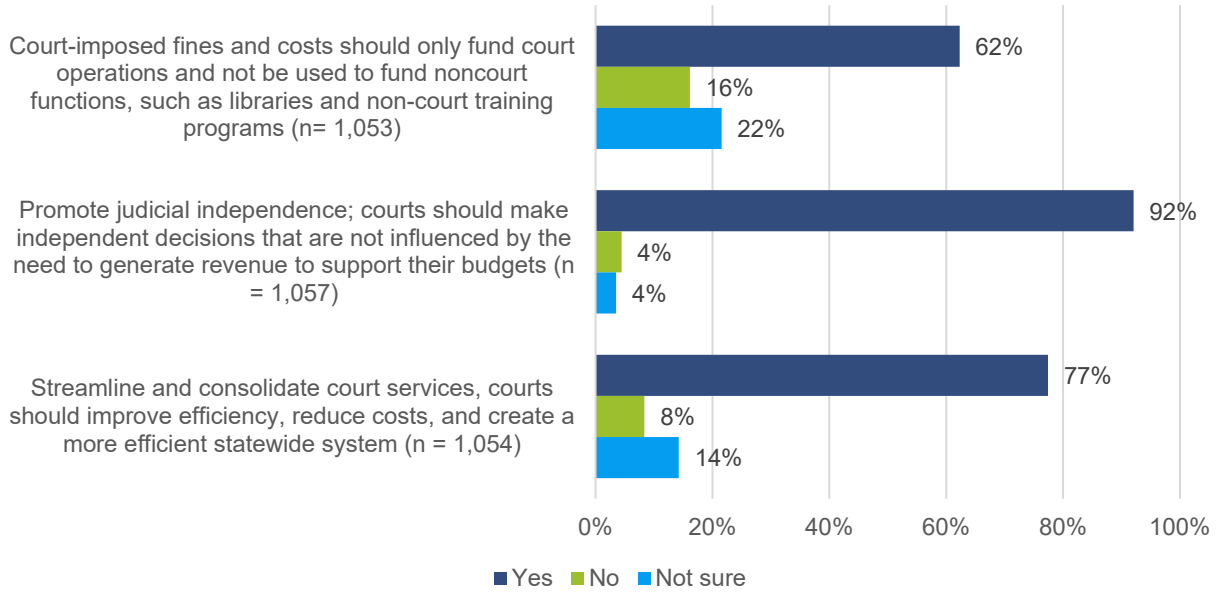
EXHIBIT 13. Sources of Local Trial Court Funding

Funding Source	Source as a Percentage of Total Court Expenditures	Source as a Percentage of Court Operations
State funding (includes both state general fund and assessments returned to local units)	22.7%	14.4%
Federal funding	7.2%	10.1%
Court-generated revenue (retained locally)	26.2%	32.4%
Local funding	43.9%	43.1%
Total	**100%**	**100%**

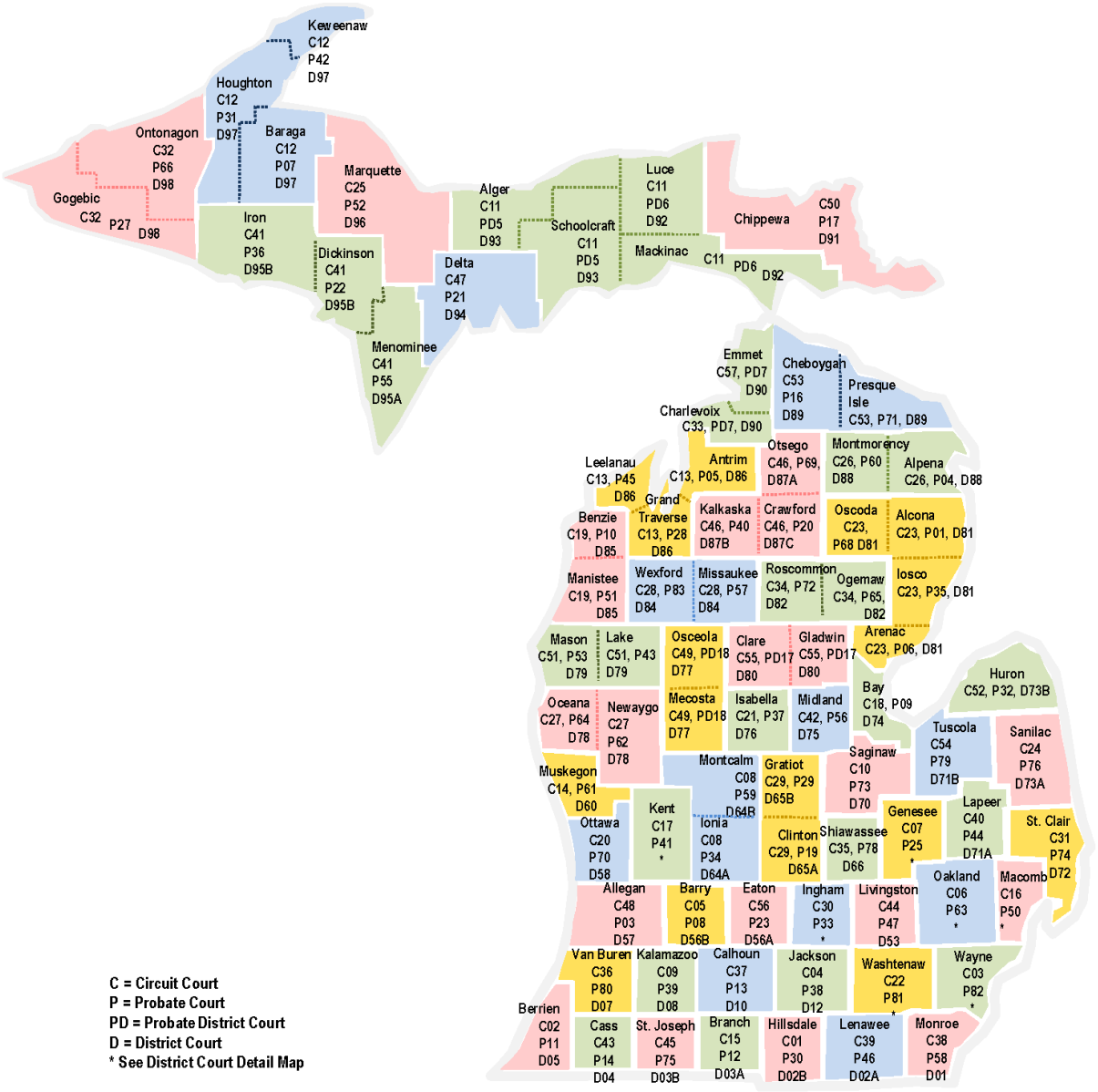
Appendix C: Stakeholder Engagement

To inform their mission and recommendations, the TCFC conducted a survey to solicit feedback from key stakeholders across the state. This survey helped TCFC members understand the current system and helped them design realistic, actionable recommendations. The TCFC received over a thousand responses from a diverse group of stakeholders, including attorneys, judges, organized labor, local government leadership and others. The stakeholders identified key problems and solutions that the TCFC should address. The exhibit below summarizes the key issues survey respondents said should be addressed by the TCFC.

EXHIBIT 14. Issues TCFC Should Address, All Survey Respondents



Appendix D: Michigan Trial Courts Maps

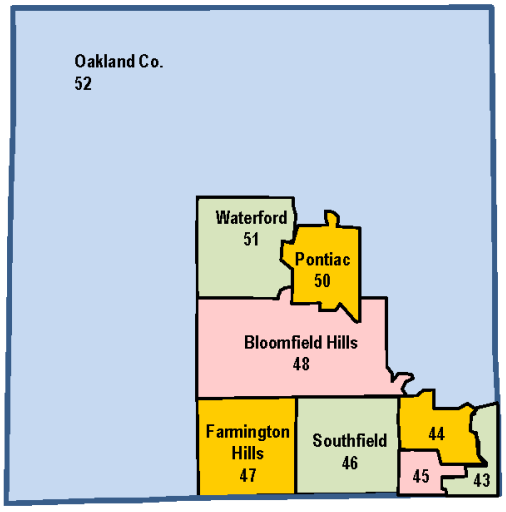


District Court Detail
May 2017

On the district court detail map, the blue shading indicates a county-funded court.

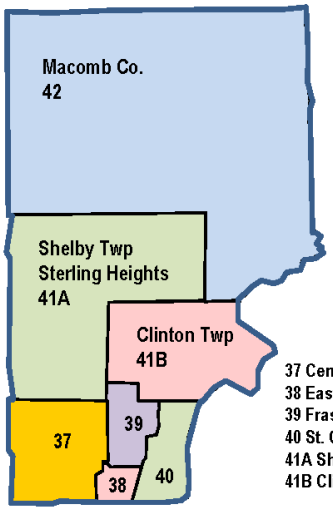
District Court Detail
May 2017

Oakland



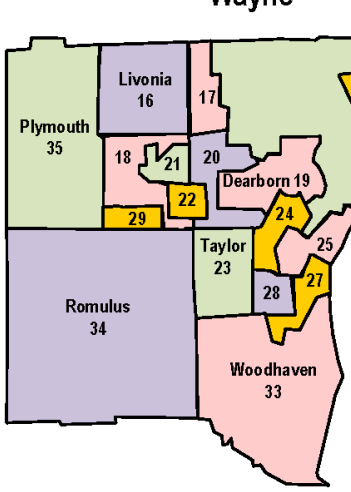
43 Ferndale, Hazel Park, Madison Heights
44 Royal Oak
45 Oak Park
46 Southfield
47 Farmington Hills
48 Bloomfield Hills
50 Pontiac
51 Waterford

Macomb



37 Center Line, Warren
38 Eastpointe
39 Fraser, Roseville
40 St. Clair Shores
41A Shelby Twp, Sterling Hts
41B Clinton Twp

Wayne



Municipal Courts
Grosse Pointe Woods
Grosse Pointe Farms
Grosse Pointe City
Grosse Pointe Park

16 Livonia
17 Redford
18 Westland
19 Dearborn
20 Dearborn Heights
21 Garden City
22 Inkster
23 Taylor
24 Allen Park
25 Lincoln Park
27 Wyandotte
28 Southgate
29 Wayne City
30 Highland Park
31 Hamtramck
32A Harper Woods
33 Woodhaven
34 Romulus
35 Plymouth
36 Detroit

On the district court detail map, the blue shading indicates a county-funded court.

Appendix E: References

Bains, Chiraag. April 26, 2018. “Ferguson Report Summary.” Presentation. Lansing, MI.

Boyd, Tom. August 23, 2018. “Overview of Kansas.” Presentation. Lansing, MI.

Dillon, Michael. February 22, 2018. “District Court Funding/Cash Flow.” Presentation. Lansing, MI. https://pscinc.box.com/s/exuehxkuoo6fqrzxq4h3j2mjke8vey8x

Dunnings, Shauna. October 25, 2018. “Where Does Court Revenue Go?” Presentation. Lansing, MI.

Hall, Daniel. April 26, 2018. “Court Funding: A National Perspective.” Presentation. Lansing, MI. https://pscinc.box.com/s/62v7b66ctaks9g5h7ftrbc8balk4ii6k

Haskamp, Mary. February 22, 2018. “Kalamazoo County Probate Court.” Presentation. Lansing, MI. https://pscinc.box.com/s/02le7wjzejw3ewxz20bines9dg7m0yne

Hogg, David A. February 2011. “District Court Tax Farming.” *Michigan Bar Journal.* Accessed April 1, 2019. http://house.michigan.gov/sessiondocs/2013-2014/testimony/Committee219-5-8-2013.pdf

Hutzel, Laura. August 23, 2018. “Trial Court Performance Measures.” Presentation. Lansing, MI.

Maciag, Mike. September 2019. “Addicted to Fines.” *Governing*. Accessed September 6, 2019. https://www.governing.com/topics/finance/gov-addicted-to-fines.html?utm_term=Addicted%20to%20Fines&utm_campaign=Addicted%20to%20Fines&utm_content=email&utm_source=Act-On+Software&utm_medium=email

Mack, Milton. December 18, 2017. “History of Funding Reform Efforts at SCAO.” Presentation. Lansing, MI.

Mack, Milton. February 28, 2019. “A Unified Court System: A Summary of Raftery.” Presentation. Lansing, MI.

McCormack, Bridget. “Michigan Senate Appropriations Subcommittee on the Judiciary, Thursday March 14, 2019. Presentation. Lansing MI. https://pscinc.app.box.com/file/428952072787

Michigan Supreme Court. July 10, 2019. People of the State of Michigan v. Shawn Loveto Cameron, Jr. Accessed September 6, 2019. https://courts.michigan.gov/Courts/MichiganSupremeCourt/Clerks/RecentCourtOrders/18-19%20Orders/155849.pdf

National Center for State Courts. July 2012. *Principles for Judicial Administration*. Accessed March 20, 2019. https://www.ncsc.org/~/media/Files/PDF/Information%20and%20Resources/Budget%20Resource%20Center/Judicial%20Administration%20Report%209-20-12.ashx

National Task Force on Fines, Fees, and Bail Practices. August 2018. *Principles on Fines, Fees, and Bail Practices.* Accessed March 18, 2019. https://www.ncsc.org/~/media/Files/PDF/Topics/Fines%20and%20Fees/Principles%201%2017%2019.ashx

Norton, Julia. February 22, 2018. “Court Collections.” Presentation. Lansing, MI. https://pscinc.box.com/s/8mtl6gn73uep2ihsgh6vda2fsv01i3si

Oeffner, Kevin. February 22, 2018. “Circuit Court Funding/Cash Flow.” Presentation. Lansing, MI. https://pscinc.box.com/s/ixnru5nyyglvnyhwvqqw6ice1wqwqvny

Ostrom, Brian. August 23, 2018. “Measuring Court Performance.” Presentation. Lansing, MI.

Parks, Jessica. October 25, 2018. “Treatment Courts.” Presentation. Lansing, MI.

Quasarano, Thomas. December. 2018. “Why Are We Being Sued Under the Open Meetings Act?” *State Bar of Michigan Administrative Law Journal* 30: 1—4. https://pscinc.box.com/s/sl61mhjn6u0q69qjmxr7b5pevkn8h10c

Raftery, William. May 2016. *Judicial Unification and its Impact on Efficiency*. Accessed March 18, 2019. https://www.ncsc.org/~/media/Files/PDF/Education%20and%20Careers/CEDP%20Papers/2016/Judicial%20Unification%20and%20Its%20Impacts%20on%20Efficiency.ashx

Reinkensmeyer, Marcus. July 28, 2018. “Arizona Trial Courts Funding Strategies: Briefing for the Michigan Trial Court Funding Commission.” Presentation. Lansing, MI. https://pscinc.box.com/s/k05nx2gxicylzcdvbqwb6k6e6l8pn5kd

Risko, Robin. January 2018. “Budget Briefing: Judiciary.” Accessed February 25, 2019. https://www.house.mi.gov/hfa/PDF/Briefings/Judiciary_BudgetBriefing_fy17-18.pdf

Rombach, Thomas. February 28, 2019. “21st Century Practice Task Force: Background and Summary.” Presentation. Lansing, MI.

SBM 21st Century Practice Task Force. July 18, 2016. *Envisioning a New Future Today.* Accessed March 25, 2018. https://www.michbar.org/file/future/21c_WorkProduct.pdf

SBM Judicial Crossroads Task Force. March 2011. *Delivering Justice in the Face of Diminishing Resources*. Accessed March 18, 2019. https://www.michbar.org/file/judicialcrossroads/JudicialCrossroadsReport.pdf

Shorba, Jeff. June 28, 2018. “Minnesota Judicial Branch Transition and Transformation.” Presentation. Lansing, MI. https://pscinc.box.com/s/huqlhrco9xbusamhnawfgjahtocrt2f7

Speaker, Liisa. July 19, 2018. *Amicus Curiae Brief of the Michigan District Judges Association for People v. Cameron.* Accessed March 18, 2019. https://courts.michigan.gov/Courts/MichiganSupremeCourt/Clerks/Documents/2018-2019/155849/155849_74_01_AC_MDJA_Brf.pdf

United States Court of Appeals for the Fifth Circuit. August 29, 2019. Adrian Caliste & Brian Gisclair v. Harry E. Cantrell. Accessed September 6, 2019. http://www.ca5.uscourts.gov/opinions/pub/18/18-30954-CV0.pdf

United States Department of Justice. March 4, 2015. *Investigation of the Ferguson Police Department.* Accessed March 20, 2019. https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf

VanNorman, John. June 28, 2018. “Judicial System Structure of Ohio.” Presentation. Lansing, MI.

Welch, Janet. December 18, 2017. “Trial Courts.” Presentation. Lansing, MI. https://pscinc.box.com/s/mevwxmj0pn9oputkcmx57cc2fwgzclxw

Welch, Janet. December 18, 2017. “Michigan Courts: An Historical Perspective.” Presentation. Lansing, MI. https://pscinc.box.com/s/6tz3c4pl9hzj5ualc7u71f4euanu4qtq

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IMPAIRED DRIVING
SAFETY COMMISSION

REPORT

REPORT FROM THE
IMPAIRED DRIVING SAFETY COMMISSION

MARCH 2019

INTRODUCTION

IMPAIRED DRIVING SAFETY COMMISSION ACT:

Public Act 350 of 2016 (effective: 3-21-2017) created the Impaired Driving Safety Commission Act. The Commission was created within the Michigan State Police (MSP) pursuant to the Act and is required to research and recommend a scientifically supported threshold of Δ^9-THC bodily content to provide evidence for per se impaired driving in the state of Michigan.

This report includes the results of the Commission's research, recommendations for the appropriate threshold of Δ^9-THC bodily content to provide evidence for per se impaired driving, and recommendations for future legislative actions.

Appointed by Governor Rick Snyder, the Commission consisted of six members:

The Director of the Michigan State Police:
Col. Kriste Kibbey Etue

The MSP Director's designated representative:
Lt. Col. Richard Arnold

A qualified and registered patient under the Michigan Medical Marihuana Act:
Ms. Margeaux Bruner

A forensic toxicologist:
Mr. Nicholas J. Fillinger

A professor from a public research university in this state:
Dr. Carol Ann Cook Flannagan, whose expertise is in traffic safety

A professor from a public research university in this state:
Dr. Norbert E. Kaminski, professor of pharmacology and toxicology, whose expertise is in the area of cannabis pharmacology and toxicology

A physician licensed under the Public Health Code:
Dr. William Ray Morrone

(Legislature Service Bureau, 2017).

STATUS OF MEDICAL AND RECREATIONAL MARIHUANA LAWS AND DRIVING PER SE LIMITS

IN MICHIGAN:

Pursuant to MCL 257.625(1), Michigan law prohibits a driver from operating a motor vehicle while intoxicated. To be found guilty under this statute, prosecutors must show that the defendant was "under the influence" at the time he or she operated the motor vehicle. There are three ways a person can be "under the influence" per Michigan law. These three categories are alcoholic liquor, a controlled substance, or an intoxicating substance (or any combination of these three categories). Marihuana falls under MCL 257.625(1) because it is a controlled substance. In addition to the above, Michigan also has what is commonly referred to as the zero-tolerance drugged driving law. Pursuant to MCL 257.625(8), a driver shall not operate a motor vehicle if he or she has any amount of a Schedule 1 controlled substance in his or her body. Marihuana falls under this law because it is listed as a Schedule 1 controlled substance by both the Drug Enforcement Administration and the Michigan Public Health Code.

In 2008, Michigan voters passed the Michigan Medical Marihuana Act (MMMA). Under MCL 333.26427, the MMMA prohibits qualifying patients from operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or motorboat while "under the influence" of marihuana. However, qualifying patients are protected when they engage in the medical use of marihuana, which includes "the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition." MCL 333.26423(f).

In the 2013 Michigan Supreme Court case of People v. Koon, 494 Mich 1; 832 N.W.2d 724, the Court carved out an exception to Michigan's zero-tolerance drugged driving law for qualifying patients. The Court held that it is not enough for a prosecutor to show that a patient has Δ^9-THC in his or her system. In other words, the zero-tolerance drugged driving law does not apply to qualifying patients who comply with the MMMA. Rather, the standard for a patient is "under the influence," as established under the MMMA, which generally means that the marihuana must have had a significant effect on a person's mental or physical condition so that he or she was no longer able to operate a vehicle in a normal manner.

Another important Michigan Supreme Court decision deals with how the metabolite of marihuana is dealt with under the zero-tolerance drugged driving law. In 2010, the Court held in People v. Feezel, 486 Mich 184; 783 N.W.2d 67, that the presence of a marihuana metabolite, also known as 11-carboxy-THC, is not a Schedule 1 drug, and therefore a person cannot be prosecuted under MCL 257.625(8) if he or she has only the metabolite in his or her blood.

On November 6, 2018, Michigan voters chose to legalize recreational marihuana. The law went into effect on December 6, 2018, and is officially known as the Michigan Regulation and Taxation of Marihuana Act (MRTMA). Similar to the MMMA, the MRTMA also prohibits a person from operating, navigating, or being in physical control of any motor vehicle while "under the influence" of marihuana. While the Michigan Supreme Court's opinion in Koon only provided an exception

to the zero-tolerance drugged driving law for qualifying patients in compliance with the MMMA, due to the adoption of the same "under the influence" standard under the MRTMA, the exception to the zero-tolerance drugged driving law may now also apply to persons consuming marihuana under the MRTMA.

IN THE UNITED STATES:

As of the date of this report, both recreational and medical marihuana have been legalized in 33 states and Washington DC (Procon.org, 2019). Currently six states have set impaired driving per se thresholds of Δ^9-THC bodily content in blood (ng/ml) to provide evidence for per se impaired driving (Edmondson, L., 2016):

- Colorado: 5 ng/ml
- Montana: 5 ng/ml
- Nevada: 2 ng/ml
- Ohio: 2 ng/ml
- Pennsylvania: 1 ng/ml
- Washington: 5 ng/ml

Unlike the other states listed, Colorado's limit of 5 ng/ml is a reasonable inference. A reasonable inference allows a jury to infer that a driver was impaired if his or her blood test result is 5 or more ng/ml Δ^9-THC, but that inference can be rebutted by the defendant in legal proceedings with evidence to the contrary.

In Canada, the amount of Δ^9-THC in one's blood determines how the impaired driving offense is charged. An impaired driving charge for a person with Δ^9-THC levels of 2-5 ng/ml blood carries a lesser penalty than a charge for Δ^9-THC greater than 5 ng/ml blood. Canada also has a hybrid offense for impaired driving with Δ^9-THC level of greater than 2.5 ng/ml blood combined with a Blood Alcohol Concentration (BAC) of 0.05 grams/100 ml.

The Commission reviewed and considered the legislation enacted in these jurisdictions as it went about its work.

COMMISSION MEETINGS:

The Commission met throughout 2018 and into March 2019, to fulfill its charge. Commissioners received presentations from subject matter experts in the following areas: Michigan criminal law; impaired driving prosecution, defense, investigation, and enforcement; substance abuse treatment; traffic safety research, analysis, and programming; pharmacology and toxicology; and forensic toxicology. Presentations and review of relevant research literature informed discussion resulting in completion of this report and the recommendations contained herein.

PHARMACOKINETICS OF Δ^9-THC:

The plant, cannabis sativa, contains over 100 structurally-related compounds, termed cannabinoids. The primary cannabinoid responsible for the psychotropic effects (e.g., euphoria) produced by cannabis is Δ9-tetrahydrocannabinol (Δ^9-THC). The chemical structure of Δ^9-THC was first described in 1964 (Gaoni & Mechoulam, 1964). Δ^9-THC produces its psychotropic effects, by binding to and activating a specific protein that is highly abundant in the brain, named cannabinoid receptor 1 (Matsuda, Lolait, Brownstein, Young & Bonner, 1990). The majority of cannabinoids present in cannabis do not possess psychotropic properties because they do not bind well to cannabinoid receptor 1 and therefore do not activate this receptor. An example of such a cannabinoid that is widely used for medicinal purposes (e.g., epidiolex) and that possesses no psychotropic activity is cannabidiol, also known as CBD. Therefore, the psychotropic activity of cannabis or various preparations of Δ^9-THC (e.g., oils and edibles) is achieved through delivery via the blood stream of Δ^9-THC and its metabolite, 11-hydroxy-THC, to the brain.

The most common route of Δ^9-THC administration is through inhalation, either by smoking cannabis or through the vaporization of various preparations containing Δ^9-THC. A second common route of Δ^9-THC administration is through oral consumption of products containing Δ^9-THC or cannabis, termed "marihuana-infused products" or "edibles." Δ^9-THC can also be delivered via the oromucosal route (i.e., direct application to the mucus membrane in the mouth) through the use of cannabis tincture, which is most often an alcohol extract of cannabis. Cannabis tincture can also be used for topical application to the skin.

The pharmacokinetics and time to onset of psychotropic effects by Δ^9-THC is highly dependent on the route of administration. This dependency is one of several particular challenges for measurement of Δ^9-THC impairment in the context of driving, as will be described in later sections. Below, the basic pharmacokinetics—i.e., the processes of absorption, metabolism, distribution, and excretion—of Δ^9-THC are described in the next paragraphs.

Absorption

Inhalation of smoked cannabis or vaporization of Δ^9-THC-containing products results in very rapid delivery of Δ^9-THC to the bloodstream. After the first puff of a cannabis cigarette, Δ^9-THC is detectible in plasma within seconds due to the lungs being highly vascularized and capable of rapid and efficient gas exchange. The peak plasma concentration of Δ^9-THC is achieved within 3-10 minutes upon initiation of smoking cannabis (Grotenhermen, 2003). The amount of Δ^9-THC delivered via the respiratory route is not only dependent on the amount of Δ^9-THC inhaled but is also dependent on the duration of the puff, depth of inhalation and the duration of the breath hold. In general, the percentage of total Δ^9-THC that is absorbed via the respiratory route is similar whether delivered via cannabis cigarette, pipe, or through vaporization.

Administration of Δ^9-THC via the oromucosal route by application of tincture also results in rapid absorption of Δ^9-THC. With Δ^9-THC being dissolved in alcohol and applied to the inside of the mouth, delivery to the blood stream is expected to be rapid but neither as efficient nor as rapid as via inhalation.

Oral administration of Δ^9-THC by eating products that contain Δ^9-THC results in slower and more variable absorption of Δ^9-THC compared to inhalation. Peak plasma concentrations for oral administrations are typically attained approximately 120 minutes after consumption (Grotenhermen, 2003; Huestis, 2005).

Oral administration generally results in lower Δ^9-THC blood concentrations than the same dosage of Δ^9-THC delivered by inhalation.

Distribution

Upon absorption, Δ^9-THC rapidly distributes via the circulating blood to organs that are highly vascularized including the brain, kidney, liver, lungs, and heart. In addition, because cannabinoids, including Δ^9-THC, are highly fat-soluble compounds they are readily stored in fat tissue and are then slowly released back into circulating blood over time. Due to this property, higher levels of cannabinoid accumulation in fat are observed in chronic cannabis users compared to occasional users.

Metabolism and Excretion

The metabolism of Δ^9-THC has been studied extensively. The primary site of Δ^9-THC metabolism is the liver where Δ^9-THC is converted to two major metabolites: 11-hydroxy-THC (11-OH-THC) and 11-carboxy-THC (11-COOH-THC) (Leighty, 1973). These metabolites undergo further processing, which make them more water soluble to facilitate excretion by urine and feces. 11-OH-THC possesses psychotropic properties that are the same as Δ^9-THC.

Elimination of compounds is often measured in terms of half-life, the amount of time required to eliminate one half of the total amount of a given compound that has been absorbed. Elimination of Δ^9-THC occurs in two distinct phases. There is an initial rapid elimination phase with a half-life of approximately 6 minutes followed by a long terminal elimination phase with a half-life of approximately 22 hours (Heuberger, Guan, Oyetayo, Klumpers, Morrison, Beaumer, van Gerven, Cohen & Freijer, 2015). This long terminal elimination phase is primarily due to rapid absorption of Δ^9-THC in fat tissue followed by its slow release over time back into circulation (Lucas, Galettis, Song, Solowij, Reuter, Schneider, & Martin, 2018). In chronic users blood-plasma concentrations of Δ^9-THC can remain above measurable levels (i.e., 1 ng/ml) for 48-72 hours after administration (Wall, Sadler, Brine, Taylor, & Perez-Reyes, 1983).

Key Point

Due to the initial rapid elimination phase of Δ^9-THC followed by the long terminal elimination phase, blood-plasma concentrations of Δ^9-THC are indicative of *exposure,* but are not a reliable indicator of whether an individual is *impaired*.

SUPPORTING SCIENCE

BEHAVIORAL EFFECTS OF Δ^9-THC:

The behavioral effects of cannabis include euphoria and relaxation, altered time perception, hallucinations, lack of concentration, impaired learning and memory, and mood changes such as panic reactions and paranoia. The intensity varies with dose, administration route, expectation of effects and the user's environment and personality. This spectrum of behavioral effects prevents classification as a stimulant, sedative, tranquilizer, or hallucinogen. The physiological effects of cannabis include heart rate and diastolic blood pressure, conjunctival suffusion, dry mouth and throat, increased appetite, vasodilation, and decreased respiratory rate. Most behavioral and physiological effects of Δ^9-THC return to baseline levels within 3-6 hours after exposure (Baselt, 2004; Huestis, 2007; Hartman & Huestis, 2013; Huestis, 2002).

Long-term cannabis use is associated with neuropsychological deficits such as memory impairment and changes in brain morphology (Lorenzetti, Lubman, Shittle, Solowij & Yücel, 2010). Chronic cannabis use may also lead to impairment in driving-related tasks, even after cessation. Chronic daily cannabis smokers abstaining from use performed poorly on critical tracking, which assesses human operator performance when a person perceives a discrepancy between a desired and actual state and aims to reduce the error by compensatory movement. While critical tracking did recover after 3 weeks of abstinence, it was still significantly worse compared to critical tracking in the control group. Similar results were observed in divided attention tasks, such as tracking performance and tracking control (Bosker, Karschner, Lee, Goodwin, Hirvonen, Innis, Theunissen, Kuypers, Huestis, & Ramakers, 2010). In a somewhat related study, a cohort of heavy chronic cannabis smokers showed no significant differences in critical tracking or divided attention task performance up to six hours after smoking as compared to before smoking (Schwope, Bosker, Ramaekers, Gorelick, & Huestis, 2012).

THC IMPAIRMENT AND RELATIONSHIP TO TRAFFIC SAFETY:

The relationship between ingesting cannabis and impairment in driving skills has been established in a number of studies, which are summarized in this section. These include laboratory studies of how Δ^9-THC, the main active ingredient in cannabis, influences cognitive and motor skills, as well as analyses of crash data linking Δ^9-THC detected in blood tests and crash risk and injury outcome.

In laboratory studies, including those using driving simulators and instrumented vehicles, Δ^9-THC affects areas of the brain that control movement, balance, coordination, memory, and judgment (Lenné, Dietze, Triggs, Walmsley, Murphy, & Redman, 2010; Hartman, Huestis, 2013; Hartman, Brown, Milavetz, et al, 2015). Cannabis has been shown to impair critical driving-related skills including psychomotor abilities like reaction time, tracking ability, and target detection, cognitive skills like judgment, anticipation and divided attention, and executive functions like route planning and risk taking (Ramaekers, Robbe, & O'Hanlon, 2000; Robbe & O'Hanlon, 1993; Liguori, Gatto & Robinson, 1998; Hartman & Huestis, 2013).

Interestingly, in most of the simulator and vehicle studies, cannabis-impaired subjects typically drive slower, keep greater following distances, and take fewer risks than when sober (Compton, 2017). These effects appear to suggest that the drivers are attempting to compensate for the subjective effects of using cannabis. This is contrasted with alcohol-impaired subjects, who typically drive faster, follow more closely, and take more risks than when sober. That said, cannabis-impaired drivers attempting to compensate for the effects of cannabis are not likely to fully mitigate the effects of the drug on driving skills. Moreover, at least one study indicated that acute cannabis intoxication can result in *more* risk taking rather than risk compensation.

In spite of the relatively clear evidence of reduced driving-related skills in controlled studies (with known dosages), the relationship between cannabis ingestion and crash risk in the field is less well understood. The Governor's Highway Safety Association (GHSA) report on Drug-Impaired Driving (Hedlund, 2017) reviewed a number of studies, including several meta-analyses, that attempt to summarize the results of a larger number of individual studies.

One such review and meta-analysis by Elvik (2013) concluded that the best estimate of the crash risk increase due to cannabis is 26%, but that this is not statistically significant. Another meta-analysis by Schulze et al. (2012) concluded that ingesting cannabis increases crash risk by a factor of 1 to 3. Finally, another review by the National Academies of Sciences (2017) concluded that "there is substantial evidence of a statistical association between cannabis use and increased risk of motor vehicle crashes" and estimated the increased risk at 22% - 36%.

A carefully controlled epidemiological study by the National Highway Traffic Safety Administration (NHTSA) found the same 25% increase in risk when comparing crash-involved drivers to a control sample of non-crash-involved drivers who were selected from the same location as the crash, a week later (Compton, 2017; Lacey, Kelley-Baker, Berning, Romano, Ramirez, Yao & Compton, 2016). However, when the authors accounted for other risk factors such as age, gender, and the presence of alcohol, the effect disappeared. This suggests that the 25% risk increase might be at least partially due to other risk factors that co-occur with cannabis use. This includes drinking alcohol, which was often found with Δ^9-THC in the blood. That said, this study focused on all crashes and most of the crashes were of low severity. In addition, because there is no clear relationship between blood levels of Δ^9-THC and impairment, it is not known how impaired the Δ^9-THC-positive drivers were in this study.

While there is some uncertainty as to the crash risk associated with cannabis impairment alone, the research is clear that the risk is lower than that of alcohol impairment (Compton & Berning, 2015). However, cannabis users are more likely to also drink alcohol before driving than non-users. Thus, polydrug use (use of 2 or more drugs, including alcohol) is quite prevalent among cannabis-impaired drivers. Since alcohol use while driving has been going down (Berning, Compton & Wochinger, 2015), the co-occurrence of alcohol and cannabis use can in itself be a risk that may increase with increasing cannabis use.

From a public health perspective, it is important to know how much cannabis legalization affects crashes. A 2017 study of Colorado and Washington (Aydelotte, Brown, Luftman, Mardock, Teixeira, Coopwood, & Brown, 2017) looked at overall traffic fatality rates per travel mile in Colorado, Washington, and eight control states between 2009 and 2015. Compared to control states, the study found that there was a small but non-significant increase in fatalities per billion miles in those states compared to the controls. A 2018 study (Lee, Abdel-Aty, & Park, 2018) looked at the change in cannabis-related fatal crashes in states as a function of changes to laws in those states. Law categories included 1) prohibition, 2) decriminalization, 3) medical, and 4) full (recreational). At the time of the analysis, only 18 states fully prohibited cannabis. The study found that legalizing only medical cannabis had no statistically significant effect on fatal crashes involving cannabis. However, either decriminalizing or legalizing cannabis significantly increased cannabis-related fatal crashes by anywhere from 31-174%. It is likely that the difference in significance between these studies was due to the focus of the 2018 study on cannabis-positive fatalities as opposed to all fatalities. It is important to note that these studies do not determine whether or not the cannabis caused the fatalities, nor do they account for concurrent effects of alcohol.

PUBLIC ATTITUDES:

Finally, surveys of attitudes towards cannabis use and driving indicate that the public, especially regular cannabis users, is unaware of the risks associated with cannabis use and driving. The GHSA reported that:

> In a survey, drivers believed that driving after drinking is a greater problem than driving after using cannabis (64% vs. 29%) and that driving after drinking is more common and increases crash risk more than driving after using cannabis (56% vs. 34% and 98% vs. 78%). Compared to drivers in other states, drivers in states with legal recreational cannabis more often said driving after using cannabis is a problem (43% vs. 28%) and were twice as likely to report using cannabis within the past year (16”% vs. 8%) (Eichelberger, 2016).
>
> In surveys and focus groups with regular marijuana users in Colorado and Washington, almost all believed that marijuana doesn’t impair their driving, and some believed that marijuana improves their driving (CDOT, 2014; PIRE, 2014; Hartman & Huestis, 2013). Most regular marijuana users surveyed in Colorado and Washington drove “high” on a regular basis. They believed it is safer to drive after using marijuana than after drinking alcohol. They believed that they have developed a tolerance for marijuana effects and can compensate for any effects, for instance by driving more slowly or by allowing greater headways.

THC AND DRIVING IN MICHIGAN:

Table 1 shows the count of drug-involved crashes and drug-involved fatalities in Michigan using the most recent five years of data (University of Michigan, 2019). During the five-year period from 2013 to 2017, the number of drug-involved crashes and fatal crashes have increased steadily, with an overall increase of 44% for all crashes and 56% for fatalities over the five-year period. Note that specific drug test results were not available for drivers in more than 95% of these crashes. However, among those who were tested, cannabinoids were present in 70% of drivers.

Table 1: Drug-Involved Crashes and Fatal Crashes in Michigan

Year	All Drug-Involved Crashes	Fatal Drug-Involved Crashes
2013	2,002	142
2014	1,944	131
2015	2,227	159
2016	2,667	216
2017	2,880	221
Total	11,720	869

Positive tests for cannabinoids in crash-involved drivers have more than doubled over the five-year time frame. The total number of crash-involved drivers testing positive for cannabinoid drugs are shown in Table 2. It is likely that both the amount of drug testing and the number of Δ^9-THC-positive drivers have increased during this time. With the small amount of testing and potential changes in testing, it is difficult to determine just how much the incidence of cannabis-impaired driving is changing in Michigan. However, it is very likely to be increasing (as the data suggest). Given the experience in other states, we expect that the number will continue to go up as Michigan implements its recreational marihuana policies (Aydelotte et al., 2017).

Table 2: Count of Crash-Involved Drivers who Tested Positive for Δ^9-THC or Other Cannabanoids

Positive for cannabinoids	2013	2014	2015	2016	2017	Total
Total	79	92	102	165	174	612

Finally, of the 612 drivers who tested positive for cannabinoids, 540 of them also had alcohol tests with known results. Of these, 44% had been drinking before driving (i.e., had non-zero BAC) and 11% were over the 0.08 BAC limit. Since drug toxicology tests are often not done for crash-involved drivers with BAC ≥ 0.1, it is likely that the actual proportion of over-BAC-limit cannabis-positive drivers is higher than 11%.

STANDARDIZED FIELD SOBRIETY TESTS:

The Standardized Field Sobriety Tests (SFSTs) are a battery of tests performed during a traffic stop to determine if a driver is impaired. Although there are a number of different field sobriety tests, three have been scientifically validated by the NHTSA and are generally admissible in court (Burns, 2013):

1. Horizontal gaze nystagmus (HGN): The subject is instructed to follow the movement of a light (or finger or other object) with only the eyes and no head movement; impaired subjects cannot follow the movement smoothly and a distinct jerk will appear prior to 45°.
2. Walk-and-turn test (WAT): The subject must walk nine heel-to-toe steps on a line, turn, and return along the line with nine heel-to-toe steps.
3. One-leg stand (OLS): The subject must raise one leg and hold it ~6 inches up while counting slowly until told to stop (at 30 seconds).

The purpose of these tests is to determine the effect of the use of alcoholic liquor, a controlled substance, or other intoxicating substance (or a combination of these) on a person's capacity to think and act with ordinary care and therefore operate a motor vehicle safely. Therefore, the results of these standardized field sobriety tests, appropriately administered, are admissible in the trial of any civil or criminal action or proceeding arising out of an arrest for a cannabis driving offense.

The three validated tests were selected from a series of studies of many different candidate tests. The history of scientific research on these tests, the selection of the three above, and their subsequent validation in both laboratory and field tests is described by Marcelline Burns (2003). However, as Burns describes, the validation work on these tests was originally done on alcohol-impaired subjects and compared to corresponding blood or breath tests. In field studies, over 90% of officers' arrest decisions on the basis of SFSTs were supported by blood tests. In particular, the HGN test is the most scientifically reliable for detecting alcohol intoxication.

However, these tests were not originally validated on impairment by other substances, though they are used to detect any form of impairment. The use of SFSTs for detecting cannabis impairment has been studied more recently with mixed results.

The three validated SFSTs plus an additional sign associated with the HGN test—head movements or jerks (HMJ)—were investigated in a laboratory setting where cannabis intake was controlled (Papafotiou, Carter, & Stough, 2005). In that study, the SFSTs were found to be moderately associated with the level of blood Δ^9-THC, with just under 50% of subjects in the high-THC condition identified as impaired at five minutes and 55 minutes after cannabis intake. When the HMJ test was added, the detection rate increased by 10%.

Notably, studies suggest that HGN has a more limited association with cannabis impairment, which is different from its strong association with BAC. A 2016 study noted these results and looked at a wider variety of possible SFSTs to find those more closely associated with cannabis impairment. In field data, a number of SFSTs that were conducted by a Drug Recognition Expert (DRE) were compared to measured blood Δ^9-THC levels in drivers. They found that the most diagnostic tests were the finger-to-nose (FTN) test and the Modified Romberg Balance (MRB) test with eyelid tremors (Hartman, Richman, Hayes, & Huestis, 2016).

BLOOD LEVELS OF Δ^9-THC AND IMPAIRMENT:

The pharmacokinetics of cannabis section explains the pattern of blood levels of Δ^9-THC as it is metabolized over time after cannabis ingestion. The key features of that process are 1) the initial rapid elimination phase, and 2) the long terminal elimination phase. The specific levels and time-course are different for different methods of ingestion.

Numerous studies of the relationship between blood levels of Δ^9-THC and performance measures are reviewed in detail in Huestis (2002). Another review focused specifically on driving-related skills can be found in Hartman & Huestis (2013). A critical observation in these studies is that there is a delay in the observed effects of impairment relative to when blood levels of Δ^9-THC peak. That is, the effect of Δ^9-THC on the central nervous system occur after the initial rapid elimination phase, decoupling the measured blood levels of Δ^9-THC from the impairment that it produces.

For example, Papafotiou et al. (2005) conducted a laboratory study in which subjects smoked controlled doses of cannabis, after which they drove on a test track and were given SFSTs at regular intervals. Blood was also extracted at regular intervals and tested for Δ^9-THC. Immediately after completion of the smoking procedure (which took some period of time), blood Δ^9-THC levels were at their highest measured level of 70.59 ng/ml for the high dose (2.93% Δ^9-THC cigarette) and 55.46 ng/ml for the low dose (1.74% Δ^9-THC cigarette). Twenty minutes later, the blood Δ^9-THC levels were 13.85 and 12.84 ng/ml, respectively. After 75 minutes, both groups were near or below 5 ng/ml (the legal limit in several states). In contrast, driving performance did not show any significant impairment at 30 minutes after completion of smoking, but it was significantly worse at 80 minutes, as measured by lateral control ("straddling the line" while driving).

Two key points must be made about the relationship between measured blood Δ^9-THC levels and impairment. First, behavioral measures of impairment are often negatively related to blood-Δ^9-THC levels, particularly for smoked cannabis. Peak blood levels occur very quickly after smoking and are often associated with no behavioral decrement. The effect of Δ^9-THC on the central nervous system (resulting in impairment) occurs more slowly while the initial rapid elimination phase occurs and blood-Δ^9-THC levels drop.

Second, regular users of cannabis respond differently to the same dose of Δ^9-THC than occasional or infrequent users of cannabis due to a phenomenon termed "tolerance." Through frequent use, drug tolerance ensues such that higher doses of a drug are required to produce the same effects as achieved initially. Indeed, there is strong scientific evidence that tolerance does occur with regular and frequent use of cannabis (Colizzi, & Bhattacharyya, 2018). The implications of tolerance to cannabis are that lower blood Δ^9-THC levels in infrequent users may result in impairment that would only be experienced at higher Δ^9-THC levels by regular cannabis users.

The consequence of these results for setting per se limits is that blood Δ^9-THC can fail to detect impaired drivers (when blood levels are low and impairment is high). It can also inappropriately flag unimpaired drivers or chronic users whose blood levels are higher in general (see section on behavioral effects of Δ^9-THC) even when not impaired.

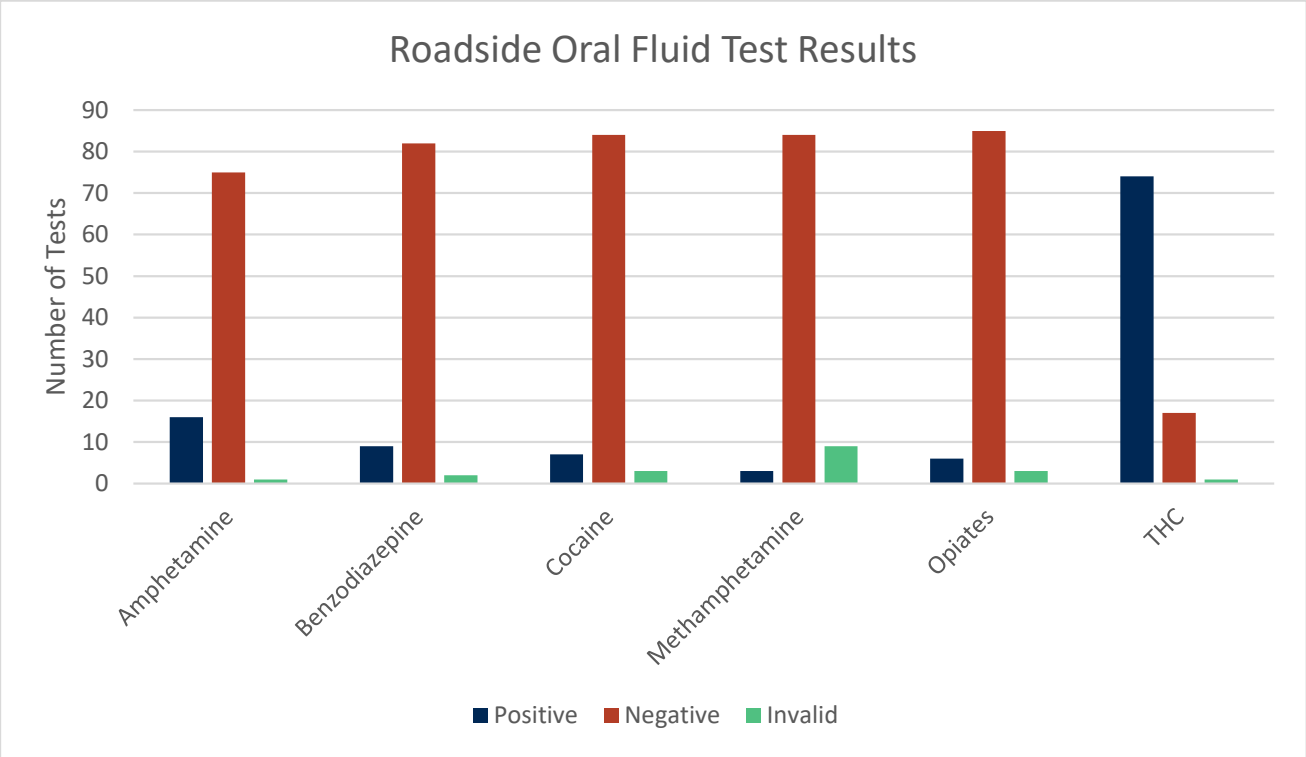
ORAL FLUID

STATUS IN MICHIGAN:

Public Act 243 of 2016 authorized the MSP to establish a pilot program in five counties in Michigan for roadside oral fluid testing to determine whether an individual is operating a vehicle while under the influence of a controlled substance. The legislation stipulated that the preliminary oral fluid test be performed by a certified DRE. A certified DRE means a law enforcement officer trained to recognize impairment in a driver under the influence of a controlled substance rather than, or in addition to, alcohol (Legislature Service Bureau, 2015).

RESULTS FROM THE ORAL FLUID ROADSIDE ANALYSIS PILOT PROGRAM (MSP, 2019):

As a result of DRE-observed driver behavior and SFSTs, 89 drivers were arrested during the initial phase of the pilot program. Of those arrested, positive oral fluid roadside test results were reported for 83 drivers.



Results of the oral fluid roadside tests are detailed in the above chart (MSP, 2019). Of the 92 oral fluid roadside tests conducted, 21 returned positive results for the presence of two or more drugs. Eight tests provided negative results for all six drug categories. Six negative test results were further validated by either independent lab results, MSP forensic lab results, or both, showing negative results as well. The entirety of the Oral Fluid Roadside Analysis Pilot Program report can be viewed at: https://www.michigan.gov/documents/msp/Oral_Fluid_Report_646833_7.pdf.

FINAL RECOMMENDATIONS

PER SE LIMIT RECOMMENDATION:

The Michigan Impaired Driving Safety Commission was created within the Michigan State Police pursuant to the Impaired Driving Safety Commission Act, 2016 PA 350 (MCL 28.791 to MCL 28.796). The Commission was charged with conducting research and to recommend a scientifically supported threshold of Δ9-tetrahydrocanabinol (Δ^9-THC) bodily content to provide evidence for per se impaired driving in the state of Michigan.

The Commission carefully reviewed the most current as well as past scientific peer-reviewed literature. Likewise, the Commission invited experts in the areas of specific relevance to the Commission's charge to make presentations to the Commission and answer questions. Based on the total body of knowledge presently available, the Commission finds there is no scientifically supported threshold of Δ^9-THC bodily content that would be indicative of impaired driving due to the fact that there is a poor correlation between driving impairment and the blood (plasma) levels of Δ^9-THC at the time of blood collection. This poor correlation between driving impairment and the blood (plasma) concentrations of Δ^9-THC at the time of blood collection is based on several factors that include:

1. Elimination of Δ^9-THC undergoes very rapid elimination over several hours with a half-life (the amount of time required to eliminate one half of the total amount of Δ^9-THC) of approximately 6 minutes followed by a long terminal elimination phase possessing a half-life of approximately 22 hours, or more (Heuberg et al., 2015). Due to the rapid initial elimination phase, Δ^9-THC levels may be very low by the time blood is drawn for a blood test, which could underestimate the Δ^9-THC levels at the time an individual was driving. By contrast, Δ^9-THC has a long terminal elimination phase due to its absorption into fat tissue followed by its slow release over time back into the blood (Lucas et al., 2018). In long-term cannabis users, blood concentrations of Δ^9-THC can remain above 1 ng/ml for 48-72 hours after administration (Wall et al., 1983). Therefore, current "no tolerance" policy in the state of Michigan, which assumes impairment at the level of detection, ≥1ng/ml, might falsely conclude that an individual is impaired.

2. Regular users of cannabis respond differently to the same dose of Δ^9-THC than occasional or infrequent users of cannabis due to a phenomenon termed "tolerance." Through frequent use, drug tolerance ensues such that higher doses of a drug are required to produce the same effects as achieved initially. Indeed, there is strong scientific evidence that tolerance does occur with regular and frequent use of cannabis (Colizzi, & Bhattacharyya, 2018). The implications of tolerance to cannabis are that lower blood Δ^9-THC levels in infrequent users may result in impairment that would only be experienced at higher Δ^9-THC levels by regular cannabis users.

Therefore, because there is a poor correlation between Δ^9-THC bodily content and driving impairment, the Commission recommends against the establishment of a threshold of Δ^9-THC bodily content for determining driving impairment and instead recommends the use of a roadside sobriety test(s) to determine whether a driver is impaired.

FINAL RECOMMENDATIONS

LAW ENFORCEMENT AND PROSECUTION EDUCATION:

In line with the recommendation to use a roadside sobriety test(s) to determine whether a driver is impaired, the Commission recommends additional training in impaired driving detection and investigation for law enforcement officers and prosecutors throughout the state.

Since 2010, the Michigan Commission on Law Enforcement Standards (MCOLES) has required completion of the NHTSA *DWI Detection and SFST* program for all basic law enforcement academy students. In addition, the Michigan Office of Highway Safety Planning (OHSP) requires that all officers assigned to grant funded impaired driving enforcement initiatives have completed the same program.

The Commission recommends that in addition to these existing requirements, MCOLES considers mandating all licensed officers complete the 16-hour Advanced Roadside Impaired Driving Enforcement (ARIDE) training program. The ARIDE program is designed to increase officers' ability to observe and identify the signs of driver impairment related to drugs, alcohol, or a combination of both. The program includes refresher training for administering SFSTs and is designed as an intermediate course between the SFST and DRE training programs. Currently, approximately 20% of licensed officers in Michigan have been trained in ARIDE.

The Commission also recommends expansion of the DRE training program. There are only approximately 160 active DREs in Michigan at present; there are counties that do not have a DRE within their jurisdiction. Though not feasible to require all officers be trained to the DRE level, expansion of the program to enable callout response for enforcement situations in which this level of expertise may be of assistance (injury and fatal traffic crashes, for instance) is advised.

The Commission recommends expansion of the Prosecuting Attorneys Association of Michigan (PAAM) Traffic Safety Training Program (TSTP). This program prepares prosecutors for the complexities of impaired driving case law and court practices; it is an essential component of the state's efforts to deter impaired driving.

FINAL RECOMMENDATIONS

PUBLIC EDUCATION:

The Commission recommends the development of public education efforts designed to inform the public about the effects of cannabis consumption and potential dangers of driving under the influence of cannabis. In addition, the Commission recommends that these efforts be developed in collaboration with cannabis stakeholder groups.

As reported in the 2018 GHSA Report, "Marijuana messaging must address two points: 1) That marijuana can impair driving, and 2) That driving while impaired by marijuana is illegal."

FUTURE RESEARCH:

The Commission recommends additional research be conducted to develop and validate methodologies to aid in assessing impairment of skills required for the operation of a motor vehicle due to the influence of cannabis. This may include SFSTs and oral fluid testing in assessing whether an individual is operating a vehicle while under the influence of a controlled substance.

DRUGGED-DRIVING COMMISSION:

The Commission conducted an extensive review of the existing state of scientific knowledge to develop its recommendations. However, as research continues, future results may change our understanding of this issue. Therefore, the Commission recommends the establishment of a permanent Drugged-Driving Commission to review new research and the experience of other states to keep the Legislature apprised of emerging relevant information.

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Principal Attorney, The Law Offices of Barton Morris

Col. Joseph M. Gasper
Director, Michigan State Police

Mr. Michael Prince
Director, Michigan Office of Highway Safety Planning

Mr. Jeffery Nye
Quality Assurance & Technical Development Manager, Michigan State Police, Forensic Science Division

F/Lt. James Flegel
Traffic Safety Specialist, Michigan State Police

F/Lt. Christopher Hawkins
Commander, Michigan State Police, Marihuana and Tobacco Investigation Section

Ms. Chelsea Deckler
Michigan State Police, Director's Office

Mr. Steven Beatty
Attorney, Michigan State Police, Legal Resources and Education Unit

Ms. Julie Agueros
Attorney, Michigan State Police, Legal Resources and Education Unit

Ms. Nicole Brown
Senior Executive Management Assistant, Michigan State Police, Field Operations Bureau

GLOSSARY OF TERMS

Δ^9-tetrahydrocannabinol (Δ^9-THC): The primary psychotropic compound in marihuana. Δ^9-THC belongs to a broader family of compounds that possess a similar chemical structure termed, cannabinoids.

11-carboxy-THC: A major metabolite of Δ9-tetrahydrocannabinol and possesses minimal psychotropic properties.

11-hydroxy-THC: A major metabolite of Δ9-tetrahydrocannabinol and possesses psychotropic properties.

Absorption: The movement of drugs and chemicals across biological membranes to enter the body.

Binding Affinity: The strength in which a drug binds with specificity to a protein, typically a receptor or enzyme. Typically, the higher the affinity of specific binding between a drug and receptor the greater the biological activity that is initiated.

Bioavailability: the percentage of the total amount of a drug or chemical that is absorbed after administration and that is available to exert its biological activity.

Biphasic: a process possessing two distinct phases or stages.

Cannabidiol (CBD): A chemical naturally produced by the cannabis sativa belonging to the family of compound termed cannabinoids. CBD has minimal psychotropic activity.

Cannabinoid Receptor 1: A protein on the surface of cells to which cannabinoids bind to initiate their biological activity. Cannabinoid receptor 1 is highly abundant on neural cells within the brain and is responsible for the euphoric effects associate with marihuana.

Cannabis Sativa: plant also termed marihuana, which is the source of plant-derived cannabinoid compounds, including Δ9-tetrahydrocannabinol (THC).

Distribution: once absorbed, the movement of drugs and chemical throughout the body that occurs primarily via circulation in the blood stream.

Drug Half-Life: the period of time required to metabolize and/or eliminate one half of the total amount of a drug that has been absorbed.

Excretion: elimination of compounds from the body in urine and feces.

First Pass Metabolism: the process by which when drugs and chemicals are absorbed for the gastrointestinal tract and enter the blood stream they are first transported to the liver to undergo metabolism.

Metabolism: the conversion of compounds by drug metabolizing enzymes primarily present in the liver to more water-soluble chemicals to enhance their utilization by the body and their excretion in urine and feces.

GLOSSARY OF TERMS

Oromucosal Route: exposure that occurs through the application of chemicals to the mucosal membrane of the oral cavity.

Peak Plasma Concentration: the highest concentration of a drug or chemical present within plasma after initial exposure or administration.

Plasma Concentrations: the amount of a drug or chemical present in the liquid (i.e., non-cellular) portion of blood.

Psychotropic Effects: Changes in brain function and resulting in alterations in perception, mood, consciousness, cognition, and/or behavior that are typically caused by exposure to a chemical.

Respiratory Route: Exposure to an agent by inhalation via the lungs.

Structurally-Related Compounds: Chemicals possessing a similar basic chemical structure and belonging to a "family" of compounds with similar chemical and/or biological properties.

Tincture: a concentrated liquid herbal extract.

Vascular: related to blood vessels.

REFERENCES

Aydelotte, J. D., Brown, L. H., Luftman, K. M., Mardock, A. L., Teixeira, P. G., Coopwood, B., & Brown, C. V. (2017). Crash fatality rates after recreational marijuana legalization in Washington and Colorado. *American Journal of Public Health*, *107*(8), 1329-1331.

Baselt, R.C. (2004). *Disposition of Toxic Drugs and Chemicals in Man* (7th ed.). Foster City, CA: Biomedical Publications.

Berning, A., Compton, R., & Wochinger, K. (2015, February). Results of the 2013-2014 national roadside survey of alcohol and drug use by drivers. *Journal of Drug Addiction, Education, and Eradication*, *11*(1), 47.

Bosker, W.M., Karschner, E.L., Lee, D., Goodwin, R.S., Hirvonen, J., Innis, R.B., Theunissen, E.L., Kuypers, K.P.C., Huestis, M.A., Ramaekers, J.G. (2013, January 2). Psychomotor Function in Chronic Daily Cannabis Smokers during Sustained Abstinence *PLoS One*; *8*(1). Retrieved from https://doi.org/10.1371/journal.pone.0053127

Burns, M. (2003, December 1). An overview of field sobriety test research. *Perceptual and motor skills*, *97*(3_suppl), 1187-1199.

CDOT (2014). *Drive High, Get a DUI: CDOT Marijuana Impaired Driving Campaign*. PowerPoint presentation, Denver, CO: Colorado Department of Transportation.

Compton, R. P. (2017, July). *Marijuana-impaired driving-a report to Congress*. Washington DC: National Highway Traffic Safety Administration.

Compton, R. P. & Berning, A. (2015, February). *Drug and alcohol crash risk*. Washington, DC: National Highway Traffic Safety Administration.

Colizzi, M., & Bhattacharyya, S. (2018, October). Cannabis use and the development of tolerance: a systematic review of human evidence. *Neurosci Biobehav 93*, 1-25.

Edmondson, L (2016, July). Driving under the influence of cannabis. *Capitol Research*. Retrieved from http://knowledgecenter.csg.org/kc/content/driving-under-influence-cannabis

Elvik, R. (2013, November). Risk of Road Accident Associated with the Use of Drugs: A Systematic Review and Meta- analysis of Evidence from Epidemiological Studies. *Accident Analysis & Prevention*, *60*, 254–267.

Gaoni, Y., & Mechoulam, R. (1964, April). Isolation, Structure, and Partial Synthesis of an Active Constituent of Hashish. *Journal of the American Chemical Society*, *82*(8), 1646-1647.

Grotenhermen, F. (2003). Pharmacokinetics and pharmacodynamics of cannabinoids. *Clinical Pharmacokinet*, *42*, 327-360.

Hartman, R. L., & Huestis, M. A. (2013). Cannabis effects on driving skills. *Clinical chemistry, 59*(3), 478-492.

REFERENCES

Hartman R.L., Brown T.L., Milavetz G., et al. (2015). Cannabis effects on driving lateral control with and without alcohol. *Drug Alcohol Dependence*. *154*, 25-37. Retrieved from https://doi.org/10.1016/j.drugalcdep.2015.06.015

Hartman, R. L., Richman, J. E., Hayes, C. E., & Huestis, M. A. (2016). Drug recognition expert (DRE) examination characteristics of cannabis impairment. *Accident Analysis & Prevention*, *92*, 219-229.

Hedlund J. (2017). *Drug-Impaired Driving: A Guide for States*. Retrieved from https://www.ghsa.org/sites/default/files/2017-07/GHSA_DruggedDriving2017_FINAL_revised.pdf

Heuberger, J. A., Guan, Z., Oyetayo, O. O., Klumpers, L., Morrison, P. D., Beumer, T. L., van Gerven, J. M., Cohen, A. F., & Freijer, J. (2015). Population pharmacokinetic model of THC integrates oral, intravenous, and pulmonary dosing and characterizes short- and long-term pharmacokinetics. *Clinical Pharmacokinetics, 54,* 209-219.

Huestis, M. A. (2002). Cannabis (Marijuana)- effects on human behavior and performance. *Forensic Science Review, 14*(1), 15-60.

Huestis, M. A. (2005). Pharmacokinetics and metabolism of the plant cannabinoids, delta9-tetrahydrocannabinol, cannabidiol and cannabinol. *Handbook of Experimental pharmacology, 168,* 657-690.

Huestis, M.A. (2007, August). Human Cannabinoid Pharmacokinetics. *Chemistry & Biodiversity*, *4*(8), 1770-1804.

Lacey, J. H., Kelley-Baker, T., Berning, A., Romano, E., Ramirez, A., Yao, J., . & Compton, R. (2016). Drug and alcohol crash risk: a case-control study (No. DOT HS 812 355). United States: National Highway Traffic Safety Administration.

Lee, J., Abdel-Aty, A., & Park, J. (2018, September). Investigation of associations between marijuana law changes and marijuana-involved fatal traffic crashes: A state-level analysis. *Journal of Transport & Health, 10,* 194-202.

Legislature Service Bureau. (2017). Act 350 of 2016. Retrieved from http://legislature.mi.gov/doc.aspx?mcl-Act-350-of-2016

Legislature Service Bureau. (2019). Senate Bill 0207 (2015). Retrieved from http://legislature.mi.gov/doc.aspx?2015-SB-0207

Leighty, E. G. (1973, July1). Metabolism and distribution of cannabinoids in rats after different methods of administration. *Biochemical Pharmacology 22*, 1613-1621.

Lenné M.G., Dietze P.M., Triggs T.J., Walmsley S., Murphy B., Redman J.R. (2010). The effects of cannabis and alcohol on simulated arterial driving: Influences of driving experience and task demand. *Accident Analysis Prevention, 42*(3):859-866. Retrieved from https://doi:10.1016/j.aap.2009.04.021

REFERENCES

Liguori, A., Gatto, C. P., & Robinson, J. H. (1998). Effects on marijuana on equilibrium, psychomotor performance, and simulated driving. *Behavioural pharmacology, 9,* 599-610.

Lorenzetti, V., Lubman, D.I., Whittle, S., Solowij, N. & Yücel, M. (2010). Structural MRI findings in long-term cannabis users: what do we know?, *Substance Use & Misuse, 45*(11), 1787-1808.

Lucas, C. J., Galettis, P., Song, S., Solowij, N., Reuter, S. E., Schneider, J., and Martin, J. H. (2018). Cannabinoid disposition after human intraperitoneal use: an insight into intraperitoneal pharmacokinetic properties in metastatic cancer. *Clinical Therapeutics 40,* 1442-1447.

Matsuda, L. A., Lolait, S. J., Brownstein, M. J., Young, A. C., and Bonner, T. I. (1990, September). Structure of a cannabinoid receptor and functional expression of the cloned cDNA. *Nature*, *346*(6284), 561-564

Michigan State Police. (February 2019). Oral Fluid Roadside Analysis Pilot Program. Retrieved from https://www.michigan.gov/documents/msp/Oral_Fluid_Report_646833_7.pdf

National Academies of Sciences, Engineering, and Medicine. (2017). *The health effects of cannabis and cannabinoids: Current state of evidence and recommendations for research*. Washington, DC: The National Academies Press.

Papafotiou, K., Carter, J. D., & Stough, C. (2005). An evaluation of the sensitivity of the Standardized Field Sobriety Tests (SFSTs) to detect impairment due to marijuana intoxication. *Psychopharmacology*, *180*(1), 107-114.

Papafotiou, K., Carter, J. D., & Stough, C. (2005). The relationship between performance on the standardised field sobriety tests, driving performance and the level of Δ*9*-tetrahydrocannabinol (THC) in blood. *Forensic Science International, 155*(2-3), 172-178.

PIRE (2014). *Washington State Roadside Survey*. Calverton, MD: Pacific Institute for Research & Evaluation.

Procon.org. (2019). Retrieved from https://medicalmarijuana.procon.org/view.resource.php?resourceID=000881

Ramaekers, J. G., Robbe, H. W. J., & O'Hanlon, J. F. (2000). Marijuana, alcohol and actual driving performance. *Human Psychopharmacology: Clinical and Experimental, 15*(7), 551-558.

Robbe, H. W. J., & O'Hanlon, J. (1993). Marijuana's effect on actual driving: summary of a 1-year experimental program. In *Proceedings International Council on Alcohol, Drugs and Traffic Safety Conference, 1993,* 603-611.

Schwope, D. M., Bosker, W. M., Ramaekers, J. G., Gorelick, D. A., & Huestis, M. A. (2012). Psychomotor performance, subjective and physiological effects and whole blood Delta(9)-tetrahydrocannabinol concentrations in heavy, chronic cannabis smokers following acute smoked cannabis. *Journal of Analytical Toxicology, 36*, 405-412.

REFERENCES

Schulze, H., Schumacher, M., Urmeew, R., Auerbach, K., Alvarez, J., Bernhoft, I. M., de Gier, H., ... & Zlender, B. (2012). Driving under the influence of drugs, alcohol and medicines in europe—findings from the DRUID project. Lisbon: European Monitoring Centre for Drugs and Drug Addiction.

University of Michigan. 2019. Michigan Traffic Crash Facts. Retrieved from https://www.michigantrafficcrashfacts.org

Wall, M. E., Sadler, B. M., Brine, D., Taylor, H., and Perez-Reyes, M. (1983). Metabolism, disposition, and kinetics of delta-9-tetrahydrocannabinol in men and women. *Clinical Pharmacology & Therapeutics, 34*, 352-363.

STECKER
Forensic Science
Division Letter

STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE
Forensic Science Division

GRETCHEN WHITMER
GOVERNOR

COL. JOSEPH M. GASPER
DIRECTOR

September 23, 2019

Mr. Kenneth Stecker (PACC-Contractor)
Ms. Kinga Canike (PACC-Contractor)

Dear Mr. Stecker and Ms. Canike,

Recently, I have had several conversations with prosecuting attorneys regarding measurement uncertainty and how it relates to toxicology reporting. For future reference, I would like to provide an explanation of why the Michigan State Police Toxicology Discipline does not report measurement uncertainty for THC. The Forensic Science Division is accredited by the ANSI (American National Standards Institute) National Accreditation Board (ANAB) to ISO 17025:2005. Maintaining that accreditation means that we must adhere to the requirements set forth in ISO 17025:2005, the "General requirements for the competence of testing and calibration laboratories".

There are hundreds of requirements that the laboratory must adhere to, however the requirement of interest is 5.10.3.1.

- *5.10.3.1 "In addition to the requirements listed in 5.10.2, test reports shall, where necessary for the interpretation of the test results, include the following:"*

- *c) "where applicable a statement on the estimated uncertainty of measurement; information on uncertainty is needed in test reports when it is relevant to the validity or application of the test results, when a customer's instruction so requires, or when the uncertainty affects compliance to a specification limit."*

When considering 5.10.3.1 c), three separate components are present that dictate whether the laboratory must report measurement uncertainty.

First, when it is relevant to the validity or application of the test results. Measurement uncertainty is not required for the validity of the toxicology discipline's test results. The validity of the test result is demonstrated through validation of the analytical testing process. The toxicology discipline does not oversee the application of the test result. Our customers are responsible for the application of the test result.

Second, when a customer's instruction so requires. The toxicology discipline's primary customers are the law enforcement agencies that submit samples, and, to a lesser extent, the prosecuting attorneys. Neither the agencies nor the prosecuting attorneys have requested this information be included on the discipline's reports.

Third, when the uncertainty affects compliance to a specification limit. In the case of alcohol, there are specification limits, 0.08 g/100 mL and 0.17 g/100 mL. The toxicology discipline reports measurement uncertainty with all alcohol cases because of these specification limits. There are no specification limits associated with THC or THC-COOH, and thus no requirement to report measurement uncertainty.

Sincerely,

Nicholas Fillinger

Nicholas Fillinger
Technical Leader
Toxicology Discipline

PEOPLE v. FEEZEL

People v. Feezel, 486 Mich. 184 (Mich. 2010)

Michigan Supreme Court
Lansing, Michigan

Opinion

FILED JUNE 8, 2010

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v No. 138031

GEORGE EVAN FEEZEL,

Defendant-Appellant.

BEFORE THE ENTIRE BENCH

CAVANAGH, J.

Defendant struck and killed a pedestrian when he was operating his vehicle while intoxicated. A jury convicted defendant of failing to stop at the scene of an accident that resulted in death, MCL 257.617(3), operating while intoxicated (OWI), second offense, MCL 257.625(1), and operating a motor vehicle with the presence of a schedule 1 controlled substance in his body, causing death, MCL 257.625(4) and (8). The Court of Appeals affirmed defendant's convictions. We granted leave to appeal. *People v Feezel*, 483 Mich 1001 (2009).

We hold that the trial court abused its discretion by failing to admit evidence of the victim's intoxication because it was relevant to the element of causation in MCL 257.617(3) and MCL 257.625(4) and (8). We hold that the error resulted in a miscarriage

of justice, which therefore requires reversal under MCL 769.26. In addition, defendant's conviction under MCL 257.625(4) and (8) was based on an improper interpretation of MCL 257.625(8) and must be vacated on that ground also. We overrule *People v Derror*, 475 Mich 316; 715 NW2d 822 (2006), to the extent that it is inconsistent with this opinion. Accordingly, we reverse the judgment of the Court of Appeals, vacate defendant's convictions under MCL 257.617(3) and MCL 257.625(4) and (8), and remand the case to the trial court for further proceedings consistent with this opinion.

I. FACTS AND PROCEDURAL HISTORY

Shortly before 2:00 a.m. on July 21, 2005, defendant struck and killed a pedestrian, Kevin Bass, with his car while traveling on Packard Road in Ypsilanti Township in Washtenaw County. At the time of the accident, Packard Road was an unlit, five-lane road, and it was dark outside and raining heavily. Although there was a sidewalk adjacent to Packard Road, the victim was walking down the middle of the road, with his back to oncoming traffic. The victim was extremely intoxicated, and his blood alcohol content (BAC) was at least 0.268 grams per 100 milliliters of blood. Although defendant initially left the scene of the accident after hitting the victim, he later returned while the police were investigating the incident and was arrested. Defendant's BAC at the time of the accident was an estimated 0.091 to 0.115 grams per 100 milliliters. There were also 6 nanograms of 11-carboxy-tetrahydrocannabinol (11-carboxy-THC) per milliliter in defendant's blood. Defendant was charged with several offenses, including OWI causing death; operating a motor vehicle with the presence of a schedule 1

controlled substance in his body, causing death; and failure to stop at the scene of an accident that resulted in death.

Before trial, the prosecutor filed a motion in limine to preclude evidence related to the victim's intoxication. The prosecutor argued that the victim's intoxication was irrelevant to whether defendant caused the accident or caused the victim's death. The trial court agreed and suppressed the evidence.

At trial, testimony revealed that defendant had been at two bars earlier that evening. At one bar, defendant was accompanied by Nicole Norman. Norman testified that she and defendant were at the bar from 11 p.m. to 1:30 a.m. At no time did she see defendant smoke marijuana, and defendant did not smell of marijuana. Norman further testified that after they left the bar, defendant drove her to Stephanie Meyers's house. After picking up Meyers, defendant dropped Norman and Meyers off at Norman's car.

Meyers testified that she was a passenger in Norman's car and Norman was driving down Packard Road moments before the accident. Meyers stated that it was pouring outside, and she did not see the victim until he was alongside the driver's side door. It was then that Meyers and Norman "snapped [their] necks backwards noticing him . . . ." Meyers also recalled that when Norman saw the victim, she stated, "That man's going to get killed." In addition, Norman testified that had she been driving in the lane that the victim was walking in, she probably would not have been able to stop her vehicle in time to avoid hitting him. Defendant was traveling down Packard Road moments after Norman's car had passed the victim.

Defendant's accident reconstruction expert found that defendant would have had

to have been driving 15 miles per hour to avoid hitting the victim. The prosecution's accident reconstruction expert agreed with defense counsel that if defendant first saw the victim from 30 feet away, then defendant would have had to have been traveling at a rate of 10 to 15 miles per hour to avoid the accident.

Defendant was convicted of failing to stop at the scene of an accident that resulted in death; OWI, second offense; and operating a motor vehicle with the presence of a schedule 1 controlled substance in his body, causing death. Defendant appealed, claiming, in relevant part, that the trial court abused its discretion by refusing to admit evidence of the victim's BAC, that the trial court erred by failing to instruct the jury on proximate cause with respect to the charges of failing to stop at the scene of an accident that resulted in death and operating a motor vehicle with a schedule 1 controlled substance, causing death, and that his conviction of operating a motor vehicle, causing death, based on the presence of 11-carboxy-THC in his body violated his due process rights under the Fifth and Fourteenth amendments of the United States Constitution.

In a divided decision, the Court of Appeals affirmed defendant's convictions. Noting that it is foreseeable for a pedestrian to be in a roadway, the majority reasoned that the trial court did not abuse its discretion by suppressing the evidence of the victim's BAC because the victim's level of "intoxication was not relevant to the critical issue in the proximate cause analysis, which is whether the victim's death was a foreseeable consequence of defendant's conduct of driving while intoxicated . . . ." *People v Feezel*, unpublished opinion per curiam of the Court of Appeals, issued November 13, 2008 (Docket No. 276959), p 12. Moreover, the majority concluded that the trial court did not

err by failing to reinstruct the jurors on proximate causation because proximate causation is not an element of MCL 257.617(3) and any error related to MCL 257.625(8) was harmless. Finally, the majority concluded that defendant's due process arguments had been rejected by this Court in *Derror*.

The partial dissent argued that the trial court's deficient instruction with respect to MCL 257.625(8) and its incorrect evidentiary ruling deprived defendant of a substantial defense and thus denied defendant his right to a fair trial. *Feezel*, unpub op at 1, 6 (SAAD, C.J., concurring in part and dissenting in part). We granted defendant's application for leave to appeal. 483 Mich 1001 (2009).

II. ANALYSIS

A. THE CAUSATION ELEMENT

The first issue presented in this appeal is whether the trial court abused its discretion by refusing to admit evidence of the victim's BAC. We hold that, under the facts of this case, the trial court abused its discretion by refusing to admit the evidence because it was relevant to the element of proximate causation in MCL 257.617(3) and MCL 257.625(4) and (8). Moreover, because the error resulted in a miscarriage of justice, it requires reversal under MCL 769.26.

1. STANDARD OF REVIEW

A trial court's decision to either admit or exclude evidence "will not be disturbed absent an abuse of . . . discretion." *People v McDaniel*, 469 Mich 409, 412; 670 NW2d

659 (2003). A trial court abuses its discretion when its decision falls "outside the range of principled outcomes." *People v Smith*, 482 Mich 292, 300; 754 NW2d 284 (2008).

If a reviewing court concludes that a trial court erred by excluding evidence, under MCL 769.26 the verdict cannot be reversed "unless in the opinion of the court, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice." In examining whether a miscarriage of justice occurred, the relevant inquiry is "the 'effect the error had or reasonably may be taken to have had upon the jury's decision.'" *People v Straight*, 430 Mich 418, 427; 424 NW2d 257 (1988), quoting *Kotteakos v United States*, 328 US 750, 764; 66 S Ct 1239; 90 L Ed 1557 (1946). If the evidentiary error is a nonconstitutional, preserved error, then it "is presumed not to be a ground for reversal unless it affirmatively appears that, more probably than not, it was outcome determinative." *People v Krueger*, 466 Mich 50, 54; 643 NW2d 223 (2002). An error is "outcome determinative if it undermined the reliability of the verdict"; in making this determination, this Court should "focus on the nature of the error in light of the weight and strength of the untainted evidence." *Id.* (quotation marks and citations omitted).

2. OVERVIEW OF CAUSATION

Three of the offenses with which defendant was charged contain an element of causation, so the prosecution was required to prove causation beyond a reasonable doubt for each offense. The Court of Appeals erred to the extent that it held otherwise. The plain language of the statutes that prohibit OWI causing death, MCL 257.625(1) and (4),

and the statutes that prohibit operating a motor vehicle with the presence of a schedule 1 controlled substance in one's body, causing death, MCL 257.625(4) and (8), requires that the defendant's operation of a motor vehicle have *caused* the death of another person.[1] Likewise, the plain language of MCL 257.617(3) contains an element of causation. Specifically, the statute imposes criminal liability if an individual fails to stop "following an accident *caused* by that individual and the accident results in the death of another . . . ." MCL 257.617(3) (emphasis added).[2] Thus, because the statute specifically

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[1] MCL 257.625 states, in relevant part:

> (1) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person is operating while intoxicated. . . .
>
> * * *
>
> (4) A person, whether licensed or not, who operates a motor vehicle in violation of subsection (1), (3), or (8) and by the operation of that motor vehicle *causes* the death of another person is guilty of a crime . . . .
>
> * * *
>
> (8) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person has in his or her body any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section, or of a controlled substance described in section 7214(a)(*iv*) of the public health code, 1978 PA 368, MCL 333.7214. [Emphasis added.]

[2] The statute provides, in relevant part:

> (1) The driver of a vehicle who knows or who has reason to believe that he or she has been involved in an accident upon public or private

requires the prosecution to establish that the accident was "caused" by the accused, the Court of Appeals ignored the plain language of the MCL 257.617(3) and erred by holding that it does not contain a causation element. Having determined that each of the statutes contains a causation element, we now turn to the definition of the term "cause."

In *People v Schaefer*, we stated that, in the criminal law context, the term "'cause' has acquired a unique, technical meaning." *People v Schaefer*, 473 Mich 418, 435; 703 NW2d 774 (2005). Specifically, the term and concept have two parts: factual causation and proximate causation. *Id.* at 435-436. Factual causation exists if a finder of fact determines that "but for" defendant's conduct the result would not have occurred. *Id.* A finding of factual causation alone, however, is not sufficient to hold an individual criminally responsible. *Id.* at 436. The prosecution must also establish that the

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> property that is open to travel by the public shall immediately stop his or her vehicle at the scene of the accident and shall remain there until the requirements of [MCL 257.619] are fulfilled or immediately report the accident to the nearest or most convenient police agency or officer to fulfill the requirements of [MCL 257.619(a)] and (b) if there is a reasonable and honest belief that remaining at the scene will result in further harm. The stop shall be made without obstructing traffic more than is necessary.
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> * * *
>
> (3) If the individual violates subsection (1) following an accident *caused* by that individual and the accident results in the death of another individual, the individual is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than $10,000.00, or both. [MCL 257.617 (emphasis added).]

defendant's conduct was a proximate cause of, in this case, the accident or the victim's death. *Id.*[3]

Proximate causation "is a legal construct designed to prevent criminal liability from attaching when the result of the defendant's conduct is viewed as too remote or unnatural." *Id.* If the finder of fact determines that an intervening cause supersedes a defendant's conduct "such that the causal link between the defendant's conduct and the victim's injury was broken," proximate cause is lacking and criminal liability cannot be imposed. *Id.* at 436-437. Whether an intervening cause supersedes a defendant's conduct is a question of reasonable foreseeability. *Id.* at 437. Ordinary negligence is considered reasonably foreseeable, and it is thus not a superseding cause that would sever proximate causation. *Id.* at 437-438. In contrast, "gross negligence" or "intentional misconduct" on the part of a victim is considered sufficient to "break the causal chain between the defendant and the victim" because it is not reasonably foreseeable. *Id.* Gross negligence, however, is more than an enhanced version of ordinary negligence. *Id.* at 438. "It means wantonness and disregard of the consequences which may ensue . . . ." *People v Barnes*, 182 Mich 179, 198; 148 NW 400 (1914).[4] "Wantonness" is defined as

[3] While there are competing positions regarding the law of proximate causation, and I personally remain committed to my position regarding proximate causation presented in *Schaefer*, 473 Mich at 450-452 (CAVANAGH, J., concurring in part and dissenting in part), and *People v Tims*, 449 Mich 83, 110-125; 534 NW2d 675 (1995) (CAVANAGH, J., dissenting), this Court's decision in *Schaefer* is the current law in the state of Michigan.

[4] This case is distinguishable from *Barnes*, in which this Court defined "gross negligence" as "wantonness and disregard of the consequences which may ensue, *and*

"[c]onduct indicating that the actor is aware of the risks but indifferent to the results" and usually "suggests a greater degree of culpability than recklessness . . . ." Black's Law Dictionary (8th ed). Therefore, while a victim's negligence is not a defense, it is an important factor to be considered by the trier of fact in determining whether proximate cause has been proved beyond a reasonable doubt. See, e.g., *People v Campbell*, 237 Mich 424, 430-431; 212 NW 97 (1927).[5]

3. SUPPRESSION OF THE EVIDENCE

We must examine whether, in this case, the victim's BAC was a relevant and admissible fact for the jury's consideration when determining whether the prima facie element of proximate causation was proved beyond a reasonable doubt. We hold that it was. However, we caution that trial courts must make a threshold determination that there is a jury-submissible question of fact regarding gross negligence before such

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indifference to the rights of others that is equivalent to a criminal intent." *Barnes*, 182 Mich at 198 (emphasis added). In that case, the issue was whether a *defendant's* conduct amounted to gross negligence, therefore warranting a conviction for involuntary homicide. *Id.* Thus, the Court's definition of "gross negligence" provided the appropriate standard to hold a defendant criminally responsible for his or her careless acts. *Id.* The operative question here is whether the victim's conduct was grossly negligent and, therefore, cut off proximate cause and relieved defendant of criminal liability. Thus, because the conduct of the victim is at issue when determining whether there was a superseding cause, the latter portion of the Court's definition of "gross negligence" in *Barnes* is not applicable.

[5] Whether, in a multiple vehicle accident, a victim-driver's intoxication raises a presumption of gross negligence is a question that we need not and do not reach in this case. See *People v Lardie*, 452 Mich 231, 251; 551 NW2d 656 (1996), overruled on other grounds by *Schaefer*, 473 Mich at 422.

evidence becomes relevant and admissible.

Under the Michigan Rules of Evidence, evidence is admissible only if it is relevant as defined by MRE 401 and is not otherwise excluded under MRE 403.[6] In *People v Crawford*, 458 Mich 376, 388; 582 NW2d 785 (1998), we explained that "[p]ursuant to MRE 401, evidence is relevant if two components are present, materiality and probative value." "Materiality is the requirement that the proffered evidence be related to 'any fact that is of consequence' to the action." *Id.*, quoting MRE 401. This Court has stated that "[b]ecause the prosecution must carry the burden of proving every element beyond a reasonable doubt, . . . the elements of the offense are always 'in issue' and, thus, material." *Crawford*, 458 Mich at 389. When examining whether the proffered evidence is probative, a court considers whether the "evidence tends 'to make

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[6] MRE 402 provides:

> All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of Michigan, these rules, or other rules adopted by the Supreme Court. Evidence which is not relevant is not admissible.

MRE 401 provides:

> "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

MRE 403 provides:

> Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence,'" and "[t]he threshold is minimal: 'any' tendency is sufficient probative force." *Id.* at 389-390 (citations omitted).

Moreover, MRE 403 excludes evidence, even if relevant, only if its probative value is "substantially outweighed" by the danger of unfair prejudice, confusion of the issues, or misleading the jury. Thus, MRE 403 "does not prohibit prejudicial evidence; only evidence that is unfairly so." *Crawford*, 458 Mich at 398. Further, "[e]vidence is unfairly prejudicial when there exists a danger that *marginally* probative evidence will be given undue or preemptive weight by the jury." *Id.* (emphasis added).

Under these rules of evidence, a court must make a threshold determination in cases such as this of whether evidence of the victim's intoxication is relevant to the element of proximate causation. If the evidence is relevant, a court must also determine whether the evidence is nevertheless inadmissible under MRE 403. We conclude that, under the facts of this case, the evidence of the victim's BAC was relevant because it was both material and probative. In addition, its probative value was not substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury because the evidence was highly probative of the element of proximate causation.

First, the materiality requirement of MRE 401 was met because, as explained earlier, the charges at issue required the prosecution to prove an element of causation beyond a reasonable doubt. See *Crawford*, 458 Mich at 389. In addition, under the broad definition of "probative," evidence of the victim's BAC must merely have *any*

tendency to make gross negligence on the part of the victim more or less probable. See *id.* at 389-390. Depending on the facts of a particular case, there may be instances in which a victim's intoxication is not sufficiently probative, such as when the proofs are insufficient to create a question of fact for the jury about whether the victim was conducting himself or herself in a grossly negligent manner. Generally, the mere fact that a victim was intoxicated at the time a defendant committed a crime is not sufficient to render evidence of the victim's intoxication admissible. While intoxication may explain why a person acted in a particular manner, being intoxicated, by itself, is not conduct amounting to gross negligence. In this case, however, the victim's extreme intoxication was highly probative of the issue of gross negligence, and therefore causation, because the victim's intoxication would have affected his ability to perceive the risks posed by his conduct and diminished his capacity to react to the world around him.[7] Indeed, in this case, the proffered superseding cause was the victim's presence in the middle of the road with his back to traffic at night during a rain storm with a sidewalk nearby. Thus, the proofs were sufficient to create a jury-submissible question about whether the victim was grossly negligent, and the victim's high level of intoxication would have aided the jury in determining whether the victim acted with

[7] The National Highway Traffic Safety Administration has stated that at a BAC of 0.08 percent a person's "[m]uscle coordination becomes poor (e.g., balance, speech, vision, reaction time, and hearing)," it is "[h]arder to detect danger," and a person's "[j]udgment, self-control, reasoning, and memory are impaired[.]" National Highway Traffic Safety Administration, *The ABCs of BAC*: *A Guide to Understanding Blood Alcohol Concentration and Alcohol Impairment*, available at <http://www.stopimpaireddriving.org/ABCsBACWeb/images/ABCBACscr.pdf> (accessed June 2, 2010).

"wantonness and a disregard of the consequences which may ensue . . . ." *Barnes*, 182 Mich at 198.

Second, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. The evidence was not unfairly prejudicial because, as explained earlier, the victim's high level of intoxication went to the heart of whether the victim was grossly negligent; thus, the evidence was not merely marginally probative, but instead was highly probative of the element of causation.

In addition, the probative value of the evidence was not, as the prosecution argues, substantially outweighed by the danger of confusion of the issues or misleading the jury. The prosecution's argument that the admission of evidence of the victim's BAC would "shift responsibility" from defendant ignores that under the circumstances of this case, the victim's conduct directly related to the disputed element of proximate causation and, therefore, whether the victim's actions amounted to ordinary or gross negligence. See, e.g., *May v Goulding*, 365 Mich 143, 148; 111 NW2d 862 (1961) (describing the difference between wanton misconduct and ordinary negligence as "'faults of different hues in the spectrum of human conduct'") (citation omitted). As a result, the probative value of the victim's high level of intoxication was not *substantially* outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury because, under the facts of this case, the victim's BAC was highly probative of the element of proximate causation, which necessarily required the trier of fact to determine whether the victim's

own behavior amounted to a superseding cause.[8]

For all these reasons, we disagree with the conclusion of the Court of Appeals that the evidence was irrelevant because the "victim's intoxication, or lack thereof, does not impact the foreseeability of an intoxicated driver striking a pedestrian in the road." *Feezel*, unpub op at 11. While it is true that when a person drives intoxicated it is foreseeable that the person *may* cause an accident or *possibly* strike a pedestrian, this general premise ignores the fact that proximate causation must be decided on a case-by-case basis. See *Stoll v Laubengayer*, 174 Mich 701, 705; 140 NW 532 (1913) (stating that "[w]hile this court has never apparently attempted to accurately define the term 'proximate cause,' it has in many cases *applied the principle* as enunciated in the authorities *to the particular facts under consideration*") (emphasis added).[9] Indeed, this principle is embedded within the concept of proximate causation, which requires the trier of fact to determine whether the victim's own conduct amounted to a superseding cause. See *Schaefer*, 473 Mich at 438-439 (stating that gross negligence "by *the*

[8] We stress that ordinary negligence on the part of a victim is insufficient to exculpate an intoxicated driver. See *Schaefer*, 473 Mich at 437-438 (stating that "gross negligence" or "intentional misconduct" on the part of a victim is sufficient to "break the causal chain between the defendant and the victim" because it is not reasonably foreseeable).

[9] In fact, this Court has previously stated that while "[p]edestrians in a public highway have a right to assume that the driver of an automobile will use ordinary care for their protection, . . . they may not rest content on that assumption and take no care for their own safety." *Campbell*, 237 Mich at 432. Thus, "[t]he driver of an automobile has a right to assume that a pedestrian will use ordinary care for his own safety, and any assumption that he has a right to indulge in may be considered by the jury with the other facts . . . ." *Id.* at 431-432.

victim . . . will generally be considered a superseding cause") (emphasis added). Thus, to hold defendant criminally responsible, the trier of fact must find beyond a reasonable doubt that defendant's conduct was a proximate cause of *this* victim's death or of *this* accident given the particular facts of the case.

Therefore, while the victim's intoxication is not a defense, under the facts of this case it should have been a factor for the jury to consider when determining whether the prosecution proved beyond a reasonable doubt that defendant's conduct was a proximate cause of the accident, under MCL 257.617(3), or a proximate cause of the victim's death, under MCL 257.625(4) and (8).

We emphasize, however, that evidence of a victim's intoxication may not be relevant or admissible in all cases. Indeed, the primary focus in a criminal trial remains on the defendant's conduct. Accordingly, any level of intoxication on the part of a victim is not automatically relevant, and the mere consumption of alcohol by a victim does not automatically amount to a superseding cause or de facto gross negligence. Instead, under MRE 401, a trial court must determine whether the evidence tends to make the existence of gross negligence more probable or less probable than it would be without the evidence and, if relevant, whether the evidence is inadmissible under the balancing test of MRE 403.

Thus, when determining whether evidence of a victim's intoxication is admissible, the trial court must make a threshold determination that evidence of the victim's conduct is sufficiently probative for a proper purpose—to show gross negligence. In other words, the trial court must determine that the issue of gross

negligence is "in issue." See *People v McKinney*, 410 Mich 413, 418; 301 NW2d 824 (1981). The court may allow the admission of evidence of the victim's intoxication to aid the jury in determining whether the victim's actions were grossly negligent only when the proofs are sufficient to create a question of fact for the jury. If a trial court cannot come to the conclusion that a reasonable juror could view the victim's conduct as demonstrating a wanton disregard of the consequences that may ensue, however, then the evidence of intoxication is not admissible.

Applying these standards to the facts of this case, we hold that the trial court abused its discretion by failing to admit the evidence of the victim's BAC. In excluding the evidence, the trial court deprived the jury of its ability to consider an important, relevant factor in determining whether the victim was grossly negligent. As a result, the error undermined the reliability of the verdict. We therefore reverse the judgment of the Court of Appeals and vacate defendant's convictions of those offenses.

4. JURY INSTRUCTIONS

To aid the trial court on remand, we note that in this case, the jury instructions, when read as a whole, may have been confusing. In *Schaefer*, we stated that the term "cause" is "a legal term of art normally not within the common understanding of jurors . . . ." *Schaefer*, 473 Mich at 441. As a result, a jury could not be expected to understand that the term "required the prosecutor to prove *both* factual causation and proximate causation." *Id.*

The trial court instructed the jury and gave the jury a written instruction on the term's unique meaning, but the instruction was buried within the elements of the charge of OWI causing death and not included in the instructions for MCL 257.617(3) and MCL 257.625(4) and (8). Moreover, the instructions for these other charges were separated from the causation instruction by instructions on lesser included offenses and a jury verdict form. Because the potential deprivation of personal rights in criminal cases is extreme and a defendant is "entitled to have all the elements of the crime submitted to the jury in a charge which [is] neither erroneous nor misleading," *People v Pepper*, 389 Mich 317, 322; 206 NW2d 439 (1973), we caution the trial court on remand to avoid possible confusion by either reinstructing the jury on causation for each crime that contains a causation element or by referring the jurors back to its earlier causation instruction.

B. DEFENDANT'S CONVICTION UNDER MCL 257.625(4) AND (8)

The next issue presented in this appeal is whether defendant's conviction under MCL 257.625(4) and (8) was proper.[10] In *Derror*, a majority of this Court held that 11-

[10] Although this Court is vacating defendant's conviction under MCL 257.625(4) and (8) because the trial court abused its discretion by failing to admit evidence of the victim's intoxication, this Court is not prevented from considering whether *Derror* was wrongly decided because the possibility remains that defendant will be retried under MCL 257.624(4) and (8) on remand. Thus, we disagree with the partial dissent that it is unnecessary to reach this issue. Moreover, although defendant had trace amounts of THC in his system, the amount of THC was below the threshold of the Michigan State Police's reporting protocol, and the prosecution only charged defendant with having 11-carboxy-THC in his system. The partial dissent's statement that "it is undisputed that defendant was guilty of violating this statute by virtue of the presence of actual THC" in his blood is disingenuous at best.

carboxy-THC, a byproduct of metabolism created when the body breaks down the psychoactive ingredient of marijuana, is a schedule 1 controlled substance under MCL 333.7212 of the Public Health Code. *Derror*, 475 Mich at 319-320. *Derror* also clarified *Schaefer* by holding that in prosecutions involving a violation of MCL 257.625(8), "the prosecution is not required to prove beyond a reasonable doubt that a defendant knew he or she might be intoxicated" because the section does not require intoxication or impairment. *Id.* at 334. Thus, because the prosecution need only establish that a defendant had any amount of a schedule 1 controlled substance in his or her body while operating a motor vehicle, under *Derror*, a person who operates a motor vehicle with the presence of any amount of 11-carboxy-THC in his or her system violates MCL 257.625(8). *Id.* at 320.

We hold that 11-carboxy-THC is not a schedule 1 controlled substance under MCL 333.7212 and, therefore, a person cannot be prosecuted under MCL 257.625(8) for operating a motor vehicle with any amount of 11-carboxy-THC in his or her system. As a result, *Derror* was wrongly decided, and because the doctrine of stare decisis supports overruling *Derror*, we overrule *Derror* to the extent that it is inconsistent with this opinion.

1. STANDARD OF REVIEW AND THE RULES OF STATUTORY INTERPRETATION

Questions of statutory interpretation are reviewed de novo. *Potter v McLeary*, 484 Mich 397, 410; 774 NW2d 1 (2009). The primary goal is to give effect to the intent of the Legislature. *Frankenmuth Mut Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515;

573 NW2d 611 (1998). When a statute is ambiguous, judicial construction is appropriate to determine the statute's meaning. See *id.* When determining the Legislature's intent, the "'statutory language is given the reasonable construction that best accomplishes the purpose of the statute.'" *Id.* (citation omitted). Indeed, "[i]t is a well-established rule of statutory construction that provisions of a statute must be construed in light of the other provisions of the statute to carry out the apparent purpose of the Legislature." *Farrington v Total Petroleum, Inc*, 442 Mich 201, 209; 501 NW2d 76 (1993). As a result, "the entire act must be read, and the interpretation to be given to a particular word in one section arrived at after due consideration of every other section so as to produce, if possible, a harmonious and consistent enactment as a whole." *Grand Rapids v Crocker*, 219 Mich 178, 182-183; 189 NW 221 (1922).

2. BACKGROUND: MCL 257.625(8) AND *DERROR*

MCL 257.625(8) states, in relevant part:

> A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person has in his or her body *any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code*, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section . . . . [Emphasis added.]

Under § 7212(1)(c) of the Public Health Code, marijuana is listed as a schedule 1 controlled substance. MCL 333.7212(1)(c). "Marijuana" is defined as follows:

> "Marihuana" means all parts of the plant Canabis [sic] sativa L., growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or

> preparation of the plant or its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. [MCL 333.7106(3).]

On the basis of these statutes, a majority of this Court concluded in *Derror* that 11-carboxy-THC is a schedule 1 controlled substance. The majority reasoned that "the Public Health Code includes within the definition of marijuana every compound and derivative of the plant . . . ." *Derror*, 475 Mich at 325. After examining several medical dictionaries with diverse definitions, the majority chose the definition of "derivative" that it believed most closely effectuated the Legislature's intent, which was "a chemical substance related structurally to another substance and theoretically derivable from it." *Id.* at 327-329 (quotation marks and citation omitted). Applying this definition of "derivative," the majority concluded that 11-carboxy-THC was included in it because the compound is structurally related to THC. *Id.* at 329. As a result, the majority concluded that MCL 257.625(8) proscribes driving with *any* amount of 11-carboxy-THC in a person's body regardless of whether the person is actually "under the influence" of marijuana while operating the motor vehicle. *Id.* at 333-334, 341. That interpretation, however, was contrary to the statutory language.

3. 11-CARBOXY-THC IS NOT A SCHEDULE 1 CONTROLLED SUBSTANCE BECAUSE IT IS NOT A DERIVATIVE OF MARIJUANA

Derror was wrongly decided. The *Derror* majority erred because it interpreted "derivative" by choosing a definition, out of several divergent definitions, that *seemed* to

include 11-carboxy-THC as a derivative when experts were in disagreement about whether 11-carboxy-THC is a derivative. *Derror*, 475 Mich at 327-328; *id*. at 350-351 (CAVANAGH, J., dissenting). More importantly, however, the majority's interpretation ignored and was inconsistent with other relevant statutory provisions. Specifically, the majority failed to interpret MCL 333.7212 in a manner consistent with federal law, ignored the factors the Legislature indicated should be used to determine whether a substance should be classified as a schedule 1 controlled substance, and ignored the Legislature's definition of "marijuana" and the Legislature's list of schedule 1 controlled substances, which do not contain the term "metabolite" or the full or any abbreviated name of 11-carboxy-THC. When MCL 333.7212 is interpreted in the context of the statutory scheme, it does not appear that the Legislature intended for 11-carboxy-THC to be classified as a schedule 1 controlled substance.

To begin with, our Legislature has declared that the provisions of the Public Health Code are "intended to be consistent with applicable federal and state law and shall be construed, when necessary, to achieve that consistency." MCL 333.1111(1). Notably, while Michigan's definition of marijuana is virtually identical to the relevant portions of the federal definition,[11] no federal court has held that 11-carboxy-THC is a controlled

[11] The federal statute defines "marijuana" as follows:

> The term "marihuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the

substance. Moreover, federal courts have stated that "the purpose of banning marijuana was to ban the euphoric effects produced by THC." *United States v Sanapaw*, 366 F3d 492, 495 (CA 7, 2004), citing *United States v Walton*, 168 US App DC 305, 306; 514 F2d 201 (1975) (stating that "the 'hallucinogenic' or euphoric effects produced by this agent led to the Congressional ban on possession, importation and distribution of marijuana"). An expert in this case, however, agreed that 11-carboxy-THC has no known pharmacological effect. See, also, *Derror*, 475 Mich at 321, indicating that the experts in that case agreed that 11-carboxy-THC "'itself has no pharmacological effect on the body and its level in the blood correlates poorly, if at all, to an individual's level of THC-related impairment.'" (Citation omitted.) By ignoring federal law, the majority's decision in *Derror* ignored our Legislature's proclamation that the Public Health Code is intended to be consistent with applicable federal law and "*shall* be construed . . . to achieve that consistency." MCL 333.1111(1) (emphasis added). [12]

In addition, in interpreting "derivative" by choosing a definition, out of several divergent definitions, that *seemed* to include 11-carboxy-THC, the *Derror* majority

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> seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination. [21 USC 802(16).]

[12] The partial dissent criticizes our citations of federal authority. As previously stated, however, our Legislature has expressly stated that the Public Health Code is intended to be consistent with federal law and that state law "*shall* be construed" to achieve that consistency. MCL 333.1111(1) (emphasis added). The Legislature did not state that this requirement can be ignored when a majority of this Court believes that federal courts have not properly decided the cases before them.

ignored other relevant statutory provisions that suggest that 11-carboxy-THC should not be considered a schedule 1 controlled substance. Our Legislature has indicated that the Michigan Board of Pharmacy must include a controlled substance in schedule 1 if "the substance has high potential for abuse" and has no accepted medical use or lacks accepted safety for use in treatment. MCL 333.7211. In addition, the Legislature has listed other factors to consider when making a determination regarding the classification of a substance:

> (a)The actual or relative potential for abuse.
>
> (b) The scientific evidence of its pharmacological effect, if known.
>
> (c) The state of current scientific knowledge regarding the substance.
>
> (d) The history and current pattern of abuse.
>
> (e) The scope, duration, and significance of abuse.
>
> (f) The risk to the public health.
>
> (g) The potential of the substance to produce psychic or physiological dependence liability.
>
> (h) Whether the substance is an immediate precursor of a substance already controlled under this article. [MCL 333.7202.]

As the *Derror* dissent indicated, "[*n*]*one* of these factors that are used to determine if a substance should be classified as a schedule 1 controlled substance applies to 11-carboxy-THC." *Derror*, 475 Mich at 349 (CAVANAGH, J., dissenting). Indeed, "11-carboxy-THC has *no* pharmacological effect on a person, and, therefore, it has no potential for abuse or potential to produce dependence." *Id*. Moreover, "it is impossible to take 11-carboxy-THC and make it into THC; therefore, it is not an immediate precursor of a substance

already classified as a schedule 1 controlled substance." *Id.* Thus, although MCL 333.7202 does not expressly prohibit the inclusion of particular substances in schedule 1, it would be absurd to suggest that 11-carboxy-THC, which fails to meet the criteria of MCL 333.7202, fits within that schedule. By ignoring the statutory provisions that are used to classify a controlled substance, this Court failed to carry out the purpose of the Legislature. *Farrington*, 442 Mich at 209.

In addition, 11-carboxy-THC is not a schedule 1 controlled substance under MCL 333.7212(1)(d). Under MCL 333.7212(1)(d), "synthetic equivalents" of various marijuana-related substances are included in schedule 1. "Synthetic substances are substances that were altered, sometimes in minor ways, but that can still have pharmacological effects on a person." *Derror*, 475 Mich at 352 (CAVANAGH, J., dissenting). This definition does not include 11-carboxy-THC, which is a metabolite—a natural byproduct that is created when a person's body breaks down THC. *Id.* at 321 (majority opinion). Therefore, 11-carboxy-THC is not a "synthetic" substance and, thus, not a schedule 1 controlled substance under MCL 333.7212(1)(d).

Finally, the definition of "marijuana," MCL 333.7106(3), and the Legislature's list of schedule 1 controlled substances, MCL 333.7212, do not contain the term "11-carboxy-THC" or any equivalent name. Nor do the statutes contain the term "metabolite." The Legislature, however, "knows how to use the term 'metabolite' when it wants to." *Derror*, 475 Mich at 352 (CAVANAGH, J., dissenting). In fact, MCL 722.623a requires a person to report suspected child abuse if a newborn infant has any amount of a metabolite of a controlled substance in his or her body. *Id.* "It is a well-

known principle that the Legislature is presumed to be aware of, and thus to have considered the effect on, all existing statutes when enacting new laws." *Walen v Dep't of Corrections*, 443 Mich 240, 248; 505 NW2d 519 (1993). The Legislature's decision to exclude the word "metabolite" from the relevant statutory provisions is further support that the Legislature did not intend that 11-carboxy-THC be classified as a schedule 1 controlled substance.

Therefore, by failing to construe the applicable portions of the Public Health Code to achieve consistency with federal law, and by failing to examine the statute in light of other relevant statutory provisions, the *Derror* majority failed to effectuate the Legislature's intent. We hold that 11-carboxy-THC is not a schedule 1 controlled substance under MCL 333.7212 and, therefore, a person cannot be prosecuted under MCL 257.625(8) for operating a motor vehicle with any amount of 11-carboxy-THC in his or her system. Although the *Derror* majority's interpretation of the statute was probably unconstitutional, because we hold that 11-carboxy-THC is not a schedule 1 controlled substance, defendant's conviction under MCL 257.625(4) and (8) cannot stand. Thus, we need not address the constitutional issues raised. [13]

[13] Although it is not necessary to reach the constitutional issues raised in this case, I continue to believe that the *Derror* majority's interpretation of the statute is unconstitutional. See *Derror*, 475 Mich at 354-362 (CAVANAGH, J., dissenting), stating that the majority's interpretation of the statute is unconstitutional because it failed to provide an ordinary person with notice of what conduct is prohibited, had the potential for arbitrary and discriminatory enforcement, and was not rationally related to the objective of the statute. And while the partial dissent correctly notes that I personally

4. THE DOCTRINE OF STARE DECISIS

Deciding to overrule precedent is not a decision that this Court takes lightly. Indeed, this Court should respect precedent and not overrule or modify it unless there is substantial justification for doing so. While "*stare decisis* is essential to the respect accorded to the judgments of the Court and to the stability of the law," it is "not a mechanical formula of adherence to the latest decision[.]" *Lawrence v Texas*, 539 US 558, 577; 123 S Ct 2472; 156 L Ed 2d 508 (2003) (citation and quotation marks omitted).

In *Robinson v Detroit*, 462 Mich 439; 613 NW2d 307 (2000), this Court formally established a test to determine when it is appropriate to depart from stare decisis.[14] First, this Court must consider whether the previous decision was wrongly decided. *Id.* at 464. This Court must then apply a three-part test to determine whether the doctrine of stare decisis nonetheless supports upholding the previously decided case. These include (1)

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support the doctrine of legislative acquiescence, that doctrine does not enable this Court to adhere to an unconstitutional interpretation of a statute.

[14] While there are competing tests for determining whether a case should be overruled, I personally remain committed to the stare decisis factors pronounced by Chief Justice KELLY in *Petersen v Magna Corp*, 484 Mich 300, 317-320; 773 NW2d 564 (2009) (opinion by KELLY, C.J.), and, although other justices disagree with this test, I personally believe that this Court should adopt those factors. Nevertheless, *Robinson* is the law in the state of Michigan. In my personal view, however, application of the *Petersen* factors also demands that *Derror* be overruled because the presumption of upholding the precedent is rebutted by a compelling justification for overturning it—namely *Derror*'s flawed interpretation of the statute, which may have resulted in a violation of the United States and Michigan constitutions. And, as will be discussed, *Derror* defies practical workability because it encourages arbitrary and discriminatory enforcement and federal courts have not interpreted the virtually identical federal definition of "marijuana" as including 11-carboxy-THC in schedule 1. Because *Derror*'s interpretation encourages arbitrary and discriminatory enforcement, it also causes hardship and inequity to the citizens of Michigan.

whether the decision defies practical workability, (2) whether reliance interests would work an undue hardship if the decision were overturned, and (3) whether changes in the law or facts no longer justify the decision. *Id.*

As previously explained, *Derror* was wrongly decided. Applying the three-part *Robinson* test, we further conclude that the doctrine of stare decisis does not support upholding *Derror*.

The first factor weighs heavily in favor of overruling *Derror* because the decision defies practicable workability given its tremendous potential for arbitrary and discriminatory enforcement based on the "whims of police and prosecutors." *Derror*, 475 Mich at 358-359 (CAVANAGH, J., dissenting). "The United States Supreme Court has recognized that a critical aspect of the vagueness doctrine is '"the requirement that a legislature establish minimal guidelines to govern law enforcement."'" *Id.* at 359, quoting *Kolender v Lawson*, 461 US 352, 358; 103 S Ct 1855; 75 L Ed 2d 903 (1983) (citation omitted). In fact, the Court has stated that when "the legislature fails to provide such minimal guidelines, a criminal statute may permit 'a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections.'" *Kolender*, 461 US at 358 (citation omitted). The *Derror* majority's interpretation of the statute, however, allows a person to be prosecuted for driving with *any* amount of 11-carboxy-THC in the person's system, even though the metabolite has no pharmacological effects. As a result, a prosecutor could "choose to charge a person found to have 0.01 nanograms of 11-carboxy-THC in his system" if the prosecutor so desires. *Derror*, 475 Mich at 359 (CAVANAGH, J., dissenting). In addition, "whether a person is deemed to

have any amount of 11-carboxy-THC in his system depends on whatever cutoff standard for detection is set by the laboratory doing the testing." *Id.* at 356. As a result, Michigan citizens cannot be sure of what conduct will be deemed criminal.[15]

Moreover, in 2008 the people of the state of Michigan legalized the use of marijuana in limited circumstances. The Michigan Medical Marihuana Act declared that "changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marihuana." MCL 333.26422(b). Under the majority's interpretation of the statute in *Derror*, however, individuals who use marijuana for medicinal purposes will be prohibited from driving long after the person is no longer impaired. Indeed, in this case, experts testified that, on average, the metabolite could remain in a person's blood for 18 hours and in a person's urine for up to 4 weeks. See, also, *Derror*, 475 Mich at 321-322, and *id*. at 356 (CAVANAGH, J., dissenting) (stating that 11-carboxy-THC could remain in a person's blood for a long period after the THC is gone and could remain in a person's system for weeks after the marijuana was ingested). And if scientific testing develops to "detect 11-carboxy-THC from marijuana that was ingested one year ago, ten years ago, or 20 years ago, it is . . . a crime to drive . . . ." *Id.* at 358 (CAVANAGH, J., dissenting). As a result,

[15] In *Derror*, an expert also testified that the presence of 11-carboxy-THC in a person's blood can be the result of passive inhalation. *Derror*, 475 Mich at 357 (CAVANAGH, J., dissenting). In contrast, an expert testified in this case that, considering the studies he had read, it would be improbable for 11-carboxy-THC to be in a person's system through passive inhalation. If the *Derror* expert was correct, however, it further reinforces the fact that *Derror*'s interpretation of the statute could lead to arbitrary and discriminatory enforcement.

"long after any possible impairment from ingesting marijuana has worn off, a person still cannot drive according" to the *Derror* majority's interpretation of the statute. *Id.* at 356. Thus, under *Derror*, an individual who only has 11-carboxy-THC in his or her system is prohibited from driving and, at the whim of police and prosecutors, can be criminally responsible for choosing to do so even if the person has a minuscule amount of the substance in his or her system. Therefore, the *Derror* majority's interpretation of the statute defies practicable workability given its tremendous potential for arbitrary and discriminatory enforcement.[16]

The second *Robinson* factor also weighs heavily in favor of overruling *Derror* because *Derror* has not become "so embedded, so accepted, so fundamental, to everyone's expectations" that overruling the case would result in "significant dislocations." *Robinson*, 462 Mich at 466. To begin with, the case was recently decided. Moreover, as this Court explained in *Robinson*, a citizen normally looks to the words of the statute itself when looking for guidance on how to direct his or her actions. *Id.* at 467. 11-carboxy-THC, however, is not listed anywhere in the statute that lists schedule 1 controlled substances, MCL 333.7212. Indeed, the *Derror* majority's conclusion that 11-

[16] We do not, as the partial dissent suggests, imply that the legalization of marijuana for a limited medical purpose is "equated with an intent to allow its lawful consumption in conjunction with driving" or that marijuana itself should no longer be on the list of schedule 1 controlled substances. We merely note that, under the *Derror* holding, those qualified individuals who lawfully use marijuana in accordance with the Michigan Medical Marihuana Act are prohibited from driving for an undetermined length of time given the potential of 11-carboxy-THC to remain in a person's system long after the person has consumed marijuana and is no longer impaired.

carboxy-THC is a schedule 1 controlled substance required this Court to examine and choose from widely divergent dictionary definitions and ignored other statutory language that describes when a substance must be placed in schedule 1. See MCL 333.7202 and MCL 333.7211. Because this Court's interpretation of the statute confounded the legitimate expectations of citizens, it is this Court that "has disrupted the reliance interest[s]." *Robinson*, 462 Mich at 467.

Finally, although the Michigan Medical Marihuana Act represented a change in the law that lends some support to the third *Robinson* factor, overall the first two *Robinson* factors support overruling *Derror*. Because this Court cannot adhere to its previous, distorted reading of the statute under the doctrine of stare decisis, we overrule *Derror* to the extent that it is inconsistent with this opinion.

III. CONCLUSION

We hold that the trial court abused its discretion by failing to admit the evidence of the victim's intoxication because it was relevant to the issue of causation in MCL 257.617(3) and MCL 257.625(4) and (8). Thus, under the facts of this case, the victim's BAC should have been a factor for the jury to consider when determining whether the prosecution proved beyond a reasonable doubt that defendant's conduct was a proximate cause of the accident and the victim's death. Moreover, we hold that the error resulted in a miscarriage of justice, requiring reversal under MCL 769.26. In addition, defendant's conviction under MCL 257.625(4) and (8) was based on an improper interpretation of

MCL 257.625(8) and must be vacated on that ground also. We overrule *Derror* to the extent that it is inconsistent with this opinion.

Accordingly, we reverse the judgment of the Court of Appeals, vacate defendant's convictions under MCL 257.617(3) and MCL 257.625(4) and (8), and remand the case to the trial court for further proceedings consistent with this opinion.

KELLY, C.J., and HATHAWAY, J., concurred with CAVANAGH, J.

S T A T E O F M I C H I G A N

SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v No. 138031

GEORGE EVAN FEEZEL,

Defendant-Appellant.

WEAVER, J. (*concurring*).

I concur in and join Justice CAVANAGH's opinion, with the exceptions of footnote 14 and the citations in part II(A)(3) of *People v Crawford*, 458 Mich 376; 582 NW2d 785 (1998), a case in which I dissented.

Elizabeth A. Weaver

S T A T E O F M I C H I G A N

SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v No. 138031

GEORGE EVAN FEEZEL,

Defendant-Appellant.

YOUNG, J. (*concurring in part and dissenting in part*).

A majority of justices today reach the correct conclusion that there may be circumstances in a criminal case that support introducing evidence of a victim's intoxication in order to show gross negligence. I concur in this portion of the lead opinion.

However, while I concur in the decision to grant defendant a new trial, I dissent from the gratuitous decision to overrule *People v Derror*.[1] The decision to overrule *Derror* redounds only to the benefit of a marijuana abuser who gets behind the wheel of a motor vehicle. In enacting MCL 333.7212, the Legislature made the policy decision to include marijuana "and *every* . . . derivative" of marijuana[2] in the list of schedule 1 controlled substances. The Legislature, furthermore, forbade anyone to operate a motor

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[1] *People v Derror*, 475 Mich 316; 715 NW2d 822 (2006).

[2] MCL 333.7106(3) (emphasis added).

vehicle with "*any* amount" of a schedule 1 controlled substance—such as a derivative of marijuana—in his or her body.[3] The decision to overrule *Derror* and rule that the metabolite 11-carboxy-tetrahydrocannabinol (11-carboxy-THC) is not a "derivative" of marijuana nullifies this clear legislative intent. In overruling *Derror*, a majority of justices usurp the role of policymaker from the people and their elected representatives and enact a policy contrary to that articulated in Michigan's controlled substances statutes. Even worse, because there is undisputed evidence that this defendant had trace amounts of *actual tetrahydrocannabinol* in his system, a majority of justices have used this case as a vehicle to overrule a decision with which they disagree even though there is plainly no reason to reach this question. This is a type of judicial overreach and activism of the worst kind.

Accordingly, I dissent from the conclusion that 11-carboxy-THC is not a derivative of marijuana within the meaning of Michigan's controlled substance laws. I likewise dissent from the decision to overrule *Derror*.

I. MICHIGAN'S CONTROLLED SUBSTANCE LAWS

MCL 257.625(8) forbids any person to "operate a vehicle . . . if the person has in his or her body any amount of a controlled substance listed in schedule 1 under . . . MCL 333.7212 . . . ." MCL 333.7212(1)(c) lists "marihuana" as a schedule 1 controlled

[3] MCL 257.625(8) (emphasis added).

substance. The Public Health Code, within which MCL 333.7212(1)(c) appears, defines "marihuana" as

> all parts of the plant Canabis [sic] sativa L., growing or not; the seeds thereof; the resin extracted from any part of the plant; ***and every*** *compound, manufacture, salt,* ***derivative****, mixture, or preparation of the plant or its seeds or resin*.[4]

Tetrahydrocannabinol, or "THC," is the main psychoactive substance found in the cannabis plant,[5] and it is undisputed that THC is a schedule 1 controlled substance.[6] The body produces 11-carboxy-THC when it metabolizes THC. Accordingly, it is a "metabolite" of THC.[7] In *Derror*, this Court addressed whether 11-carboxy-THC, as a metabolite of THC, is also a "derivative" of THC.[8] Because "derivative" is undefined in the Public Health Code, the Court in *Derror* used medical dictionaries to define the term and thereby determine whether 11-carboxy-THC is a derivative of THC.[9]

The Court in *Derror* properly concluded that the term "derivative" encompasses metabolites. Although medical dictionaries define multiple senses of the term

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[4] MCL 333.7106(3) (emphasis added).

[5] See *Shorter Oxford English Dictionary* (6th ed), p 3221.

[6] Additionally, the Legislature has included "synthetic equivalents" of THC in schedule 1. See MCL 333.7212(1)(d) and (e).

[7] A "metabolite" is "'[a]ny product or substrate (foodstuff, intermediate, waste product) of metabolism, especially of catabolism.'" *Derror*, 475 Mich at 326, quoting *Stedman's Online Medical Dictionary*.

[8] *Derror*, 475 Mich at 326.

[9] *Id*., citing MCL 8.3a and *People v Schaefer*, 473 Mich 418, 435; 703 NW2d 774 (2005).

"derivative," the Court determined that the definition "chemical substance related structurally to another substance and theoretically derivable from it," contained in *Merriam-Webster's Online Medical Dictionary*, best effectuates the Legislature's intent.[10] In applying this definition, the Court concluded that 11-carboxy-THC is a derivative because "it has an identical chemical structure to THC except for the eleventh carbon atom."[11]

II. THE DECISION TO OVERRULE *DERROR* IS A RETREAT FROM STARE DECISIS

A majority of justices today overrule *Derror* and conclude that 11-carboxy-THC is not a derivative of THC. In doing so, they appear to retreat from their previously stated fidelity to stare decisis.[12] The justices in the majority can say what they will about their

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[10] *Derror*, 475 Mich at 327-329.

[11] *Id.* at 327.

[12] See, e.g., *Pohutski v City of Allen Park*, 465 Mich 675, 712; 641 NW2d 219 (2002) (KELLY, J., dissenting) ("[I]f each successive Court, believing its reading is correct and past readings wrong, rejects precedent, then the law will fluctuate from year to year, rendering our jurisprudence dangerously unstable."); *People v Hawkins*, 468 Mich 488, 517-518; 668 NW2d 602 (2003) (CAVANAGH, J., dissenting) ("'We have overruled our precedents when the intervening development of the law has "removed or weakened the conceptual underpinnings from the prior decision, or where the later law has rendered the decision irreconcilable with competing legal doctrines or policies." . . . Absent those changes or compelling evidence bearing on Congress' original intent, . . . our system demands that we adhere to our prior interpretations of statutes.'"), quoting *Neal v United States*, 516 US 284, 295; 116 S Ct 763; 133 L Ed 2d 709 (1996), quoting *Patterson v McLean Credit Union*, 491 US 164, 173; 109 S Ct 2363; 105 L Ed 2d 132 (1989); *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 278; 731 NW2d 41 (2007) (CAVANAGH, J., dissenting) ('"Under the doctrine of stare decisis, principles of law deliberately examined and decided by a court of competent jurisdiction become precedent and should not be lightly departed.'"), quoting *People v Jamieson*, 436 Mich 61, 79; 461

commitment to stare decisis, but the fact that they reach the issue raised in *Derror* when the facts of this case do not require this Court to address it puts to rest any semblance of principle in their positions.[13]

In deciding whether to overturn a precedent of this Court, "[t]he first question, of course, should be whether the earlier decision was wrongly decided."[14] The lead opinion has not shown that *Derror* was wrongly decided. In fact, it merely repeats similar arguments offered by the dissent in *Derror*. These arguments were unpersuasive when *Derror* was decided, and they remain unpersuasive today.

NW2d 884 (1990); *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 622; 702 NW2d 539 (2005) (WEAVER, J., dissenting) ("Correction for correction's sake does not make sense. The case has not been made why the Court should not adhere to the doctrine of stare decisis in this case."); Berg, *Hathaway attacks*, Michigan Lawyers Weekly, October 27, 2008 ("'People need to know what the law is,' [Supreme Court candidate Diane] Hathaway said. 'I believe in stare decisis. Something must be drastically wrong for the court to overrule.'"); *Lawyers' election guide: Judge Diane Marie Hathaway*, Michigan Lawyers Weekly, October 30, 2006 (quoting Justice HATHAWAY, then running for a position on the Court of Appeals, as saying that "[t]oo many appellate decisions are being decided by judicial activists who are overturning precedent").

[13] This case is yet another example of how the new majority is making good on Chief Justice KELLY's pledge made shortly after the shift in the Court's philosophical majority following the 2008 Supreme Court election:

> We the new majority will get the ship off the shoals and back on course, and we will undo a great deal of the damage that the Republican-dominated court has done. Not only will we not neglect our duties, we will not sleep on the bench. [*She said*, Detroit Free Press, December 10, 2008, p 2A.].

[14] *Robinson v Detroit*, 462 Mich 439, 464; 613 NW2d 307 (2000).

First, the lead opinion claims that the *Derror* Court "failed to interpret MCL 333.7212 in a manner consistent with federal law,"[15] as required under MCL 333.1111(1),[16] because "no federal court has held that 11-carboxy-THC is a controlled substance."[17] However, "no federal court has specifically *excluded* 11-carboxy-THC from the definition of 'marijuana.'"[18] Accordingly, the *Derror* Court's interpretation of MCL 333.7212 is consistent with federal law.[19]

Second, the lead opinion claims that *Derror* "ignored other relevant statutory provisions that suggest that 11-carboxy-THC should not be considered a schedule 1 controlled substance." In particular, the lead opinion claims that the Michigan Board of Pharmacy is not required to include 11-carboxy-THC in schedule 1 because the substance

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[15] *Ante* at 22.

[16] MCL 333.1111(1) provides that the Public Health Code "is intended to be consistent with applicable federal and state law and shall be construed, when necessary, to achieve that consistency."

[17] *Ante* at 22-23.

[18] *Derror*, 475 Mich at 330 n 10.

[19] The lead opinion also claims that "federal courts have stated that 'the purpose of banning marijuana was to ban the euphoric effects produced by THC.'" *Ante* at 23, quoting *United States v Sanapaw*, 366 F3d 492, 495 (CA 7, 2004), which in turn cited *United States v Walton*, 168 US App DC 305, 306; 514 F2d 201 (1975). However, as the *Derror* Court explained, and as the dissent in *Derror* acknowledged, "the federal courts that have dealt with similar issues have reached their conclusions by interpreting the legislative history, rather than the plain language of the analogous federal statute." *Derror*, 475 Mich at 330 n 10. Our fidelity must be to the actual text of the statute, and accordingly, the *Derror* Court rightly declined to adopt federal precedents that "do not comport with the actual words that our Legislature used to convey its meaning." *Id.*

does not have "high potential for abuse."[20] This argument is specious. Although MCL 333.7211 mandates the inclusion of certain substances in schedule 1, "[i]t does not prohibit the inclusion of *other* substances in schedule 1."[21] Moreover, the Legislature expressly listed marijuana as a schedule 1 controlled substance. Because 11-carboxy-THC is a derivative of marijuana, it too constitutes a schedule 1 controlled substance,[22] regardless of whether it "has high potential for abuse" within the meaning of MCL 333.7211.

Finally, the lead opinion claims that, because the Legislature did not specifically *include* the terms "11-carboxy-THC" or "metabolite" in the list of schedule 1 controlled substances, it purposely *omitted* them from that list. This argument is also specious and misses the entire point of the *Derror* decision: the Legislature expressly listed marijuana in schedule 1 and then specifically defined "marijuana" as including its derivatives. The Legislature should not have to draft a statute in the manner of a person wearing a belt and suspenders, by expressly banning every conceivable iteration and by-product of marijuana in order to protect the citizens of Michigan from people who drive with marijuana and marijuana by-products in their systems.

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[20] *Ante* at 24, quoting MCL 333.7211.

[21] *Derror*, 475 Mich at 330 n 9 (emphasis added).

[22] *Id.*

Because *Derror* was correctly decided, the decision whether to overrule *Derror* should end there. However, even if *Derror* had been wrongly decided, other relevant factors exist that caution against overruling *Derror*.

Before overruling a wrongly decided precedent, this Court must consider "whether the decision at issue defies 'practical workability,' whether reliance interests would work an undue hardship, and whether changes in the law or facts no longer justify the questioned decision."[23] None of these factors compel overruling *Derror*.

Derror does not defy practical workability merely because of the "*potential* for arbitrary and discriminatory enforcement . . . ."[24] Moreover, the voters' approval of the Michigan Medical Marihuana Act[25] is not, as the lead opinion suggests, relevant to deciding whether to overrule *Derror*.[26] To begin with, legalization of the use of marijuana for a limited medical purpose cannot be equated with an intent to allow its lawful consumption in conjunction with driving. The lead opinion's argument, taken to its logical extreme, suggests that *marijuana itself*, not just its derivative, 11-carboxy-THC, should no longer be a schedule 1 controlled substance because of its limited legalization by the Michigan Medical Marihuana Act. It is clear that the act operates *in*

[23] *Robinson*, 462 Mich at 464.

[24] *Ante* at 28 (emphasis added).

[25] MCL 333.26421 *et seq*.

[26] Of note, defendant's conduct occurred in 2005, three years before the people of Michigan approved the Michigan Medical Marihuana Act.

harmony with existing controlled substances laws, not *in place of* them.[27] In particular, the act only provides that a "*qualifying* patient who has been issued and possess a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner . . . for the medical use of marihuana in accordance with this act . . . ."[28] Notably, the act also prohibits the operation of a motor vehicle "while under the influence of marihuana."[29]

Finally, the lead opinion expresses concern that *Derror* impermissibly prohibits

> those qualified individuals who lawfully use marijuana in accordance with the Michigan Medical Marihuana Act . . . from driving for an undetermined length of time given the potential of 11-carboxy-THC to remain in a person's system long after the person has consumed marijuana and is no longer impaired."[30]

This concern is a red herring. The act itself provides: "All other acts and parts of acts inconsistent with this act do not apply *to the medical use of marihuana as provided for by this act*."[31] Therefore, to the extent the act's prohibition of driving "under the influence" of prescribed medical marijuana may be narrower than the statutes at issue in this case and the application of *Derror*, the people of Michigan have determined that the act supersedes Michigan's controlled substances laws. Nevertheless, it does so *only* vis-à-vis prescribed medical marijuana, not in other circumstances, such as those in the case at bar.

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[27] After all, *alcohol* is a legal substance, and no one would suggest that the Legislature could not restrict from driving those who consume alcohol.

[28] MCL 333.26424(a).

[29] MCL 333.26427(b)(4).

[30] *Ante* at 30 n 16.

[31] MCL 333.26427(e) (emphasis added).

The lead opinion's denigration of the reliance interests involved in applying *Derror* is similarly misguided. Some justices in the majority attach significance to the doctrine of "legislative silence" or "acquiescence."[32] But here, the lead opinion's position appears to be inconsistent with this professed adherence to the doctrine that "[i]f a legislature reenacts a statute without modifying a high court's practical construction of that statute, that construction is implicitly adopted."[33] It is noteworthy that the Legislature has reenacted MCL 257.625 *four times* by amending it since this Court decided *Derror*.[34] At none of those times did the Legislature amend the provision that forbids a person to operate a motor vehicle with "any amount of a controlled substance listed in schedule 1 under . . . MCL 333.7212 . . . ."[35] Furthermore, the Legislature has not amended the list of schedule 1 controlled substances since *Derror* to exclude

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[32] "Silence by the Legislature following judicial construction of a statute suggests consent to that construction." *Donajkowski v Alpena Power Co*, 460 Mich 243, 270; 596 NW2d 574 (1999) (KELLY, J., joined by CAVANAGH, J., dissenting). I believe that this is a shallow, incoherent doctrine, as I stated in my *Donajkowski* majority opinion. See *id.* at 259-262. However, it is a doctrine upon which some justices in the majority rely when it is convenient to do so.

[33] *Hawkins*, 468 Mich at 519 (CAVANAGH, J., joined by KELLY, J., dissenting), citing 2B Singer, Statutes & Statutory Construction (2000 rev), § 49.09, pp 103-112.

I continue to adhere to my stated position that "[i]n the absence of a clear indication that the Legislature intended to either adopt or repudiate this Court's prior construction, there is no reason to subordinate our primary principle of construction—to ascertain the Legislature's intent by first examining the statute's language—to the reenactment rule." *Hawkins*, 468 Mich at 508-509 (majority opinion).

[34] See 2006 PA 564; 2008 PA 341; 2008 PA 462; 2008 PA 463.

[35] MCL 257.625(8).

metabolites of marijuana or 11-carboxy-THC. Thus, for those in the majority who subscribe to the doctrine of legislative acquiescence, the Legislature's multiple reenactments and acquiescence have significance and, accordingly, embarrassingly belie the majority's argument that no reliance interests are involved in overturning *Derror*.

III. AS THERE WAS ACTUAL THC IN DEFENDANT'S BLOOD, THERE IS NO NEED TO REACH THE QUESTION WHETHER DERIVATIVES ARE WITHIN THE AMBIT OF THE STATUTE

Finally, and perhaps most important, the decision to overrule *Derror* is simple unnecessary in the instant case. Not only did defendant's blood contain the derivative 11-carboxy-THC, it *also contained THC itself.* All members of this Court, including those in the majority, agree that having "any amount" of THC in a driver's bloodstream, however slight, is illegal under this statute. Therefore, in a case in which it is undisputed that defendant violated this statute by virtue of the presence of actual THC, it is unnecessary to review whether 11-carboxy-THC is a schedule 1 controlled substance. Consequently, the decision by a majority of justices to overrule *Derror* should be seen for what it is: an unnecessary and exceedingly aggressive act to kill a case with which the new majority of this Court disagrees.

IV. CONCLUSION.

In enacting MCL 333.7212, the Legislature made the policy decision to include marijuana "and *every* . . . derivative" of marijuana[36] in the list of schedule 1 controlled

[36] MCL 333.7106(3) (emphasis added).

substances. The Legislature, furthermore, forbade anyone to operate a vehicle with "*any* amount" of a schedule 1 controlled substance—such as a derivative of marijuana—in his or her body.[37] This Court's decision in *Derror* correctly determined that the metabolite 11-carboxy-THC is a "derivative" of the marijuana. The determination by the majority of justices to overrule *Derror* is not only ill considered, but also usurps the clear policy choices of the people of Michigan. It is undisputed that there was *actual THC* in defendant's bloodstream. Therefore, whether derivatives of THC are also prohibited is not a question that is necessary for this Court to reach *in this case*. This decision is thus indicative of the new majority's willfulness to overrule cases with which it disagrees. Accordingly, I vigorously dissent from the decision to overrule *Derror*.

CORRIGAN and MARKMAN, JJ., concurred with YOUNG, J.

[37] MCL 257.625(8) (emphasis added).

PEOPLE v. PERRY

[redacted]
Court of Appeals of Michigan

People v. [redacted]

Decide[redacted]

[redacted]-2021

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v. [redacted], Defendant-Appellant.

Per Curiam.

Kalamazoo Circuit Court LC No[redacted]

Before: Boonstra, P.J., and Markey and Servitto, JJ.

Per Curiam.

Defendant appeals, by leave granted, [1] the trial court's affirmance of the district court's denial of defendant's motion for dismissal. We affirm.

[1] *People v* [redacted], unpublished order of the Court of Appeals, entered December 16, 2020 (Docket No[redacted]).

In December 2019, defendant, who was 18 years old at the time, was driving her car when she was involved in an accident. The responding police officers detected the odor of burnt marijuana emanating from defendant's vehicle. Defendant admitted to the officers that she had smoked marijuana. The officers suspected that defendant had been operating her car under the influence of drugs. Defendant participated in standard field sobriety tests and submitted to a preliminary breath test, which produced a test result of .000 blood alcohol content. The officers requested that defendant submit to a blood test, and she agreed. Defendant was taken to Bronson Hospital, where she had her blood drawn. Her blood sample produced a test result positive for active tetrahydrocannabinol (THC), reflecting 4 nanograms of THC per milliliter of blood. The test results were negative for alcohol and all other controlled substances.

Defendant was charged under MCL 257.625(8) with operating a motor vehicle with a schedule 1 controlled substance-marijuana-in her system. Defendant moved to dismiss the charge in the district court, arguing that the voter-initiated Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27951 *et seq.*[2] barred any criminal prosecution against her for a violation of MCL 257.625(8), although she would be responsible for a civil infraction if she drove her car with marijuana in her system. The district court denied the motion to dismiss, disagreeing with defendant's construction of the MRTMA and its interrelationship with MCL 257.625(8). Defendant appealed to the circuit court, which also concluded that the MRTMA did not prohibit charging defendant with a criminal offense under MCL 257.625(8). This Court then granted defendant's application for leave to appeal.

[2] Although the act uses the spelling "marihuana," we use the more common spelling "marijuana" throughout this opinion.

"We review questions of statutory interpretation de novo." *People v Hartwick,* 498 Mich. 192, 209; 870 N.W.2d 37 (2015). *The Hartwick* Court addressed the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq.,* which, like the MRTMA, was passed into law by initiative. *Id.*

at 198. The Supreme Court explained the applicable rules of construction for voter-initiated statutes:

> The MMMA was passed into law by initiative. We must therefore determine the intent of the electorate in approving the MMMA, rather than the intent of the Legislature. Our interpretation is ultimately drawn from the plain language of the statute, which provides the most reliable evidence of the electors' intent. But as with other initiatives, we place special emphasis on the duty of judicial restraint. Particularly, we make no judgment as to the wisdom of the medical use of marijuana in Michigan. This state's electors have made that determination for us. To that end, we do not attempt to limit or extend the statute's words. We merely bring them meaning derived from the plain language of the statute. *[Id.* at 209-210 (quotation marks and citations omitted).]

The statute under which defendant was charged, MCL 257.625(8), provides:

> A person, whether licensed or not, shall not operate a vehicle on a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person has in his or her body any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section, or of a controlled substance described in section 7214(a)(iv) of the public health code, 1978 PA 368, MCL 333.7214.

Marijuana is a schedule 1 controlled substance. MCL 333.7212(1)(c).

Defendant asserts here, as she did in the trial court, that MCL 257.625(8) conflicts with and is preempted by the MRTMA. Thus, we are tasked in this case with ascertaining the intent of the voters in approving the 2018 initiative known as Proposal 18-1, later codified by the Michigan legislature as the MRTMA, MCL 333.27951 *et seq*. More specifically, as applied to this case, we are tasked with determining whether the voters intended to decriminalize the use of any amount of marijuana by persons under the age of 21 even if operating a motor vehicle. We hold that they did not.

In advance of the 2018 election, an organization known as the Coalition to Regulate Marijuana like Alcohol gathered petition signatures for what ultimately became Proposal 18-1. The face of the petitions reflected that the undersigned electors were petitioning for the initiation of legislation described as follows:

> An initiation of legislation to allow under state law the personal possession and use of marihuana *by persons 21 years of age or older*; to provide for the lawful cultivation and sale of marihuana and industrial hemp *by persons 21 years of age or older*; to permit the taxation of revenue derived from commercial marihuana facilities; to permit the promulgation of administrative rules; and to prescribe certain penalties for violations of this act. If not enacted by the Michigan State Legislature in accordance with the Michigan Constitution of 1963, the proposed legislation is to be voted on at the General Election, November 6, 2018. For the full text of the proposed legislation, see the reverse side of this petition. [Petition for Proposal 18-1 (emphasis added).]

The face of the petitions also reflected that they were "Paid for with regulated funds by Coalition to Regulate Marijuana like Alcohol."[3]

[3] We note parenthetically that Michigan law does not permit persons under the age of 21 to operate a motor vehicle if they have any bodily alcohol content. See MCL 257.625(6) ("A person who is less than 21 years of age . . . shall not operate a vehicle . . . if the person has any bodily alcohol content."). A person in violation of that subsection may be prosecuted criminally and, upon conviction, is "guilty of a misdemeanor." MCL 257.625(12)(a).

What followed on the reverse side of the petitions (and thereafter) was four full legal-sized pages of proposed legislative text that commenced with the repetition of the above-quoted paragraph (except for the last sentence), followed by detailed proposed legislation (in 17 sections and numerous subsections). Of course, none of this language was incorporated into the official ballot wording that was approved by the Board of State Canvassers with respect to Proposal 2018-1. Instead, what the voters saw when they went to vote in the November 2018 general election, was simply as was reflected on the Board's approved official ballot wording:

> *Official Ballot Wording approved by*
>
> *Board of State Canvassers*
>
> *September 6, 2018*
>
> *Coalition to Regulate Marihuana Like Alcohol*
>
> **Proposal 18-1**
>
> **A proposed initiated law to authorize and legalize possession, use and cultivation of marijuana products by individuals who are at least 21 years of age and older, and commercial sales of marijuana through state-licensed retailers**
>
> This proposal would:
>
> • Allow individuals 21 and older to purchase, possess and use marijuana and marijuana-infused edibles, and grow up to 12 marijuana plants for personal consumption.
>
> • Impose a 10-ounce limit for marijuana kept at residences and require amounts over 2.5 ounces be secured in locked containers.
>
> • Create a state licensing system for marijuana businesses and allow municipalities to ban or restrict them.
>
> • Permit retail sales of marijuana and edibles subject to a 10% tax, dedicated to implementation costs, clinical trials, schools, roads, and municipalities where marijuana businesses are located.
>
> • Change several current violations from crimes to civil infractions.
>
> Should this proposal be adopted?
>
> [ ] YES
>
> [ ] NO

Notably, the ballot language repeatedly apprised voters that Proposal 18-1 only applied to individuals "21 years of age or older" and only allowed "individuals 21 and older to purchase, possess and use marijuana." It said nothing about decriminalizing marijuana use by persons less than 21 years of age, much less about decriminalizing marijuana use by such persons while operating a motor vehicle.

Following the passage of Proposal 18-1 in the 2018 general election, the Legislature enacted (as it was obliged to do) the full legislative text of Proposal 18-1 as the MRTMA. Consistent with the ballot language, section 2 of the MRTMA described its purpose:

> The purpose of this act is to make marihuana legal under state and local law *for adults 21 years of age or older*, to make industrial hemp legal under state and local law, and to control the commercial production and distribution of marihuana under a system that licenses, regulates, and taxes the businesses involved. The intent is to prevent arrest and penalty for personal possession and cultivation of marihuana *by adults 21 years of age or older*; remove the commercial production and distribution of marihuana from the illicit market; prevent revenue generated from commerce in marihuana from going to criminal enterprises or gangs; *prevent the distribution of marihuana to persons under 21 years of age*; prevent the diversion of marihuana to illicit markets; ensure the safety of marihuana and marihuana-infused products; and ensure security of marihuana establishments. *To the fullest extent possible, this act shall be interpreted in accordance with the purpose and intent set forth in this section*. [MCL 333.27952 (emphasis added)].

The balance of the act provided all of the detail that was contained in the four pages appended to the face of the petitions that placed Proposal 18-1 on the ballot.

Significantly, the MRTMA, at MCL 333.27954(1)(c), provides that the MRTMA "does not authorize . . . any person under the age of 21 to possess, consume, purchase or otherwise obtain, cultivate, process, transport, or sell marihuana[.]" Defendant nevertheless asserts that the MRTMA, at MCL 333.27965(3)(a)(2), decriminalizes marijuana use and sets forth a civil infraction fine schedule for possession of marijuana by those under 21 years of age. MCL 333.27965(3)(a)(2) states:

> A person who commits any of the following acts, and is not otherwise authorized by this act to conduct such activities, may be punished only as provided in this section and is not subject to any other form of punishment or disqualification, unless the person consents to another disposition authorized by law:
>
> ***
>
> 3. Except for a person who engaged in conduct described by section 4(1)(a), 4(1)(d), or 4(1)(g), a person under 21 years of age who possesses not more than 2.5 ounces of marihuana or who cultivates not more than 12 marihuana plants:
>
> (a) for a first violation, is responsible for a civil infraction and may be punished as follows:
>
> ***
>
> (2) if the person is at least 18 years of age, by a fine of not more than $100 and forfeiture of the marihuana.

As the circuit court aptly observed, MCL 257.625(8) criminalized the "use" of marijuana, while MCL333.27965(3) decriminalized the "possession" and "cultivation" of marijuana for individuals under the age of 21. Michigan law recognizes a distinction between possessing marijuana, MCL 333.7403, [4] and using marijuana, MCL 333.7404.[5] Defendant here was not charged with the possession or cultivation of marijuana. Rather, she was charged with operating a vehicle with "any amount of a controlled substance" in her body. MCL 257.625(8). Using or consuming marijuana is a necessary step leading to the operation of a motor vehicle with marijuana in the driver's system, in violation of MCL 257.625(8); simple possession, however, is not.

[4] MCL 333.7403(1) provides that "[a] person shall not knowingly or intentionally possess a controlled substance[.]"

5 MCL 333.7404(1) provides that "[a] person shall not use a controlled substance[.]"

We cannot ignore the quantities mentioned in the provision relied upon by defendant. MCL 333.27965(3)(a)(2), provides a civil infraction for a person under 21 years of age who possesses not more than 2.5 ounces of marijuana or cultivates not more than 12 marijuana plants. Basic research[6] reveals that one ounce of marijuana yields approximately 84 "joints" (i.e., hand rolled marijuana cigarettes). Thus, 2.5 ounces would yield approximately 210 joints. That is significant amount of marijuana-much more than a single person could realistically "use" or "internally possess" at any given point in time. Had the legislature intended to decriminalize the *internal* possession or use of marijuana for those under 21 it would presumably have placed a limit consistent with the amount a person could reasonably use or consume-much, much lower than the stated limit of 2.5 ounces.

6 *http://www.therecoverycenter.org/resources/weed-through-the-myths-get-the-facts,* accessed June 23, 2021.

In addition, MCL 333.27965(3) carves out exceptions to the statutory rule that a person under 21 years of age who possesses not more than 2.5 ounces of marihuana or who cultivates not more than 12 marihuana plants is responsible only for a civil infraction. The statutory provision begins, "Except for a person who engaged in conduct described by section 4(1)(a), 4(1)(d), or 4(1)(g) . . . ." Thus, according to the plain language of the statute, the civil infraction penalty applies in situations *except for* those set forth in MCL 333.27954(1)(a), (d), or (g). Relevant to the instant matter, MCL 333.27954(1)(a) and (g) state:

> This act does not authorize:
>
> (a) operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while under the influence of marihuana;
>
> ***
>
> (g) consuming marihuana while operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat, or smoking marihuana within the passenger area of a vehicle upon a public way.

Incorporating the above into MCL 333.27965(3) would have that statute read:

> *Except* for a person who engaged in operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while under the influence of marihuana [MCL 333.27954(1)(a)] or consuming marihuana while operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat, or smoking marihuana within the passenger area of a vehicle upon a public way [MCL 333.27954(1)(g)], a person under 21 years of age who possesses not more than 2.5 ounces of marihuana or who cultivates not more than 12 marihuana plants:
>
> (a) for a first violation, is responsible for a civil infraction and may be punished as follows . . . . [emphasis added]

Clearly, then, when a person is under the influence of marijuana or is consuming marijuana while operating a vehicle, the person is not afforded the same limitation on punishment as one who is under 21 and simply possesses less than 2.5 ounces of marijuana or cultivates 12 or fewer marijuana plants.

In the affidavit for probable cause, an officer swore that upon responding to an accident involving defendant on December 2, 2019, there was an odor of burnt marijuana emanating from defendant's vehicle. The officer further swore that

upon speaking to defendant, an odor of marijuana was emanating from her person, and that that defendant admitted that she had smoked marijuana. A blood draw performed on defendant the same day revealed the presence of marijuana in defendant's system. The officer's affidavit, coupled with defendant's alleged admission that she had smoked marijuana, provided probable cause to believe that defendant was "consuming marihuana while operating, navigating, or being in physical control of any motor vehicle . . . upon a public way." MCL 333.27954(1)(g). This is consistent with the opening proviso of MCL 333.27954 that "this act does not authorize: . . . (c) any person under the age of 21 to possess, consume, purchase or otherwise obtain, cultivate, process, transport, or sell marihuana."[7] Because defendant's behavior fits within one of the exceptions listed in MCL 333.27965(3), she is not entitled to the lower civil infraction penalty.

[7] We note that while MCL 333.27954(1) identifies certain conduct that the MRTMA expressly "does not authorize," it does not follow that the MRTMA *authorizes* any and all conduct that is *not* expressly identified as "not authorize[d]." See *Southeastern Oakland Co Incinerator Authority v Dep't of Natural Resources*, 176 Mich.App. 434, 442; 440 N.W.2d 649 (1989), citing *In re Mosby*, 360 Mich. 186, 192; 103 N.W.2d 462 (1960) (noting that the doctrine of *ejusdem generis* may not be applied when the language of the statute, in its entirety, "discloses no purpose of limiting the general words used").

We recognize that in *People v Koon,* 494 Mich. 1, 3; 832 N.W.2d 724 (2013), our Supreme Court held:

> The Michigan Medical Marihuana Act (MMMA) prohibits the prosecution of registered patients who internally possess marijuana, but the act does not protect registered patients who operate a vehicle while "under the influence" of marijuana. The Michigan Vehicle Code prohibits a person from driving with any amount of a schedule 1 controlled substance, a list that includes marijuana, in his or her system. This case requires us to decide whether the MMMA's protection supersedes the Michigan Vehicle Code's prohibition and allows a registered patient to drive when he or she has indications of marijuana in his or her system but is not otherwise under the influence of marijuana. We conclude that it does.

However, MCL 333.27954(1)(g) does not contain "under the influence" language. It prohibits what defendant admits she did here: "consuming marihuana while operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat, or smoking marihuana within the passenger area of a vehicle upon a public way."

Finally, defendant's argument is simply illogical. Defendant would have this Court read the MRTMA as allowing criminal liability for a person who could not legally consume any amount of marijuana (given that such consumption is expressly not authorized under MCL 333.27954(1)(g)), yet preclude criminal liability if that person did do so *while driving.* That is contrary to the entire purpose of the act, especially when the MRTMA is read in conjunction with motor vehicle laws.[8]

[8] It similarly would strain credulity to conclude that the mere inclusion of the "under the influence" language in the exception set forth in MCL 333.27954(1)(a) requires that we hold that it implicitly

> repealed MCL 257.625(8) insofar as it relates to persons under the age of twenty-one.

The motor vehicle laws were enacted, among other things, to provide for the safety and protection of drivers and passengers. In *People v Dupre,* __Mich App __;__ N.W.2d__(Docket No. 350386, December 17, 2020), this Court addressed an issue similar to the one at hand. In that case, defendant entered a no-contest plea to operating while visibly impaired (OWVI) in violation of MCL 257.625(3). *Id.* at__, slip op at 1. He held a medical marihuana card and, on appeal, argued that the MMMA superseded the OWVI statute, and thus a defendant with a medical marihuana permit is protected from OWVI prosecution by the MMMA if a defendant is "under the influence" of marihuana under the MMMA. *Id.* This Court disagreed. *Id.* at__, slip op at 6.

We recognized that the Legislature created the offense of OWVI, "to address those situations in which a defendant's level of intoxication and resulting impairment does not suffice to establish operating while intoxicated (OWI), yet the defendant still presents a danger to the public because his or her ability to operate the vehicle is visibly impaired." *Id.* at__, slip op at 3. We also noted "our Supreme Court has appeared, in light of marijuana legalization, to treat marijuana as if the electors intended that marijuana be treated similar to alcohol," *id.* at__, slip op at 5, and that "defendant's reading of the MMMA would require this Court to conclude that the electors' intent was to give registered patients internally possessing marijuana greater protections than average citizens internally possessing alcohol. The language of the MMMA is devoid of such language, and defendant presents no evidence that would lead us to conclude this was the electors' intent." *Id.*

This Court stated:

> our reading § 7 of the MMMA leads us to conclude that the limitations on immunity appear to be situations in which public safety or public health intersect with a registered patient's use of medical marijuana. For example, registered patients cannot smoke marijuana in any public place or on public transportation, MCL 333.26427(b)(3), and they cannot "[undertake any task under the influence of marihuana, when doing so would constitute negligence," MCL 333.26427(b)(1). Because a driver operates a vehicle while visibly impaired if they drive with "less ability than would an ordinary, careful and prudent driver," the driver puts public safety at risk by doing so. In short, a driver operating while visibly impaired appears to do so negligently, in violation of MCL 333.26427(b)(1). Therefore, we discern no intent within the MMMA to immunize the visibly impaired driver from prosecution.

> This connection mirrors what this Court has held was the Legislature's intent in passing the OWVI statute: to allow the government to protect the public from a driver when his or her "level of intoxication and resulting impairment does not suffice to establish OWI, yet the defendant *still presents a danger to the public* because his or her ability to operate the vehicle is visibly impaired." Moreover, the MMMA itself declares that its purpose is "to be an' effort for the health and welfare of [Michigan] citizens.'" [MCL 333.26422(c)]. MCL 333.26422(c) appears to be direct evidence that the electors' intent in passing the MMMA was the improvement of health and safety of *citizens,* not just registered patients. Defendant's theory that the MMMA precludes registered patients from being convicted of OWVI would put ordinary citizens and registered patients alike in danger because registered patients would be allowed to drive with "less ability than the ordinary, careful, and prudent driver" without fear of prosecution.
>
> In sum, we conclude that the MMMA does not supersede the OWVI statute. "Under the influence" as used in MCL 333.26427(b)(4) is not limited in meaning to how that phrase is understood with regard to the OWI statute, MCL 257.625(1). *[Id.* at__, slip op at 5-6, internal citations omitted]

We can conceive of no reason for treating a person under 21 who drives with marijuana in his or her system (although not legally permitted to possess or consume it) more lightly than a person who does so while legally permitted to possess and consume it, just as we do not deem it appropriate to treat such a person more lightly than a person under 21 who drives with alcohol in his or her system.

In sum, the MRTMA did not remove all criminal penalties for persons under the age of 21 who operate a motor vehicle with marijuana in their system, is under the influence of marijuana while driving, or consumes marijuana while operating a vehicle. Defendant operated her vehicle on the road while she had in her body any amount of a controlled substance, in contravention of MCL 257.625(8). The trial court thus properly affirmed the district court's denial of defendant's motion for dismissal.

Affirmed.

Markey, J. (dissenting).

Defendant was charged under MCL 257.625(8) with operating a motor vehicle with a schedule 1 controlled substance-marijuana-in her system. She was 18 years old at the time of the incident that formed the basis for the charge. Defendant moved to dismiss the charge in the district court, arguing that the voter-initiated Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27951 *et seq.,* barred any criminal prosecution against her for a violation of MCL 257.625(8), although she would be responsible for a civil infraction if she drove her car with marijuana in her system. The district court denied the motion to dismiss, disagreeing with defendant's construction of the MRTMA and its interrelationship with MCL 257.625(8). Defendant appealed to the circuit court, which also concluded that the MRTMA did not prohibit charging defendant with a criminal offense under MCL 257.625(8). This Court then granted defendant's application for leave to appeal. *People* [redacted] unpublished order of the Court of Appeals, entered December 16, 2020 (Docket No[redacted]). I would hold that a person under the age of 21 who operates a motor vehicle with any amount of marijuana in his or her system in violation of MCL 257.625(8) cannot be criminally prosecuted for the conduct under the statute in light of language in the MRTMA. Instead, the individual may only be held responsible for a civil infraction. Accordingly, I

would reverse and remand the case to the district court for entry of an order of dismissal. Therefore, I respectfully dissent.

I. STATUTORY FRAMEWORK - BRIEF OVERVIEW

To give context to my discussion of the background facts and procedural history of the case, I offer a brief overview of the statutory framework. MCL 257.625(8) provides:

> A person, whether licensed or not, shall not operate a vehicle on a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person has in his or her body any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section, or of a controlled substance described in section 7214(a)(iv) of the public health code, 1978 PA 368, MCL 333.7214.

Marijuana is a schedule 1 controlled substance. MCL 333.7212(1)(c).

Turning to the MRTMA, MCL 333.27954(1)(c) provides that the MRTMA "does not authorize . . . any person under the age of 21 to possess, consume, purchase or otherwise obtain, cultivate, process, transport, or sell marihuana[.]" But with respect to persons 21 years of age or older, unless otherwise provided, they cannot be arrested, prosecuted, or penalized in any manner for "possessing, using or consuming, internally possessing, purchasing, transporting, or processing 2.5 ounces or less of marihuana . . . [.]" MCL 333.27955(1)(a).

MCL 333.27965(3) addresses the treatment of persons under the age of 21, such as defendant, with respect to marijuana-related activities, providing, in relevant part, as follows:

> A person who commits any of the following acts, and is not otherwise authorized by this act to conduct such activities, may be punished only as provided in this section and is not subject to any other form of punishment or disqualification, unless the person consents to another disposition authorized by law:
>
> * * *
>
> 3. Except for a person who engaged in conduct described by section 4(1)(a), 4(1)(d), or 4(1)(g), a person under 21 years of age who possesses not more than 2.5 ounces of marihuana or who cultivates not more than 12 marihuana plants:
>
> (a) for a first violation, is responsible for a civil infraction and may be punished as follows . . . .

Regarding the exceptions referenced in MCL 333.27965(3), the provision most pertinent to this case is MCL 333.27954(1)(a), which provides that the MRTMA "does not authorize . . . operating . . . any motor vehicle . . . while under the influence of marihuana[.]" None of the exceptions pertain to operating a motor vehicle with any amount of marijuana in one's system.

The ultimate question posed in this case is whether, in light of the MRTMA, a person under 21 years of age can be *criminally* charged with and convicted of operating a motor vehicle with any amount of marijuana in his or her system pursuant to MCL 257.625(8).

II. BACKGROUND FACTS AND PROCEDURAL HISTORY

In December 2019, our 18-year-old defendant was operating her car when she was involved in an accident. According to the responding police officers, they could smell the odor of marijuana coming from defendant's vehicle at the crash scene. Defendant admitted to smoking marijuana. The police suspected that she had been driving her

vehicle while under the influence of marijuana. A preliminary breath test revealed that she had not been drinking alcohol. Defendant did agree to submit to a blood test and was taken to a local hospital to have her blood drawn. The blood test was positive for active tetrahydrocannabinol (THC), revealing 4 nanograms of THC per milliliter of blood. The test results were negative for any other controlled substances or alcohol.

The prosecution charged defendant under MCL 257.625(8)-she was not charged with operating a motor vehicle while under the influence of marijuana, MCL 257.625(1)(a). In the district court, defendant moved to dismiss the charge on the basis that the MRTMA, specifically MCL 333.27965(3) and MCL 333.27954(1)(a), conflicted with and preempted MCL 257.625(8). Defendant contended that because the MRTMA grants an individual under the age of 21 immunity from criminal prosecution for possessing not more than 2.5 ounces of marijuana unless the individual is operating a motor vehicle while under the influence of marijuana, the prosecution could not criminally charge her with having any amount of marijuana in her system under MCL 257.625(8). Defendant maintained that the prosecution has a higher burden when attempting to convict a person of operating a motor vehicle while "under the influence" of marijuana as opposed to simply establishing that the individual was driving with marijuana in his or her system. In response, the prosecution argued that the MRTMA only provides an individual under the age of 21 with immunity from criminal prosecution for simple possession of marijuana. And the prosecution was not charging defendant for mere possession of marijuana. The district court denied defendant's motion to dismiss, ruling that the MRTMA was not intended to prohibit the criminal prosecution of individuals under the age of 21 for a violation of MCL 257.625(8).

Defendant filed an application for leave to appeal in the circuit court seeking reversal of the district court's decision and entry of a judgment of dismissal. The circuit court concluded that defendant was conflating the term "possesses," as used in MCL 333.27965(3), with the word "uses." Therefore, according to the circuit court, because defendant's conduct involved the use of marijuana, the MRTMA did not shield her from a criminal prosecution under MCL 257.625(8). Defendant then filed an application for leave to appeal in this Court, which was granted.

III. ANALYSIS

Defendant argues that MCL 257.625(8) conflicts with and is preempted by the MRTMA. Defendant contends that the plain language of the MRTMA addresses the precise situation involved in this case, i.e., where a person under 21 years of age uses marijuana, and that the exclusive penalty for such conduct is a civil infraction. Defendant maintains that MCL 257.625(8), with its lower, no-tolerance standard of driving with any amount of marijuana in one's system, clearly conflicts with the provision in the MRTMA that requires the state to prove that a defendant operated a vehicle while under the influence of marijuana in order to convict the defendant in connection with driving and marijuana use.

"We review questions of statutory interpretation de novo." *People v Hartwick,* 498 Mich. 192, 209; 870 N.W.2d 37 (2015). *The Hartwick* Court addressed the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq.,* which, like the MRTMA, was passed into law by initiative. *Id.* at 198. Our Supreme Court recited the rules of construction governing a voter-initiated statute:

> The MMMA was passed into law by initiative. We must therefore determine the intent of the electorate in approving the MMMA, rather than the intent of the Legislature. Our interpretation is ultimately drawn from the plain language of the statute, which provides the most reliable evidence of the electors' intent. But as with other initiatives, we place special emphasis on the duty of judicial restraint. Particularly, we make no judgment as to the wisdom of the medical use of marijuana in Michigan. This state's electors have made that determination for us. To that end, we do not attempt to limit or extend the statute's words. We merely bring them meaning derived from the plain language of the statute. *[Id.* at 209-210 (quotation marks and citations omitted).]

MCL 257.625(8), which, again, prohibits operating a motor vehicle with any amount of marijuana in the driver's system, is considered the Michigan Vehicle Code's zero-tolerance provision. *People v Koon,* 494 Mich. 1, 4; 832 N.W.2d 724 (2013). In 2018, Michigan voters passed into law a ballot initiative now codified as the MRTMA. The MRTMA "shall be broadly construed to accomplish its intent as stated in [MCL 333.27952]." MCL 333.27967. And MCL 333.27952 provides:

> The purpose of this act is to make marihuana legal under state and local law for adults 21 years of age or older, to make industrial hemp legal under state and local law, and to control the commercial production and distribution of marihuana under a system that licenses, regulates, and taxes the businesses involved. The intent is to prevent arrest and penalty for personal possession and cultivation of marihuana by adults 21 years of age or older; remove the commercial production and distribution of marihuana from the illicit market; prevent revenue generated from commerce in marihuana from going to criminal enterprises or gangs; prevent the distribution of marihuana to persons under 21 years of age; prevent the diversion of marihuana to illicit markets; ensure the safety of marihuana and marihuana-infused products; and ensure security of marihuana establishments. To the fullest extent possible, this act shall be interpreted in accordance with the purpose and intent set forth in this section.

I initially note that a person under 21 years of age is not authorized to consume marijuana under the MRTMA. See MCL 333.27954(1)(c) (the MRTMA "does not authorize . . . any person under the age of 21 to possess, consume, purchase or otherwise obtain, cultivate, process, transport, or sell marihuana"). Therefore, defendant did not have the right or authority to operate a motor vehicle with marijuana in her system; her conduct, if proven, was unlawful. The issue presented is whether she can be criminally prosecuted under MCL 257.625(8) or whether a civil infraction is the exclusive penalty.

MCL 333.27965(3) provides that an individual under 21 years of age is only legally responsible for a civil infraction if he or she *"possesses* not more than 2.5 ounces of marihuana or who cultivates not more than 12 marihuana plants." (Emphasis added.) The district and circuit courts

emphasized that there is a difference between "possessing" and "using" marijuana and that defendant was not charged with mere possession of marijuana. Michigan law does generally recognize a distinction between the possession of marijuana, MCL 333.7403, [1] and the use of marijuana, MCL 333.7404.[2]

[1] MCL 333.7403(1) provides that "[a] person shall not knowingly or intentionally possess a controlled substance[.]"

[2] MCL 333.7404(1) states that "[a] person shall not use a controlled substance[.]"

Although using or consuming marijuana is a necessary step leading to the operation of a motor vehicle with marijuana in the driver's system, a violation of MCL 257.625(8) can best be described as an offense involving the internal possession of marijuana. I conclude that the term "possesses," as used in MCL 333.27965(3), encompasses internal possession of marijuana and that any other construction would render other language in MCL 333.27965(3) surplusage and nugatory. See *People v Ball,* 297 Mich.App. 121, 123; 823 N.W.2d 150 (2012) ("The Court must avoid construing a statute in a manner that renders statutory language nugatory or surplusage."). I note that the MRTMA does reference the act of "internally possessing" marijuana. See MCL 333.27955(1)(a). Thus, internal possession is a recognized form of possession under the MRTMA.

There are three express exceptions to the language in MCL 333.27965(3), which makes it a civil infraction for a person under 21 years of age to possess marijuana. Those exceptions include MCL 333.27954(1)(a), which provides, in part, that the MRTMA does not authorize a person to operate a motor vehicle while under the influence of marijuana, and MCL 333.27954(1)(g), which provides, in part, that the MRTMA does not authorize an individual to consume marijuana while operating a motor vehicle. If one construes the term "possesses," as used in MCL 333.27965(3), to pertain solely to a charge of external possession of marijuana, which is the interpretation applied by the district and circuit courts, urged by the prosecution, and adopted by the majority, it becomes *entirely unnecessary* to carve out the exceptions that concern the use, consumption, or internal possession of marijuana. Those exceptions become surplusage and nugatory. For example, operating a motor vehicle while under the influence of marijuana entails more than the mere external possession of marijuana; it involves the use, consumption, or internal possession of marijuana. There is absolutely no need for this express exception if the term "possesses" does not even reach the crime of operating a motor vehicle while under the influence of marijuana in the first place. The fact that the exceptions set forth in MCL 333.27965(3) address crimes of use, consumption, and internal possession of marijuana necessarily means that the term "possesses" must also encompass those types of scenarios, thereby making express reference to the exceptions necessary. The majority's construction renders the listed exceptions nonessential and inconsequential redundancies. When the term "possesses" is read in conjunction with the use and consumption exceptions all found in MCL 333.27965(3), it becomes evident that the intent of the electorate was to broadly view possession, such that it included, minimally, external and internal possession of marijuana.

Furthermore, for purposes of MCL 333.27965(3), if the electorate found it necessary to expressly exclude offenses involving the use and consumption of marijuana from coverage under the marijuana-possession language, the lack of inclusion in those exceptions of the offense of operating a motor vehicle with marijuana in the driver's system *necessarily revealed an intent* for that particular conduct to fall within the parameters of marijuana possession, implicating the civil- infraction penalty and precluding a criminal prosecution. The silence in those exceptions is deafening, revealing an intent to

criminally punish solely those persons who drive while under the influence of marijuana, including individuals under the age of 21. I therefore conclude that a person under the age of 21 who operates a motor vehicle with any amount of marijuana in his or her system is only responsible for a civil infraction and is not subject to criminal punishment under MCL 257.625(8). See MCL 333.27965(3).

The majority refers to MCL 333.27954(1)(g), which, as noted earlier, provides that the MRTMA "does not authorize . . . consuming marihuana while operating . . . or being in physical control of any motor vehicle." The majority asserts that there was evidence that defendant was consuming marijuana while operating her vehicle and that because her "behavior fits within one of the exceptions listed in MCL 333.27965(3), she is not entitled to the lower civil infraction penalty." The majority's stance, in my view, is a red herring. Defendant was charged with operating a motor vehicle with marijuana in her system; therefore, the only relevant evidence would concern the amount of marijuana in her system when driving, not whether she was using or consuming the marijuana while she was driving. She was *not* charged with the crime of using or consuming marijuana. See MCL 333.7404(1).

The majority emphasizes that the MRTMA was intended to afford protection for those individuals 21 years of age or older, not persons under that age like defendant. My interpretation of the MRTMA does not result in protecting individuals under the age of 21 and allowing them to drive with marijuana in their system. To the contrary, those persons have engaged in unlawful conduct in the eyes of the law and are subject to a civil penalty.

The majority, in rejecting any assertion that the term "possesses" as used in MCL 333.27965(3) encompasses internal possession, states that 2.5 ounces of marijuana would yield 210 "joints," which is an amount that does not speak to internal possession. The majority argues that "[h]ad the [Legislature intended to decriminalize the *internal* possession . . . of marijuana for those under 21 it would presumably have placed a limit consistent with the amount a person could reasonably use or consume-much, much lower than the stated limit of 2.5 ounces." The majority's view fails to appreciate my interpretation of the language, i.e., that the term "possesses" concerns not only internal possession but also normal, external possession. Thus, the 2.5-ounce amount makes practical sense when understanding that it pertains to both types of possession. Setting a much lower weight that would be more in line with internal possession only would lack logic in connection with external possession. I note that the MMMA places a 2.5-ounce limit on the possession of marijuana for medical use, which weight limitation encompasses the internal possession of marijuana. MCL 333.26424(a); *Koon,* 494 Mich. at 6.

The majority notes "that while MCL 333.27954(1) identifies certain conduct that the MRTMA expressly 'does not authorize,' it does not follow that the MRTMA *authorizes* any and all conduct that is *not* expressly identified as 'not authorize[d].'" (Emphasis and alteration in original.) If we were construing MCL 333.27954(1) in isolation or in a vacuum perhaps I would agree, but MCL 333.27954(1) must be read in conjunction with MCL 333.27965(3), which is the starting point of the analysis. And, as part of that analysis, if the exceptions in MCL 333.27954(1) do not apply, the civil-infraction language pertaining to individuals under 21 years old governs. The majority, in my view, is effectively reading an additional exception into MCL 333.27954(1)- operating a motor vehicle with any amount of marijuana in the driver's system. While the majority would retort that the exceptions are irrelevant because this is not a case of "possession" to begin with and instead is a case

of "use," I return to my point that such an interpretation renders the "use" exceptions meaningless and redundant.

Finally, the majority asserts that it "would strain credulity to conclude that the mere inclusion of the 'under the influence' language in the exception set forth in MCL 333.27954(1)(a) requires that we hold that it implicitly repealed MCL 257.625(8) insofar as it relates to persons under the age of twenty-one." This argument ultimately and essentially ignores the analytical framework in which MCL 333.27965(3) works in tandem with MCL 333.27954(1) and it ignores the distinction in the law between driving while under the influence of marijuana and driving while having any amount of marijuana in one's system. I note that as part of its reasoning in ruling that the MMMA prohibits criminal prosecutions for operating a motor vehicle while internally possessing marijuana under MCL 257.625(8), our Supreme Court in *Koon* indicated that the MMMA only expressly precluded driving while under the influence of marijuana. *Koon,* 494 Mich. at 6-7. The *Koon* Court stated:

> The MMMA . . . does not define what it means to be "under the influence" of marijuana. While we need not set exact parameters of when a person is "under the influence," we conclude that it contemplates something more than having any amount of marijuana in one's system and requires some effect on the person. Thus, taking the MMMA's provisions together, the act's protections extend to a registered patient who internally possesses marijuana while operating a vehicle unless the patient is under the influence of marijuana. In contrast, the Michigan Vehicle Code's zero-tolerance provision prohibits the operation of a motor vehicle by a driver with an infinitesimal amount of marijuana in his or her system even if the infinitesimal amount of marijuana has no influence on the driver.
>
> The immunity from prosecution provided under the MMMA to a registered patient who drives with indications of marijuana in his or her system but is not otherwise under the influence of marijuana inescapably conflicts with the Michigan Vehicle Code's prohibition against a person driving with any amount of marijuana in his or her system. *[Id]*

In sum, I would reverse and remand for entry of an order dismissing the charge. Accordingly, I respectfully dissent.

PEOPLE v. OAKES

STATE OF MICHIGAN
IN THE 71A DISTRICT COURT FOR THE COUNTY OF LAPEER

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

Case No. 18-[redacted]
Hon. Laura Cheger Barnard

[redacted],

Defendant.

_____/

ROBERT HINOJOSA (P72630)	MICHAEL A. KOMORN (P47970)
Assistant Prosecuting Attorney	Attorney for Defendant
255 Clay Street	30903 Northwestern Hwy, Ste 240
Lapeer, MI 48446	Farmington Hills, MI 48334
Phone: (810) 667-0326	Phone: (800) 656-3557

_____/

DEFENDANT'S MOTION TO DISMISS

NOW COMES Defendant, [redacted], by and through his attorney, Michael A. Komorn, and for his Motion to Dismiss pursuant to Proposal 1, hereby states as follows:

1. Defendant is currently charged with Manufacture of Marijuana, pursuant to MCL 333.7401(2)(d)(i) and Possession of a Controlled Substance, pursuant to MCL 333.7403(2)(a)(v).

2. On November 6, 2018, Michigan votes passed Proposal 18-1, which will become codified initiatiated law on or before December 6, 2018.

3. Pursuant to Section 5.1:

> [T]he following acts by a person 21 years of age or older are not unlawful, are not offense, are not grounds for seizing or forfeiting property, are not grounds for arrest, prosecution or penalty in any

manner… (b) within the persons residence, possessing, storing and processing not more than 10 ounces of marihuana and any marihuana produced by marihuana plants cultivated on the premises and cultivating not more than 12 marihuana plants for personal use, provided that no more than 12 marihuana plants are possessed, cultivated, or processed on the premises at once.

4. Furthermore, pursuant to Section 15.4:

Except for a person who engaged in conduct described in section 4, a person who possesses more than twice the amount of marihuana allowed by section 5, cultivates more than twice the amount of marihuana allowed by section 5, or delivers without receiving any remuneration to a person who is at least 21 years of age more than twice the amount of marihuana allowed by section 5, shall be responsible for a misdemeanor, but shall not be subject to imprisonment unless the violation was habitual, willful, and for a commercial purpose or the violation involved violence.

5. Although the Michigan Regulation and Taxation of Marihuana Act was not in effect on the date the Defendant is alleged to have committed the offense, and thus, did not preclude grounds for arrest, the passage of the MRTMA prohibits the instant prosecution.

WHEREFORE, Defendant Nathan [redacted] respectfully requests this Honorable Court to dismiss the case against him, pursuant to Proposal 18-1.

Dated: November 30, 2018

PROOF OF SERVICE
The undersigned certifies that the foregoing instrument was served via certified mail upon counsel for all parties to the above cause and to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on November 30, 2018

/s/Alyssa McCormick
Alyssa L. McCormick

Respectfully submitted,

/s/ Michael A. Komorn
Michael A. Komorn (P47970)
Attorney for Defendant

STATE OF MICHIGAN
IN THE 71A DISTRICT COURT FOR THE COUNTY OF LAPEER

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

Case No. 18-[redacted]
Hon. Laura Cheger Barnard

[redacted]

Defendant.

_____/

ROBERT HINOJOSA (P72630)	MICHAEL A. KOMORN (P47970)
Assistant Prosecuting Attorney	Attorney for Defendant
255 Clay Street	30903 Northwestern Hwy, Ste 240
Lapeer, MI 48446	Farmington Hills, MI 48334
Phone: (810) 667-0326	Phone: (800) 656-3557

_____/

BRIEF IN SUPPORT OF MOTION TO DISMISS

Defendant is currently charged with Manufacture of Marijuana, pursuant to MCL 333.7401(2)(d)(i) and Possession of a Controlled Substance, pursuant to MCL 333.7403(2)(a)(v). At the time of arrest, Defendant was allegedly in possession of more than 200 marihuana plants, as well as the alleged cocaine. Defendant is currently 43 years of age. For the following reasons, the charge regarding marihuana must be dismissed.

ARGUMENT

On November 6, 2018, Michigan voters passed Proposal 18-1, which will become a codified initiated law on or before December 6, 2018, cited as the Michigan Regulation and Taxation of Marihuana Act ("MRTMA"). Pursuant to Section 5,1 "the following acts by a person 21 years of age or older are not unlawful, are not an offense,

are not grounds for seizing or forfeiting property, are not grounds for arrest, prosecution, or penalty in any manner…" as relevant here: (b) within the persons residence, possessing, storing and processing not more than 10 ounces of marihuana and any marihuana produced by marihuana plants cultivated on the premises and cultivating not more than 12 marihuana plants for personal use, provided that no more than 12 marihuana plants are possessed, cultivated, or processed on the premises at once.

However, Section 15.4 states:

> Except for a person who engaged in conduct described in section 4, a person who possesses more than twice the amount of marihuana allowed by section 5, cultivates more than twice the amount of marihuana allowed by section 5, or delivers without receiving any remuneration to a person who is at least 21 years of age more than twice the amount of marihuana allowed by section 5, shall be responsible for a misdemeanor, but shall not be subject to imprisonment unless the violation was habitual, willful, and for a commercial purpose or the violation involved violence.

Section 4.1 provides, as relevant here, "This act does not authorize:"

> (f) cultivating marihuana plants if the plants are visible from a public place without the use of binoculars, aircraft, or other optical aids ***or outside of an enclosed area equipped with locks or other functioning security devices that restrict access to the area;***

Section 15.4 makes it clear that if an individual cultivates more than 12 plants, and does not violate section 4, they will be responsible for a misdemeanor. In this case, as stated in the police report, the plants within the garage were secured with a lock, as well as "plots 4, 5, and 6" officers took the paperwork and lock. Thus, showing that these plants were in an enclosed and locked facility. Furthermore, at the Van Dyke location, as stated in the police report, officers received a set of keys that fit all

of the pad locks. Again, showing that these plants were in an enclosed and locked facility.

Although MRTMA Section 5 and 15 were not in effect on the date Defendant is alleged to have committed the offense, and thus, did not preclude grounds for arrest. However, with the passage of MRTMA, and Defendant currently being submitted to prosecution, the MRTMA prohibits the instant prosecution from proceeding, for Defendant's cultivating more than 12 marihuana plants Section 5.1.

Section 5,1. of the MRTMA is nearly identical to §4 of the Michigan Medical Marihuana Act, which provides that "A qualifying patient who has been issued and possesses a registry identification card is not subject to arrest, prosecution or penalty in any manner…" MCL §333.26424(a). Under the Michigan Medical Marihuana Act, "a person can fail to qualify for immunity from arrest pursuant to §4(a), but still be entitled to immunity from prosecution or penalty. Therefore, courts must inquire whether a person 'possesses a registry identification card at the time of arrest, prosecution, or penalty separately.'" *People v Nicholson,* 297 Mich App 191, 199; 822 NW 2d 284 (2012).

In *Nicholson,* defendant was arrested on May 1, 2011, for possession of approximately one ounce of marijuana. At the time of his encounter with law enforcement, defendant informed them that he was a medical marihuana patient, that he has been approved for the medical use of marihuana, but that he had not year received his registry identification card. He claimed to have paperwork showing his approval for the use of marijuana for medical purposes, but did not have the paperwork on him at the time he was arrested.

Defendant filed a motion to dismiss, and argued that although he did not have the paperwork with him at the time of arrest, he had applied for a registry identification card on February 16, 2011, and although he had not received the actual card before his arrest, his application became his card on March 18, 2011 by virtue of MCL §333.26429(b) (automatic grant of registry card if the department fails to act within 20 days). Defendant's application, dated February 16, 2011, and his registry identification card that was backdated to March 18, 2011, were submitted to the district court. The district court denied his motion, and the circuit court affirmed on the grounds that defendant acknowledged that he had applied for, but had not received a medical marijuana card at the time of the offense.

The Court first addressed the rule of construction that applied to the interpretation of an initiative law:

> The words of an initiative law are given their ordinary and customary meaning as would have been understood by the voters. *Welch Foods, Inc. v Attorney General,* 213 Mich App 459, 461; 540 NW 2d 693 (1995). We presume that the meaning as plainly expressed in the statute is what was intended. *Id.* This Court must avoid a construction that would render any part of a statute surplusage or nugatory, and "we must consider both the plain meaning of the critical words or phrases as well as their placement and purpose in the statutory scheme." *People v Williams,* 268 Mich App 416, 425; 707 NW 2d 624 (2005).
>
> *Nicholson,* at 197.

The parties made arguments in the Court of Appeals focusing on the proper interpretation of the "possesses" requirement with respect to the registry identification card. However, strikingly, the Court of Appeals found that "[i]t is apparent from these arguments that both defendant and the prosecution presume that whether a defendant is a person who 'possesses a registry identification card' at

the time of his or her arrest is determinative regarding whether he or she meets the §4(a) "possesses" requirement in order to be immune from not only arrest, but also prosecution or penalty."

The Court "conclude[d] that a person can fail to qualify for immunity from arrest pursuant to §4(a), but still be entitled to immunity from prosecution or penalty. Therefore, courts must inquire whether a person "possesses a registry identification card" at the time of arrest, prosecution, or penalty separately." *Id.* "The words 'or' is disjuntive and, accordingly, it indicates a choice between alternatives." *Id.* citing *Michigan v McQueen,* 293 Mich App 644, 671; 811 NW 2d 513 (2011).

> Thus, the immunity from arrest, prosecution, or penalty set forth in §4(a) is applicable separately under each circumstance. Accordingly, whether a person is one who possesses a registry identification card so as to be immune from arrest is a separate question from whether the person is immune from prosecution or penalty. *Nicholson,* at 200.

While triggering condition for protection under the MMMA is the issuance and possession of a registry identification card, the triggering conditions for protection from prosecution and penalty under the MRTMA is being a person 21 years of age or older and possessing 2.5 ounces or less of marijuana. Here, like in *Nicholson,* because Defendant is "21 years of age or older, and allegedly was in possession of 2.5 ounces or less of marijuana" at the time of this prosecution, his actions "are not grounds for arrest, prosecution, or penalty in any manner…" Therefore, the charge against Defendant must be dismissed.

WHEREFORE, Defendant [redacted] respectfully requests that this Honorable Court grant his Motion and Dismiss the charges against him.

Dated: November 30, 2018

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served via certified mail upon counsel for all parties to the above cause and to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on November 30, 2018

/s/Alyssa McCormick
Alyssa L. McCormick

Respectfully submitted,

/s/ Michael A. Komorn
Michael A. Komorn (P47970)
Attorney for Defendant

40th Judicial Circuit Court
255 Clay Street, Lapeer, Michigan 48446
Honorable Nick O. Holowka, Circuit Judge (810) 245-4816
Honorable Michael D. Hodges, Circuit Judge (810) 245-4817
Honorable Justus C. Scott, Probate/Circuit Judge (810) 667-0261

STATE OF MICHIGAN

IN THE 40TH CIRCUIT COURT FOR THE COUNTY OF LAPEER

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Case No.: 19-013455-FH

Hon. Nick O. Holowka

v

NATHAN ALAN OAKES,

Defendant.

OPINION

I. FACTS & PROCEDURAL HISTORY

In this case, Defendant Nathan Alan Oakes is charged in a felony information with delivery/manufacture of marijuana contrary to MCL 333.7401(2)(d)(i) (over 45 kg or over 200 plants) and possession of less than 25 grams of cocaine. The charges arise from evidence seized by law enforcement officers on or about September 24, 2017. The defendant asserts that the marijuana was cultivated for medical purposes, and he has asserted immunities and defenses under the Michigan Medical Marihuana Act.[1] Additionally, defendant contends that even if he is found guilty of unlawful manufacture of marijuana, the passage of the Michigan Regulation and Taxation of Marihuana Act (MRTMA),[2] which went into effect on December 6, 2018, controls the penalty that may be imposed for that offense and makes the crime a misdemeanor. Defendant has moved to dismiss the marijuana charge based on the change in the law. This court directed the parties to brief their positions on whether the MRTMA has any retroactive effect on defendant's case, and this court now determines that the MRTMA has no retroactive effect.

II. STANDARD OF REVIEW

In determining whether a statute should be applied retroactively or prospectively only, legislative intent governs. Statutes are presumed to operate prospectively unless the contrary intent is clearly manifested. *Frank W Lynch & Co v Flex Technologies*, 463 Mich 578, 583; 624 NW2d 180 (2001). When interpreting language that has been directly approved by the voters of this state, the court must ascertain and give effect to the intent of the electorate and give the language its "ordinary and plain meaning as would have been understood by the electorate." *People v Kolanek*, 491 Mich 382, 397; 817 NW2d 528 (2012). The plain language

[1] MCL 333.26421 et seq
[2] MCL 333.27951 et seq

40th Judicial Circuit Court
255 Clay Street, Lapeer, Michigan 48446
Honorable Nick O. Holowka, Circuit Judge (810) 245-4816
Honorable Michael D. Hodges, Circuit Judge (810) 245-4817
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is the most reliable evidence of the electors' intent. *Braska v Challenge Mfg Co*, 307 Mich App 340, 352; 861 NW2d 289 (2014). The court "must consider both the plain meaning of the critical words or phrases as well as their placement and purpose," and must avoid a construction that would render any language surplusage or nugatory. *People v Nicholson*, 297 Mich App 191, 197; __ NW2d__ (2012).

III. APPLICABLE LAW & ANALYSIS

Defendant asserts that the penalty provision of the MRTMA[3] should be given retroactive effect such that, pursuant to part 4 of section 15, the defendant in this case, if found guilty of possessing or cultivating more than twice the amount of marijuana allowed under the MRTMA, but not guilty of conduct described in section 4 of the Act, may only be sentenced to a misdemeanor and shall not be subject to imprisonment unless the violation was habitual, willful, and for a commercial purpose or the violation involved violence. This provision expressly applies to individuals whose activities are not authorized pursuant to the MRTMA. Because the conduct of the defendant in this case predated enactment of the MRTMA, his conduct clearly was not authorized by the Act. The only issue is whether section 15 may be applied at sentencing for conduct that occurred before the MRTMA went into effect. There is no express language in the statute clearly indicating an intention that any part of the Act should apply retroactively. Section 15 states that it applies to "[a] person who commits" certain acts. The use of the present tense verb "commits" and the conspicuous absence of any reference to past or prior conduct supports an interpretation that the provision is not intended to have retroactive effect.

Defendant asserts that the common-law rule is that when the legislature repeals a criminal statute or otherwise legalizes conduct that was formerly deemed criminal, this action requires dismissal of a pending criminal proceeding charging such conduct.[4] However, the Michigan legislature has abrogated the common law by enactment of a general savings clause,[5] which preserves offenses as being punishable despite a subsequent change in the law, unless a contrary intention is expressed in the amendment. This clause does not necessarily preserve the terms of punishment to be imposed "where an amendatory act mitigates the authorized terms of punishment but continues to proscribe the same conduct." *People v Schultz*, 435 Mich 517, 528-29; 460 NW2d 505 (1990); See also *People v Scarborough*, 189 Mich App 341, 344; 471 NW2d 567 (1991). However, when a new statute not only ameliorates the penalty for an offense but also redefines the conduct prohibited by law, the presumption of prospective-only application remains intact. *People v Doxey*, 263 Mich App 115, 120-21; 687 NW2d 360 (2004). The MRTMA clearly does more than reduce the penalty for possession or cultivation of marijuana. It creates new rights to use and possess marijuana within the limits set by the act, and it redefines the conduct that remains prohibited. Therefore, the statute presumably operates on a prospective basis only. Because there is no contrary intent clearly manifested by the statutory language, this court determines that the statute has no retroactive effect on sentencing or otherwise.

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[3] MCL 333.27965
[4] See *Bell v Maryland*, 378 US 226, 230; 84 S Ct 1814; 12 L Ed 2d 822 (1964)
[5] MCL 8.4a

40th Judicial Circuit Court
255 Clay Street, Lapeer, Michigan 48446
Honorable Nick O. Holowka, Circuit Judge (810) 245-4816
Honorable Michael D. Hodges, Circuit Judge (810) 245-4817
Honorable Justus C. Scott, Probate/Circuit Judge (810) 667-0261

IV. CONCLUSION

Based on the foregoing analysis and for the reasons stated, the defendant's motion to dismiss count one based on the enactment of the MRTMA is hereby considered and DENIED. The moving party shall prepare an order conforming to this opinion and submit it for entry pursuant to the court rules.

10/1/21
Date

Nick O. Holowka (P26095)
Chief Circuit Court Judge

PEOPLE v. CADDELL

CTN: 2021000445 CC1 In

STATE OF MICHIGAN **74th JUDICIAL DISTRICT** **18th JUDICIAL CIRCUIT**	**COMPLAINT** **FELONY**	**CASE NO.: 202[redacted]** **DISTRICT:** **CIRCUIT:**

District Court ORI: MI- **MI090025J**
1230 WASHINGTON AVE. BAY CITY, MI 48708 989-895-4232

Circuit Court ORI: **MI- MI090015J**
1230 WASHINGTON AVE. BAY CITY, MI, 48708

THE PEOPLE OF THE STATE OF MICHIGAN

Defendant's name and address
V[redacted]
[redacted]1

Victim or complainant

Complaining Witness
COURT OFFICER

Date: On or about
10/21/2020

Co-defendant(s)

City/Twp./Village	County in Michigan	Defendant TCN	Defendant CTN	Defendant SID	Defendant DOB
CITY OF BAY CITY	**Bay**		**09-21000445-01**		[redacted]

Police agency report no.	Charge	DLN Type	Vehicle Type	Defendant DLN
00M3[redacted]	**See below**	**OPER./CHAUF**		[redacted]

STATE OF MICHIGAN, COUNTY OF Bay
The complaining witness says that on or about 10/21/2020 at 4074 Wilder Rd in Bay County, Michigan the defendant contrary to law:

COUNT 1: CONTROLLED SUBSTANCE - DELIVERY/MANUFACTURE MARIJUANA/SYNTHETIC EQUIVALENTS
did deliver the controlled substance marijuana; contrary to MCL; 333.7401(2)(d)(iii). [333.74012D3]
FELONY: 4 Years and/or $20,000.00. Unless sentenced to more than 1 year in prison, the court shall impose license sanctions pursuant to MCL 333.7408a.

Court shall order law enforcement to collect a DNA identification profiling sample before sentencing or disposition, if not taken at arrest.

The complaining witness asks that the defendant be apprehended and dealt with according to law.

(*Peace Officers Only*) I declare that the statements above are true to the best of my information, knowledge and belief.

Warrant authorized on 02/10/2021 by:
Date

Bernard J. Coppolino, P33577
Prosecuting Official

Complaining Witness Signature

Subscribed and sworn to before me on _____
Date

Judge/Magistrate/Clerk **Bar no.**

DEFENDANT(S) NAME & ADDRESS

MARGARET MCFADDEN CADDELL 530 ORCHARD DR DETROIT, MI 48226

DEF KEY: 2021000445 **SID NO:** X210004451 **CTN NO:** 09 - 21000445 - 01

IF THERE IS A **"YES"** IN THE SUBPOENA COLUMN THEN THE INDICATED WITNESS IS A **"KNOWN WITNESS INTENDED TO BE PRODUCED AT TRIAL"**

IF THERE IS A **"NO"** IN THE SUBPOENA COLUMN THEN THE INDICATED WITNESS IS A **"ADDITIONAL RES GESTAE WITNESS KNOWN TO THE PEOPLE"**

SUBPOENA	WITNESS NAME & ADDRESS	
YES	KELSEY LONGE	1301 THIRD STREET DETROIT MI 48226
YES	D/TPR/SPL AARON MARTIN	MICHIGAN STATE POLICE 3RD DHQ
NO	COURT OFFICER	MICHIGAN STATE POLICE POST 31
YES	TRANSPORT OFFICER	MICHIGAN STATE POLICE 3RD DHQ
YES	D/TPR/SPL DANIEL STICKEL	MICHIGAN STATE POLICE 3RD DHQ
YES	ASHLEY WRIGHT	4074 WILDER RD BAY CITY MI 48706

PEOPLE v. THUE

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	FOR PUBLICATION February 11, 2021 9:05 a.m.
v	No. 353978 Grand Traverse Circuit Court
MICHAEL EUGENE THUE, Defendant-Appellant.	LC No. 2020-035330-AR

Before: CAVANAGH, P.J., and SERVITTO and CAMERON, JJ.

CAVANAGH, P.J.

Defendant appeals by leave granted[1] the circuit court's order denying defendant's application for leave to appeal the district court's denial of his motion to allow him to use medical marijuana while on probation. We reverse the district court's order denying defendant's motion to modify the terms of his probation to allow him to use medical marijuana.

I. FACTS

On June 25, 2019, defendant was involved in a road-rage incident for which he was charged with assault and battery, MCL 750.81. He ultimately pleaded guilty, and was sentenced to one year of probation. As a condition of probation defendant was not to use marijuana, including medical marijuana. Defendant filed a motion to modify the terms of his probation to allow him to use medical marijuana. The district court held a hearing on defendant's motion, during which defendant argued that a person authorized to use medical marijuana under the Michigan Medical Marijuana Act (MMMA), MCL 333.26421 *et seq*.,[2] is entitled to special protections, including

[1] See *People v Thue*, unpublished order of the Court of Appeals, entered September 29, 2020 (Docket No. 353978).

[2] Although the statutory provisions of the MMMA referenced herein use the spelling "marihuana," we use the conventional spelling "marijuana" in this opinion. See *People v Jones*, 301 Mich App 566, 568 n 1; 837 NW2d 7 (2013).

protection from arrest, prosecution, or penalty of any kind.[3] The prosecution argued that the district court had the ability to place restrictions on a defendant's medication. The district court denied defendant's motion to modify the terms of his probation, holding that it was bound by the "Circuit Court's decision on this issue," which apparently was consistent with a policy in the circuit court to not allow probationers to use medical marijuana. The district court stated that it had the authority to place restrictions on medication, and that the restriction was appropriate in this case.

Following the district court's decision, defendant filed an application for leave to appeal to the circuit court. Defendant argued that revoking his probation upon the use of medical marijuana would constitute the imposition of a "penalty" in violation of MCL 333.26424(a)[4] of the MMMA. Defendant also argued that MCL 333.26427(e) of the MMMA overrides the Michigan Probation Act, MCL 771.1 *et seq*., prohibiting the imposition of such a condition. The circuit court denied leave to appeal and this appeal followed.

II. MOOTNESS

On December 20, 2019, defendant was sentenced to one year of probation, which included the condition that defendant not use marijuana including medical marijuana. Thus, defendant's term of probation likely ended on December 20, 2020. "An issue is moot when an event occurs that renders it impossible for the reviewing court to fashion a remedy to the controversy." *People v Cathey*, 261 Mich App 506, 510; 681 NW2d 661 (2004). And generally a court will not decide moot issues. *People v Richmond*, 486 Mich 29, 34; 782 NW2d 187 (2010). But if an "issue is one of public significance that is likely to recur, yet evade judicial review," it is justiciable. *Id*. (quotation marks and citation omitted). We conclude that such is the case here. As our Supreme Court in *People v Vanderpool*, 505 Mich 391, 397 n 1; 952 NW2d 414 (2020), explained: "the relatively short timelines involved in probation cases compared with the often sluggish pace of the appellate process might make this situation one that is capable of repetition, yet evading review." The issue whether a sentencing court can prohibit a defendant from using medical marijuana as a condition of probation, although the defendant possesses a valid medical marijuana registration card, is one of public significance that is likely to recur yet evade judicial review.

III. ANALYSIS

A. STANDARD OF REVIEW

A trial court's decision setting the terms of probation is reviewed for an abuse of discretion, which occurs only when the decision falls outside the principled range of outcomes. *People v Malinowski*, 301 Mich App 182, 185; 835 NW2d 468 (2013).

"This Court reviews de novo whether the trial court properly interpreted and applied the Medical Marijuana Act." *People v Anderson (On Remand)*, 298 Mich App 10, 14-15; 825 NW2d

[3] There is no dispute that defendant had a valid medical marijuana registration card during all relevant times.

[4] In cases cited later in this opinion, MCL 333.26424(a) of the MMMA is occasionally referred to as "§ 4," and MCL 333.26427 is occasionally referred to as "§ 7."

641 (2012). "[T]he intent of the electors governs the interpretation of voter-initiated statutes such as the MMMA, just as the intent of the Legislature governs the interpretation of legislatively enacted statutes." *Ter Beek v Wyoming*, 495 Mich 1, 8; 846 NW2d 531 (2014). "The best evidence of that intent is the plain language used, and courts do not evaluate the wisdom of any statute or act. Statutes are read as a whole, and we give every word . . . meaning[.]" *People v Latz*, 318 Mich App 380, 383; 898 NW2d 229 (2016) (quotation marks and citations omitted; alteration in original). "If the statutory language is clear and unambiguous, the inquiry stops." *Id*. (quotation marks and citation omitted).

B. MICHIGAN MEDICAL MARIJUANA LAW

The MMMA provides that "[t]he medical use of marijuana is allowed under state law to the extent that it is carried out in accordance with the provisions of this act," MCL 333.26427(a), and "[a]ll other acts and parts of acts inconsistent with this act do not apply to the medical use of marijuana as provided for by this act." MCL 333.26427(e). The immunity provision of the MMMA, MCL 333.26424(a), provides in pertinent part that "[a] qualifying patient who has been issued and possesses a registry identification card is not subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marijuana in accordance with this act . . . . "

It is an issue of first impression for this Court whether the revocation of probation upon the use of medical marijuana, contrary to a condition of probation, constitutes a "penalty" under § 4(a) of the MMMA, making it a violation of the MMMA. However, in several cases not involving conditions of probation, the Michigan Supreme Court and this Court have concluded that the MMMA preempts or supersedes ordinances and statutes that conflict with the MMMA.

In *Ter Beek*, for example, the city of Wyoming adopted a zoning ordinance that prohibited any uses contrary to federal, state, or local law. *Ter Beek*, 495 Mich at 6. And because the federal controlled substances act (CSA) considers marijuana an unlawful controlled substance, its use was prohibited in the city. *Id*. at 9. But the plaintiff, who lived in that city, possessed a medical marijuana registration card and sought to grow and use medical marijuana in his home in accordance with the MMMA. *Id*. at 6. The plaintiff sought a declaratory judgment that the ordinance was preempted by the MMMA because it penalized the plaintiff's use of medical marijuana contrary to § 4(a) of the MMMA. *Id*. at 6-7. Our Supreme Court agreed with the plaintiff, holding that § 4(a) of the MMMA—the immunity provision—was not preempted by the CSA, *id*. at 19, and to the extent the city's ordinance conflicted with § 4(a) of the MMMA, it was preempted, *id*. at 24. The Court noted that, although the MMMA does not define the term "penalty," the "term is commonly understood to mean a 'punishment imposed or incurred for a violation of law or rule . . . something forfeited.' " *Id*. at 20, quoting *Random House Webster's College Dictionary* (2000). And the ordinance impermissibly penalized qualifying patients for engaging in MMMA-compliant marijuana use by subjecting them to civil punishment; thus, it was preempted. *Ter Beek*, 495 Mich at 20-21.

In *People v Koon*, 494 Mich 1; 832 NW2d 724 (2013), our Supreme Court held that the MMMA supersedes MCL 257.625(8) of the Motor Vehicle Code, *id*. at 8-9, which "prohibits a person from driving with any amount of marijuana in his or her system." *Id*. at 5. The *Koon* Court

asserted that "[t]he immunity from prosecution provided under the MMMA to a registered patient who drives with indications of marijuana in his or her system but is not otherwise under the influence of marijuana inescapably conflicts with the Michigan Vehicle Code's prohibition against a person driving with any amount of marijuana in his or her system." *Id*. at 7. The Court noted:

> When the MMMA conflicts with another statute, the MMMA provides that "[a]ll other acts and parts of acts inconsistent with [the MMMA] do not apply to the medical use of marihuana. . . ." Consequently, the Michigan Vehicle Code's zero-tolerance provision, MCL 257.625(8), which is inconsistent with the MMMA, does not apply to the medical use of marijuana. [*Id*. at 7, quoting MCL 333.26427(e).]

Accordingly, the Court concluded, "the MMMA is inconsistent with, and therefore supersedes, MCL 257.625(8) unless a registered qualifying patient loses immunity because of his or her failure to act in accordance with the MMMA." *Koon*, 494 Mich at 8-9 (footnote omitted).

Similarly, in *Latz*, the defendant pleaded guilty to illegal transportation of marijuana, MCL 750.474, subject to his right to challenge the legality of that statute as conflicting with the MMMA. *Latz*, 318 Mich App at 382-383. The defendant possessed a valid medical marijuana registration card. *Id*. at 384 n 2. And the MMMA expressly defines the medical use of marijuana as including the transportation of marijuana. *Id*. at 387, quoting MCL 333.26423(h). This Court asserted that "if another statute is inconsistent with the MMMA such that it punishes the proper use of medical marijuana, the MMMA controls, and the person properly using medical marijuana is immune from punishment." *Id*. at 385. Thus, because MCL 750.474—which generally prohibits the transportation of marijuana in a motor vehicle unless it is enclosed in a case in the trunk or, if there is no trunk, in a case not readily accessible from the interior of the vehicle—impermissibly conflicts with the MMMA. *Id*. at 383-384, 387. MCL 750.474 "unambiguously seeks to place additional requirements on the transportation of medical marijuana beyond those imposed by the MMMA" and "subjects persons in compliance with the MMMA to prosecution despite that compliance." *Id*. at 387. Accordingly, the *Latz* Court concluded, MCL 750.474 is impermissible and an "MMMA-compliant medical-marijuana patient[] cannot be prosecuted for violating it." *Id*.

C. MEDICAL MARIJUANA LAWS OF OTHER STATES

Other states that have similar medical marijuana laws have held that probation terms prohibiting the use of medical marijuana in compliance with medical marijuana laws are unenforceable and illegal under those laws. In *Reed-Kaliher v Hoggatt*, 237 Ariz 119; 347 P3d 136 (2015), for example, the defendant was a "registered qualifying patient" under ARS 36-2801 of the Arizona Medical Marijuana Act (AMMA). *Id*. at 121. While the defendant was on probation, his probation officer added a condition to his probation prohibiting him from using marijuana for any reason. *Id*. The defendant sought relief in the superior court of Arizona, arguing that the "AMMA's immunity provision, ARS § 36–2811(B), shield[ed] him from prosecution,

revocation of probation, or other punishment for his possession or use of medical marijuana."[5] *Id*. The Arizona superior court denied the defendant's motion.

Subsequently, the Arizona Supreme Court considered the AMMA's application to probationers, noting that "[b]ecause marijuana possession and use are otherwise illegal in Arizona, ARS § 13–3405(A), the drafters sought to ensure that those using marijuana pursuant to AMMA would not be penalized for such use." *Id*. at 122. The Court further stated that the "AMMA broadly immunizes qualified patients, carving out only narrow exceptions from its otherwise sweeping grant of immunity against 'penalty in *any* manner, or denial of *any* right or privilege.' " *Id*. And it was uncontested that the defendant was a registered qualifying patient. *Id*. Further, the Court noted, probation was a privilege, and its revocation was a penalty. *Id*. Thus, a probationary term that prohibited a qualified patient from using medical marijuana pursuant to the terms of the AMMA would constitute the denial of a privilege. *Id*. "Nor may a court impose such a condition or penalize a probationer by revoking probation for such AMMA-compliant use, as that action would constitute a punishment." *Id*.

The Arizona Supreme Court in *Reed-Kaliher* also considered the relationship between the AMMA and Arizona's probation act. The court noted that, when granting probation, a trial court only has the authority granted by Arizona's statutes, and "[i]n this case, an Arizona statute, AMMA, precludes the court from imposing any penalty for AMMA-compliant marijuana use." *Id*. The Court concluded further, that "[w]hile the State can and should include reasonable and necessary terms of probation, it cannot insert illegal ones." *Id*. at 122-123. The court acknowledged that the state has authority to "prohibit a wide range of behaviors, even those that are otherwise legal, such as drinking alcohol or being around children," but "it cannot impose a term that violates Arizona law." *Id*. at 123. Thus, the Arizona Supreme Court concluded, "any probation term that threatens to revoke probation for medical marijuana use that complies with the terms of AMMA is unenforceable and illegal under AMMA." *Id*.

Similarly, the appellate courts in Oregon have held that sentencing courts may not impose probation conditions that conflict with a defendant's rights under the Oregon Medical Marijuana Act (OMMA). See, e.g., *State v Miller*, 299 Or App 515, 516-517; 450 P3d 578 (2019); *State v Rhamy*, 294 Or App 784, 785; 431 P3d 103 (2018); *State v Bowden*, 292 Or App 815, 818-819; 425 P3d 475 (2018).

Likewise, in *Gass v 52nd Judicial Dist, Lebanon Co*, ___ Pa ___, ___; 232 A3d 706 (2020), the plaintiffs filed a class-action suit seeking declaratory and injunctive relief, challenging a judicial district's policy prohibiting all probationers from using medical marijuana regardless of whether they possess a medical marijuana card under the Pennsylvania Medical Marijuana Act (MMA). *Gass*, 232 A3d at 709. The plaintiffs argued that the judicial district's policy violated the immunity provision of the MMA, *id*. at 710, which provides that no such patient "shall be

[5] The *Reed-Kaliher* Court noted that, under ARS 36-2811(B), " '[a] registered qualifying patient . . . is not subject to arrest, prosecution or penalty in any manner, or denial of any right or privilege . . . [f]or . . . medical use of marijuana pursuant to [AMMA],' as long as the patient complies with statutory limits on quantity and location of marijuana use." *Reed-Kaliher*, 237 Ariz at 121, quoting ARS 36-2811(B).

subject to arrest, prosecution or penalty in any manner, or denied any right or privilege . . . solely for lawful use of medical marijuana . . . . " *Id*. at 708, quoting 35 PS 10231.2103(a). The court recognized that probation was a privilege and its revocation on account of lawful medical marijuana use could be considered a punishment or the denial of a privilege. *Gass*, 232 A3d at 713. Thus, the Pennsylvania Supreme Court held, the judicial district's policy "fails to afford sufficient recognition to the status of a probationer holding a valid medical marijuana card as a patient, entitled to immunity from punishment, or the denial of any privilege, solely for lawful use." *Id*. at 715. Accordingly, the court granted the petition for declaratory and injunctive relief on the ground that the judicial district's policy was contrary to the immunity accorded by the MMA and could not be enforced. *Id*.

D. APPLICATION

We conclude that provisions of the Michigan Probation Act that allow a court to prohibit a probationer's MMMA-compliant use of marijuana impermissibly conflict with MCL 333.26427(a) and (e) of the MMMA and are unenforceable. Further, the revocation of probation upon the MMMA-compliant use of marijuana constitutes a "penalty" in violation of MCL 333.26424(a) of the MMMA.

We first address MCL 333.26427(a) and (e) of the MMMA. There is no dispute that defendant had a medical marijuana registration card. There is no indication that defendant used marijuana in violation of the MMMA. Thus, defendant was authorized to use medical marijuana under MCL 333.26427(a). Further, as illustrated by the plain language of MCL 333.26427(a) and (e), as well as the holdings in *Ter Beek*, *Koon*, and *Latz*, a statute or provision of a statute that conflicts with a defendant's right to MMMA-compliant use of marijuana is preempted or superseded by the MMMA. The Michigan Probation Act permits a court to impose multiple conditions of probation on a defendant under MCL 771.3. However, provisions of the probation act that are inconsistent with the MMMA do not apply to the medical use of marijuana. In other words, a condition of probation prohibiting the use of medical marijuana that is otherwise used in accordance with the MMMA is directly in conflict with the MMMA and is impermissible.

We also conclude that the revocation of probation upon the MMMA-compliant use of marijuana constitutes a "penalty" under MCL 333.26424(a) of the MMMA. The MMMA is substantially similar to the medical marijuana acts adopted in other states, including those discussed here, and immunizes persons from being subject to a penalty of any kind for the lawful use of medical marijuana. And like other states, Michigan has also recognized probation as a privilege. See e.g., *People v Terminelli*, 68 Mich App 635, 637; 243 NW2d 703 (1976) (stating that "probation is a privilege, the granting of which rests within the discretion of the trial court"). See also *People v Breeding*, 284 Mich App 471, 479-480; 772 NW2d 810 (2009) ("Probation is a matter of grace, not of right, and the trial court has broad discretion in determining the conditions to impose as part of probation."); *People v Johnson*, 210 Mich App 630, 633; 534 NW2d 255 (1995) ("A sentence of probation is an alternative to confining a defendant in jail or prison and is granted as a matter of grace in lieu of incarceration."). Because probation is a privilege, the revocation of probation is a penalty or the denial of a privilege. Under MCL 333.26424(a) a person is protected from penalty in any manner, or denial of any right or privilege, for the lawful use of medical marijuana. Therefore, a court cannot revoke probation upon the use of medical marijuana that otherwise complies with the terms of the MMMA. "We note, however, that the MMMA is

inapplicable to the recreational use of marijuana, and thus, a trial court may still impose probation conditions related to the recreational use of marijuana and revoke probation for such recreational use, as well as for marijuana use in violation of the MMMA." Accordingly, the district court erred in prohibiting defendant from MMMA-compliant marijuana use as a term of his probation and defendant's motion to modify the terms of his probation to allow him to use medical marijuana should have been granted.

Defendant also argues that the court's limitation on his right to use medical marijuana as a term of probation violates his due process rights. However, when possible this Court "must interpret statutes to avoid constitutional issues." *People v Anderson*, 330 Mich App 189, 198 n 5; 946 NW2d 825 (2019). In light our resolution of this matter we need not address defendant's constitutional issues.

Reversed. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Deborah A. Servitto
/s/ Thomas C. Cameron

PEOPLE v. GONZALEZ

2020002625 NS-Atwood

Information - Circuit Court
Original Complaint - Court
Warrant - Court

Bindover/Transfer - Circuit/Juvenile Court
Complaint copy - Prosecutor
Complaint copy - Defendant/Attorney

STATE OF MICHIGAN 56A JUDICIAL DISTRICT 56TH JUDICIAL CIRCUIT	COMPLAINT FELONY	CASE NO. 20200[redacted] DISTRICT: CIRCUIT:

District Court ORI: MI- MI230025J
1045 INDEPENDENCE BLVD. CHARLOTTE, MI 48813 517-543-7500

Circuit Court ORI: MI- MI230015J
1045 INDEPENDENCE BLVD. CHARLOTTE, MI 48813 517-543-7500

THE PEOPLE OF THE STATE OF MICHIGAN

Defendant's name and address
V [redacted] Gonzalez W/M
[redacted]

Victim or complainant

Complaining Witness

Co-defendant(s) (If known)

Date: On or about
09/03/2020

City/Twp./Village	County in Michigan	Defendant TCN	Defendant CTN	Defendant SID	Defendant DOB
City of Potterville	EATON		23-20002625-01		[redacted]

Police agency report no.	Charge	Maximum penalty
23PPD 2020-0168	See below	

[ ] A sample for chemical testing for DNA identification profiling is on file with the Michigan State Police from a previous case.

[ ] Oper./Chauf. CDL

Vehicle Type

Defendant DLN [redacted]

Witnesses

PPD Officer

STATE OF MICHIGAN, COUNTY OF EATON

The complaining witness says that on the date and at the location described, the defendant, contrary to law,

COUNT 1: CONTROLLED SUBSTANCE - DELIVERY/MANUFACTURE 5-45 KILOGRAMS OF MARIJUANA/SYNTHETIC EQUIVALENT; OR 20 - 200 PLANTS

did possess with the intent to deliver 5 kilograms or more, but less than 45 kilograms of marijuana or a mixture containing marijuana; contrary to MCL 333.7401(2)(d)(ii). [333.74012D11]

FELONY: 7 Years and/or $500,000.00. Unless sentenced to more than 1 year in prison, the court shall impose license sanctions pursuant to MCL 333.7408a.

Court shall order law enforcement to collect a DNA identification profiling sample before sentencing or disposition, if not taken at arrest.

☑ The complaining witness asks that the defendant be apprehended and dealt with according to law.

Warrant authorized on 09/04/2020 by:
Date

Dylan R Lloyd

Prosecuting Official

☐ Security for costs posted

I declare under the penalties of perjury that this complaint has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Complaining Witness Signature

09-04-2020
Date

MCL 764.1 *et seq.*, MCL 766.1 *et seq.*, MCL 767.1 *et seq.*,MCR6.110

TER BEEK v CITY OF WYOMING

Ter Beek v. City of Wyoming

Citation.

Brief Fact Summary.
Plaintiff seeks a declaratory judgment on the grounds that he cannot comply with the city code and the state law at the same time because they are in conflict with each other.

Synopsis of Rule of Law.
A city ordinance is deemed preempted when it directly conflicts with a state statue preempted by the MMMA.

Issue.
Whether the City ordinance is preempted by the MMMA.

Held.
Yes, the City ordinance is preempted by the MMMA.

Discussion.
Under the Michigan Constitution, the City has the power to adopt its own resolutions and ordinances for its municipal, subject to the Constitution and the law of Michigan. Further, the City if precluded from enacting an ordinance if it is in conflict with Michigan law. Here, the ordinance is in direct conflict with Michigan Law, the MMMA, because one cannot comply with both laws at the same time. Therefore, the ordinance is preempted by the MMMA.

POINTS OF LAW
The Supremacy Clause invalidates state laws that interfere with, or are contrary to federal law.

DeRUITER
v
TOWNSHIP OF BYRON

Michigan Supreme Court
Lansing, Michigan

Syllabus

DeRUITER v TOWNSHIP OF BYRON

Docket No. 158311. Argued on application for leave to appeal October 3, 2019. Decided April 27, 2020.

Christie DeRuiter, a registered qualifying medical marijuana patient and a registered primary caregiver to qualifying patients, brought an action in the Kent Circuit Court against Byron Township, alleging that the township's zoning ordinance—which required that a primary caregiver obtain a permit before cultivating medical marijuana and that the caregiver cultivate the marijuana within a dwelling or garage in a residentially zoned area within the township as part of a regulated home occupation at a full-time residence—directly conflicted with and was therefore preempted by the Michigan Medical Marihuana Act (the MMMA), MCL 333.26421 *et seq*. DeRuiter cultivated marijuana in an enclosed, locked facility at a commercially zoned property she rented in the township; she did not obtain a permit from the township before cultivating the medical marijuana as a primary caregiver. At the township's direction, DeRuiter's landlord ordered her to stop cultivating medical marijuana at the property or face legal action. When the township attempted to enforce its zoning ordinance, DeRuiter filed the instant action, seeking a declaratory judgment regarding the ordinance's legality; the township countersued, seeking a declaration that the ordinance did not conflict with the MMMA. Both parties moved for summary disposition, and the court, Paul J. Sullivan, J., granted summary disposition in favor of DeRuiter, holding that the ordinance directly conflicted with the MMMA and that it was therefore preempted by the act. The Court of Appeals, HOEKSTRA, P.J., and MURPHY and MARKEY, JJ., affirmed the trial court order, concluding that the MMMA preempted defendant's home-occupation zoning ordinance because the ordinance directly conflicted with the MMMA by prohibiting what the MMMA permitted and because the ordinance improperly imposed regulations and penalties upon persons who engage in the MMMA-compliant medical use of marijuana. 325 Mich App 275 (2018). Byron Township applied for leave to appeal in the Supreme Court, which ordered and heard oral argument on whether to grant the application or take other action. 503 Mich 942 (2019).

In a unanimous opinion by Justice BERNSTEIN, the Supreme Court, in lieu of granting leave to appeal, *held*:

Under the conflict-preemption doctrine, the MMMA does not nullify a municipality's inherent authority to regulate land use under the Michigan Zoning Enabling Act (MZEA), MCL 125.3101 *et seq*., as long as (1) the municipality does not prohibit or penalize the cultivation of medical marijuana and (2) the municipality does not impose regulations that are unreasonable and

inconsistent with regulations established by state law. MCL 333.26424(b)(2) states that primary caregivers and qualifying patients must keep their plants in an enclosed, locked facility in order for those individuals to be entitled to the MMMA protections in MCL 333.26424(a) and (b). Because an enclosed, locked facility may be found in various locations on various types of property, the township's ordinance limiting where medical marijuana must be cultivated within the locality did not directly conflict with the MMMA's requirement that marijuana plants be kept in an enclosed, locked facility. The township's ordinance requiring primary caregivers to obtain a permit and pay a fee before using a building or structure within the township to cultivate medical marijuana also did not directly conflict with the MMMA because the ordinance did not effectively prohibit the medical use of marijuana.

1. Generally, local governments may control and regulate matters of local concern when that power is conferred by the state. However, state law may preempt a local regulation either expressly or by implication. Implied preemption can occur when the state has occupied the entire field of regulation in a certain area (field preemption) or when a local regulation directly conflicts with state law (conflict preemption). A direct conflict exists when the ordinance permits what the statute prohibits or the ordinance prohibits what the statute permits; there is no conflict between state and local law when a locality enacts regulations that are not unreasonable and inconsistent with regulations established by state law so long as the state regulatory scheme does not occupy the field. That is, while a local ordinance is preempted when it bans an activity that is authorized and regulated by state law, a local governmental unit may add to the conditions in a statute as long as the additional requirements do not contradict the requirements set forth in the statute. A court must review both the statute and the local ordinance to determine whether conflict preemption applies.

2. MCL 333.26424(a) and (b) provide that qualifying patients and primary caregivers are immune from arrest, prosecution, or penalty in any manner, including, but not limited to, civil penalty or disciplinary action for the medical use of marijuana in accordance with the MMMA. In turn, MCL 333.26424(b)(2) provides that primary caregivers and qualifying patients must keep their plants in an enclosed, locked facility in order to qualify for the immunity. This requirement sets forth the type of structure marijuana plants must be kept and grown in for a patient or a caregiver to be entitled to the MMMA protections in MCL 333.26424(a) and (b), but the provision does not address where marijuana may be grown. Under *Ter Beek v City of Wyoming*, 495 Mich 1 (2014), a local ordinance conflicts with the MMMA when the ordinance results in a complete prohibition of the medical use of marijuana; however, the MMMA does not foreclose all local regulation of marijuana. In that regard, the act does not nullify a municipality's inherent authority to regulate land use under the MZEA as long as (1) the municipality does not prohibit or penalize the cultivation of medical marijuana and (2) the municipality does not impose regulations that are unreasonable and inconsistent with regulations established by state law. Because an enclosed, locked facility may be found in various locations on various types of property, a local regulation limiting where medical marijuana must be cultivated within a locality does not conflict with the statutory requirement that marijuana plants be kept in an enclosed, locked facility. In this case, the township's ordinance allowed for the medical use of marijuana by a registered primary caregiver but placed limitations on where the caregiver could cultivate marijuana within the township. The ordinance's geographical restriction added to and complemented the limitations imposed by the MMMA; it did not directly conflict with the MMMA. While the ordinance went further in its regulation than the MMMA, the township appropriately used its authority under the

MZEA to craft an ordinance that did not directly conflict with the MMMA's provision requiring that marijuana be cultivated in an enclosed, locked facility. The township also had authority under the MZEA to require zoning permits and permit fees for the use of buildings and structures within its jurisdiction. The township's ordinance requiring primary caregivers to obtain a permit and pay a fee before using a building or structure within the township to cultivate medical marijuana did not directly conflict with the MMMA because the ordinance did not effectively prohibit the medical use of marijuana, and DeRuiter did not argue that the requirements for obtaining a permit were so unreasonable as to create a conflict. To the extent that DeRuiter argued that the immunity provisions of the MMMA contributed to a blanket prohibition on local governments regulating the medical use of marijuana with respect to time, place, and manner of such use, that argument sounded in field preemption; but neither the trial court nor the Court of Appeals reached the issue of field preemption, and DeRuiter conceded that her appeal did not concern the issue of field preemption. The Court of Appeals erred by affirming the trial court's grant of summary disposition in favor of DeRuiter.

Reversed and remanded to the trial court for further proceedings.

Michigan Supreme Court
Lansing, Michigan

OPINION

FILED April 27, 2020

S T A T E O F M I C H I G A N

SUPREME COURT

CHRISTIE DeRUITER,

Plaintiff/Counterdefendant-Appellee,

v No. 158311

TOWNSHIP OF BYRON,

Defendant/Counterplaintiff-Appellant.

BEFORE THE ENTIRE BENCH

BERNSTEIN, J.

In this case, we address whether defendant-counterplaintiff Byron Township's zoning ordinance, which regulates the location of registered medical marijuana caregiver activities and requires that a "primary caregiver"[1] obtain a permit before cultivating

[1] For purposes of the Michigan Medical Marihuana Act, MCL 333.26421 *et seq.*, a "primary caregiver" means "a person who is at least 21 years old and who has agreed to

medical marijuana, is preempted by the Michigan Medical Marihuana Act (the MMMA), MCL 333.26421 *et seq*.[2] Specifically, Byron Township's ordinance requires that medical marijuana caregivers cultivate marijuana as a "home occupation" at a full-time residence. Byron Township Zoning Ordinance, § 3.2.H.1. Plaintiff-counterdefendant, Christie DeRuiter, a registered qualifying patient[3] and primary caregiver under the MMMA,[4] cultivated medical marijuana on rented commercially zoned property. DeRuiter's landlord was directed by the Byron Township supervisor to cease and desist the cultivation of medical marijuana or face legal action. After Byron Township attempted to enforce its zoning ordinance, DeRuiter sought a declaratory judgment regarding the ordinance's legality. Byron Township countersued and also sought a declaratory judgment regarding the ordinance's legality, arguing that the ordinance did not conflict with the MMMA. The trial court held that § 3.2 of Byron Township's zoning ordinance directly conflicted with, and was therefore preempted by, the MMMA. The trial court granted DeRuiter's motion for summary disposition and denied Byron Township's motion for summary disposition.

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assist with a patient's medical use of marihuana . . . ." MCL 333.26423(k). Primary caregivers with a registry identification card possess immunity from criminal prosecution under Michigan law for cultivating marijuana for their qualifying patients. MCL 333.26424(b).

[2] This opinion addresses zoning in the context of medical marijuana use and the MMMA. It does not address any zoning issues that may arise from the voter-initiated legalization of recreational marijuana. See 2018 IL 1, effective December 6, 2018.

[3] "Qualifying patient" means "a person who has been diagnosed by a physician as having a debilitating medical condition." MCL 333.26423(*l*).

[4] Although DeRuiter is both a registered qualifying patient and a primary caregiver, her challenge to Byron Township's zoning ordinance concerns only her rights as a primary caregiver.

The Court of Appeals affirmed the trial court in a published opinion. *DeRuiter v Byron Twp*, 325 Mich App 275, 287; 926 NW2d 268 (2018).

Because we conclude that the Byron Township Zoning Ordinance does not directly conflict with the MMMA, we reverse the Court of Appeals' judgment and remand this case to the trial court for proceedings consistent with this opinion.

I. FACTS

Christie DeRuiter, a licensed qualifying patient and registered primary caregiver under the MMMA, began growing marijuana on rented commercially zoned property because she did not want to grow marijuana at her residence. DeRuiter grew the marijuana in an "enclosed, locked facility." See MCL 333.26423(d).

After learning of DeRuiter's cultivation of medical marijuana on commercially zoned property, the Byron Township supervisor determined that DeRuiter's growing operation constituted a zoning violation under the Byron Township Zoning Ordinance. The zoning ordinance contains a locational restriction[5] that allows for the cultivation of medical marijuana by primary caregivers, but only as "a home occupation." Byron Township Zoning Ordinance, § 3.2.H.1.[6] "Home occupation" is defined by Byron Township as follows:

[5] We use "locational restriction" in this opinion to denote a zoning restriction that regulates where an activity may occur within a municipality.

[6] The township amended § 3.2 of the Byron Township Zoning Ordinance on July 11, 2016. The postamendment version of the zoning ordinance is at issue in this case.

> An occupation or profession that is customarily incidental and secondary to the use of a dwelling. It is customarily conducted within a dwelling, carried out by its occupants utilizing equipment customarily found in a home and, except for a sign allowed by this Ordinance, is generally not distinguishable from the outside. [Byron Township Zoning Ordinance, § 2.5.]

Under this home-occupation requirement, the ordinance mandates that the "medical use" of marijuana by a primary caregiver be "conducted entirely within a dwelling[7] or attached garage, except that a registered primary caregiver may keep and cultivate [medical marijuana], in an enclosed, locked facility. . . ." Byron Township Zoning Ordinance, § 3.2.H.2.d (quotation marks omitted). The ordinance also requires that "[t]he medical use of marijuana shall comply at all times with the MMMA and the MMMA General Rules, as amended." Byron Township Zoning Ordinance, § 3.2.H.2.a.

Furthermore, Byron Township requires that primary caregivers obtain a permit to grow medical marijuana. Byron Township Zoning Ordinance, § 3.2.H.3. If a primary caregiver who holds a permit departs from the requirements of either the ordinance or the MMMA, their permit can be revoked. Byron Township Zoning Ordinance, § 3.2.H.3.c. Byron Township's zoning ordinance clarifies that a permit is not required for a qualifying patient's cultivation of marijuana for personal use and that a permit is not required for a qualifying patient's possession or use of marijuana in their dwelling. Byron Township

[7] The term "dwelling unit" is defined as "[a] building or portion of a building, designed for use and occupancy by one family for living and sleeping purposes and with housekeeping facilities. A recreational vehicle, vehicle chassis, tent or other transient residential use is not considered a dwelling." Byron Township Zoning Ordinance, § 2.3. Byron Township's zoning ordinance does not permit dwellings by right in commercially zoned districts. See Byron Township Zoning Ordinance, §§ 6.1 and 6.2.

Zoning Ordinance, § 3.2.H.5 and § 3.2.H.6. DeRuiter did not obtain a permit from Byron Township before cultivating medical marijuana as a primary caregiver.

In March 2016, Byron Township sent DeRuiter's landlord a letter, directing the landlord to cease and desist DeRuiter's cultivation of medical marijuana and to remove all marijuana and related equipment or be subject to enforcement action. The letter asserted that violations of the zoning ordinance were a nuisance per se.

In May 2016, DeRuiter filed a complaint, seeking a declaratory judgment that Byron Township's zoning ordinance was preempted by the MMMA and that it was, therefore, unenforceable. She took issue with the ordinance's permit requirement and locational restriction. She also sought injunctive relief to prevent Byron Township from enforcing the ordinance. Byron Township filed a counterclaim, seeking a declaratory judgment and abatement of the alleged nuisance.

The trial court granted DeRuiter's motion for summary disposition, denied Byron Township's motion for summary disposition, and dismissed Byron Township's counterclaim. The trial court held that the zoning provisions in question directly conflicted with the MMMA and that, as a result, those provisions were preempted and unenforceable. Specifically, the trial court held that Byron Township's zoning ordinance impermissibly subjected primary caregivers to penalties for the medical use of marijuana and for assisting qualifying patients with the medical use of marijuana regardless of a caregiver's compliance with the MMMA. According to the trial court, these penalties clearly conflicted with the MMMA, which prohibits penalizing qualifying patients and primary caregivers who are in compliance with the MMMA. See MCL 333.26424(a) and (b). The trial court also determined that Byron Township could not prohibit what the MMMA

explicitly authorized—the medical use of marijuana under MCL 333.26427(a). According to the trial court, Byron Township ran afoul of these principles by requiring that a primary caregiver obtain a permit to cultivate marijuana, placing locational restrictions on that cultivation, and subjecting caregivers to fines and penalties for noncompliance.

Byron Township appealed. The Court of Appeals affirmed the trial court in a published opinion, holding that "the trial court did not err by ruling that a direct conflict exist[s] between defendant's ordinance and the MMMA resulting in the MMMA's preemption of plaintiff's home-occupation ordinance." *DeRuiter*, 325 Mich App at 287. Byron Township filed an application for leave to appeal in this Court. We ordered oral argument on the application, directing the parties to address "whether the defendant's zoning ordinance pertaining to the location of registered medical marijuana caregivers is preempted by the [MMMA]." *DeRuiter v Byron Twp*, 503 Mich 942 (2019).

II. STANDARDS OF REVIEW

"Whether a state statute preempts a local ordinance is a question of statutory interpretation and, therefore, a question of law that we review de novo." *Ter Beek v City of Wyoming*, 297 Mich App 446, 452; 823 NW2d 864 (2012) (*Ter Beek I*), aff'd 495 Mich 1 (2014). "We also review de novo the decision to grant or deny summary disposition and review for clear error factual findings in support of that decision." *Ter Beek v City of Wyoming*, 495 Mich 1, 8; 846 NW2d 531 (2014) (*Ter Beek II*) (citations omitted).

The MMMA was enacted by voter referendum in 2008. "Statutes enacted by the Legislature are interpreted in accordance with legislative intent; similarly, statutes enacted

by initiative petition are interpreted in accordance with the intent of the electors."[8] *People v Mazur*, 497 Mich 302, 308; 872 NW 2d 201 (2015). "We begin with an examination of the statute's plain language, which provides 'the most reliable evidence' of the electors' intent." *Id*., citing *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). "If the statutory language is unambiguous, . . . [n]o further judicial construction is required or permitted because we must conclude that the electors intended the meaning clearly expressed." *People v Bylsma*, 493 Mich 17, 26; 825 NW2d 543 (2012) (quotation marks and citations omitted; alteration in original).

III. ANALYSIS

Generally, local governments may control and regulate matters of local concern when such power is conferred by the state. *City of Taylor v Detroit Edison Co*, 475 Mich 109, 117-118; 715 NW2d 28 (2006). State law, however, may preempt a local regulation either expressly or by implication. *Mich Gun Owners, Inc v Ann Arbor Pub Sch*, 502 Mich 695, 702; 918 NW2d 756 (2018), citing *Detroit v Ambassador Bridge Co*, 481 Mich 29, 35; 748 NW2d 221 (2008). Implied preemption can occur when the state has occupied the entire field of regulation in a certain area (field preemption) or when a local regulation directly conflicts with state law (conflict preemption). *Mich Gun Owners, Inc*, 502 Mich at 702. In the context of conflict preemption, a direct conflict exists when "the ordinance

[8] The Legislature subsequently amended the MMMA. See 2012 PA 512, effective April 1, 2013; 2012 PA 514, effective April 1, 2013; 2016 PA 283, effective December 20, 2016. Because these amendments do not concern preemption or local zoning restrictions, we are primarily concerned with the electorate's intent when determining whether a direct conflict exists between the MMMA and the Byron Township Zoning Ordinance.

permits what the statute prohibits or the ordinance prohibits what the statute permits." *People v Llewellyn*, 401 Mich 314, 322 n 4; 257 NW2d 902 (1977).

We only address whether the MMMA is in direct conflict with the township's zoning ordinance. We do not address field preemption because the trial court did not base its preemption ruling on that doctrine. See *DeRuiter*, 325 Mich App at 287 (declining to address field preemption because "the trial court never based its ruling on field preemption of zoning"). Likewise, we do not consider express preemption because DeRuiter has not argued that the MMMA expressly preempts the zoning ordinance at issue.

Conflict preemption applies if "the ordinance is in direct conflict with the state statutory scheme[.]" *Llewellyn*, 401 Mich at 322. An examination of whether the MMMA directly conflicts with the zoning ordinance must necessarily begin with an examination of both the relevant provisions of the MMMA and of the ordinance.

The MMMA affords certain protections under state law for the medical use of marijuana. MCL 333.26424. The MMMA defines the phrase "medical use of marihuana" as "the acquisition, possession, cultivation, manufacture, extraction, use, internal possession, delivery, transfer, or transportation of marihuana, marihuana-infused products, or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition." MCL 333.26423(h). The MMMA states, in pertinent part, that a qualifying patient "is not subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action . . . for the medical use of marihuana in accordance with this act[.]" MCL 333.26424(a). The MMMA also provides the same immunity to a primary caregiver in

"assisting a qualifying patient . . . with the medical use of marihuana in accordance with this act." MCL 333.26424(b). As a condition of immunity under either subsection, the MMMA requires a primary caregiver or qualifying patient who cultivates marijuana to keep their plants in an "enclosed, locked facility." MCL 333.26424(a); MCL 333.26424(b)(2).[9]

Both lower courts held that the zoning ordinance here directly conflicts with the MMMA because the ordinance allows Byron Township to sanction a registered primary caregiver's "medical use of marijuana" when that use occurs in a commercially zoned location. In affirming the trial court's holding, the Court of Appeals relied on our decision in *Ter Beek II*. Like the case before us, *Ter Beek II* involved a challenge to a local zoning ordinance on the basis that the ordinance was preempted by the MMMA. In that case, we were tasked with deciding whether the city of Wyoming's zoning ordinance conflicted with, and was thus preempted by, the immunity provisions of the MMMA, MCL 333.26424(a) and (b). *Ter Beek II*, 495 Mich at 19.

We said yes. The zoning ordinance in *Ter Beek II* prohibited land uses that were contrary to federal law and subjected such land uses to civil sanctions. Because the manufacture and possession of marijuana is prohibited under federal law, the Wyoming ordinance at issue in *Ter Beek II* had the effect of banning outright the medical use of

[9] An "enclosed, locked facility" may be a "closet, room, or other comparable, stationary, and fully enclosed area . . . ." MCL 333.26423(d). The facility may be outdoors "if [marijuana plants] are not visible to the unaided eye from an adjacent property when viewed by an individual at ground level or from a permanent structure and are grown within a stationary structure that is enclosed on all sides, except for the base," or it may be in a vehicle under certain conditions. *Id*.

marijuana in the city. As a result, there was no way that patients and caregivers could engage in the medical use of marijuana under the MMMA without subjecting themselves to a civil penalty.

The Byron Township ordinance is different than the ordinance we considered in *Ter Beek II*. It allows for the medical use of marijuana by a registered primary caregiver but places limitations on where the caregiver may cultivate marijuana within the township (i.e., in the caregiver's "dwelling or attached garage" as part of a regulated "home occupation"). See Byron Township Zoning Ordinance, § 3.2.H.1 and § 3.2.H.2.d. But despite the differences, DeRuiter argues that the Byron Township ordinance is in direct conflict with the MMMA because the act protects a registered caregiver from "penalty in any manner" for "assisting a qualifying patient . . . with the medical use of marihuana" so long as the caregiver abides by the MMMA's volume limitations and restricts the cultivation to an "enclosed, locked facility." See MCL 333.26424(b). The Court of Appeals agreed.

Admittedly, our preemption analysis in *Ter Beek II* considered the MMMA's prohibition on the imposition of a "penalty in any manner." *Ter Beek II*, 495 Mich at 24. But while we sided with the plaintiff in *Ter Beek II*, we cautioned that "Ter Beek does not argue, and we do not hold, that the MMMA forecloses all local regulation of marijuana[.]" *Id*. at 24 n 9.

Were we to accept DeRuiter's argument, the only allowable restriction on where medical marijuana could be cultivated would be an "enclosed, locked facility" as that term is defined by the MMMA. MCL 333.26423(d). Because the MMMA does not otherwise limit cultivation, the argument goes, any other limitation or restriction on cultivation

imposed by a local unit of government would be in conflict with the state law.[10] We disagree. The "enclosed, locked facility" requirement in the MMMA concerns what type of structure marijuana plants must be kept and grown in for a patient or caregiver to be entitled to the protections offered by MCL 333.26424(a) and (b); the requirement does not speak to *where* marijuana may be grown. In other words, because an enclosed, locked facility could be found in various locations on various types of property, regardless of zoning, this requirement is not in conflict with a local regulation that limits *where* medical marijuana must be cultivated.

This result is not at odds with *Ter Beek II*, which involved an ordinance that resulted in a complete prohibition of the medical use of marijuana, despite the MMMA's authorization of such use, see MCL 333.26427(a). A local ordinance is preempted when it bans an activity that is authorized and regulated by state law. For example, in *Nat'l Amusement Co v Johnson*, 270 Mich 613, 614; 259 NW 342 (1935), we considered a city ordinance that banned a person from " 'tak[ing] part in any amusement or exhibition which shall result in a contest to test the endurance of the participants.' " We concluded that the ordinance was preempted by a state statute that regulated "endurance contests" and made it unlawful to participate in such contests "except in accordance with the provisions of this act." *Id*. at 615 (quotation marks omitted). We explained:

> Where an amusement, which has been lawful and unregulated, is not evil *per se* but may be conducted in a good or bad manner, is the subject of

[10] DeRuiter argues that the MMMA permits her to cultivate medical marijuana in any enclosed, locked facility. She does not contend that it was impossible or impractical for her to cultivate marijuana in her home in accordance with Byron Township's zoning ordinance. Consequently, we do not address this latter possibility.

> legislation, regulatory, not prohibitory, it would seem clear that the legislature intended to permit continuance of the amusement, subject to statutory conditions. The statute makes it unlawful to conduct a walkathon only in violation of certain conditions. This is merely a common legislative manner of saying that it is lawful to conduct it if the regulations are observed. [*Id*. at 616-617.]

We presumed that "the city may add to the conditions" in the statute but found it impermissible that "the ordinance attempt[ed] to prohibit what the statute permit[ted]." *Id*. at 617. As with the ordinance in *Nat'l Amusement*, Wyoming's ordinance in *Ter Beek II* had the effect of wholly prohibiting an activity (the medical use of marijuana) that the MMMA allows. But that does not mean that local law cannot "add to the conditions" in the MMMA. *Id*. DeRuiter's argument would result in an interpretation of the MMMA that forecloses all local regulation of marijuana—the exact outcome we cautioned against in *Ter Beek II*. See *Ter Beek II*, 495 Mich at 24 n 9. DeRuiter nevertheless emphasizes our statement that "the [Wyoming] Ordinance directly conflicts with the MMMA by permitting what the MMMA expressly prohibits—the imposition of a 'penalty in any manner' on a registered qualifying patient whose medical use of marijuana falls within the scope of § 4(a)'s immunity." *Id*. at 20. We appreciate the apparent contradiction and take this opportunity to clarify. Our analysis in *Ter Beek II*—in particular, our focus on whether the MMMA permitted the city to impose a sanction for violating the Wyoming ordinance—suggested that the MMMA's immunity language was the source of the conflict. That was true in *Ter Beek II* because the ordinance left no room whatsoever for the medical use of marijuana.

In *Ter Beek II*, the conflict giving rise to that preemption can be viewed as whether the city of Wyoming had completely prohibited the medical use of marijuana that the

electors intended to permit when they approved the MMMA.[11] That view meshes with our caselaw, as indicated in our discussion of *Nat'l Amusement*. More recently, we declined to find a conflict between state and local law when a locality enacted regulations that are not "unreasonable and inconsistent with regulations established by state law," so long as the state regulatory scheme did not occupy the field. *Detroit v Qualls*, 434 Mich 340, 363; 454 NW2d 374 (1990) (holding that a city ordinance regulating the quantity of fireworks a retailer may store was not in conflict with a state law that limited possession to a "reasonable amount"). Similarly, in *Miller v Fabius Twp Bd*, 366 Mich 250, 255-257; 114 NW2d 205 (1962), we held that a local ordinance that prohibited powerboat racing and water skiing between the hours of 4:00 p.m. and 10:00 a.m. was not preempted by a state law that prohibited the activity " 'during the period 1 hour after sunset to 1 hour prior to sunrise.' " In both cases, we quoted favorably the following proposition:

> The mere fact that the State, in the exercise of the police power, has made certain regulations does not prohibit a municipality from exacting additional requirements. So long as there is no conflict between the two, and the requirements of the municipal bylaw are not in themselves pernicious, as being unreasonable or discriminatory, both will stand. The fact that an ordinance enlarges upon the provisions of a statute by requiring more than the statute requires creates no conflict therewith, unless the statute limits the requirement for all cases to its own prescription. Thus, where both an ordinance and a statute are prohibitory and the only difference between them is that the ordinance goes further in its prohibition, but not counter to the prohibition under the statute, and the municipality does not attempt to authorize by the ordinance what the legislature has forbidden or forbid what

[11] While this Court has stated that "[t]he MMMA does *not* create a general right for individuals to use and possess marijuana in Michigan," *People v Kolanek*, 491 Mich 382, 394; 817 NW2d 528 (2012), the act plainly evinces an intent to permit that use, under certain circumstances, by persons who have a legitimate medical need. See MCL 333.26422 (findings and declarations).

> the legislature has *expressly* licensed, authorized, or required, there is nothing contradictory between the provisions of the statute and the ordinance because of which they cannot coexist and be effective. Unless legislative provisions are contradictory in the sense that they cannot coexist, they are not deemed inconsistent because of mere lack of uniformity in detail. [*Miller*, 366 Mich at 256-257, quoting 37 Am Jur, Municipal Corporations, § 165, p 790. See also *Qualls*, 434 Mich at 362, quoting 56 Am Jur 2d, Municipal Corporations, § 374, pp 408-409.]

Under this rule, an ordinance is not conflict preempted as long as its additional requirements do not contradict the requirements set forth in the statute.[12]

Plaintiff has not argued that the state's authority to regulate the medical use of marijuana is exclusive. The geographical restriction imposed by Byron Township's zoning ordinance adds to and complements the limitations imposed by the MMMA; we therefore do not believe there is a contradiction between the state law and the local ordinance. As in *Qualls* and *Miller*, the local ordinance goes further in its regulation but not in a way that is counter to the MMMA's conditional allowance on the medical use of marijuana. We therefore hold that the MMMA does not nullify a municipality's inherent authority to regulate land use under the Michigan Zoning Enabling Act (MZEA), MCL 125.3101 *et seq.*,[13] so long as the municipality does not prohibit or penalize all medical marijuana

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[12] See *Nat'l Amusement Co*, 270 Mich at 616, quoting 43 C. J., p 218 ("In order that there be a conflict between a State enactment and a municipal regulation both must contain either express or implied conditions which are inconsistent and irreconcilable with each other. Mere differences in detail do not render them conflicting. If either is silent where the other speaks, there can be no conflict between them. Where no conflict exists, both laws stand. . . . As a general rule, additional regulation to that of a State law does not constitute a conflict therewith.") (quotation marks omitted).

[13] The MZEA provides that "[a] local unit of government may provide by zoning ordinance for the regulation of land development and . . . regulate the use of land and structures . . . ." MCL 125.3201(1). Moreover, even if the "enclosed, locked facility" requirement did

cultivation, like the city of Wyoming's zoning ordinance did in *Ter Beek II*, and so long as the municipality does not impose regulations that are "unreasonable and inconsistent with regulations established by state law." *Qualls*, 434 Mich at 363. In this case, Byron Township appropriately used its authority under the MZEA to craft a zoning ordinance that does not directly conflict with the MMMA's provision requiring that marijuana be cultivated in an enclosed, locked facility.[14]

DeRuiter also argues that Byron Township's permit requirement directly conflicts with the MMMA because it impermissibly infringes her medical use of marijuana. Again, we disagree. As with the zoning ordinance's locational restriction, the permit requirement does not effectively prohibit the medical use of marijuana.[15] The MZEA allows Byron

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concern where marijuana must be grown, this would not necessarily preclude a local governmental unit from imposing additional locational restrictions. *Rental Prop Owners Ass'n of Kent Co v Grand Rapids*, 455 Mich 246, 262; 566 NW2d 514 (1997) ("The mere fact that the state, in the exercise of the police power, has made certain regulations does not prohibit a municipality from exacting additional requirements.") (quotation marks and citations omitted).

[14] We do not decide whether Byron Township's ordinance conflicts with other aspects of the MMMA. Nor do we decide if the ordinance, which also precludes cultivating medical marijuana outside or in a structure detached from a residence, see Byron Township Zoning Ordinance, § 3.2.G.1 and § 3.2.H.2.d, has the practical consequence of prohibiting DeRuiter from cultivating the number of marijuana plants she is expressly permitted by the MMMA, see MCL 333.26426(d); MCL 333.26424(a); MCL 333.26424(b)(2).

[15] Byron Township's zoning ordinance provides that "[t]he operations of a registered primary caregiver, as a home occupation, shall be permitted only with the prior issuance of a Township permit." Byron Township Zoning Ordinance, § 3.2.H.3. Additionally, "[a] complete and accurate application shall be submitted . . . and an application fee in an amount determined by resolution of the Township Board shall be paid." Byron Township Zoning Ordinance, § 3.2.H.3.a. To obtain a permit from the township, a caregiver must demonstrate that their grow operation is located in a full-time residence and provide state identification, their MMMA registry identification card, information about the equipment

Township to require zoning permits and permit fees for the use of buildings and structures within its jurisdiction.[16] Accordingly, Byron Township may require primary caregivers to obtain a permit and pay a fee before they use a building or structure within the township for the cultivation of medical marijuana. We express no opinion on whether the requirements for obtaining a permit from the township are so unreasonable as to create a conflict with the MMMA because that argument has not been presented to us.

To the extent DeRuiter argues that the immunity provisions of the MMMA contribute to a blanket prohibition on local governments regulating the "medical use" of marijuana with respect to time, place, and manner of such use, *that* argument sounds in field preemption. DeRuiter made this claim in the trial court. But because the trial court and the Court of Appeals held that the ordinance was conflict preempted, neither court reached the issue.[17] Accordingly, we decline to address it at this time.

IV. CONCLUSION

We hold that Byron's Township's home-occupation zoning ordinance does not directly conflict with the MMMA. Accordingly, we reverse the Court of Appeals' holding

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used to cultivate marijuana, and a description of the location being used to grow medical marijuana. Byron Township Zoning Ordinance, § 3.2.H.3.b. "A permit shall be granted if the application demonstrates compliance with [the] Ordinance, the MMMA and the MMMA General Rules." *Id*.

[16] The MZEA authorizes municipalities to "charge reasonable fees for zoning permits as a condition of granting authority to use . . . buildings . . . and structures . . . within a zoning district established under this act." MCL 125.3406(1).

[17] At oral argument before this Court, DeRuiter conceded that her appeal does not concern field preemption.

to the contrary and remand to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

Richard H. Bernstein
Bridget M. McCormack
Stephen J. Markman
Brian K. Zahra
David F. Viviano
Elizabeth T. Clement
Megan K. Cavanagh

Michigan Model Criminal Jury Instructions

Model Criminal Jury Instructions

Michigan Supreme Court

We are pleased to provide an electronic copy of the criminal jury instructions developed by the Michigan State Bar Criminal Jury Instruction Committee and presently in use for criminal trials. On December 22, 2014, by Administrative Order 2013–13, the Michigan Supreme Court appointed a new committee—the Committee on Model Criminal Jury Instructions. That committee is composed of attorneys and judges whose duty it will be to ensure that the criminal jury instructions accurately and understandably inform jurors about the legal process in which they will participate and the law that they are to apply.

The members of the committee are:

Hon. Timothy G. Hicks (Chair)
Timothy A. Baughman
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Hon. Stacia J. Buchanan
Hon. Paul John Cusick
Hon. Joyce A. Draganchuk
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Melissa A. Powell
Stephen T. Rabaut
Jerome Sabbota

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M Crim JI 1.1 Preliminary Instructions to Prospective Jurors

(1)Ladies and gentlemen, I am Judge _____ , and it is my pleasure and privilege to welcome you to the _____ Court of _____.

(2)I know that jury duty may be a new experience for some of you. Jury duty is one of the most serious duties that members of a free society are asked to perform. Our system of self-government could not exist without it.

(3)The jury is an important part of this court. The right to a jury trial is an ancient tradition and part of our heritage. The law says that both a person who is accused of a crime and the prosecution have the right to a trial, not by one person, but by a jury of twelve impartial persons.

(4)Jurors must be as free as humanly possible from bias, prejudice, or sympathy for either side. Each side in a trial is entitled to jurors who keep open minds until the time comes to decide the case.

Use Note

MCR 6.412(B) states that the court should give the prospective jurors appropriate preliminary instructions before beginning the jury selection process.

History

M Crim JI 1.1 (formerly CJI2d 1.1) was CJI 1:1:01.

M Crim JI 1.2 Selection of Fair and Impartial Jury

(1)A trial begins with jury selection. The purpose of this process is to obtain information about you that will help us choose a fair and impartial jury to hear this case.

(2)During jury selection [the lawyers and] I will ask you questions. This is called the voir dire. The questions are meant to find out if you know anything about the case. Also, we need to find out if you have any opinions or personal experiences that might influence you for or against the prosecution, the defendant, or any witnesses. One or more of these things could cause you to be excused in this particular case, even though you may otherwise be qualified to be a juror.

(3)The questions may probe deeply into your attitudes, beliefs, and experiences. They are not meant to be an unreasonable prying into your private life. The law requires that we get this information so that an impartial jury can be chosen.

(4)If you do not hear or understand a question you should say so. If you do understand it, you should answer it truthfully and completely. Please do not hesitate to speak freely about anything you believe we should know.

Use Note

Omit bracketed material when voir dire is being conducted by judge only.

History

M Crim JI 1.2 (formerly CJI2d 1.2) was CJI 1:1:02.

Reference Guide

Court Rules

MCR 6.412(C).

Case Law

People v Jendrzejewski, 455 Mich 495, 566 NW2d 530 (1997); *People v Tyburski,* 445 Mich *606*, 518 NW2d 441 (1994); *People v Sawyer,* 215 Mich App *183*, 545 NW2d 6 (1996); *People v Taylor, 195 Mich App 57*, 489 NW2d 99 (1992).

M Crim JI 1.3 Challenges

During jury selection you may be excused from serving on the jury in one of two ways. First, I may excuse you for cause; that is, I may decide that there is a valid reason why you cannot or should not serve in this case. Or, a lawyer from one side or the other may excuse you without giving any reason for doing so. This is called a peremptory challenge. The law gives each side the right to excuse a certain number of jurors in this way. If you are excused, you should not feel bad or take it personally. As I explained before, there simply may be something that causes you to be excused from this particular case.

History

M Crim JI 1.3 (formerly CJI2d 1.3) was CJI 1:1:03.

M Crim JI 1.4 Juror Oath before *Voir Dire*

(1)I will now ask you to stand and swear to answer truthfully, fully, and honestly all the questions that you will be asked about your qualifications to serve as a juror in this case. If you have religious beliefs against taking an oath, you may affirm that you will answer all the questions truthfully, fully, and honestly.

(2)Here is your oath: "Do you solemnly swear (or affirm) that you will truthfully and completely answer all questions about your qualifications to serve as jurors in this case?"

Use Note

This oath *must* be administered to all prospective jurors before voir dire. MCR 6.412(B).

History

M Crim JI 1.4 (formerly CJI2d 1.4) was CJI 1:1:04.

M Crim JI 1.5 Introduction of Judge, Parties, Counsel, and Witnesses

(1)I'd like to introduce to you the members of my staff. [*Introduce court personnel and explain what they do.*]

(2)This is a criminal case involving the charge of _____

_____, which I will explain more fully later. This charge has been made against the defendant, who is _____. The defendant's lawyer is _____. [*Introduce any other persons at counsel table.*]

(3)The lawyer for the State of Michigan is [Assistant] Prosecuting Attorney _____. [*Introduce any other persons at counsel table.*][1]

(4)The witnesses who may be called in this case are: [*Read list of witnesses.*][2]

(5)Does anyone in the jury box [or waiting to be chosen] know the defendant or any of the lawyers or witnesses?

Use Note

[1] The court can, if it prefers, read M Crim JI 1.8, Reading of Information, at this point.

[2] The witnesses should not be designated as defense or prosecution witnesses but should simply be read.

History

M Crim JI 1.5 (formerly CJI2d 1.5) was CJI 1:1:05.

M Crim JI 1.6 Length of Trial

(1)We think that this trial will last for [days / weeks].

(2)If you believe that the length of the trial will be a real hardship for you, please let me know right now.

History

M Crim JI 1.6 (formerly CJI2d 1.6) was CJI 1:1:06.

M Crim JI 1.7 Health Questions

Some of you may have health problems that would prevent you from serving on a jury. For example, does anyone have a medical problem that makes you unable to sit for two or three hours at a time? Does anyone have a sight or hearing problem?

History

M Crim JI 1.7 (formerly CJI2d 1.7) was CJI 1:1:07.

M Crim JI 1.8 Reading of Information

(1)This is a criminal case. The paper used to charge the defendant with a crime is called an information*. The information in this case charges the defendant, _____, with the crime of _____, and reads as follows:

[*Read information.*]

(2)The defendant has pled not guilty to this charge. You should clearly understand that the information I have just read is not evidence. An information is read in every criminal trial so that the defendant and jury can hear the charges. You must not think it is evidence of [his / her] guilt or that [he / she] must be guilty because [he / she] has been charged.

Use Note

*The judge should say "indictment" or "complaint" where appropriate.

History

M Crim JI 1.8 (formerly CJI2d 1.8) was CJI 1:2:19-1:2:20; amended January, 1991.

Reference Guide

Case Law

Tot v United States, 319 US 463 *(1943).*

M Crim JI 1.9 Presumption of Innocence, Burden of Proof, and Reasonable Doubt

(1)A person accused of a crime is presumed to be innocent. This means that you must start with the presumption that the defendant is innocent. This presumption continues throughout the trial and entitles the defendant to a verdict of not guilty unless you are satisfied beyond a reasonable doubt that [he / she] is guilty.

(2)Every crime is made up of parts called elements. The prosecutor must prove each element of the crime beyond a reasonable doubt. The defendant is not required to prove [his / her] innocence or to do anything.* If you find that the prosecutor has not proven every element beyond a reasonable doubt, then you must find the defendant not guilty.

(3)A reasonable doubt is a fair, honest doubt growing out of the evidence or lack of evidence. It is not merely an imaginary or possible doubt, but a doubt based on reason and common sense. A reasonable doubt is just that a doubt that is reasonable, after a careful and considered examination of the facts and circumstances of this case.

Use Note

This instruction must be given in every case.

*For some affirmative defenses, a defendant must produce evidence. The court should instruct the jury on the defendant's burden of production of evidence where it is most appropriate to do so. The committee recommends that this be done when the court instructs on the nature and requirements of the affirmative defense itself.

History

M Crim JI 1.9 (formerly CJI2d 1.9) was CJI 1:2:21 and 1:2:24. Amended November, 1990; January, 1992.

CHAPTER 2

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M Crim JI 2.1 Juror Oath Following Selection

(1)Ladies and gentlemen of the jury, you have been chosen to decide a criminal charge made by the State of Michigan against one of your fellow citizens.

(2)I will now ask you to stand and swear to perform your duty to try the case justly and to reach a true verdict. If your religious beliefs do not permit you to take an oath, you may instead affirm to try the case justly and reach a true verdict.

(3)Here is your oath: "Each of you do solemnly swear (or affirm) that, in this action now before the court, you will justly decide the questions submitted to you, that, unless you are discharged by the court from further deliberation, you will render a true verdict, and that you will render your verdict only on the evidence introduced and in accordance with the instructions of the court, so help you God."

Use Note

Because jeopardy attaches as soon as the jury is sworn, *Crist v Bretz*, 437 *US* 28, 32-36 (1978), the oath should not be administered until the trial is ready to begin.

After the jury is selected and before the trial begins, the court must have the jurors sworn. MCR 6.412(F). Before trial begins, the court should give them appropriate pretrial instructions. MCR 2.513(A).

History

M Crim JI 2.1 (formerly CJI2d 2.1) was CJI 1:2:01.

Reference Guide

Statutes

MCL 768.14-.15.

Court Rules

MCR 2.511(H).

Case Law

People v Allan, 299 Mich App 205, 829 NW2d 319 (2013).

M Crim JI 2.2 Legal Principles

Now I will explain some of the legal principles you will need to know and the procedure we will follow in this trial.

History

M Crim JI 2.2 (formerly CJI2d 2.2) was CJI 1:2:08.

M Crim JI 2.3 Trial Procedure

(1)A trial follows this procedure:

(2)First, the prosecutor makes an opening statement, where [he / she] gives [his / her] theories about the case. The defendant's lawyer does not have to make an opening statement, but [he / she] may make an opening statement after the prosecutor makes [his / hers], or [he / she] may wait until later. These statements are not evidence. They are only meant to help you understand how each side views the case.

(3)To prove the charge(s) the prosecutor must prove the following beyond a reasonable doubt:

[*Read elements of the offense(s). Since the elements of the offense(s) may contain legal terms, definitions of those terms should also be given.*]

(4)Next, the prosecutor presents [his / her] evidence. The prosecutor may call witnesses to testify and may show you exhibits like documents or objects. The defendant's lawyer has the right to cross-examine the prosecutor's witnesses.

(5)After the prosecutor has presented all [his / her] evidence, the defendant's attorney may also offer evidence, but does not have to. By law, the defendant does not have to prove [his / her] innocence or produce any evidence. If the defense does call any witnesses, the prosecutor has the right to cross-examine them. The prosecutor may also call witnesses to contradict the testimony of the defense witnesses.

(6)After all the evidence has been presented, the prosecutor and the defendant's lawyer will make their closing arguments. Like the opening statements, these are not evidence. They are only meant to help you understand the evidence and the way each side sees the case. You must base your verdict only on the evidence.

(7)You have been given a written copy of the instructions I have just read to you. You may refer to them during the trial. Since no one can predict the course of a trial, these instructions may change at the end of the trial. At the close of the trial, I will provide you with a copy of my final instructions for your use during deliberations.

History

M Crim JI 2.3 (formerly CJI2d 2.3) was CJI 1:2:14; amended January, 1991; September, 2011.

Reference Guide

Court Rules

MCR 2.513(A).

M Crim JI 2.4 Function of Court and Jury

(1)My responsibilities as the judge in this trial are to make sure that the trial is run fairly and efficiently, to make decisions about evidence, and to instruct you about the law that applies to this case. You must take the law as I give it to you. Nothing I say is meant to reflect my own opinions about the facts of the case. As jurors, you are the ones who will decide this case.

(2)Your responsibility as jurors is to decide what the facts of the case are. This is your job, and no one else's. You must think about all the evidence and all the testimony and then decide what each piece of evidence means and how important you think it is. This includes how much you believe what each of the witnesses said.

(3)What you decide about any fact in this case is final.

History

M Crim JI 2.4 (formerly CJI2d 2.4) was CJI 1:2:09.

Reference Guide

Case Law

People v Mosden, 381 Mich 506, 164 NW2d 26 (1969); *Spalding v Lowe*, 56 Mich 366, 371, 23 NW 46 (1885*); Knowles v People*, 15 Mich 408, 412 (1867); *People v Derry*, 23 Mich App 572, 179 NW2d 182 (1970).

M Crim JI 2.5 Considering Only Evidence / What Evidence Is

When it is time for you to decide the case, you are only allowed to consider the evidence that was admitted in the case. Evidence includes only the sworn testimony of witnesses, the exhibits admitted into evidence, and anything else I tell you to consider as evidence.

History

M Crim JI 2.5 (formerly CJI2d 2.5) was CJI 1:2:15.

M Crim JI 2.5a Interim Commentary by Attorneys

The court will now allow each party to provide interim commentary. The lawyers' commentaries are not evidence. They are only meant to help you understand the evidence and each side's legal theories. You should only accept things that the lawyers say that are supported by the evidence or by your own common sense and general knowledge. All of my earlier instructions about basing your decision on the evidence and law continue to apply.

Use Note

The court is not required to allow interim commentary. An instruction of this nature should be given if the court, in its discretion, allows interim commentaries.

History

M Crim JI 2.5a (formerly CJI2d 2.5a) was adopted by the committee in September, 2011.

Reference Guide

Court Rules

MCR 2.513(D).

M Crim JI 2.6 Judging Credibility and Weight of Evidence

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

(2)In deciding which testimony you believe, you should rely on your own common sense and everyday experience. However, in deciding whether you believe a witness's testimony, you must set aside any bias or prejudice you have based on the race, gender, or national origin of the witness.*

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

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

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

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

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

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

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

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

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

Use Note

*The court should substitute other improper considerations, such as religion or sexual orientation, where appropriate.

History

M Crim JI 2.6 (formerly CJI2d 2.6) was CJI 1:2:16; amended March, 1991.

Reference Guide

Case Law

Knowles v People, 15 Mich 408, 412 (1867).

M Crim JI 2.7 Questions Not Evidence

The questions the lawyers ask the witnesses are not evidence. Only the answers are evidence. You should not think that something is true just because one of the lawyers asks questions that assume or suggest that it is.

History

M Crim JI 2.7 (formerly CJI2d 2.7) was CJI 1:2:12.

M Crim JI 2.8 Court's Questioning Not a Reflection of Opinion

I may ask some of the witnesses questions myself. These questions are not meant to reflect my opinion about the evidence. If I ask questions, my only reason would be to ask about things that may not have been fully explored.

History

M Crim JI 2.8 (formerly CJI2d 2.8) was CJI 1:2:11.

M Crim JI 2.9 Questions by Jurors Allowed

(1)During the trial you may think of an important question that would help you understand the facts in this case. You are allowed to ask such questions.

(2)You should wait to ask questions until after a witness has finished testifying and both sides have finished their questioning. If you still have an important question after this, do not ask it yourself. Raise your hand, write the question down, and pass it to the bailiff, who will give it to me. Do not show your question to other jurors.

(3)If your question is not asked, it is because I determined under the law that the question should not be asked. Do not speculate about why the question was not asked. In other words, you should draw no conclusions or inferences about the facts of the case, nor should you speculate about what the answer might have been. Also, in considering the evidence you should not give greater weight to testimony merely because it was given in answer to questions submitted by members of the jury.

(4)On the other hand, if you cannot hear what a witness or lawyer says, please raise your hand immediately and ask to have the question or answer repeated.

History

M Crim JI 2.9 (formerly CJI2d 2.9) was CJI 2:1:06. Amended September, 2000; September, 2011.

Reference Guide

Court Rules

MCR 2.513(I).

Case Law

People v Heard, 388 Mich 182, 200 NW2d 73 (1972); *People v Wesley*, 148 Mich App 758, 384 NW2d 783 (1985), aff'd, 428 Mich 708, 411 NW2d 159 (1987).

M Crim JI 2.10 Objections

During the trial the lawyers may object to certain questions or statements made by the other lawyers or witnesses. I will rule on these objections according to the law. My rulings for or against one side or the other are not meant to reflect my opinions about the facts of the case.

History

M Crim JI 2.10 (formerly CJI2d 2.10) was CJI 1:2:10.

M Crim JI 2.11 Disregard Out-of-Presence Hearings

Sometimes the lawyers and I will have discussions out of your hearing. Also, while you are in the jury room I may have to take care of other matters that have nothing to do with this case. Pay no attention to these interruptions.

History

M Crim JI 2.11 (formerly CJI2d 2.11) was CJI 1:2:07.

M Crim JI 2.12 Jurors Not To Discuss Case

You must not discuss the case with anyone, including your family or friends. You must not even discuss it with the other jurors until the time comes for you to decide the case. When it is time for you to decide the case, I will send you to the jury room for that purpose. Then you should discuss the case among yourselves, but only in the jury room and only when all the jurors are there. When the trial is over, you may, if you wish, discuss the case with anyone.

Use Note

The no-discussion instruction *must be given* to the jury, but it may be given when most appropriate. In any case that appears likely to be of significant public interest, an admonition should be given before the end of the first day if the jury is not sequestered. At the end of each subsequent day of the trial, and at other recess periods if the court deems it necessary, an admonition should be given. See M Crim JI 2.14.

History

M Crim JI 2.12 (formerly CJI2d 2.12) was CJI 1:2:03. This instruction was modified by the committee in September, 1996, to clarify that the jury should not discuss the case until sent to the jury room "for that purpose" by the court.

Reference Guide

Case Law

People v Hunter, 370 Mich 262, 121 NW2d 442 (1963); *People v Blondia*, 69 Mich App 554, 245 NW2d 130 (1976).

M Crim JI 2.13 Recesses

(1)If I call for a recess during the trial, I will either send you back to the jury room or allow you to leave the courtroom on your own and go about your business. But you must not discuss the case with anyone or let anyone discuss it with you or in your presence. If someone tries to do that, tell him or her to stop, and explain that as a juror you are not allowed to discuss the case. If he or she continues, leave and report the incident to me as soon as you return to court.

(2)You must not talk to the defendant, the lawyers, or the witnesses about anything at all, even if it has nothing to do with the case.

(3)It is very important that you only get information about the case in court, when you are acting as the jury and when the defendant, the lawyers, and I are all here.

Use Note

This instruction should be given in every case.

History

M Crim JI 2.13 (formerly CJI2d 2.13) was CJI 1:2:04.

Reference Guide

Court Rules

MCR 2.513(B).

Case Law

People v Budzyn and *People v Nevers*, 456 Mich 77, 566 NW2d 229 (1997); *People v France*, 436 Mich 138, 461 NW2d 621 (1990).

M Crim JI 2.14 Caution about Publicity in Cases of Public Interest

(1)During the trial, do not read, listen to, or watch any news reports about the case. Under the law, the evidence you consider to decide the case must meet certain standards. For example, witnesses must swear to tell the truth, and the lawyers must be able to cross-examine them. Because news reports do not have to meet these standards, they could give you incorrect or misleading information that might unfairly favor one side. So, to be fair to both sides, you must follow this instruction.

[*Give the instruction below when recessing:*]

(2)Remember, for the reasons I explained to you earlier, you must not read, listen to, or watch any news reports about this case while you are serving on this jury.

Use Note

In any case that appears likely to be of significant public interest, an admonition should be given before the end of the first day if the jury is not sequestered. If the process of selecting a jury is a lengthy one, such an admonition may also be given to each juror when selected. At the end of each subsequent day of the trial, and at other recess periods if the court deems it necessary, an admonition should be given. See generally American Bar Association Standards Relating to the Administration of Criminal Justice (Approved Draft, 1978), *Fair Trial and Free Press*, 8-3.6(c) and Commentary, pp 8-49 et seq. (2d ed 1978).

History

M Crim JI 2.14 (formerly CJI2d 2.14) was CJI 1:2:05, 1:2:25, 2:1:07.

Reference Guide

Case Law

People v Hicks, 185 Mich App 107, 114-117, 460 NW2d 569 (1990).

M Crim JI 2.15 Sequestration of Jurors

(1)Because this case has gotten so much public attention, I have reluctantly decided that you will not be allowed to go home at the end of the day. Instead, you will stay together. I know this will be difficult for all of you, and you should tell me if this causes you any special hardship.

(2)You may wonder why this is necessary. In fairness to both sides, it is necessary for you to stay together away from any outside information. Please do not communicate in any way with anyone except the other jurors without telling one of the bailiffs. Also, you must not read any newspapers or magazines except for the ones the bailiffs give you. I have told the bailiffs to remove all articles about the trial from the reading material.

(3)We will do everything we can to make you as comfortable as possible. The bailiff will help you with anything you need.

Use Note

Sequestration of the jury is within the discretion of the trial court. *See* MCL 768.16. Sequestration may be constitutionally required in extreme cases. *See Sheppard v Maxwell*, 384 US 333 (1966).

History

M Crim JI 2.15 (formerly CJI2d 2.15) was CJI 2:1:08.

M Crim JI 2.16 Jurors Not to Consider Information from Outside the Courtroom

The restrictions I'm about to describe are meant to ensure that the parties get a fair trial. In our judicial system, it is crucial that jurors are not influenced by anything or anyone outside the courtroom. Now that many jurors have easy access to information through handheld devices and other technology, jurors may be tempted to use these devices to learn more about some aspect of the case. But if a juror were to do this, it would harm the parties. The parties' attorneys would have no way of knowing that a juror has gotten outside information and would have no chance to object if that information was false, untrustworthy, or irrelevant. Remember, no matter how careful and conscientious news reporters, family members, friends, and other people outside the courtroom may be, information about the case from television, radio, the Internet, and social media will inevitably be incomplete—and could be incorrect. Please bear these things in mind as I read the following instructions. These restrictions apply from this moment until I discharge you from jury service:

(1)You must decide this case based solely on the evidence you see and hear in this courtroom. You must not consider information that comes from anywhere else.

(2)This means that during the trial, you must not read, watch, or listen to news reports about the case, whether in newspapers, on television, on the radio, or on the Internet.

(3)You also must not research any aspect of the case during the trial. This means research using a cellular phone, computer, or other electronic device to search the Internet, as well as research with traditional sources like dictionaries, reference manuals, newspapers, or magazines.

(4)You must not investigate the case on your own or conduct any experiments concerning the case, including investigation or experiments using the Internet, computers, cellular phones, or other electronic devices.

(5)You must not visit the scene of any event at issue in this trial. If it is necessary for you to view or visit the scene, court staff will take you there as a group, under court supervision. You must not consider as evidence any personal knowledge you have of the scene.

(6)Before your deliberations, you must not discuss this case with anyone, even your fellow jurors. After you begin deliberations, you should discuss the case with your fellow jurors, but you still must not discuss the case with anyone else until I discharge you from jury service. Until I have discharged you from your jury service, you must not share any information about the case by any means, including cellular phones or social media.

(7)If you discover that a juror has violated my instructions, report it to my bailiff.

History

M Crim JI 2.16 (formerly CJI2d 2.16) was CJI 1:2:06. Amended May, 2009; July, 2009; May, 2013. The committee amended this instruction in July, 2009, to comply with the amendment to MCR 2.511 effective September 1, 2009.

Reference Guide

Court Rules

MCR 2.511.

Case Law

People v Messenger, 221 Mich App 171, 561 NW2d 463 (1997), habeas corpus denied, 2010 US Dist LEXIS 69864 (July 13, 2010); *People v Maliszewski*, No 308879, 2013 Mich App LEXIS 644 (April 9, 2013) (unpublished).

M Crim JI 2.17 Notetaking Allowed

You may take notes during the trial if you wish, but of course you don't have to. If you do take notes, you should be careful that it does not distract you from paying attention to all the evidence. When you go to the jury room to decide your verdict, you may use your notes to help you remember what happened in the courtroom. If you take notes, do not let anyone except the other jurors see them during deliberations. [You must turn them over to the bailiff during recesses.]Your notes will not be examined by anyone, and when your jury service concludes, your notes will be collected and destroyed.

Use Note

If the court decides to allow notetaking, this instruction must be given. *MCR* 2.513*(H)*. The bracketed portion is a possible procedure the court may follow to ensure that notes are seen only by the jurors.

History

M Crim JI 2.17 (formerly CJI2d 2.17) was CJI 2:1:04. Amended September, 2011.

Reference Guide

Court Rules

MCR 2.513(H).

M Crim JI 2.18 Notetaking Not Allowed

I don't believe that it is desirable or helpful for you to take notes during this trial. If you take notes, you might not be able to give your full attention to the evidence. So please do not take any notes while you are in the courtroom.

Use Note

This instruction should be given only when a juror requests to take notes, and the court decides not to allow notetaking.

History

M Crim JI 2.18 (formerly CJI2d 2.18) was CJI 2:1:05.

Reference Guide

Court Rules

MCR 2.513(H).

M Crim JI 2.19 Multiple Defendants Consider Evidence and Law As It Applies to Each Defendant

(1)There is more than one defendant in this case. The fact that they are on trial together is not evidence that they were associated with each other or that either one is guilty.

(2)You should consider each defendant separately. Each is entitled to have [his / her] case decided on the evidence and the law that applies to [him / her].

[(3)If any evidence was limited to (one defendant / some defendants) you should not consider it as to any other defendants.]

Use Note

This instruction must be given when there are two or more defendants. Omit paragraph (3) to avoid confusion in conspiracy cases.

History

M Crim JI 2.19 (formerly CJI2d 2.19) was CJI 2:1:01; amended January, 1991.

Reference Guide

Case Law

People v Liggett, 378 Mich 706, 148 NW2d 784 (1967).

M Crim JI 2.20 Defendant Represents Himself or Herself

In this case, the defendant, _____, is representing [himself / herself]. This fact should not affect your decision in any way. The defendant has the right to represent [himself / herself], and [he / she] has chosen to exercise that right. [A lawyer, _____, is present if the defendant wishes to consult (him / her).]

History

M Crim JI 2.20 (formerly CJI2d 2.20) was CJI 2:1:02; amended January, 1991.

Reference Guide

Court Rules

MCR 6.005(D), (E).

Case Law

Faretta v California, 422 US 806 (1975); *People v Adkins* and *People v Suggs*, 452 Mich 702, 726-727, 551 NW2d 108 (1996); *People v Dennany*, 445 Mich 412, 438, 519 NW2d 128 (1995); *People v Bladel*, 421 Mich 39, 63 n20, 365 NW2d 56 (1985), aff'd sub nom *People v Jackson*, 475 US 625 (1986), overruled on other grounds by *Montejo v Louisiana*, 556 US 778 (2009); *People v Anderson*, 398 Mich 361, 247 NW2d 857 (1976).

M Crim JI 2.21 Second Trial

This case has been tried before, and during this trial you may hear some references to the first trial. Sometimes a case must be retried before a new jury, and you should not pay any attention to the fact that this is the second trial. Your verdict must be based only on the evidence in this trial. You must decide the facts only from what you yourself hear and see.

History

M Crim JI 2.21 (formerly CJI2d 2.21) was CJI 2:1:03.

M Crim JI 2.22 Number of Jurors

You can see that we have chosen a jury of [thirteen / fourteen]. After you have heard all of the evidence and my instructions, we will draw lots to decide which [one / two] of you will be dismissed in order to form a jury of twelve.

History

M Crim JI 2.22 (formerly CJI2d 2.22) was CJI 1:2:02.

Reference Guide

Court Rules

MCR 6.411.

M Crim JI 2.23 Penalty

Possible penalty should not influence your decision. It is the duty of the judge to fix the penalty within the limits provided by law.

History

M Crim JI 2.23 (formerly CJI2d 2.23) was CJI 3:1:19.

Reference Guide

Case Law

People v Goad, 421 Mich 20, 364 NW2d 584 (1984); *People v Szczytko*, 390 Mich 278, 285, 212 NW2d 211 (1973).

M Crim JI 2.24 Instructions to Be Taken As a Whole

I may give you more instructions during the trial, and at the end of the trial I will give you detailed instructions about the law in this case. You should consider all of my instructions as a connected series. Taken all together, they are the law you must follow.

Use Note

MCR 2.513(N) permits the court at its discretion and on notice to the parties to instruct the jury before closing arguments.

History

M Crim JI 2.24 (formerly CJI2d 2.24) was CJI 1:2:13.

Reference Guide

Case Law

People v Dye, 356 Mich 271, 96 NW2d 788 (1959), cert denied, 361 US 935 (1960); *People v Finley*, 38 Mich 482 (1878); *People v McKinley*, 168 Mich App 496, 425 NW2d 460 (1988).

M Crim JI 2.25 Deliberations and Verdict

After all of the evidence has been presented and the lawyers have given their arguments, I will give you detailed instructions about the rules of law that apply to this case. Then you will go to the jury room to decide on your verdict. A verdict must be unanimous. That means that every juror must agree on it, and it must reflect the individual decision of each juror.

History

M Crim JI 2.25 (formerly CJI2d 2.25) was CJI 1:2:18.

Reference Guide

Court Rules

MCR 6.410.

Case Law

People v Sanford, 402 Mich 460, 265 NW2d 1 (1978); *People v Burden*, 395 Mich 462, 236 NW2d 505 (1975); *People v Johnson*, 101 Mich App 748, 300 NW2d 511 (1980).

M Crim JI 2.26 Maintaining an Open Mind

It is important for you to keep an open mind and not make a decision about anything in the case until you go to the jury room to decide the case.

History

M Crim JI 2.26 (formerly CJI2d 2.26) was CJI 1:2:1.

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M Crim JI 3.1 Duties of Judge and Jury

(1)Members of the jury, the evidence and arguments in this case are finished, and I will now instruct you on the law. That is, I will explain the law that applies to this case.

(2)Remember that you have taken an oath to return a true and just verdict, based only on the evidence and my instructions on the law. You must not let sympathy or prejudice influence your decision.

(3)As jurors, you must decide what the facts of this case are. This is your job, and nobody else's. You must think about all the evidence and then decide what each piece of evidence means and how important you think it is. This includes whether you believe what each of the witnesses said. What you decide about any fact in this case is final.

(4)It is my duty to instruct you on the law. You must take the law as I give it to you. If a lawyer says something different about the law, follow what I say. At various times, I have already given you some instructions about the law. You must take all my instructions together as the law you are to follow. You should not pay attention to some instructions and ignore others.

(5)To sum up, it is your job to decide what the facts of the case are, to apply the law as I give it to you, and, in that way, to decide the case.

Use Note

This instruction should be given in every case. On notice to the parties, the court, in its discretion, may give the final jury instructions to the jury before the parties make closing arguments.

History

M Crim JI 3.1 (formerly CJI2d 3.1) was CJI 3:1:01. This instruction was last amended by the committee in May, 2004.

Reference Guide

Court Rules

MCR 2.513(N).

M Crim JI 3.2 Presumption of Innocence, Burden of Proof, and Reasonable Doubt

(1)A person accused of a crime is presumed to be innocent. This means that you must start with the presumption that the defendant is innocent. This presumption continues throughout the trial and entitles the defendant to a verdict of not guilty unless you are satisfied beyond a reasonable doubt that [he / she] is guilty.

(2)Every crime is made up of parts called elements. The prosecutor must prove each element of the crime beyond a reasonable doubt. The defendant is not required to prove [his / her] innocence or to do anything.* If you find that the prosecutor has not proven every element beyond a reasonable doubt, then you must find the defendant not guilty.

(3)A reasonable doubt is a fair, honest doubt growing out of the evidence or lack of evidence. It is not merely an imaginary or possible doubt, but a doubt based on reason and common sense. A reasonable doubt is just that: a doubt that is reasonable, after a careful and considered examination of the facts and circumstances of this case.

Use Note

This instruction must be given in every case.

*For some affirmative defenses, a defendant must produce evidence. The court should instruct the jury on the defendant's burden of production of evidence where it is most appropriate to do so. The committee recommends this be done when the court instructs on the nature and requirements of the affirmative defense itself.

History

M Crim JI 3.2 (formerly CJI2d 3.2) was CJI 3:1:02-3:1:05. Amended November, 1990; January, 1992.

Reference Guide

Case Law

Victor v Nebraska, 511 US 1, 5 (1994); *Martin v Ohio*, 480 US 228 (1987); *Sandstrom v Montana*, 442 US 510, 517-524 (1979); *County Court of Ulster County v Allen*, 442 US 140, 156-157 (1979); *Kentucky v Whorton*, 441 US 786, 789 (1979); *Taylor v Kentucky*, 436 US 478, 487-488 (1978); *In re Winship*, 397 US 358, 364 (1970); *Davis v United States*, 160 US 469, 486-487 (1895); *People v Allen*, 466 Mich 86, 643 NW2d 227 (2002); *People v Nowack*, 462 Mich 392, 400, 614 NW2d 78 (2000); *People v Konrad*, 449 Mich 263, 273, 536 NW2d 517 (1995); *People v Murphy*, 416 Mich 453, 463-464, 331 NW2d 152 (1982); *People v Wright*, 408 Mich 1, 19-26, 289 NW2d 1 (1980); *People v Gallagher*, 404 Mich 429, 437-439, 273 NW2d 440 (1979); *People v D'Angelo*, 401 Mich 167, 182-183, 257 NW2d 655 (1977); *People v Bagwell*, 295 Mich 412, 419, 295 NW 207 (1940); *People v Williams*, 208 Mich 586, 594-595, 175 NW 187 (1919); *People v Ezzo*, 104 Mich 341, 342-343, 62 NW 407 (1895); *People v Potter*, 89 Mich 353, 355, 50 NW 994 (1891); *People v Macard*, 73 Mich 15, 26, 40 NW 784 (1888); *People v DeFore*, 64 Mich 693, 701, 31 NW 585 (1887); *People v Steubenvoll*, 62 Mich 329, 334, 28 NW 883 (1886); *People v Finley*, 38 Mich 482, 483 (1878); *Hamilton v People*, 29 Mich 173 (1874); *People v Hill*, 257 Mich App 126, 667 NW2d 78 (2003); *People v Snider*, 239 Mich App 393, 420-421, 608 NW2d 502 (2000); *People v Cooper*, 236 Mich App 643, 656, 601 NW2d 409 (1999); *People v Hubbard (After Remand)*, 217 Mich App 459, 487, 552 NW2d 493 (1996), overruled in part on other grounds by *People v Harris*, 495 Mich 120, ___ NW2d ___ (2014) and *People*

v Bryant, 491 Mich 575, 822 NW2d 124, *cert denied*, 133 S Ct 664 (2012); *People v Sammons*, 191 Mich App 351, 372, 478 NW2d 901 (1991), cert denied, 505 US 1213 (1992); *People v Jackson*, 167 Mich App 388, 390-391; 421 NW2d 697 (1988).

M Crim JI 3.3 Defendant Not Testifying

Every defendant has the absolute right not to testify. When you decide the case, you must not consider the fact that [he / she] did not testify. It must not affect your verdict in any way.

Use Note

When the defendant does not take the stand, the trial court should ascertain before giving instructions whether the defense wishes this instruction to be given.

If the defendant or counsel requests that no instruction be given, no instruction shall be given.

If the defendant or counsel requests an instruction, an instruction shall be given. (In cases involving more than one defendant, the court shall give the instruction upon the request of any defendant.)

When used, this instruction should be given in conjunction with the instruction on presumption of innocence and burden of proof.

History

M Crim JI 3.3 (formerly CJI2d 3.3) was CJI 3:1:06*;* amended January, 1991.

Reference Guide

Case Law

Griffin v State of California, 380 US 609 (1965); *People v Hampton*, 394 Mich 437, 438, 231 NW2d 654 (1975); *People v Roberson*, 167 Mich App 501, 423 NW2d 245 (1988).

M Crim JI 3.4 Defendant—Impeachment by Prior Conviction

(1)There is evidence that the defendant has been convicted of a crime* in the past.

(2)You may consider this evidence only in deciding whether you believe the defendant is a truthful witness. You may not use it for any other purpose. A past conviction is not evidence that the defendant committed the alleged crime in this case.

Use Note

This instruction should be given when a prior criminal conviction has been admitted into evidence for impeachment.

*The defendant may request that the specific crime or crimes be named.

History

M Crim JI 3.4 (formerly CJI2d 3.4) was CJI 3:1:08.

Reference Guide

Case Law

*People v Jac*ks, 76 Mich 218, 222, 42 NW 1134 (1889).

M Crim JI 3.5 Evidence

(1)When you discuss the case and decide on your verdict, you may only consider the evidence that has been properly admitted in this case. Therefore, it is important for you to understand what is evidence and what is not evidence.

(2)Evidence includes only the sworn testimony of witnesses [, the exhibits admitted into evidence, and anything else I told you to consider as evidence][1].

(3)Many things are not evidence, and you must be careful not to consider them as such. I will now describe some of the things that are not evidence.

(4)The fact that the defendant is charged with a crime and is on trial is not evidence. [Likewise, the fact that (he / she) is charged with more than one crime is not evidence.]

(5)The lawyers' statements and arguments [and any commentary] are not evidence. They are only meant to help you understand the evidence and each side's legal theories. You should only accept things the lawyers say that are supported by the evidence or by your own common sense and general knowledge. The lawyers' questions to the witnesses [, your questions to the witnesses,] and my questions to the witnesses are also not evidence. You should consider these questions only as they give meaning to the witnesses' answers.

(6)My comments, rulings, questions, [summary of the evidence,] and instructions are also not evidence. It is my duty to see that the trial is conducted according to the law, and to tell you the law that applies to this case. However, when I make a comment or give an instruction, I am not trying to influence your vote or express a personal opinion about the case. If you believe that I have an opinion about how you should decide this case, you must pay no attention to that opinion. You are the only judges of the facts, and you should decide this case from the evidence.

(7)At times during the trial, I have excluded evidence that was offered or stricken testimony that was heard. Do not consider those things in deciding the case. Make your decision only on the evidence that I let in, and nothing else.

[(8)Your decision should be based on all the evidence, regardless of which party produced it.][2]

(9)You should use your own common sense and general knowledge in weighing and judging the evidence, but you should not use any personal knowledge you may have about a place, person, or event. To repeat once more, you must decide this case based only on the evidence admitted during this trial.

Use Note

This instruction should be given in every case. Bracketed portions of the instruction should be given only when appropriate to the case.

[1] If helpful, describe the exhibits admitted into evidence.

[2] For use when requested by counsel.

In a case with a self-represented defendant, this instruction may need to be modified.

History

M Crim JI 3.5 (formerly CJI2d 3.5) was CJI 3:1:09. Amended January, 1991; September, 2011.

M Crim JI 3.5a Summary of Evidence

I will now summarize the evidence for you. It is intended only as a summary and you should consider all of the evidence when deciding this case, even if I do not mention all of the evidence in this summary. Remember that it is your job to decide what the facts of this case are. This is your job and nobody else's. It is for you to determine the weight of the evidence and the credit to be given to the witnesses, and you are free to decide that something I have not mentioned, but which has been admitted into evidence, is significant to your decision. You are not bound by my summary of the evidence.

[Summarize the evidence.]

Again, it is for you to determine for yourself the weight of the evidence and the credit to be given to the witnesses. You are not bound by my summation.

Use Note

In the rare instance the court gives a summary of the evidence, an instruction of this nature must be given. Also, "the court shall not comment on the credibility of witnesses or state a conclusion on the ultimate issue of fact before the jury."? MCR 2.513(M).

History

M Crim JI 3.5a (formerly CJI2d 3.5a) was adopted by the committee in September, 2011.

Reference Guide

Court Rules

MCR 2.513(M).

M Crim JI 3.6 Witnesses—Credibility

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

(2)In deciding which testimony you believe, you should rely on your own common sense and everyday experience. However, in deciding whether you believe a witness's testimony, you must set aside any bias or prejudice you may have based on the race, gender, or national origin of the witness.*

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

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

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

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

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

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

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

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

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

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

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

Use Note

*The court should substitute other improper considerations, such as religion or sexual orientation, where appropriate. This instruction should be given in every case. Bracketed portions should be given only on request, where there is evidence or argument that a witness's testimony may have been affected by promises, threats, suggestions, or other influences.

History

M Crim JI 3.6 (formerly CJI2d 3.6) was CJI 3:1:11-3:1:13; amended March, 1991.

Reference Guide

Case Law

Spalding v Lowe, 56 Mich 366, 371, 23 NW 46 (1885); *Knowles v People*, 15 Mich 408, 412 (1867).

M Crim JI 3.7 Multiple Defendants

(1)_____ and _____ are both on trial in this case. The fact that they are on trial together is not evidence that they were associated with each other or that either one is guilty.

(2)You should consider each defendant separately. Each is entitled to have [his / her] case decided on the evidence and the law that applies to [him / her].

[(3)If any evidence was limited to (one defendant / some defendants) you should not consider it as to any other defendants.]

Use Note

This instruction must be given when there are two or more defendants. Omit bracketed material to avoid confusion in conspiracy cases.

History

M Crim JI 3.7 (formerly CJI2d 3.7) was CJI 3:1:14; amended January, 1991.

Reference Guide

Case Law

People v Liggett, 378 Mich 706, 148 NW2d 784 (1967).

M Crim JI 3.8 Less Serious Crimes

You may also consider whether [the defendant is / either or both of the defendants are] guilty of the less serious crime known as _____.

History

M Crim JI 3.8 (formerly CJI2d 3.8) was CJI 3:1:15.

Reference Guide

Case Law

People v Smith, 478 Mich 64, 66, 731 NW2d 411 (2007); *People v Mendoza*, 468 Mich 527, 664 NW2d 685 (2003); *People v Reese*, 466 Mich 440, 647 NW2d 498 (2002); *People v Cornell*, 466 Mich 335, 646 NW2d 127 (2002); *People v Silver*, 466 Mich 386, 646 NW2d 150 (2002); *People v Hall (On Remand)*, 256 Mich App 674, 671 NW2d 545 (2003).

M Crim JI 3.9 Specific Intent *[deleted]*

Note: This instruction was deleted by the committee in May, 2005. The decision to delete the instruction was premised upon the supreme court's opinion in *People v Maynor*, 470 Mich 289, 683 NW2d 565 (2004). Discussing the first-degree child abuse statute, MCL 750.136*b(2)*, the *Maynor* majority noted that, in light of the state of mind requirement expressed in M Crim JI 17.18:

> [I]t is unnecessary for the jury to be given further instruction on "specific intent," such as that found in CJI2*d* 3.9. The need to draw the common-law distinction between "specific" and "general" intent is not required under the plain language of the statute, as long as the jury is instructed that it must find that defendant either knowingly or intentionally caused the harm. Moreover, the enactment of MCL 768.37, which abolished the defense of voluntary intoxication except in one narrow circumstance, has significantly diminished the need to categorize crimes as being either "specific" or "general" intent crimes.

Maynor, 470 Mich at 296-297. Since the offense instructions each contain any required *mens rea* element, the committee was of the view that M Crim JI 3.9 is redundant at best and potentially confusing at worst. For that reason, it was deleted and the final paragraph concerning proof of intent moved to M Crim JI 4.16.

M Crim JI 3.10 Time and Place (Venue)

The prosecutor must also prove beyond a reasonable doubt that the crime occurred on or about [*state date alleged*] within _____ County.

Use Note

The date should be stated with as much certainty as is reflected in the testimony; for example, "On or about June, 2004." If evidence of similar acts is given, if there is an alibi defense, or if there is any need for further instructions, the alternate clarifying instruction on time, M Crim JI 4.12, should be consulted.

History

M Crim JI 3.10 (formerly CJI2d 3.10) was CJI 3:1:17 and was last amended by the committee in October, 2004.

Reference Guide

Statutes

MCL 762.3.

Case Law

People v Houthoofd, 487 Mich 568, 790 NW2d 315 (2010); *People v Lee*, 334 Mich 217, 226, 54 NW2d 305 (1952); *People v Webbs*, 263 Mich App 531, 533, 689 NW2d 163 (2004).

M Crim JI 3.10a Time and Place (Venue)—Criminal Sexual Conduct Cases

The prosecutor must also prove beyond a reasonable doubt that the crime occurred within _____ County.

Time, however, is not an element of the crime of criminal sexual conduct. The prosecutor does not have to prove the date or time of the offense beyond a reasonable doubt.

History

M Crim JI 3.10a (formerly CJI2d 3.10a) was adopted by the committee in September, 2010.

Reference Guide

Case Law

People v Dobek, 274 Mich App 58, 82-84, 732 NW2d 546 (2007); *People v Miller*, 165 Mich App 32, 47, 418 NW2d 668 (1987), aff'd on remand, 186 Mich App 660, 465 NW2d 47 (1991); *People v Naugle*, 152 Mich App 227, 235, 393 NW2d 592 (1986).

M Crim JI 3.11 Deliberations and Verdict

(1)When you go to the jury room, you will be provided with a written copy [copies] of the final jury instructions. [A copy of electronically recorded instructions will also be provided to you.] You should first choose a foreperson. The foreperson should see to it that your discussions are carried on in a businesslike way and that everyone has a fair chance to be heard.

(2)During your deliberations please turn off your cell phones or other communications equipment until we recess.

(3)A verdict in a criminal case must be unanimous. In order to return a verdict, it is necessary that each of you agrees on that verdict. In the jury room you will discuss the case among yourselves, but ultimately each of you will have to make up your own mind. Any verdict must represent the individual, considered judgment of each juror.

(4)It is your duty as jurors to talk to each other and make every reasonable effort to reach agreement. Express your opinions and the reasons for them, but keep an open mind as you listen to your fellow jurors. Rethink your opinions and do not hesitate to change your mind if you decide you were wrong. Try your best to work out your differences.

(5)However, although you should try to reach agreement, none of you should give up your honest opinion about the case just because other jurors disagree with you or just for the sake of reaching a verdict. In the end, your vote must be your own, and you must vote honestly and in good conscience.

[*Use the next paragraph when there are less serious included crimes:*]

(6)In this case, there are several different crimes that you may consider. When you discuss the case, you must consider the crime of [*name principal charge*] first. [If you all agree that the defendant is guilty of that crime, you may stop your discussions and return your verdict.] If you believe that the defendant is not guilty of [*name principal charge*] or if you cannot agree about that crime, you should consider the less serious crime of [*name less serious charge*]. [You decide how long to spend on (*name principal charge*) before discussing (*name less serious charge*). You can go back to (*name principal charge*) after discussing (*name less serious charge*) if you want to.]

(7)If you have any questions about the jury instructions before you begin deliberations, or questions about the instructions that arise during deliberations, you may submit them in writing in a sealed envelope to the bailiff.

Use Note

This instruction should be given after the attorney's closing arguments regardless of whether the jury instructions are given before or after closing argument.

Paragraph (6) of this instruction is the approved form when the jury is instructed on less serious crimes. *See People v Handley*, 415 Mich 356, 329 NW2d 710 (1982). The remainder of the instruction should be given in every case.

History

M Crim JI 3.11 (formerly CJI2d 3.11) was CJI 3:1:15A, 3:1:18. Amended May, 2005; September, 2011.

Reference Guide

Court Rule

MCR 2.513(N)(2).

Case Law

People v Pollick, 448 Mich 376, 531 NW2d 159 (1995); *People v Hardin*, 421 Mich 296, 365 NW2d 101 (1984).

M Crim JI 3.11a Replacement Juror

Members of the jury, one of your fellow jurors is unable to continue the deliberations with you. Do not consider the reasons for the juror's discontinued service. Alternate juror [*name alternate juror*] will now participate. You are now a new jury and must start over with your deliberations.

History

M Crim JI 3.11a (formerly CJI2d 3.11a) was adopted by the committee in February, 2012.

Reference Guide

Court Rules

MCR 6.411.

M Crim JI 3.12 Deadlocked Jury

(1)You have returned from deliberations, indicating that you believe you cannot reach a verdict. I am going to ask you to please return to the jury room and resume your deliberations in the hope that after further discussion you will be able to reach a verdict. As you deliberate, please keep in mind the guidelines I gave you earlier.

(2)Remember, it is your duty to consult with your fellow jurors and try to reach agreement, if you can do so without violating your own judgment. To return a verdict, you must all agree, and the verdict must represent the judgment of each of you.

(3)As you deliberate, you should carefully and seriously consider the views of your fellow jurors. Talk things over in a spirit of fairness and frankness.

(4)Naturally, there will be differences of opinion. You should each not only express your opinion but also give the facts and the reasons on which you base it. By reasoning the matter out, jurors can often reach agreement.

(5)If you think it would be helpful, you may submit to the bailiff a written list of the issues that are dividing or confusing you. It will then be submitted to me. I will attempt to clarify or amplify the instructions in order to assist you in your further deliberations.

(6)When you continue your deliberations, do not hesitate to rethink your own views and change your opinion if you decide it was wrong.

(7)However, none of you should give up your honest beliefs about the weight or effect of the evidence only because of what your fellow jurors think or only for the sake of reaching agreement.

Use Note

This instruction, which follows the language of M Crim JI 3.11, is to be given when a jury returns from deliberation unable to reach a verdict. See *People v Larry*, 162 Mich App 142, 149, 412 NW2d 674 (1987).

History

M Crim JI 3.12 (formerly CJI2d 3.12) was CJI 3:1:18A. Amended September, 2011.

Reference Guide

Court Rules

MCR 2.513(N)(4).

Case Law

People v Larry, 162 Mich App 142, 149, 412 NW2d 674 (1987).

M Crim JI 3.13 Penalty

Possible penalty should not influence your decision. It is the duty of the judge to fix the penalty within the limits provided by law.

History

M Crim JI 3.13 (formerly CJI2d 3.13) was CJI 3:1:19.

Reference Guide

Case Law

People v Goad, 421 Mich 20, 364 NW2d 584 (1984); *People v Szczytko*, 390 Mich 278, 285, 212 NW2d 211 (1973).

M Crim JI 3.14 Communications with the Court

(1)If you want to communicate with me while you are in the jury room, please have your foreperson write a note and give it to the bailiff. It is not proper for you to talk directly with the judge, lawyers, court officers, or other people involved in the case.

(2)As you discuss the case, you must not let anyone, even me, know how your voting stands. Therefore, until you return with a unanimous verdict, do not reveal this to anyone outside the jury room.

Use Note

MCR 2.513(B) states in part: The court may not communicate with the jury or any juror pertaining to the case without notifying the parties and permitting them to be present. The court must ensure that all communications pertaining to the case between the court and the jury or any juror are made a part of the record.

History

M Crim JI 3.14 (formerly CJI2d 3.14) was CJI 3:1:20.

Reference Guide

Case Law

People v Bufkin, 168 Mich App 615, 425 NW2d 201 (1988).

M Crim JI 3.15 Exhibits

When you go to the jury room to deliberate, you may take [your notes and] full instructions. If you want to look at any or all of the reference documents or exhibits that have been admitted, just ask for them.

History

M Crim JI 3.15 (formerly CJI2d 3.15) was CJI 3:1:21. Amended September, 2011.

Reference Guide

Court Rules

MCR 2.513(O).

M Crim JI 3.16 Written or Electronically Recorded Instructions in the Jury Room

When you go to the jury room, you will be given a written copy of the instructions you have just heard. As you discuss the case, you should think about all my instructions together as the law you are to follow.

[Use when an electronically recorded instruction is provided:]

[You will also be given an electronically recorded copy of the instructions you have just heard.]

Use Note

The court shall provide a written copy of the instructions to the jury. The court may provide additional copies as needed. MCR 2.513(N)(3). Providing each juror with a copy of the instructions to view as the instructions are being recited by the court enables the jurors to have dual perception, which could enhance comprehension.

History

M Crim JI 3.16 (formerly CJI2d 3.16) was CJI 3:1:21A. Amended September, 2011.

Reference Guide

Court Rules

MCR 2.513(N)(3).

M Crim JI 3.17 Single Defendant—Single Count

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

History

M Crim JI 3.17 (formerly CJI2d 3.17) was CJI 3:1:22.

M Crim JI 3.18 Multiple Defendants—Single Count

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

History

M Crim JI 3.18 (formerly CJI2d 3.18) was CJI 3:1:23.

M Crim JI 3.19 Single Defendant—Multiple Counts—Single Wrongful Act

(1)The defendant is charged with one wrongful act in alternative counts, that is, that [he / she] is guilty of _____ or _____, but not both.

(2)You should consider these alternatives separately in light of all the evidence.

(3)You may find the defendant not guilty, guilty of _____, or guilty of _____.

History

M Crim JI 3.19 (formerly CJI2d 3.19) was CJI 3:1:24*;* amended January, 1991.

M Crim JI 3.20 Single Defendant—Multiple Counts—More Than One Wrongful Act

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

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

History

M Crim JI 3.20 (formerly CJI2d 3.20) was CJI 3:1:25.

M Crim JI 3.21 Multiple Defendants—Multiple Counts—Single Wrongful Act

(1) Each defendant is charged with one wrongful act in alternative counts, that is, that [he / she] is guilty of _____ or _____, but not both.

(2) For each defendant, you should consider these alternatives separately in light of all the evidence.

(3) You must return a separate verdict for each defendant. You may find each defendant not guilty, guilty of _____, or guilty of _____.

History

M Crim JI 3.21 (formerly CJI2d 3.21) was CJI 3:1:26; amended January, 1991.

M Crim JI 3.22 Multiple Defendants—Multiple Counts—More Than One Wrongful Act

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

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

History

M Crim JI 3.22 (formerly CJI2d 3.22) was CJI 3:1:27.

M Crim JI 3.23 Verdict Form

I have prepared a verdict form listing the possible verdicts.

Use Note

The use of verdict forms is optional, in the discretion of the trial judge. However, if a form is used, the judge should explain the form and the possible choices. See M Crim JI 3.24-3.31.

History

M Crim JI 3.23 (formerly CJI2d 3.23) was CJI 3:1:28.

M Crim JI 3.24 Verdict Form

Defendant: _____

[Count No. : _____]

POSSIBLE VERDICTS:

You may return only one verdict on this charge. Mark only one box on this sheet.

____ Not Guilty

____ Guilty of _____

History

M Crim JI 3.24 (formerly CJI2d 3.24) was CJI 3:1:29.

M Crim JI 3.25 Verdict Form

Defendant: _____

[Count No. _____]

POSSIBLE VERDICTS:

You may return only one verdict on this charge. Mark only one verdict on this sheet.

____ Not Guilty

____ Not Guilty by Reason of Insanity

____ Guilty but Mentally Ill of _____

____ Guilty of _____

History

M Crim JI 3.25 (formerly CJI2d 3.25) was CJI 3:1:30. Amended by the committee in September, 2000, to reflect the possible verdict of guilty but mentally ill as required by MCL 768.29a(2).

M Crim JI 3.26 Verdict Form

Defendant: _____

[Count No. _____]

POSSIBLE VERDICTS:

You may return only one verdict on this charge. Mark only one verdict on this sheet.

____ Not Guilty

____ Guilty of _____

Guilty of the Lesser Offense of:

____ _____

____ _____

____ _____

____ _____

____ _____

____ _____

____ _____

History

M Crim JI 3.26 (formerly CJI2d 3.26) was CJI 3:1:31.

Reference Guide

Case Law

People v Wade, 283 Mich App 462, 771 NW2d 447 (2009).

M Crim JI 3.27 Verdict Form

Defendant: _____

[Count No. _____]

POSSIBLE VERDICTS:

You may return only one verdict on this charge. Mark only one verdict on this sheet.

____ Not Guilty

____ Not Guilty by Reason of Insanity

____ Guilty but Mentally Ill of _____

____ Guilty but Mentally Ill of the Lesser Offense of _____

____ Guilty of _____

____ Guilty of the Lesser Offense of _____

History

M Crim JI 3.27 (formerly CJI2d 3.27) was CJI 3:1:32. Amended by the committee in September, 2000, to reflect the possible verdict of guilty but mentally ill as required by MCL 768.29a(2).

Reference Guide

Case Law

People v Wade, 283 Mich App 462, 771 NW2d 447 (2009).

M Crim JI 3.28 Verdict Form

Defendant: _____

POSSIBLE VERDICTS:

You may return only one verdict on this charge. Mark only one verdict on this sheet.

____ Not Guilty

Count 1

____ Guilty of _____

Count 2

____ Guilty of _____

History

M Crim JI 3.28 (formerly CJI2d 3.28) was CJI 3:1:33.

M Crim JI 3.29 Verdict Form

Defendant: _____

POSSIBLE VERDICTS:

You may return only one verdict on this charge. Mark only one verdict on this sheet.

____ Not Guilty

____ Not Guilty by Reason of Insanity

Count 1

____ Guilty but Mentally Ill of _____

____ Guilty of _____

Count 2

____ Guilty but Mentally Ill of _____

____ Guilty of _____

History

M Crim JI 3.29 (formerly CJI2d 3.29) was CJI 3:1:34. Amended by the committee in September, 2000, to reflect the possible verdict of guilty but mentally ill as required by MCL 768.29a(2).

M Crim JI 3.30 Verdict Form

Defendant: _____

POSSIBLE VERDICTS:

You may return only one verdict on this charge. Mark only one box on this sheet.

____ Not Guilty

Count 1

____ Guilty of _____

Count 2

____ Guilty of _____

Guilty of the Lesser Offense of:

____ _____

____ _____

____ _____

____ _____

____ _____

____ _____

____ _____

History

M Crim JI 3.30 (formerly CJI2d 3.30) was CJI 3:1:35.

Reference Guide

Case Law

People v Wade, 283 Mich App 462, 771 NW2d 447 (2009).

M Crim JI 3.31 Verdict Form

Defendant: _____

POSSIBLE VERDICTS:

You may return only one verdict on this charge. Mark only one verdict on this sheet.

____ Not Guilty

____ Not Guilty by Reason of Insanity

Count 1

____ Guilty but Mentally Ill of _____

____ Guilty of _____

Count 2

____ Guilty but Mentally Ill of _____

____ Guilty of _____

____ Guilty but Mentally Ill of the Lesser Offense of _____

____ Guilty of the Lesser Offense of _____

History

M Crim JI 3.31 (formerly CJI2d 3.31) was CJI 3:1:36. Amended by the committee in September, 2000, to reflect the possible verdict of guilty but mentally ill as required by MCL 768.29a(2).

Reference Guide

Case Law

People v Wade, 283 Mich App 462, 771 NW2d 447 (2009).

M Crim JI 3.32 Verdict Form (Single Count)

Defendant: _____

[First-degree Criminal Sexual Conduct]

POSSIBLE VERDICTS:

You may return only one verdict on this charge. Mark only one verdict in this section.

____ Not Guilty

____ Guilty of First-degree Criminal Sexual Conduct

If you find that the defendant was not guilty of first-degree criminal sexual conduct, do not consider the following section. Only proceed to the special findings if you have reached a verdict of guilty above.

ADDITIONAL SPECIAL FINDINGS:

If you found the defendant guilty of first-degree criminal sexual conduct, you must also decide whether or not the prosecutor proved beyond a reasonable doubt that [*name complainant*] was less than thirteen years old at the time of the offense, and that the defendant was seventeen years of age or older at the time of the offense. Consider each of these findings separately. Mark only one box for each numbered finding in this section. Your findings must be unanimous.

1.[*Name complainant*] was less than thirteen years old at the time of the offense.

___ Not Proved beyond a reasonable doubt

___ Proved beyond a reasonable doubt

2.The defendant was seventeen years of age or older at the time of the offense.

___ Not Proved beyond a reasonable doubt

___ Proved beyond a reasonable doubt

History

M Crim JI 3.32 was adopted in April 2015.

Reference Guide

Statutes

MCL 750.520b(2)(b)

Case Law

In *Alleyne v United States*, 570 US __; 133 S Ct 2151; 186 L Ed 2d 314 (2013), the United States Supreme Court held that facts that would trigger a mandatory minimum sentence must be admitted by the defendant or proved beyond a reasonable doubt to the trier of fact.

CHAPTER 4 *Evidence*

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M Crim JI 4.1 Defendant's Statements As Evidence Against the Defendant

(1)The prosecution has introduced evidence of a statement[1] that it claims the defendant made.

(2)Before you may consider such an out-of-court statement against the defendant, you must first find that the defendant actually made the statement as given to you.

(3)If you find that the defendant did make the statement, you may give the statement whatever weight you think it deserves. In deciding this, you should think about how and when the statement was made, and about all the other evidence in the case. You may consider the statement in deciding the facts of the case [and in deciding if you believe the defendant's testimony in court].[2]

Use Note

[1] Although "statement" is preferable to "confession" or "admission," if the latter descriptions have been used throughout the trial, they should be used in the instructions.

[2] Use the bracketed phrase only if the defendant testifies at trial and the prior statement is used to impeach his or her testimony.

History

M Crim JI 4.1 (formerly CJI2d 4.1) was CJI 4:1:01 and was last amended by the committee in October, 2002.

Reference Guide

Court Rules

MRE 801(d)(2)(A).

Case Law

Crane v Kentucky, 476 US 683 (1986); *Jackson v Denno*, 378 US 368 (1964); *People v Lundy*, 467 Mich 254, 257, 650 NW2d 332 (2002); *People v Walker*, 374 Mich 331, 132 NW2d 87 (1965); *People v Hamilton*, 163 Mich App 661, 415 NW2d 653 (1987); *People v Williams*, 46 Mich App 165, 169-170, 207 NW2d 480 (1973).

M Crim JI 4.2 Confession Not Admissible Against Codefendant

Defendant _____'s [statement / confession / admission] has been admitted as evidence only against [him / her]. It cannot be used against defendant _____, and you must not do so. You must not consider that statement in any way when you decide whether defendant _____ is guilty or not guilty.

Use Note

The extrajudicial confession of a codefendant that implicates another defendant can usually be introduced into evidence against the defendant only if the declarant testifies and is available for cross-examination by the defendant.

Under the Michigan Rules of Evidence (MRE 801(d)(2)(E)), statements by a coconspirator during the course of and in furtherance of a conspiracy are admissible against all conspirators upon prima facie showing of conspiracy. Under these circumstances, this instruction should not be used. See chapter 10 for instructions on conspiracy.

History

M Crim JI 4.2 (formerly CJI2d 4.2) was CJI 4:1:02; amended January, 1991.

Reference Guide

Case Law

Richardson v Marsh, 481 US 200 (1987); *Cruz v New York*, 481 US 186 (1987); *Parker v Randolph*, 442 US 62 (1979); *Bruton v US*, 391 US 123 (1968); *People v Frazier*, 446 Mich 539, 521 NW2d 291 (1994); *People v Poole*, 444 Mich 151, 506 NW2d 505 (1993); *People v Banks*, 438 Mich 408, 475 NW2d 769 (1991), cert den, 502 US 1065 (1992); *People v Richardson*, 204 Mich App 71, 514 NW2d 503 (1994); *People v Etheridge*, 196 Mich App 43, 492 NW2d 490 (1992), leave to appeal held in abeyance, 503 NW2d 906, 908 (1993); *People v Butler*, 193 Mich App 63, 66, 483 NW2d 430 (1992).

M Crim JI 4.3 Circumstantial Evidence

(1)Facts can be proved by direct evidence from a witness or an exhibit. Direct evidence is evidence about what we actually see or hear. For example, if you look outside and see rain falling, that is direct evidence that it is raining.

(2)Facts can also be proved by indirect, or circumstantial, evidence. Circumstantial evidence is evidence that normally or reasonably leads to other facts. So, for example, if you see a person come in from outside wearing a raincoat covered with small drops of water that would be circumstantial evidence that it is raining.

(3)You may consider circumstantial evidence. Circumstantial evidence by itself, or a combination of circumstantial evidence and direct evidence, can be used to prove the elements of a crime. In other words, you should consider all the evidence that you believe.

History

M Crim JI 4.3 (formerly CJI2d 4.3) was CJI 4:2:01-4:2:02.

Reference Guide

Case Law

Holland v United States, 348 US 121, 139 (1954); *People v Dellabonda*, 265 Mich 486, 513, 251 NW 594 (1933); *People v Stewart*, 75 Mich 21, 28, 42 NW 662 (1889); *People v Foley*, 64 Mich 148, 31 NW 94 (1887); *People v Moore*, 176 Mich App 555, 563, 440 NW2d 67 (1989); *People v Kent*, 157 Mich App 780, 794, 404 NW2d 668 (1987).

M Crim JI 4.4 Flight, Concealment, Escape or Attempted Escape

(1)There has been some evidence that the defendant [tried to run away / tried to hide / ran away / hid] after [the alleged crime / (he / she) was accused of the crime / the police arrested (him / her) / the police tried to arrest (him / her)].

(2)This evidence does not prove guilt. A person may run or hide for innocent reasons, such as panic, mistake, or fear. However, a person may also run or hide because of a consciousness of guilt.

(3)You must decide whether the evidence is true, and, if true, whether it shows that the defendant had a guilty state of mind.

History

M Crim JI 4.4 (formerly CJI2d 4.4) was CJI 4:4:01*; revised* January, 1991.

Reference Guide

Case Law

Wong Sun v United States, 371 US 471, 483-484 n10 (1963); *Cooper v United States*, 94 US App DC 343, 345, 218 F2d 39, 41 (1954); *Vick v United States*, 216 F2d 228, 233 (CA 5, 1954); *People v Smelley*, 485 Mich 1023, 776 NW2d 310 (2010); *People v Cammarata*, 257 Mich 60, 240 NW 14 (1932); *People v Cismadija*, 167 Mich 210, 132 NW 489 (1911); *People v Cutchall*, 200 Mich App 396, 504 NW2d 666 (1993); *People v Kraai*, 92 Mich App 398, 285 NW2d 309 (1979); *People v Kyles*, 40 Mich App 357, 360, 198 NW2d 732 (1972).

M Crim JI 4.5 Prior Inconsistent Statement Used to Impeach Witness

You have heard evidence that, before the trial, [a witness / witnesses] made [a statement / statements] that may be inconsistent with [his / her / their] testimony here in court.

(1)You may consider an inconsistent statement made before the trial [only][1] to help you decide how believable the [witness' / witnesses'] testimony was when testifying here in court.

(2) If the earlier statement was made under oath, then you may also consider the earlier statement as evidence of the truth of whatever the [witness / witnesses] said in the earlier [statement / statements] when determining the facts of this case.[2]

Use Note

[1] If the statement is admissible only as impeachment, use [only], and do not read (2). If the statement is also admissible as substantive evidence under MRE 801(d)(1), do not use [only] and read both (1) and (2).

[2] Other out-of-court inconsistent statements may also be admissible as substantive evidence. The court may modify the instruction under appropriate circumstances.

History

M Crim JI 4.5 (formerly CJI2d 4.5) was CJI 4:5:01; amended June, 1991; amended September, 2003; amended August 2017.

Reference Guide

Court Rules

MRE 801(c)-(d), 803, 803A, 804.

Case Law

People v D'Angelo, 401 Mich 167, 257 NW2d 655 (1977); *People v Durkee*, 369 Mich 618, 120 NW2d 729 (1963); *People v Bonner*, 116 Mich App 41, 321 NW2d 835 (1982); *People v Kohler*, 113 Mich App 594, 599, 318 NW2d 481 (1981); *People v Adams*, 92 Mich App 619, 628, 285 NW2d 392 (1979); *People v Paul Mathis*, 55 Mich App 694, 223 NW2d 310 (1974); *People v Russell*, 27 Mich App 654, 183 NW2d 845 (1970).

M Crim JI 4.6 Judicial Notice

In this case, I took judicial notice that [*state fact*]. This means that you may accept this fact as true, but you are not required to do so.

History

M Crim JI 4.6 (formerly CJI2d 4.6) was CJI 4:6:01.

Reference Guide

Court Rules

MRE 201(f).

Case Law

People v Reed, 393 Mich 342, 224 NW2d 867 (1975).

M Crim JI 4.7 Stipulation

When the lawyers agree on a statement of facts, these are called stipulated facts. You may regard such stipulated facts as true, but you are not required to do so.

History

M Crim JI 4.7 (formerly CJI2d 4.7) was CJI 4:11:01.

Reference Guide

Case Law

People v Crawford, 458 Mich 376, 389, 582 NW2d 785 (1998).

M Crim JI 4.8 Jury View of Premises

I am letting you see [*name premises, scene, or object viewed*] only to help you understand the evidence that was presented in court. You must not consider anything you learn from seeing [*name premises, scene, or object viewed*] that was not covered by the evidence admitted in the trial.

Use Note

This instruction is to be used only when the court has permitted a view of something other than an exhibit. This instruction should be given even though the court convenes at the scene and takes testimony. The instruction may be given before or at the time of the view. MCR 2.513(J) provides that, in the interests of safety and security, the trial court may preclude a defendant from attending a jury view.

History

M Crim JI 4.8 (formerly CJI2d 4.8) was CJI 4:7:01.

Reference Guide

Statutes

MCL 768.28.

Court Rules

MCR 2.513(J).

Case Law

People v Auerbach, 176 Mich 23, 141 NW 869 (1913).

M Crim JI 4.9 Motive

(1)You may consider whether the defendant had a reason to commit the alleged crime, but a reason, by itself, is not enough to find a person guilty of a crime.

(2)The prosecutor does not have to prove that the defendant had a reason to commit the alleged crime. [He / she] only has to show that the defendant actually committed the crime [and that (he / she) meant to do so].

Use Note

This instruction is discretionary with the trial judge and may be given where the counsel have presented an unbalanced viewpoint of the value of motive evidence. Use the bracketed material in the second paragraph where the crime charged is a specific intent crime.

History

M Crim JI 4.9 (formerly CJI2d 4.9) was CJI 4:8:01; amended January, 1991.

Reference Guide

Case Law

People v Milhalko, 306 Mich 356, 10 NW2d 914 (1943); *People v Kuhn*, 232 Mich 310, 205 NW 188 (1925); *People v Noble*, 152 Mich App 319, 393 NW2d 619 (1986); *People v Stanton*, 97 Mich App 453, 460, 296 NW2d 70 (1980).

M Crim JI 4.10 Preliminary Examination Transcript

The testimony of _____ was read into this trial because [he / she] was not available. This testimony was taken under oath at an earlier hearing. You should consider this testimony in the same way you consider any other testimony you have heard in court.

Use Note

MRE 804*(a)* of the Michigan Rules of Evidence defines unavailability of a witness.

History

M Crim JI 4.10 (formerly CJI2d 4.10) was CJI 4:9:01; amended January, 1991.

Reference Guide

Statutes

MCL 768.26.

Court Rule

MRE 804(a).

Case Law

People v Dye, 431 Mich 58, 427 NW2d 501 (1988); *People v Karelse*, 428 Mich 872, 437 NW2d 255 (1987); *People v Gonzales*, 415 Mich 615, 627, 329 NW2d 743 (1982), remanded by 417 Mich 968, 336 NW2d 751 (1983), app den, 424 Mich 908, 385 NW2d 585 (1986); *People v Pickett*, 339 Mich 294, 63 NW2d 681 (1954), cert den, 349 US 937 (1955); *People v Schepps*, 217 Mich 406, 186 NW 508 (1922); *People v Pennington*, 113 Mich App 688, 318 NW2d 542 (1982).

M Crim JI 4.11 Evidence of Other Offenses—Relevance Limited to Particular Issue

(1)You have heard evidence that was introduced to show that the defendant committed [a crime / crimes / improper acts] for which [he / she] is not on trial.

(2)If you believe this evidence, you must be very careful only to consider it for certain purposes. You may only think about whether this evidence tends to show:

[Choose one or more from (a) through (g):]

(a)That the defendant had a reason to commit the crime;

(b)That the defendant specifically meant to _____;

(c)That the defendant knew what the things found in [his / her] possession were;

(d)That the defendant acted purposefully—that is, not by accident or mistake, or because [he / she] misjudged the situation;

(e)That the defendant used a plan, system, or characteristic scheme that [he / she] has used before or since;

(f)Who committed the crime that the defendant is charged with.

(g)*[State other proper purpose for which evidence is offered.]*

(3)You must not consider this evidence for any other purpose. For example, you must not decide that it shows that the defendant is a bad person or that [he / she] is likely to commit crimes. You must not convict the defendant here because you think [he / she] is guilty of other bad conduct. All the evidence must convince you beyond a reasonable doubt that the defendant committed the alleged crime, or you must find [him / her] not guilty.

Use Note

Do *not* use this instruction for uncharged acts of sexual intimacy in child sex cases. Instead, see M Crim JI 20.28, Uncharged Acts in Child Criminal Sexual Conduct Cases.

History

M Crim JI 4.11 (formerly CJI2d 4.11) was CJI 4:10:01. Amended June, 1990; January, 1991; October, 1993.

Reference Guide

Statutes

MCL 768.27, .27a, .27b.

Court Rules

MRE 404(b).

Case Law

People v Knox, 469 Mich 502, 674 NW2d 366 (2004*); People v Hine*, 467 Mich 242, 650 NW2d 659 (2002); *People v Sabin*, 463 Mich 43, 614 NW2d 888 (2000); *People v Vandervliet*, 444 Mich 52, 508 NW2d 114 (1993); *People v Engelman*, 434 Mich 204, 212, 453 NW2d 656 (1990); *People v Goddard*, 429 Mich 505, 418 NW2d 881 (1988); *People v Major*, 407 Mich 394, 285 NW2d 660 (1979); *People v Rustin*, 406 Mich 527, 280 NW2d 448 (1979); *People v Delgado*, 404 Mich 76, 83, 273 NW2d 395 (1978); *People v Duncan*, 402 Mich 1, 12, 260 NW2d 58 (1977); *People v Oliphant*, 399 Mich 472, 250 NW2d 443 (1976); *People v Renno*, 392 Mich 45, 219 NW2d 422 (1974); *People v DerMartzex*, 390 Mich 410, 417, 213 NW2d 97 (1973); *People v Kelly*, 386 Mich 330, 192 NW2d 494 (1971); *People v Davis*, 343 Mich 348, 72 NW2d 269 (1955); *People v Johnston*, 328 Mich 213, 43 NW2d 334 (1950); *People v Randall*, 294 Mich 478, 293 NW 725 (1940); *People v Kalder*, 284 Mich 235, 279 NW 493 (1938); *People v Savage*, 225 Mich 84, 86, 195 NW 669 (1923); *People v Crawford*, 218 Mich 125, 187 NW 522 (1922); *People v Di Pietro*, 214 Mich 507, 183 NW 22 (1921); *People v Rice*, 206 Mich 644, 173 NW 495 (1919); *People v Bullock*, 173 Mich 397, 410, 139 NW 43 (1912); *People v Pattison*, 276 Mich App 613, 741 NW2d 558 (2007); *People v Mitchell*, 223 Mich App 395, 398, 566 NW2d 312 (1997), on remand, 231 Mich App 335, 586 NW2d 119 (1999); *People v McMillan*, 213 Mich App 134, 539 NW2d 553 (1995); *People v Kvam*, 160 Mich App 189, 408 NW2d 71 (1987); *People v Burgess*, 153 Mich App 715, 396 NW2d 814 (1986); *People v Garland*, 152 Mich App 301, 393 NW2d 896 (1986), remanded, 431 Mich 855, 426 NW2d 184 (1988); *People v Robinson*, 128 Mich App 338, 340 NW2d 303 (1983); *People v Nabers*, 103 Mich App 354, 367-368, 303 NW2d 205, rev'd on other grounds, 411 Mich 1046, 309 NW2d 187 (1981); *People v Cramer*, 97 Mich App 148, 155, 293 NW2d 744 (1980); *People v Austin*, 95 Mich App 662, 291 NW2d 160 (1980); *People v Castillo*, 82 Mich App 476, 266 NW2d 460 (1978); *People v Fields*, 49 Mich App 652, 212 NW2d 612 (1973); *People v Chism*, 32 Mich App 610, 189 NW2d 435 (1971), aff'd, 390 Mich 104, 211 NW2d 193 (1973); *People v Heiss*, 30 Mich App 126, 186 NW2d 63 (1971).

M Crim JI 4.11a Evidence of Other Acts of Domestic Violence

(1)The prosecution has introduced evidence of claimed acts of domestic violence* by the defendant for which [he / she] is not on trial.

(2)Before you may consider such alleged acts as evidence against the defendant, you must first find that the defendant actually committed such acts.

(3)If you find that the defendant did commit those acts, you may consider them in deciding if the defendant committed the [offense / offenses] for which [he / she] is now on trial.

(4)You must not convict the defendant here solely because you think [he / she] is guilty of other bad conduct. The evidence must convince you beyond a reasonable doubt that the defendant committed the alleged crime, or you must find [him / her] not guilty.

Use Note

Domestic violence for purposes of this instruction is defined in MCL 768.27b(5).

History

This instruction was adopted by the committee in September, 2006, for use with MCL 768.27b. The instruction was renumbered from M Crim JI 5.8c in February, 2010, and amended to incorporate the cautionary component of M Crim JI 4.11.

Reference Guide

Statutes

MCL 768.27b.

Case Law

People v Pattison, 276 Mich App 613, 741 NW2d 558 (2007).

M Crim JI 4.12 Time—Optional Clarifying Instruction

(1)The defendant is charged with only one crime. [This criminal act is (*describe act with as much certainty as is reflected in the testimony*).][1]

(2)The prosecutor says that this crime took place at [*state place with as much certainty as is reflected in the testimony*]. The prosecutor also says that the crime took place on or about [*state date and time with as much certainty as is reflected in the testimony*].[2] [The prosecutor does not have to prove that the crime was committed on that exact date, but only that it was committed reasonably near that date.][3]

(3)[Some of the testimony in this case might show that the defendant committed other bad acts. Remember that the defendant is not on trial for any of those acts.][4] You must find that the defendant committed the alleged act or you must find the defendant not guilty.

Use Note

[1] The bracketed material should be used when there might be confusion because of the vagueness of the testimony about where and when the criminal act took place or if a description of the criminal act relied on would be clarifying.

[2] This instruction should reflect the testimony and sometimes may not allege a specific date. It will be sufficient if it reflects the testimony, such as: The prosecutor also alleges that the crime occurred on or about May or June, 1989.

[3] This instruction should not be given where the evidence clearly indicates a certain time and the defense is alibi.

[4] This paragraph is to be given when testimony about other bad acts has been introduced.

History

M Crim JI 4.12 (formerly CJI2d 4.12) was CJI 4:12:01.

Reference Guide

Statutes

MCL 767.45, .51.

Case Law

People v Whittemore, 230 Mich 435, 437, 203 NW 87 (1925); *People v Swift*, 172 Mich 473, 488, 138 NW 662 (1912); *People v Taylor*, 185 Mich App 1, 460 NW2d 582 (1990).

M Crim JI 4.13 Special Venue Instruction—Felony Consisting of More Than One Act

The alleged crime in this case is made up of several acts. The prosecutor only has to prove that one of these acts took place in _____ County; [he / she] does not have to prove that all of them took place there. When applicable, this instruction is to be given after the general time and place instruction, M Crim JI 3.10.

Use Note

When applicable, this instruction is to be given after the general time and place instruction, M Crim JI 3.10.

This is a cautionary instruction based on MCL 762.8:

Whenever a felony consists or is the culmination of 2 or more acts done in the perpetration of that felony, the felony may be prosecuted in any county where any of those acts were committed or in any county that the defendant intended the felony or acts done in perpetration of the felony to have an effect.

History

M Crim JI 4.13 (formerly CJI2d 4.13) was CJI 4:13:01; amended January, 1991; December, 2013.

Reference Guide

Statutes

MCL 762.8.

M Crim JI 4.14 Tracking-Dog Evidence

You have heard testimony about the use of a tracking-dog. You must consider tracking-dog evidence with great care and remember that it has little value as proof. Even if you decide that it is reliable, you must not convict the defendant based only on tracking-dog evidence. There must be other evidence that the defendant is guilty.

Use Note

This instruction must be given when testimony about the use of tracking-dog evidence is introduced.

History

M Crim JI 4.14 (formerly CJI2d 4.14) was CJI 4:14:01.

Reference Guide

Case Law

People v Warinner, 461 Mich 885, 891, 601 NW2d 378 (1999); *People v Laidlaw*, 169 Mich App 84, 93, 425 NW2d 738 (1988); *People v McMillen*, 126 Mich App 211, 336 NW2d 895 (1983); *People v McRaft*, 102 Mich App 204, 301 NW2d 852 (1980); *People v Perryman*, 89 Mich App 516, 280 NW2d 579 (1979); *People v McPherson*, 85 Mich App 341, 271 NW2d 228 (1978); *People v Harper*, 43 Mich App 500, 508, 204 NW2d 263 (1972).

M Crim JI 4.15 Fingerprint Evidence

The prosecutor has introduced evidence about fingerprints. You may consider this evidence when you decide whether the prosecutor has proved beyond a reasonable doubt that the defendant was the person who committed the alleged crime. However, fingerprints matching the defendant's must have been found in the place the crime was committed under such circumstances that they could only have been put there when the crime was committed.

Use Note

This instruction should be given only where the sole evidence of identity comes from fingerprints.

History

M Crim JI 4.15 (formerly CJI2d 4.15) was CJI 4:15:01.

Reference Guide

Case Law

People v Willis, 60 Mich App 154, 230 NW2d 353 (1975); *People v Cullens*, 55 Mich App 272, 222 NW2d 315 (1974); *People v Ware*, 12 Mich App 512, 163 NW2d 250 (1968).

M Crim JI 4.16 Intent

The defendant's intent may be proved by what [he / she] said, what [he / she] did, how [he / she] did it, or by any other facts and circumstances in evidence.

Use Note

This instruction may be used when requested or deemed helpful by the court.

History

M Crim JI 4.16 (formerly CJI2d 3.9(3)). Adopted May, 2005.

Reference Guide

Case Law

People v Maynor, 470 Mich 289, 296-297, 683 NW2d 565 (2004).

M Crim JI 4.17 Drug Profile Evidence

You have heard testimony from [*name witness(es)*] about [his / her / their] training or experience concerning other drug cases. This testimony is not to be used to determine whether the defendant committed the crime charged in this case. This testimony may be considered by you only for the purpose of *[state purpose for which evidence was offered and admitted]*.

History

M Crim JI 4.17 (formerly CJI2d 4.17) adopted by the committee in May, 2008.

Reference Guide

Case Law

People v Murray, 234 Mich App 46 (1999); *People v Hubbard*, 209 Mich App 234, 241-242, 530 NW2d 130 (1995).

CHAPTER 5 *Witnesses*

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M Crim JI 5.1 Witnesses—Impeachment by Prior Conviction

(1)You have heard that one witness, _____, has been convicted of a crime in the past.

(2)You should judge this witness's testimony the same way you judge the testimony of any other witness. You may consider [his / her] past criminal convictions, along with all the other evidence, when you decide whether you believe [his / her] testimony and how important you think it is.

History

M Crim JI 5.1 (formerly CJI2d 5.1) was CJI 5:1:01; amended January, 1991.

Reference Guide

Court Rules

MRE 609.

Case Law

Luce v United States, 469 US 38 (1984); *People v Finley*, 431 Mich 506, 431 NW2d 19 (1988); *People v Allen*, 429 Mich 558, 420 NW2d 499 (1988).

M Crim JI 5.2 Weighing Conflicting Evidence—Number of Witnesses

You should not decide this case based on which side presented more witnesses. Instead, you should think about each witness and each piece of evidence and whether you believe them. Then you must decide whether the testimony and evidence you believe proves beyond a reasonable doubt that the defendant is guilty.

Use Note

This instruction may be given where the number of witnesses is raised in argument, or on request. This charge should not be given unless the defendant has introduced evidence, and it should be given only if there is a disparity between the number of witnesses or volume of evidence presented by the state and the defendant.

History

M Crim JI 5.2 (formerly CJI2d 5.2) was CJI 5:1:02.

Reference Guide

Case Law

People v Phillips, 112 Mich App 98, 109-110, 315 NW2d 868 (1982); *People v Hagle*, 67 Mich App 608, 617, 242 NW2d 27 (1976).

M Crim JI 5.3 Witness Who Has Been Interviewed by a Lawyer

You have heard that a lawyer [or lawyer's representative] talked to one of the witnesses. There is nothing wrong with this. A lawyer [or lawyer's representative] may talk to a witness to find out what the witness knows about the case and what the witness's testimony will be.

History

M Crim JI 5.3 (formerly CJI2d 5.3) was CJI 5:1:03; amended January, 1991.

M Crim JI 5.4 Witness as Undisputed Accomplice

(1)[*Name witness*] says [he / she] took part in the crime that the defendant is charged with committing.

[Choose as many of the following as apply:]

[(a)(*Name witness*) has already been convicted of charges arising out of the commission of that crime.]

[(b)The evidence clearly shows that (*name witness*) is guilty of the same crime the defendant is charged with.]

[(c)(*Name witness*) has been promised that (he / she) will not be prosecuted for the crime the defendant is charged with committing based upon any information derived directly or indirectly from the witness's truthful testimony. The witness may be prosecuted if the prosecution obtains additional, independent evidence against the witness.]

[(d)(*Name witness*) has been promised that (he / she) will not be prosecuted for the crime the defendant is charged with committing.]

(2)Such a witness is called an accomplice.

Use Note

This instruction is to be followed by the instruction on weighing testimony of an accomplice, M Crim JI 5.6. This charge should be given automatically where the witness has admitted his guilt or has been convicted of the crime, or where the evidence clearly indicates his complicity. Strike out whichever of the bracketed statements is inapplicable. Of course, more than one may apply. In certain classes of cases (e.g., consensual statutory rape), the victim as a matter of law is not considered to be an accomplice. In those cases, the defendant is not entitled to the charge on accomplice testimony. MCL 767.6 provides for use immunity (see paragraph 1(c) above). However, the prosecution can offer a witness/accomplice transactional immunity (see paragraph 1(d) above).

History

M Crim JI 5.4 (formerly CJI2d 5.4) was CJI 5:3:01*;* amended January, 1991; September, 2010.

Reference Guide

Statutes

MCL 767.6.

Case Law

People v Pettiford, No 288552, 2010 Mich App Lexis 813 (May 6, 2010) (unpublished).

M Crim JI 5.5 Witness a Disputed Accomplice

(1)Before you may consider what [*name witness*] said in court, you must decide whether [he / she] took part in the crime the defendant is charged with committing. [*Name witness*] has not admitted taking part in the crime, but there is evidence that could lead you to think that [he / she] did.

(2)A person who knowingly and willingly helps or cooperates with someone else in committing a crime is called an accomplice.

(3)When you think about [*name witness*]'s testimony, first decide if [he / she] was an accomplice. If, after thinking about all the evidence, you decide that [he / she] did not take part in this crime, judge [his / her] testimony as you judge that of any other witness. But, if you decide that [*name witness*] was an accomplice, then you must consider [his / her] testimony in the following way:

Use Note

This instruction is to be followed by the instruction on weighing testimony of an accomplice, M Crim JI 5.6. If there is a dispute as to the status of the witness as an accomplice, this fact should be submitted to the jury as a separate question for its determination.

History

M Crim JI 5.5 (formerly CJI2d 5.5) was CJI 5:2:02; amended January, 1991.

Reference Guide

Case Law

People v Young, 472 Mich 130, 693 NW2d 801 (2005); *People v Dumas*, 161 Mich 45, 125 NW 766 (1910); *People v Walker*, 3 Mich App 230, 145 NW2d 25 (1966).

M Crim JI 5.6 Cautionary Instruction Regarding Accomplice Testimony

(1)You should examine an accomplice's testimony closely and be very careful about accepting it.

(2)You may think about whether the accomplice's testimony is supported by other evidence, because then it may be more reliable. However, there is nothing wrong with the prosecutor's using an accomplice as a witness. You may convict the defendant based only on an accomplice's testimony if you believe the testimony and it proves the defendant's guilt beyond a reasonable doubt.

(3)When you decide whether you believe an accomplice, consider the following:

(a)Was the accomplice's testimony falsely slanted to make the defendant seem guilty because of the accomplice's own interests, biases, or for some other reason?

(b)Has the accomplice been offered a reward or been promised anything that might lead [him / her] to give false testimony? [*State what the evidence has shown. Enumerate or define reward.*]

(c)Has the accomplice been promised that [he / she] will not be prosecuted, or promised a lighter sentence or allowed to plead guilty to a less serious charge? If so, could this have influenced [his / her] testimony?

[(d)Does the accomplice have a criminal record?]

(4)In general, you should consider an accomplice's testimony more cautiously than you would that of an ordinary witness. You should be sure you have examined it closely before you base a conviction on it.

Use Note

Use bracketed material as applicable. Where appropriate, list any other grounds or circumstances that have arisen in a particular case. This cautionary instruction may be used even when the defendant, rather than the prosecutor, calls an accomplice. Of course, the instruction should be modified appropriately if the defendant calls the witness. For an example of such a modification, see *People v Heikkinen*, 250 Mich App 322, 646 NW2d 190 (2002).

History

M Crim JI 5.6 (formerly CJI2d 5.6) was CJI 5:2:03; amended January, 1991.

Reference Guide

Case Law

People v Young, 472 Mich 130, 693 NW2d 801 (2005); *People v Dumas*, 161 Mich 45, 125 NW 766 (1910); *People v Walker*, 3 Mich App 230, 145 NW2d 25 (1966).

M Crim JI 5.7 Addict-Informer

(1)You have heard the testimony of _____, who has given information to the police in this case. The evidence shows that [he / she] is addicted to a drug, namely _____.

(2)You should examine the testimony of an addicted informer closely and be very careful about accepting it.

(3)You should think about whether the testimony is supported by other evidence, because then it may be more reliable. However, there is nothing wrong with the prosecutor using an addicted informer as a witness. You may convict the defendant based on such a witness's testimony alone if you believe the testimony and it proves the defendant's guilt beyond a reasonable doubt.

(4)When you decide whether to believe [*name witness*], consider the following:

(a)Did the fact that this witness is addicted to drugs affect [his / her] memory of events or ability to testify accurately?

(b)Does the witness's addiction give [him / her] some special reason to testify falsely?

[(c)Does the witness expect a reward or some special treatment or has (he / she) been offered a reward or been promised anything that might lead (him / her) to give false testimony?

(d)Has the witness been promised that (he / she) will not be prosecuted for any charge, or promised a lighter sentence or allowed to plead guilty to a less serious charge? If so, could this have influenced (his / her) testimony?

(e)Was the witness's testimony falsely slanted to make the defendant seem guilty because of the witness's own interests or to remove suspicion from others, or because (he / she) feared retaliation from others in drug trafficking?

(f)Was the witness affected by the fear of being jailed and denied access to drugs?

(g)Does the witness have a past criminal record?]

(5)In general, you should consider an addicted informer's testimony more cautiously than you would that of an ordinary witness. You should be sure you have examined it closely before you base a conviction on it.

Use Note

Both sides should have the opportunity to develop the record with respect to the fairness of addict-informant instructions. These instructions are based on similar instructions on accomplice testimony. Upon request the trial court and the prosecutor must disclose any leniency or immunity granted the witness or any reasonable expectations of leniency resulting from contact with the prosecutor. This is a cautionary instruction to be used where the uncorroborated testimony of an addict informant is the only evidence linking the accused with the alleged offense. *People v Griffin*, 235 Mich App 27,

40, 597 NW2d 176 (1999).

History

M Crim JI 5.7 (formerly CJI2d 5.7) was CJI 5:2:04; amended January, 1991.

Reference Guide

Case Law

People v Atkins, 397 Mich 163, 243 NW2d 292 (1976); *People v Mata (On Remand)*, 80 Mich App 204, 263 NW2d 332 (1977).

M Crim JI 5.8 Character Evidence Regarding Credibility of Witness

(1)You have heard evidence about the character of [*name witness*] for truthfulness. You may consider this evidence, together with all the other evidence in the case, in deciding whether you believe the testimony of [*name witness*] and in deciding how much weight to give that testimony.

[(2)The prosecutor has cross-examined (one / some) of the defendant's character witnesses as to whether they had heard anything bad about the defendant. You should consider such cross-examination only in deciding whether you believe the character witnesses and whether they described (him / her) fairly.][1]

[(3)The prosecutor also called witnesses who testified that the defendant does not have a good character for truthfulness. This evidence can only be considered by you in judging the believability of the defendant's testimony. It is not evidence that (he / she) committed the crime charged.][2]

Use Note

[1] Use paragraph (2) only where the prosecutor has cross-examined the defendant's character witnesses concerning reported conduct inconsistent with the claimed good character for truthfulness.

[2] Use paragraph (3) only where the prosecutor calls adverse character witnesses on rebuttal.

History

M Crim JI 5.8 (formerly CJI2d 5.8) was CJI 5:2:05-5:2:08; amended June, 1992.

Reference Guide

Court Rules

MRE 608(a).

Case Law

People v Matthews, 143 Mich App 45, 371 NW2d 887 (1985).

M Crim JI 5.8a Character Evidence Regarding Conduct of the Defendant

(1)You have heard evidence about the defendant's character for [peacefulness / honesty / good sexual morals / being law-abiding / (*describe other trait*)]. You may consider this evidence, together with all the other evidence in the case, in deciding whether the defendant committed the crime with which (he / she) is charged. Evidence of good character alone may sometimes create a reasonable doubt in your minds and lead you to find the defendant not guilty.

[(2)The prosecutor has cross-examined (one / some) of the defendant's character witnesses as to whether they had heard anything bad about the defendant. You should consider such cross-examination only in deciding whether you believe the character witnesses and whether they described the defendant fairly.][1]

[(3)The prosecutor also called witnesses who testified that the defendant does not have the good character described by the defendant's character witnesses. This evidence can only be considered by you in judging whether you believe the defendant's character witnesses and whether the defendant has a good character for (*describe trait*). It is not evidence that the defendant committed the crime charged.][2]

Use Note

[1] Use paragraph (2) only where the prosecutor has cross-examined the defendant's character witnesses concerning reported conduct inconsistent with the claimed good character.

[2] Use paragraph (3) only where the prosecutor has called adverse character witnesses on rebuttal.

History

M Crim JI 5.8a (formerly CJI2d 5.8a) new June, 1992.

Reference Guide

Court Rules

MRE 405(a).

Case Law

People v Whitfield, 425 Mich 116, 130-131, 388 NW2d 206 (1986); *People v Champion*, 411 Mich 468, 471, 307 NW2d 681 (1981); *People v Simard*, 314 Mich 624, 23 NW2d 106 (1946); *People v Lane*, 304 Mich 29, 7 NW2d 210 (1942); *People v Rosa*, 268 Mich 462, 465, 256 NW 483 (1934); *People v Trahos*, 251 Mich 592, 232 NW 357 (1930); *People v Powell*, 223 Mich 633, 640; 194 NW 502 (1923); *People v Van Dam*, 107 Mich 425, 65 NW 277 (1895); *People v Jassino*, 100 Mich 536, 59 NW 230 (1894); *People v Garbutt*, 17 Mich 9 (1868); *People v Taylor*, 159 Mich App 468, 488, 406 NW2d 859 (1987); *People v Thomas*, 126 Mich App 611, 337 NW2d 598 (1983).

M Crim JI 5.8b Evidence of Other Acts of Child Sexual Abuse [*renumbered M Crim JI 20.28a in May, 2008*]

[This instruction was adopted by the committee in September, 2006, for use with MCL 768.27a, effective January 1, 2006, and renumbered as M Crim JI 20.28a in May, 2008.]

M Crim JI 5.8c Evidence of Other Acts of Domestic Violence [*amended and renumbered M Crim JI 4.11a in February, 2010*]

Note: This instruction was renumbered to M Crim JI 4.11a in February, 2010, and amended to incorporate the cautionary component of M Crim JI 4.11.

M Crim JI 5.9 Child Witness

For a witness who is a [young] child, a promise to tell the truth takes the place of an oath to tell the truth.

Use Note

This instruction is based on former MCL 600.2163, repealed by 1998 PA 323, eff. Aug. 3, 1998.

History

M Crim JI 5.9 (formerly CJI2d 5.9) was CJI 5:2:09. Amended by the committee in September, 2000, to delete reference to children under 10 as provided in the former statute, MCL 600.2163.

Reference Guide

Case Law

People v Walker, 113 Mich 367, 369, 71 NW 641 (1897); *Mead v Harris*, 101 Mich 585, 588, 60 NW 284 (1894); *McGuire v People*, 44 Mich 286, 287-288, 6 NW 669 (1880); *People v McNeill*, 81 Mich App 368, 377-378, 265 NW2d 334 (1978); *People v Edwards*, 35 Mich App 233, 235, 192 NW2d 382 (1971); *People v Strunk*, 11 Mich App 99, 160 NW2d 602 (1968).

M Crim JI 5.10 Expert Witness

(1)You have heard testimony from a witness, _____, who has given you [his / her] opinion as an expert in the field of _____. Experts are allowed to give opinions in court about matters they are experts on.

(2)However, you do not have to believe an expert's opinion. Instead, you should decide whether you believe it and how important you think it is. When you decide whether you believe an expert's opinion, think carefully about the reasons and facts [he / she] gave for [his / her] opinion, and whether those facts are true. You should also think about the expert's qualifications, and whether [his / her] opinion makes sense when you think about the other evidence in the case.

Use Note

Do *not* use this instruction where the expert testifies regarding the characteristics of sexually abused children and about whether the complainant's behavior is consistent with those characteristics. Instead, see M Crim JI 20.29, Limiting Instruction on Expert Testimony (Child Criminal Sexual Conduct Cases).

History

M Crim JI 5.10 (formerly CJI2d 5.10) was CJI 5:2:11-5:2:12; amended January, 1991.

Reference Guide

Court Rules

MRE 702-703.

Case Law

Daubert v Merrell Dow Pharms, 509 US 579 (2004); *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 685 NW2d 391 (2004); *People v Peterson* and *People v Smith*, 450 Mich 349, 537 NW2d 857 (1995); *People v Beckley*, 434 Mich 691, 456 NW2d 391 (1990); *People v Steele*, 283 Mich App 472, 769 NW2d 256 (2009); *People v Dobek*, 274 Mich App 58, 732 NW2d 546 (2007).

M Crim JI 5.11 Police Witness

You have heard testimony from [a witness who is a police officer / witnesses who are police officers]. That testimony is to be judged by the same standards you use to evaluate the testimony of any other witness.

Use Note

This instruction is discretionary and may be given upon request.

History

M Crim JI 5.11 (formerly CJI2d 5.11) was CJI 5:2:13. Amended January, 1991; March, 1995.

Reference Guide

Case Law

People v Lalonde, 171 Mich 286, 137 NW 74 (1912); *People v Seabrooks*, 135 Mich App 442, 354 NW2d 374 (1984).

M Crim JI 5.12 Prosecutor's Failure to Produce Witness

[*State name of witness*] is a missing witness whose appearance was the responsibility of the prosecution. You may infer that this witness's testimony would have been unfavorable to the prosecution's case.

History

M Crim JI 5.12 (formerly CJI2d 5.12) was CJI 5:2:14. Deleted May, 2003; readopted October, 2004.

Reference Guide

Statutes

MCL 767.40a.

Case Law

People v Perez, 469 Mich 415, 420, 670 NW2d 655 (2003).

M Crim JI 5.13 Agreement for Testimony / Possible Penalty

(1)You have heard testimony that a witness, [*name witness*], made an agreement with the prosecutor about charges against [him / her] in exchange for [his / her] testimony in this trial. You have also heard evidence that [*name witness*] faced a possible penalty of [*state maximum possible penalty*] as a result of those charges.

(2)You are to consider this evidence only as it relates to [*name witness*]'s credibility and as it may tend to show [*name witness*]'s bias or self-interest.

Use Note

This instruction should be used only where evidence has been elicited concerning the sentencing advantages of a plea or dismissal agreement offered in exchange for a witness's testimony. If that evidence relates to the same offense with which the defendant is charged, the court should reinstruct in accord with M Crim JI 2.23 that the penalty facing the defendant is not to be considered in deciding the case.

History

M Crim JI 5.13 (formerly CJI2d 5.13) new June, 1991.

Reference Guide

Case Law

People v Mumford, 183 Mich App 149, 455 NW2d 51 (1990).

M Crim JI 5.14 Support Persons or Animals

You [are about to hear / have heard] testimony from a witness who [will be / was] accompanied by a support [person / animal]. The use of a support [person / animal] is authorized by law. You should disregard the support [person / animal]'s presence and decide the case based solely on the evidence presented. You should not consider the witness's testimony to be any more or less credible because of the [person / animal]'s presence. You must not allow the use of a support [person / animal] to influence your decision in any way.

History

M Crim JI 5.14 was adopted March 2018.

Reference Guide

Statutes

MCL 600.2163a(4)

Case Law

People v Johnson, 315 Mich App 163 (2016).

CHAPTER 6 *State of Mind*

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M Crim JI 6.2 Intoxication As a Defense to a Specific Intent Crime 6-3

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M Crim JI 6.1 General Intent—Intoxication Is Not a Defense

There has been some evidence that the defendant was voluntarily intoxicated with alcohol or drugs when the alleged crime was committed. Voluntary intoxication is not a defense to [the crime charged here / the crime of _____]. So it does not excuse the defendant if [he / she] committed this crime.

History

M Crim JI 6.1 (formerly CJI2d 6.1) was CJI 6:1:01.

M Crim JI 6.2 Intoxication As a Defense to a Specific Intent Crime

(1)The defendant says that [he / she] could not have specifically intended to [*state specific intent of appropriate crime charged*] because [he / she] was intoxicated with alcohol or drugs.

(2)The defendant is not guilty of [*state charge*] if the defendant proves by a preponderance of the evidence that [he / she] lacked the intent to [*state required specific intent*] because [he / she] voluntarily consumed a legally obtained and properly used medication or other substance and did not know and reasonably should not have known that [he / she] would become intoxicated or impaired as a result.

(3)It is not a defense that the defendant was under the influence of or impaired by a voluntarily and knowingly consumed alcoholic liquor, drug, controlled substance, or a combination of them.

Use Note

Neither this instruction nor the statute on which it is based, MCL 768.37, addresses involuntary or unknowing consumption of an intoxicant as a defense to a crime.

History

M Crim JI 6.2 (formerly CJI2d 6.2) was CJI 6:1:02 and was last amended by the committee in October, 2002, to reflect the statutory changes found in 2002 PA 366, MCL 768.37, effective September 1, 2002.

Reference Guide

Case Law

People v Mills, 450 Mich 61, 82, 537 NW2d 909 (1995).

M Crim JI 6.3 Diminished Capacity [*deleted*]

Note. The committee deleted this instruction in September, 2001 in light of the supreme court's decision in *People v Carpenter*, 464 Mich 223, 627 NW2d 276 (2001). In *Carpenter* the court abolished the defense of diminished capacity, holding that "evidence of a defendant's lack of mental capacity short of legal insanity to avoid or reduce criminal responsibility by negating specific intent" is not admissible. Id. at 241.

M Crim JI 6.4 Property Crimes: Mistake and Intent

When you decide whether the defendant intended to _____, you must consider whether [he / she] acted as [he / she] did because of a mistake. If the defendant did not _____ [*e.g., pay (his / her) employer all the money (he / she) is required to account for*] because of an honest mistake, a bookkeeping error, or a misunderstanding about what [he / she] was supposed to do, then [he / she] did not take the [money / property] intentionally and is not guilty of the crime of _____.

History

M Crim JI 6.4 (formerly CJI2d 6.4) was CJI 6:1:03.

Reference Guide

Case Law

People v Holcomb, 395 Mich 326, 235 NW2d 343 (1975); *People v Hopper*, 274 Mich 418, 264 NW 849 (1936); *People v Goodchild*, 68 Mich App 226, 242 NW2d 465 (1976); *People v Karasek*, 63 Mich App 706, 234 NW2d 761 (1975).

M Crim JI 6.5 Intent to Injure or Defraud

When I say someone must "act with the intent to injure or defraud," I mean act to cheat or deceive, usually to get money, property, or something else valuable, or to make someone else suffer such a loss.

History

M Crim JI 6.5 (formerly CJI2d 6.5) was CJI 6:1:04.

M Crim JI 6.6 Restitution Is Not a Defense

Repaying the victim does not excuse the crime of _____. If you are satisfied beyond a reasonable doubt that the defendant [embezzled / converted / took] the property intending to cheat or deceive, then the defendant is guilty even if [he / she] paid the victim back later.

History

M Crim JI 6.6 (formerly CJI2d 6.6) was CJI 6:1:05.

Reference Guide

Case Law

People v Butts, 128 Mich 208, 87 NW 224 (1901).

CHAPTER 7 *Defenses*

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M Crim JI 7.1 Murder: Defense of Accident (Involuntary Act)

(1)The defendant says that [he / she] is not guilty of _____ because _____'s death was accidental. That is, the defendant says that _____ died because [*describe outside force; e.g., "the gun went off as it hit the wall"*].

(2)If the defendant did not mean to [pull the trigger / (*state other action*)] then [he / she] is not guilty of murder. The prosecutor must prove beyond a reasonable doubt that the defendant meant to _____.

Use Note

This instruction is designed for use where the defendant alleges that the act itself was entirely accidental. It is meant to be used as a defense to a murder charge only.

History

M Crim JI 7.1 (formerly CJI2d 7.1) was CJI 7:1:01; amended October, 1993.

Reference Guide

Case Law

People v Lester, 406 Mich 252, 277 NW2d 633 (1979); *People v Hawthorne*, 265 Mich App 47, 692 NW2d 879 (2005).

M Crim JI 7.2 Murder: Defense of Accident (Not Knowing Consequences of Act)

(1)The defendant says that [he / she] is not guilty of _____ because _____'s death was accidental. By this defendant means that [he / she] did not mean to kill or did not realize that what [he / she] did would probably cause a death or cause great bodily harm.

(2)If the defendant did not mean to kill, or did not realize that what [he / she] did would probably cause a death or cause great bodily harm, then [he / she] is not guilty of murder.

Use Note

This instruction is designed for use where the defendant acknowledges the act was voluntary but the consequences unintended. It is meant to be used as a defense to a murder charge only.

History

M Crim JI 7.2 (formerly CJI2d 7.2) was CJI 7:1:02; amended October, 1993; May, 2008.

M Crim JI 7.3 Lesser Offenses: Involuntary Manslaughter; Intentional Aiming of Firearm; Careless Discharge of a Firearm; Negligent Homicide

(1)However, even if the defendant is not guilty of murder, [he / she] may be guilty of a less serious offense. [If (he / she) willingly did something that was grossly negligent toward human life or if (he / she) intended to cause injury / If the gun went off as (he / she) purposely pointed or aimed it at someone], [he / she] may be guilty of involuntary manslaughter.

(2)Even if the defendant is not guilty of murder or involuntary manslaughter, you may decide that the defendant did something careless, reckless, or ordinarily negligent that caused the death. In that case, [he / she] may be guilty of [careless, reckless or negligent use of a firearm / negligent homicide].

(3)To sum up, when you consider the charge of murder, you should also consider whether the defendant is guilty of _____ or _____. In a few moments, I will describe these crimes in detail, and I will tell you what terms like "gross negligence" mean.

Use Note

Use (1) or (1) and (2) as applicable.

History

M Crim JI 7.3 (formerly CJI2d 7.3) was CJI 7:1:03-7:1:05. Amended October, 1993; September, 1995.

Reference Guide

Statutes

MCL 750.329.

Case Law

People v Jones, 419 Mich 577, 358 NW2d 837 (1984); *People v Ora Jones*, 395 Mich 379, 236 NW2d 461 (1975); People v St Cyr, 392 Mich 605, 221 NW2d 389 (1974); People v Pepper, 389 Mich 317, 206 NW2d 439 (1973); People v Hess, 214 Mich App 33, 37-38, 543 NW2d 332 (1995); People v Martin, 130 Mich App 609, 344 NW2d 17 (1983).

M Crim JI 7.3a Accident as Defense to Specific Intent Crime

The defendant says that [he / she] is not guilty of [*state crime*] because [he / she] did not intend to [*state specific intent required*]. The defendant says that [his / her] conduct was accidental. If the defendant did not intend to [*state specific intent required*], [he / she] is not guilty. The prosecutor must prove beyond a reasonable doubt that the defendant intended to [*state specific intent required*].

Use Note

Use this instruction where the defense of accident is claimed to negate specific intent.

History

M Crim JI 7.3a (formerly CJI2d 7.3a) new October, 1993.

Reference Guide

Case Law

People v Mills, 450 Mich 61, 537 NW2d 909 (1995); *People v Owens*, 108 Mich App 600, 310 NW2d 819 (1981).

M Crim JI 7.4 Lack of Presence (Alibi)

(1)You have heard evidence that the defendant could not have committed the alleged crime because [he / she] was somewhere else when the crime was committed.

(2)The prosecutor must prove beyond a reasonable doubt that the defendant was actually there when the alleged crime was committed. The defendant does not have to prove [he / she] was somewhere else.

(3)If, after carefully considering all the evidence, you have a reasonable doubt about whether the defendant was actually present when the alleged crime was committed, you must find [him / her] not guilty.

Use Note

This instruction is not to be used when the defendant is charged under circumstances where his presence is not required at the time and place of the commission of the crime. See 23A CJS, Criminal Law 1203 at 536. Thus, if the defendant is charged as an aider and abettor, this instruction should normally not be used. But *see People v Matthews*, 163 Mich App 244, 247-248, 413 NW2d 755 (1987): if the defendant is charged as an aider and abettor in such circumstances that his or her presence is required (as the getaway driver, for example), the alibi instruction should be given.

The instruction on identification, M Crim JI 7.8, should be given in many alibi cases, followed by this instruction or, where there is accomplice testimony, by a cautionary instruction on such testimony.

The committee feels that the term "alibi" has negative connotations and suggests the use of the term "lack of presence" as an alternative.

History

M Crim JI 7.4 (formerly CJI2d 7.4) was CJI 7:2:01-7:2:02.

Reference Guide

Case Law

People v Travis, 443 Mich 668, 505 NW2d 563 (1993); *People v McGinnis*, 402 Mich 343, 262 NW2d 669 (1978); *People v Burden*, 395 Mich 462, 236 NW2d 505 (1975); *People v Loudenslager*, 327 Mich 718, 42 NW2d 834 (1950); *People v Mullane*, 256 Mich 54, 239 NW 282 (1931); *People v Miller*, 250 Mich 72, 229 NW 475 (1930); *People v Mott*, 140 Mich App 289, 364 NW2d 696 (1985); *People v Heatwole*, 83 Mich App 732, 269 NW2d 283 (1978); *People v Bryant*, 80 Mich App 428, 264 NW2d 13 (1978); *People v Erb*, 48 Mich App 622, 211 NW2d 51 (1973).

M Crim JI 7.5 Claim of Right

(1)To be guilty of [larceny / robbery / (*state other crime*)], a person must intend to steal. In this case, there has been some evidence that the defendant took the property because [he / she] claimed the right to do so. If so, the defendant did not intend to steal.

(2)When does such a claimed right exist? It exists if the defendant took the property honestly believing that it was legally [his / hers] or that [he / she] had a legal right to have it. Two things are important: the defendant's belief must be honest, and [he / she] must claim a legal right to the property.

(3)You should notice that the test is whether the defendant honestly believed [he / she] had such a right. It does not matter if the defendant was mistaken or should have known otherwise. [It also does not matter if the defendant (used force / trespassed) to get the property or if [he / she] knew that someone else claimed the property.]

(4)The defendant does not have to prove [he / she] claimed the right to take the property. Instead, the prosecutor must prove beyond a reasonable doubt that the defendant took the property without a good-faith claimed right to do so.[1]

Use Note

The evidence must indicate the defendant thought the property to be legally his, and that he was operating under an honest conviction that he was acting under claim of right. If the evidence does not show this, no claim of right instruction should be given.

[1] There is some authority contradicting the statement in paragraph (4) of this instruction that the prosecution must prove beyond a reasonable doubt that the defendant took the property without a good-faith claimed right to do so. *See People v Cain*, 238 Mich App 95, 120 n10, 605 NW2d 28 (1999) ("It is important to note that this claim of right defense merely creates a question of fact for the jury and does not establish an affirmative defense, which would then require the prosecution to prove that [the defendant] was not acting under a good-faith belief in a claim of right").

History

M Crim JI 7.5 (formerly CJI2d 7.5) was CJI 7:3:01.

Reference Guide

Case Law

People v Shaunding, 268 Mich 218, 255 NW 770 (1934); *People v Henry*, 202 Mich 450, 168 NW 534 (1918); *People v Hillhouse*, 80 Mich 580, 45 NW 484 (1890); *People v Cain*, 238 Mich App 95, 119, 605 NW2d 28 (1999); *People v Pohl*, 202 Mich App 203, 507 NW2d 819 (1993), remanded, 445 Mich 918 (1994); *People v Karasek*, 63 Mich App 706, 234 NW2d 761 (1975); *People v McCann*, 42 Mich App 47, 201 NW2d 345 (1972).

M Crim JI 7.6 Duress

(1)The defendant says that [he / she] is not guilty because someone else's threatening behavior made [him / her] act as [he / she] did. This is called the defense of duress.

(2)The defendant is not guilty if [he / she] committed the crime under duress. Under the law, there was duress if [four / five] things were true:

(a)One, the threatening behavior would have made a reasonable person fear death or serious bodily harm;

(b)Two, the defendant actually was afraid of death or serious bodily harm;

(c)Three, the defendant had this fear at the time [he / she] acted;

(d)Four, the defendant committed the act to avoid the threatened harm.

[(e)Five, the situation did not arise because of the defendant's fault or negligence.][1]

(3)In deciding whether duress made the defendant act as [he / she] did, think carefully about all the circumstances as shown by the evidence.

(4)Think about the nature of any force or threats. Think about the background and character of the person who made the threats or used force. Think about the defendant's situation when [he / she] committed the alleged act. Could [he / she] have avoided the harm [he / she] feared in some other way than by committing the act? Think about how reasonable these other means would have seemed to a person in the defendant's situation at the time of the alleged act.[2]

(5)The prosecutor must prove beyond a reasonable doubt that the defendant was not acting under duress. If [he / she] fails to do so, then you must find the defendant not guilty.

Use Note

This instruction should be used only when there is some evidence of the essential elements of duress.

[1] Use (e) only where there is some evidence that the defendant found himself in the position of having to commit the crime through his own fault or negligence. Michigan law is unclear on whether a defendant can claim duress only where the defendant is completely free of fault.

[2] In escape cases, the special factors listed in M Crim JI 7.7 should also be given if they are supported by competent evidence.

History

M Crim JI 7.6 (formerly CJI2d 7.6) was CJI 7:5:01-7:5:03.

Reference Guide

Case Law

People v Lemons, 454 Mich 234, 248, 562 NW2d 447 (1997); *People v Luther*, 394 Mich 619, 232 NW2d 184 (1975), aff'g 53 Mich App 648, 219 NW2d 812 (1974); *People v Merhige*, 212 Mich 601, 180 NW 418 (1920); *People v Dittis*, 157 Mich App 38, 403 NW2d 94 (1987); *People v Hubbard*, 115 Mich App 73, 320 NW2d 294 (1982); *People v Mendoza*, 108 Mich App 733, 742, 310 NW2d 860 (1981); *People v Stephens*, 103 Mich App 640, 644, 303 NW2d 51 (1981); *People v Martin*, 100 Mich App 447, 452-453, 298 NW2d 900 (1980); *People v Hocquard*, 64 Mich App 331, 236 NW2d 72 (1975); *People v Richter*, 54 Mich App 598, 221 NW2d 429 (1974); *People v Kelly*, 51 Mich App 28, 214 NW2d 334 (1973); *People v Field*, 28 Mich App 476, 477-478, 184 NW2d 551 (1970); *People v Spalding*, 17 Mich App 73, 76, 169 NW2d 163 (1969).

M Crim JI 7.7 Special Factors in Escape Cases

You may also consider the following things:

(a)Was the defendant faced with a specific threat of death, forcible sexual attack, or substantial bodily injury in the immediate future?

(b)Was there time for [him / her] to complain to those in charge?

(c)Was there a *History* of complaints by the defendant that had been useless?

(d)Did the defendant have the time or the chance to take action in the courts?

(e)Did the defendant use force or violence against innocent people or prison employees during the escape?

(f)Did the defendant immediately report to the proper authorities after [he / she] was safe from the immediate threat?

Use Note

This instruction should be given only in escape cases. See MCL 768.21b(4) and *People v Luther*, 394 Mich 619, 622-624, 232 NW2d 184, 186-187 (1975). M Crim JI 7.6 should be given first, followed by any of the factors listed in this instruction that are supported by competent evidence. Only those factors that are supported by the evidence should be given.

History

M Crim JI 7.7 (formerly CJI2d 7.7) was CJI 7:5:04.

Reference Guide

Case Law

United States v Bailey, 444 US 394, 410-411 (1980); *People v Andrews*, 192 Mich App 706, 481 NW2d 831 (1992); *People v Rau*, 174 Mich App 339, 436 NW2d 409 (1989); *People v Sekoian*, 169 Mich App 609, 614, 426 NW2d 412 (1988); *People v Blair*, 157 Mich App 43, 403 NW2d 96 (1987); *People v Crooks*, 151 Mich App 389, 390 NW2d 250 (1986); *People v Luther*, 53 Mich App 648, 219 NW2d 812 (1974), aff'd, 394 Mich 619, 232 NW2d 184 (1975).

M Crim JI 7.8 Identification

(1)One of the issues in this case is the identification of the defendant as the person who committed the crime. The prosecutor must prove beyond a reasonable doubt that the crime was committed and that the defendant was the person who committed it.

(2)In deciding how dependable an identification is, think about such things as how good a chance the witness had to see the offender at the time, how long the witness was watching, whether the witness had seen or known the offender before, how far away the witness was, whether the area was well-lighted, and the witness's state of mind at that time.

(3)Also, think about the circumstances at the time of the identification, such as how much time had passed since the crime, how sure the witness was about the identification, and the witness's state of mind during the identification.

[(4)You may also consider any times that the witness failed to identify the defendant, or made an identification or gave a description that did not agree with (his / her) identification of the defendant during trial.]

(5)You should examine the witness's identification testimony carefully. You may consider whether other evidence supports the identification, because then it may be more reliable. However, you may use the identification testimony alone to convict the defendant, as long as you believe the testimony and you find that it proves beyond a reasonable doubt that the defendant was the person who committed the crime.

Use Note

This instruction should be given, upon request, in every case in which identity is in issue.

The bracketed portion should be given, upon request, when supported by the evidence.

History

M Crim JI 7.8 (formerly CJI2d 7.8) was CJI 7:7:01.

Reference Guide

Case Law

Manson v Brathwaite, 432 US 98, 114 (1977); *Neil v Biggers*, 409 US 188 (1972); *In re Winship*, 397 US 358 (1970); *People v Wright*, 408 Mich 1, 289 NW2d 1 (1980); *People v Kachar*, 400 Mich 78, 95-96, 252 NW2d 807 (1977); *People v Anderson*, 389 Mich 155, 180, 205 NW2d 461 (1973); *People v Storch*, 176 Mich App 414, 440 NW2d 14 (1989); *People v Young*, 146 Mich App 337, 379 NW2d 491 (1985).

M Crim JI 7.9 The Meanings of Mental Illness, Intellectual Disability and Legal Insanity

(1)One of the defenses that will be raised in this case is that the defendant was legally insane at the time of the crime. Under the law, mental illness and legal insanity are not the same. A person can be mentally ill and still not be legally insane. Because of this, and because the law treats people who commit crimes differently depending on their mental state at the time of the crime, it is important for you to understand the legal meanings of "mental illness," "intellectual disability," and "legal insanity."

(2)"Mental illness" is defined by law as a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or the ability to cope with the ordinary demands of life.

(3)"Intellectual disability" means significantly subaverage intellectual functioning that appeared before the defendant was 18 years old and impaired two or more of [his / her] adaptive skills.[1]

(4)To be legally insane, a person must first be either mentally ill or intellectually disabled, as I have defined those conditions. But that is not enough. To be legally insane, the person must, because of [his / her] mental illness or intellectual disability, lack substantial capacity either to appreciate the nature and quality or the wrongfulness of [his / her] conduct or to conform [his / her] conduct to the requirements of the law.

Use Note

If the defendant plans to assert an insanity defense, an instruction such as this one *must be given* before testimony is presented on the issue. MCL 768.29a(1). Filing a notice of intent to assert an insanity defense is *not* the same as actually asserting the defense at trial. Before trial, the court should ask if the defendant plans to raise the insanity defense. If he does not, the court should not give this instruction. The statute mandates that definitions of mental illness and intellectual disability be given. If defendant's counsel does not want the definition of intellectual disability (or mental illness) because it is inappropriate and confusing, the Criminal Jury Instruction Committee suggests that the defendant place a waiver on the record prior to trial.

When instructing prior to deliberations, use M Crim JI 7.11.

[1] The court may provide the jury with a definition of adaptive skills where appropriate. The phrase is defined in MCL 330.1100a(3), and means skills in 1 or more of the following areas:

(a)Communication

(b)Self-care

(c)Home living

(d)Social skills

(e)Community use

(f)Self-direction

(g)Health and safety

(h)Functional academics

(i)Leisure

(j)Work

History

M Crim JI 7.9 (formerly CJI2d 7.9) was CJI 7:8:01. This instruction was modified by the committee in June, 1994, to reflect the legislative change in the definition of legal insanity found in 1994 PA 56, amending MCL 768.21a.

The instruction was modified in January 2015 to reflect a statutory change from the phrase "mental retardation" to "intellectual disability," and to conform the definitional language to that used in the statute.

Reference Guide

Statutes

MCL 330.1100a(3), 768.29a(1)

Case Law

People v Grant, 445 Mich 535, 520 NW2d 123 (1994).

M Crim JI 7.10 Person Under the Influence of Alcohol or Controlled Substances

(1)A person is not legally insane just because [he / she] was voluntarily intoxicated by alcohol or drugs at the time of the crime.

[(2)Drug intoxication is not voluntary and may be a defense if the defendant was unexpectedly intoxicated by the use of a prescribed drug. Intoxication was not voluntary where,

(a)the defendant did not know or have reason to know that the prescribed drug was likely to be intoxicating,

(b)the prescribed drug, not another intoxicant, must have caused the defendant's intoxication, and

(c)as a result of the intoxication, the defendant was rendered temporarily insane or lacked the mental ability to form the intent necessary to commit the crime charged.][1]

[(3)A person can become legally insane by the voluntary, continued use of mind-altering substances like alcohol or drugs if their use results in a settled condition of insanity before, during, and after the alleged offense.][2]

(4)Of course, a mentally ill [or intellectually disabled] person can also be intoxicated, and both conditions may influence what [he / she] does. You should decide whether the defendant was mentally ill [or intellectually disabled] at the time of the crime. If [he / she] was, you should use the definitions I gave you to decide whether [he / she] was also legally insane.

Use Note

[1] Use this paragraph only if the defendant is claiming that he or she was unexpectedly intoxicated by the use of a prescribed drug as described in *People v Caulley*, 197 Mich App 177, 494 NW2d 853 (1992).

[2] Use this paragraph only if the defendant is claiming that a settled condition of legal insanity resulted from voluntary substance abuse as described in *People v Conrad*, 148 Mich App 433, 385 NW2d 277 (1986). If the defendant plans to assert an insanity defense, an instruction such as this one must be given before testimony is presented on the issue. MCL 768.29a(1). Presumably this is true only where intoxication is an issue in the case. *In People v Anderson*, 166 Mich App 455, 466-467, 421 NW2d 200 (1988), the court of appeals approved giving the statutory definition of MCL 768.21a, rather than CJI 7:8:02 (now M Crim JI 7.10). This instruction may also be given before jury deliberations (see M Crim JI 7.11).

History

M Crim JI 7.10 (formerly CJI2d 7.10) was CJI 7:8:02. Amended June, 1990; October, 1993; January 2016.

Reference Guide

Statutes

MCL 768.21a(2).

Case Law

People v Savoie, 419 Mich 118, 129 n4, 349 NW2d 139 (1984); People v Caulley, 197 Mich App 177, 494 NW2d 853 (1992); People v Conrad, 148 Mich App 433, 385 NW2d 277 (1986); People v Matulonis, 115 Mich App 263, 320 NW2d 238 (1982).

M Crim JI 7.11 Legal Insanity; Mental Illness; Intellectual Disability; Burden of Proof

(1)The defendant says that [he / she] is not guilty by reason of insanity. A person is legally insane if, as a result of mental illness or intellectual disability, [he / she] was incapable of understanding the wrongfulness of [his / her] conduct, or was unable to conform [his / her] conduct to the requirements of the law. The burden is on the defendant to show that [he / she] was legally insane.

(2)Before considering the insanity defense, you must be convinced beyond a reasonable doubt that the defendant committed the [crime / crimes] charged by the prosecutor. If you are not, your verdict should simply be not guilty of [that / those] offense[s]. If you are convinced that the defendant committed an offense, you should consider the defendant's claim that [he / she] was legally insane.

(3)In order to establish that [he / she] was legally insane, the defendant must prove two elements by a preponderance of the evidence. A preponderance of the evidence means that [he / she] must prove that it is more likely than not that each of the elements is true.

(4)First, the defendant must prove that [he / she] was mentally ill and/or intellectually disabled.[1]

(a)"Mental illness" means a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or the ability to cope with the ordinary demands of life.

(b)"Intellectual disability" means significantly subaverage intellectual functioning that appeared before the defendant was 18 years old and impaired two or more of [his / her] adaptive skills.[2]

(5)Second, the defendant must prove that, as a result of [his / her] mental illness and/or intellectual disability, [he / she] either lacked substantial capacity to appreciate the nature and wrongfulness of [his / her] act, or lacked substantial capacity to conform [his / her] conduct to the requirements of the law.

(6)You should consider these elements separately. If you find that the defendant has proved both of these elements by a preponderance of the evidence, then you must find [him / her] not guilty by reason of insanity. If the defendant has failed to prove either or both elements, [he / she] was not legally insane.

Use Note

An individual who was under the influence of voluntarily consumed or injected alcohol or controlled substances at the time of his or her alleged offense is not considered to have been legally insane solely because of being under the influence of the alcohol or controlled substances. MCL 768.21a(2).

[1] This paragraph may be modified if the defendant is claiming only one aspect of this element.

[2] The court may provide the jury with a definition of "adaptive skills" where appropriate. The phrase is defined in MCL 330.1100a(3) and means skills in 1 or more of the following areas:

(a)Communication.

(b)Self-care.

(c)Home living.

(d)Social skills.

(e)Community use.

(f)Self-direction.

(g)Health and safety.

(h)Functional academics.

(i)Leisure.

(j)Work.

History

M Crim JI 7.11 (formerly CJI2d 7.11) was CJI 7:8:02A-7:8:06, 7:8:13.

The instruction was modified in June, 1994 to reflect the effect of 1994 PA 56, amending MCL 768.21a, which changed the burden of proof and requires the defendant to establish legal insanity by a preponderance of the evidence.

The instruction was modified in January 2015 to reflect a statutory change from the phrase "mental retardation" to "intellectual disability," and to conform the definitional language to that used in the statute.

The instruction was modified in August 2016 to remove repetitive language and over-emphasis of a defendant's duty to prove the defense.

Reference Guide

Statutes

MCL 330.1100a(3), 330.1100b(15), .1400(g), 768.20a, .21, .21a

Case Law

People v McRunels, 237 Mich App 168, 603 NW2d 95 (1999); *People v Munn*, 25 Mich App 165, 181 NW2d 28 (1970); *People v Deneweth*, 14 Mich App 604, 165 NW2d 910 (1968).

M Crim JI 7.12 Definition of Guilty but Mentally Ill

(1)There is another verdict that is completely different from the verdict of not guilty because of insanity. This is called "guilty but mentally ill."?

(2)To find the defendant guilty but mentally ill, you must find each of the following:

(3)First, the prosecutor has proven beyond a reasonable doubt that the defendant is guilty of a crime.

(4)Second, that the defendant has proven by a preponderance of the evidence that [he / she] was mentally ill, as I have defined that term for you, at the time of the crime.

(5)Third, that the defendant has not proven by a preponderance of the evidence that [he / she] lacked the substantial capacity either to appreciate the nature and quality or the wrongfulness of [his / her] conduct or to conform [his / her] conduct to the requirements of the law.

Use Note

MCL 768.29a(2) requires an instruction on guilty but mentally ill whenever there is an instruction on insanity. *People v Mikulin*, 84 Mich App 705, 270 NW2d 500 (1978). A guilty but mentally ill instruction cannot be waived by the defendant. *People v Ritsema*, 105 Mich App 602, 307 NW2d 380 (1981).

History

M Crim JI 7.12 (formerly CJI2d 7.12) was CJI 7:8:09 and was amended in October, 2002, to set forth the statutory elements found at MCL 768.36(1) as amended by 2002 PA 245, effective May 1, 2002.

Reference Guide

Statutes

MCL 768.36(1).

Case Law

People v Ramsey, 422 Mich 500, 375 NW2d 297 (1985); *People v Goad*, 421 Mich 20, 364 NW2d 584 (1984).

M Crim JI 7.13 Insanity at the Time of the Crime

You must judge the defendant's mental state at the time of the alleged crime. You may consider evidence about [his / her] mental condition before and after the crime, but only to help you judge [his / her] mental state at the time of the alleged crime.

History

M Crim JI 7.13 (formerly CJI2d 7.13) was CJI 7:8:11.

Reference Guide

Statutes

MCL 768.21a.

Case Law

People v Murphy, 416 Mich 453, 461-462, 331 NW2d 152 (1982); *People v Woody*, 380 Mich 332, 335-338, 157 NW2d 201 (1968).

M Crim JI 7.14 Permanent or Temporary Insanity

Legal insanity may be permanent or temporary. You must decide whether the defendant was legally insane at the time of the alleged crime.

Use Note

The committee recommends that this instruction be given if requested.

History

M Crim JI 7.14 (formerly CJI2d 7.14) was CJI 7:8:12.

Reference Guide

Case Law

People v Finley, 38 Mich 482, 483 (1878); *People v Wright*, 58 Mich App 735, 739, 228 NW2d 807 (1975); *People v Jordan*, 51 Mich App 710, 713, 216 NW2d 71 (1974).

M Crim JI 7.15 Use of Deadly Force in Self-Defense

(1)The defendant claims that [he / she] acted in lawful self-defense. A person has the right to use force or even take a life to defend [himself / herself] under certain circumstances. If a person acts in lawful self-defense, that person's actions are justified and [he / she] is not guilty of [*state crime*].

(2)You should consider all the evidence and use the following rules to decide whether the defendant acted in lawful self-defense. Remember to judge the defendant's conduct according to how the circumstances appeared to [him / her] at the time [he / she] acted.

(3)First, at the time [he / she] acted, the defendant must have honestly and reasonably believed that [he / she] was in danger of being [killed / seriously injured / sexually assaulted]. If the defendant's belief was honest and reasonable, [he / she] could act immediately to defend [himself / herself] even if it turned out later that [he / she] was wrong about how much danger [he / she] was in. In deciding if the defendant's belief was honest and reasonable, you should consider all the circumstances as they appeared to the defendant at the time.

(4)Second, a person may not kill or seriously injure another person just to protect [himself / herself] against what seems like a threat of only minor injury. The defendant must have been afraid of [death / serious physical injury / sexual assault]. When you decide if the defendant was afraid of one or more of these, you should consider all the circumstances: [the condition of the people involved, including their relative strength / whether the other person was armed with a dangerous weapon or had some other means of injuring the defendant / the nature of the other person's attack or threat / whether the defendant knew about any previous violent acts or threats made by the other person].

(5)Third, at the time [he / she] acted, the defendant must have honestly and reasonably believed that what [he / she] did was immediately necessary. Under the law, a person may only use as much force as [he / she] thinks is necessary at the time to protect [himself / herself]. When you decide whether the amount of force used seemed to be necessary, you may consider whether the defendant knew about any other ways of protecting [himself / herself], but you may also consider how the excitement of the moment affected the choice the defendant made.

Use Note

Use when requested where some evidence of self-defense has been introduced or elicited.

History

M Crim JI 7.15 (formerly CJI2d 7.15) was CJI 7:9:01; amended June, 1990; June, 1991; September, 2005, September, 2007.

Reference Guide

Statutes

MCL 780.971 et seq.

Case Law

People v Goree, 296 Mich App 293, 819 NW2d 82 (2012); *People v Conyer*, 281 Mich App 526, 762 NW2d 198 (2008).

M Crim JI 7.16 Duty to Retreat to Avoid Using Deadly Force

(1)A person can use deadly force in self-defense only where it is necessary to do so. If the defendant could have safely retreated but did not do so, you may consider that fact in deciding whether the defendant honestly and reasonably believed [he / she] needed to use deadly force in self-defense.*

(2)However, a person is never required to retreat if attacked in [his / her] own home, nor if the person reasonably believes that an attacker is about to use a deadly weapon, nor if the person is subject to a sudden, fierce, and violent attack.

(3)Further, a person is not required to retreat if the person:

(a)has not or is not engaged in the commission of a crime at the time the deadly force is used, and

(b)has a legal right to be where the person is at that time, and

(c)has an honest and reasonable belief that the use of deadly force is necessary to prevent imminent [death / great bodily harm / sexual assault] of the person or another.

Use Note

*Paragraph (1) should not be given if the duty to retreat is not in dispute. *People v Richardson*, 490 Mich 115, 803 NW2d 302 (2011).

History

M Crim JI 7.16 (formerly CJI2d 7.16) was CJI 7:9:02; amended October, 2002, September, 2007.

Reference Guide

Statutes

MCL 780.971 et seq.

Case Law

People v Riddle, 467 Mich 116, 649 NW2d 30 (2002); *People v Conyer*, 281 Mich App 526, 762 NW2d 198 (2008).

M Crim JI 7.16a Rebuttable Presumption Regarding Fear of Death, Great Bodily Harm, or Sexual Assault

(1)If you find both that —

(a)the deceased was breaking and entering a dwelling or business, or committing home invasion, or had broke and entered or committed home invasion and was still present in the dwelling or business, or is unlawfully attempting to remove a person from a dwelling, business, or vehicle against the person's will,

and

(b)the defendant honestly and reasonably believed the deceased was engaged in any of the conduct just described

— you must presume that the defendant had an honest and reasonable belief that imminent [death / great bodily harm / sexual assault] would occur.

This presumption does not apply if—

[*Use the appropriate paragraph below based on the claims of the parties and the evidence admitted.*]

(a) the deceased has the legal right to be in the dwelling, business, or vehicle and there is not a "no contact" [court order / pretrial supervision order / probation order / parole order] against the deceased, or

(b) the individual being removed is a child or grandchild or otherwise in the lawful custody of the deceased victim, or

(c) the defendant was engaged in the commission of a crime or using the dwelling, business premises, or vehicle to further the commission of a crime, or

(d) the deceased was a peace officer who was entering or attempting to enter the premises or vehicle in the performance of his duties, or

(e) the deceased was the [spouse / former spouse / person with whom the defendant had or previously had a dating relationship / person with whom the defendant had a child in common / a resident or former resident of the defendant's household], and the defendant had a prior history of domestic violence* as the aggressor.

Use Note

*For the definition of "domestic violence," see MCL 400.1501(1)(d).

History

M Crim JI 7.16a (formerly CJI2d 7.16a) was adopted September, 2007; amended May, 2008; amended August, 2014

to correct and comply with statutory language.

Reference Guide

Statutes

MCL 780.951, et seq.

MCL 780.971, et seq.

Case Law

People v Conyer, 281 Mich App 526, 762 NW2d 198 (2008).

M Crim JI 7.17 No Duty to Retreat While in Own Dwelling [*deleted*]

Note. This instruction was deleted by the committee in September, 2008, because the current requirements regarding the duty to retreat before using deadly force are found at M Crim JI 7.16.

M Crim JI 7.18 Deadly Aggressor—Withdrawal

A person who started an assault on someone else [with deadly force / with a dangerous or deadly weapon] cannot claim that [he / she] acted in self-defense unless [he / she] genuinely stopped [fighting / (his / her) assault] and clearly let the other person know that [he / she] wanted to make peace. Then, if the other person kept on fighting or started fighting again later, the defendant had the same right to defend [himself / herself] as anyone else and could use force to save [himself / herself] from immediate physical harm.

Use Note

If supported by the facts, failure to give this instruction *sua sponte* is reversible error.

History

M Crim JI 7.18 (formerly CJI2d 7.18) was CJI 7:9:04.

Reference Guide

Case Law

People v Townes, 391 Mich 578, 218 NW2d 136 (1974); *People v Van Camp*, 356 Mich 593, 97 NW2d 726 (1959); *People v Terrell*, 106 Mich App 319, 321, 308 NW2d 183 (1981); *People v Kerley*, 95 Mich App 74, 83-84, 289 NW2d 883 (1980); *People v Peoples*, 75 Mich App 616, 255 NW2d 707 (1977); *People v Van Horn*, 64 Mich App 112, 235 NW2d 80 (1975); *People v Matthews*, 17 Mich App 48, 169 NW2d 138 (1969).

M Crim JI 7.19 Nondeadly Aggressor Assaulted with Deadly Force

A defendant who [assaults someone else with fists or a weapon that is not deadly / insults someone with words / trespasses on someone else's property / tries to take someone else's property in a nonviolent way] does not lose all right to self-defense. If someone else assaults [him / her] with deadly force, the defendant may act in self-defense, but only if [he / she] retreats if it is safe to do so.

History

M Crim JI 7.19 (formerly CJI2d 7.19) was CJI 7:9:05 and was last amended by the committee in October, 2002.

Reference Guide

Case Law

People v Riddle, 467 Mich 116, 649 NW2d 30 (2002); *People v Townes*, 391 Mich 578, 593, 218 NW2d 136 (1974); *People v Smith*, 67 Mich App 145, 155, 240 NW2d 475 (1976).

M Crim JI 7.20 Burden of Proof-Self—Defense

The defendant does not have to prove that [he / she] acted in self-defense. Instead, the prosecutor must prove beyond a reasonable doubt that the defendant did not act in self-defense.

Use Note

This instruction should be given where there is some evidence of self-defense. If there is no evidence of self-defense, no instructions on self-defense should be given.

History

M Crim JI 7.20 (formerly CJI2d 7.20) was CJI 7:9:06.

Reference Guide

Case Law

People v Hoskins, 403 Mich 95, 267 NW2d 417 (1978); *People v Jackson*, 390 Mich 621, 212 NW2d 918 (1973); *People v Hunley*, 313 Mich 688, 21 NW2d 923 (1946); *People v Watts*, 61 Mich App 309, 232 NW2d 396 (1975); *People v Brown*, 34 Mich App 45, 190 NW2d 701 (1971); *People v Johnson*, 13 Mich App 69, 163 NW2d 688 (1968), rev'd on other grounds, 382 Mich 632, 172 NW2d 369 (1969).

M Crim JI 7.21 Defense of Others—Deadly Force

(1)The defendant claims that [he / she] acted lawfully to defend _____. A person has the right to use force or even take a life to defend someone else under certain circumstances. If a person acts in lawful defense of another, [his / her] actions are justified and [he / she] is not guilty of [*state crime*].

(2)You should consider all the evidence and use the following rules to decide whether the defendant acted in lawful defense of another. Remember to judge the defendant's conduct according to how the circumstances appeared to [him / her] at the time [he / she] acted.

(3)First, at the time [he / she] acted, the defendant must not have been engaged in the commission of a crime.

(4)Second, when [he / she] acted, the defendant must have honestly and reasonably believed that _____ was in danger of being [killed / seriously injured / sexually assaulted]. If [his / her] belief was honest and reasonable, [he / she] could act at once to defend _____, even if it turns out later that the defendant was wrong about how much danger _____ was in.

(5)Third, if the defendant was only afraid that _____ would receive a minor injury, then [he / she] was not justified in killing or seriously injuring the attacker. The defendant must have been afraid that _____ would be [killed / seriously injured / sexually assaulted]. When you decide if [he / she] was so afraid, you should consider all the circumstances: [the conditions of the people involved, including their relative strength / whether the other person was armed with a dangerous weapon or had some other means of injuring _____ / the nature of the other person's attack or threat / whether the defendant knew about any previous violent acts or threats made by the attacker].

(6)Fourth, at the time [he / she] acted, the defendant must have honestly and reasonably believed that what [he / she] did was immediately necessary. Under the law, a person may only use as much force as [he / she] thinks is needed at the time to protect the other person. When you decide whether the force used appeared to be necessary, you may consider whether the defendant knew about any other ways of protecting _____, but you may also consider how the excitement of the moment affected the choice the defendant made.

(7)The defendant does not have to prove that [he / she] acted in defense of _____. Instead, the prosecutor must prove beyond a reasonable doubt that the defendant did not act in defense of _____.

History

M Crim JI 7.21 (formerly CJI2d 7.21) was CJI 7:9:07-7:9:08; amended September, 1990; June, 1991; September, 2005, September, 2007.

Reference Guide

Statutes

MCL 780.971 et seq.

Case Law

People v Burkard, 374 Mich 430, 132 NW2d 106 (1965); *Pond v People*, 8 Mich 150, 174 (1860); *People v Kurr*, 253 Mich App 317, 654 NW2d 651 (2002); *People v Wright*, 25 Mich App 499, 181 NW2d 649 (1970).

M Crim JI 7.22 Use of Nondeadly Force in Self-Defense or Defense of Others

(1)The defendant claims that [he / she] acted in lawful [self-defense / defense of _____]. A person has the right to use force to defend [himself / herself / another person] under certain circumstances. If a person acts in lawful [self-defense / defense of others], [his / her] actions are justified and [he / she] is not guilty of [*state crime*].

(2)You should consider all the evidence and use the following rules to decide whether the defendant acted in lawful [self-defense / defense of _____]. Remember to judge the defendant's conduct according to how the circumstances appeared to [him / her] at the time [he / she] acted.

(3)First, at the time [he / she] acted, the defendant must not have been engaged in the commission of a crime.

(4)Second, when [he / she] acted, the defendant must have honestly and reasonably believed that [he / she] had to use force to protect [himself / herself / _____] from the imminent unlawful use of force by another. If [his / her] belief was honest and reasonable, [he / she] could act at once to defend [himself / herself / _____], even if it turns out later that [he / she] was wrong about how much danger [he / she / _____] was in.

(5)Third, a person is only justified in using the degree of force that seems necessary at the time to protect [himself / herself / the other person] from danger. The defendant must have used the kind of force that was appropriate to the attack made and the circumstances as [he / she] saw them. When you decide whether the force used was what seemed necessary, you should consider whether the defendant knew about any other ways of protecting [himself / herself / _____], but you may also consider how the excitement of the moment affected the choice the defendant made.

(6)Fourth, the right to defend [oneself / another person] only lasts as long as it seems necessary for the purpose of protection.

(7)Fifth, the person claiming self-defense must not have acted wrongfully and brought on the assault. [However, if the defendant only used words, that does not prevent (him / her) from claiming self-defense if (he / she) was attacked.]

History

M Crim JI 7.22 (formerly CJI2d 7.22) was CJI 7:9:09; amended September 1990; September, 2005, September 2007.

Reference Guide

Statutes

MCL 780.971 et seq.

Case Law

People v Heflin, 434 Mich 482, 502-503, 456 NW2d 10 (1990); *Brownell v People*, 38 Mich 732, 738 (1878); *People v Hooper*, 152 Mich App 243, 246-247, 394 NW2d 27 (1986); *People v Deason*, 148 Mich App 27, 384 NW2d 72 (1985); *People v McGee*, 66 Mich App 164, 169-170, 238 NW2d 564 (1975).

M Crim JI 7.23 Past Violence by Complainant or Decedent

[*Specific Acts*]

(1)There has been evidence that the [complainant / decedent] may have committed violent acts in the past and that the defendant knew about these acts. You may consider this evidence when you decide whether the defendant honestly and reasonably feared for [his / her] safety.

[*General Reputation*]

(2)There has been evidence that the [complainant / decedent] may have had a reputation for cruelty or violence. You may consider this evidence when you decide whether it was likely that the [complainant / decedent] threatened to hurt the defendant physically, and whether the defendant honestly and reasonably feared for [his / her] safety.

History

M Crim JI 7.23 (formerly CJI2d 7.23) was CJI 7:9:10; amended September, 1990.

Reference Guide

Court Rules

MRE 404(a)(2).

Case Law

People v Harris, 458 Mich 310, 316, 583 NW2d 680 (1998); *People v Heflin*, 434 Mich 482, 502-503, 456 NW2d 10 (1990); *People v Wright*, 294 Mich 20, 292 NW 539 (1940); *People v Walters*, 223 Mich 676, 194 NW 538 (1923); *People v Taylor*, 195 Mich App 57, 489 NW2d 99 (1992); *People v Wilson*, 194 Mich App 599, 605, 487 NW2d 822 (1992); *People v Kerley*, 95 Mich App 74, 80, 289 NW2d 883 (1980).

M Crim JI 7.24 Self-Defense Against Persons Acting in Concert

A defendant who is attacked by more than one person [or by one person and others helping and encouraging the attacker] has the right to act in self-defense against all of them. [However, before using deadly force against one of the attackers, the defendant must honestly and reasonably believe that (he / she) is in imminent danger of (death / great bodily harm / sexual assault) by that particular person.]

Use Note

Use the second sentence only where the defendant used deadly force.

History

M Crim JI 7.24 (formerly CJI2d 7.24) was CJI 7:9:11; amended September, 1990; June, 1991, September, 2007.

Reference Guide

Statutes

MCL 780.971 *et seq*.

Case Law

People v Johnson, 112 Mich App 483, 316 NW2d 247 (1982).

CHAPTER 8

Aiding and Abetting and Accessory after the Fact

M Crim JI 8.1 Aiding and Abetting 8-2

M Crim JI 8.2 Crime Primarily Intended [deleted] 8-4

M Crim JI 8.3 Separate Crime Within the Scope of Common Unlawful Enterprise 8-5

M Crim JI 8.4 Inducement 8-6

M Crim JI 8.5 Mere Presence Insufficient 8-7

M Crim JI 8.6 Accessory After the Fact 8-8

M Crim JI 8.7 Difference Between Aider and Abettor and Accessory After the Fact 8-9

M Crim JI 8.1 Aiding and Abetting

(1)In this case, the defendant is charged with committing _____ or intentionally assisting someone else in committing it.

(2)Anyone who intentionally assists someone else in committing a crime is as guilty as the person who directly commits it and can be convicted of that crime as an aider and abettor.

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

(a)First, that the alleged crime was actually committed, either by the defendant or someone else. [It does not matter whether anyone else has been convicted of the crime.]

(b)Second, that before or during the crime, the defendant did something to assist* in the commission of the crime.

(c)Third, at that time the defendant must have intended the commission of the crime alleged or must have known that the other person intended its commission or that the crime alleged was a natural and probable consequence of the commission of the crime intended.

Use Note

*The statute penalizes one who "procures, counsels, aids, or abets" the commission of a crime. The committee believes "assists" captures the essence of the prohibited conduct, but court or counsel may prefer to select, in appropriate cases, a more specific verb from the statutory list.

History

M Crim JI 8.1 combines former CJI2d 8.1 and 8.2, which were CJI 8:1:01–8:1:02 and CJI 8:1:03, respectively. This instruction was adopted in June, 1992, and paragraph (3)(c) was amended in April, 1996, to reflect the state of mind required by case law, and in September, 2013, to reflect case law holding that a defendant can be an aider or abettor as a natural consequence of the commission of the offense.

Reference Guide

Statutes

MCL 767.39.

Case Law

People v Robinson, 475 Mich 1, 15, 715 NW2d 44 (2006); *People v Moore*, 470 Mich 56, 679 NW2d 41, cert denied, 543 US 947 (2004); *People v Carines*, 460 Mich 750, 757–758, 597 NW2d 130 (1999); *People v Mann*, 395 Mich 472, 236 NW2d 509 (1975); *People v Smielewski*, 235 Mich App 196, 208–209, 596 NW2d 636 (1999); *People v Bartlett*, 231 Mich

App 139, 157, 585 NW2d 341 (1998); *People v Turner*, 213 Mich App 558, 569, 540 NW2d 728 (1995); *People v Crousore*, 159 Mich App 304, 317, 406 NW2d 280 (1987); *People v Brown*, 120 Mich App 765, 328 NW2d 380 (1982); *People v Champion*, 97 Mich App 25, 32, 293 NW2d 715 (1980), rev'd on other grounds, 411 Mich 468, 307 NW2d 681 (1981); *People v Derrick Smith*, 87 Mich App 584, 594, 274 NW2d 844 (1978); *People v Stephens*, 84 Mich App 250, 269 NW2d 552 (1978); *People v Parks*, 57 Mich App 738, 226 NW2d 710 (1975).

M Crim JI 8.2 Crime Primarily Intended *[deleted]*

[Instruction deleted by committee in June, 1992, because material combined with present M Crim JI 8.1.]

M Crim JI 8.3 Separate Crime Within the Scope of Common Unlawful Enterprise

(1)The defendant says that [he / she] is not guilty of [*state charged offense*] because [he / she] did not intend to help anyone commit that offense.

(2)It is not sufficient for the prosecutor just to prove that the defendant intended to help another in the common unlawful activity of [*state common criminal enterprise*]. It is necessary that the prosecutor prove beyond a reasonable doubt that the defendant intended to help someone else commit the charged offense of [*state charged offense*].

(3)In determining whether the defendant intended to help someone else commit the charged offense of [*state charged offense*], you may consider whether that offense was fairly within the common unlawful activity of [*state common criminal enterprise*], that is, whether the defendant might have expected the charged offense to happen as part of that activity. There can be no criminal liability for any crime not fairly within the common unlawful activity.

Use Note

This instruction is intended for use where it is claimed that the defendant is criminally liable as an aider and abettor for a crime committed during the course of a criminal enterprise. For example, in *People v Poplar*, 20 Mich App 132, 173 NW2d 732 (1969), the defendant, who acted as a lookout during a breaking and entering, was found liable as an aider and abettor for the nonfatal shooting of the building manager by codefendants.

CAUTION: DO NOT USE THIS INSTRUCTION IN FELONY-MURDER CASES. See *People v Kelly*, 423 Mich 261, 277-280, and 286-287, n3, 378 NW2d 365 (1985).

History

M Crim JI 8.3 (formerly CJI2d 8.3) was CJI 8:1:04, which was substantially revised by the committee in June, 1992.

Reference Guide

Statutes

MCL 767.39.

Case Law

People v Robinson, 475 Mich 1, 715 NW2d 44 (2006); *People v Koharski*, 177 Mich 194, 142 NW 1097 (1913); *People v Belton*, 160 Mich 416, 125 NW 386 (1910*); People v Foley*, 59 Mich 553, 26 NW 699 (1886); *Nye v People*, 35 Mich 16 (1876); *People v Knapp*, 26 Mich 112 (1872); *People v Wirth*, 87 Mich App 41, 273 NW2d 104 (1978); *People v Trudeau*, 51 Mich App 766, 216 NW2d 450 (1974); *People v Poplar*, 20 Mich App 132, 173 NW2d 732 (1969).

M Crim JI 8.4 Inducement

It does not matter how much help, advice, or encouragement the defendant gave. However, you must decide whether the defendant intended to help another commit the crime and whether [his / her] help, advice, or encouragement actually did help, advise, or encourage the crime.

History

M Crim JI 8.4 (formerly CJI2d 8.4) was CJI 8:1:05; amended June 1990.

Reference Guide

Statutes

MCL 767.39.

Case Law

People v Palmer, 392 Mich 370, 378, 220 NW2d 393 (1974); People v Washburn, 285 Mich 119, 126, 280 NW 132 (1938).

M Crim JI 8.5 Mere Presence Insufficient

Even if the defendant knew that the alleged crime was planned or was being committed, the mere fact that [he / she] was present when it was committed is not enough to prove that [he / she] assisted in committing it.

History

M Crim JI 8.5 (formerly CJI2d 8.5) was CJI 8:1:06.

Reference Guide

Statutes

MCL 767.39.

Case Law

People v Burrel, 253 Mich 321, 235 NW 170 (1931); *People v Turner*, 125 Mich App 8, 336 NW2d 217 (1983); *People v Davenport*, 122 Mich App 159, 332 NW2d 443 (1982); *People v Bryan*, 92 Mich App 208, 284 NW2d 765 (1979); *People v Killingsworth*, 80 Mich App 45, 263 NW2d 278 (1977).

M Crim JI 8.6 Accessory After the Fact

(1)The defendant is charged with being an accessory after the fact to [*state principal offense*]. An accessory after the fact is someone who knowingly helps a felon avoid discovery, arrest, trial, or punishment.

(2)To prove that the defendant is guilty, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(3)First, that someone else committed [*state principal offense*]. [*State principal offense*] is defined as [*summarize all the elements of the principal offense*]. [The prosecutor does not have to prove that the other person has been charged with or convicted of (*state principal offense*); (he / she) just has to prove that (*state principal offense*) was committed.][1]

(4)Second, that the defendant helped the other person in an effort to avoid discovery, arrest, trial, or punishment.

(5)Third, that when the defendant gave help, [he / she] knew the other person had committed a felony.

(6)Fourth, that the defendant intended to help the other person avoid discovery, arrest, trial, or punishment.[2]

Use Note

[1] Use bracketed sentences when the principal has not been charged or convicted. *See People v Williams*, 117 Mich App 506, 513-514, 324 NW2d 70 (1982).

[2] This is a specific intent crime.

History

M Crim JI 8.6 (formerly CJI2d 8.6) was CJI 8:2:01. Amended September, 2000.

Reference Guide

Statutes

MCL 750.67.

Case Law

People v Lucas, 402 Mich 302, 262 NW2d 662 (1978); *People v Lefkovitz*, 294 Mich 263, 268-271, 293 NW 642 (1940); *People v Cunningham*, 201 Mich App 720, 506 NW2d 624 (1993*); People v Williams*, 117 Mich App 506, 513-514, 324 NW2d 70 (1982).

M Crim JI 8.7 Difference Between Aider and Abettor and Accessory After the Fact

(1)You must decide if the defendant is guilty of [*state principal offense*] as an aider and abettor, or is guilty of being an accessory after the fact to the felony of [*state principal offense*], or if [he / she] is not guilty.

(2)If the prosecutor has proven beyond a reasonable doubt that before or during the [*state principal offense*] the defendant gave [his / her] encouragement or assistance intending to help another commit that crime, then you may find the defendant guilty of aiding and abetting the crime.

(3)If the prosecutor has proven beyond a reasonable doubt that the defendant knew about [*state principal offense*] and helped the person who committed it avoid discovery, arrest, trial, or punishment after the crime ended, then you may find the defendant guilty of being an accessory after the fact. The felony of [*state principal offense*] ends when _____ .

(4)If the prosecutor has not proven either of these charges beyond a reasonable doubt, your verdict must be not guilty.

Use Note

This instruction should be given in those cases in which there is a question whether the defendant was an aider and abettor or an accessory after the fact. It should be given after the instructions defining the elements of the felony, aiding and abetting, and accessory after the fact.

History

M Crim JI 8.7 (formerly CJI2d 8.7) was CJI 8:2:02. Amended June, 1990; October 1993.

Reference Guide

Statutes

MCL 750.505, 767.39.

Case Law

People v Lucas, 402 Mich 302, 262 NW2d 662 (1978); *People v Usher*, 196 Mich App 228, 233, 492 NW2d 786 (1992); *People v Hartford*, 159 Mich App 295, 406 NW2d 276 (1987); *People v Davenport*, 122 Mich App 159, 332 NW2d 443 (1982); *People v Karst*, 118 Mich App 34, 324 NW2d 526 (1982); *People v Williams (On Remand)*, 117 Mich App 505, 514, 324 NW2d 70 (1982); *People v Bargy*, 71 Mich App 609, 248 NW2d 636 (1976).

CHAPTER 9 *Attempt*

M Crim JI 9.1 Attempt 9-2
M Crim JI 9.2 Attempt As Lesser Offense 9-3
M Crim JI 9.3 Impossibility No Defense 9-4
M Crim JI 9.4 Abandonment As Defense to Attempt 9-5

M Crim JI 9.1 Attempt

(1)The defendant is charged with attempting to commit the crime of _____. To prove the defendant's guilt, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant intended to commit _____, which is defined as [*state elements from the appropriate instructions defining the crime*].

(3)Second, that the defendant took some action toward committing the alleged crime, but failed to complete the crime. It is not enough to prove that the defendant made preparations for committing the crime. Things like planning the crime or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the crime would have been completed if it had not been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the crime that the defendant is charged with attempting and not some other objective.

[(4)You may convict the defendant of attempting to commit _____ even if the evidence convinces you that the crime was actually completed.]

Use Note

Any attempt to commit an offense is a specific intent crime. See *People v Langworthy*, 416 Mich 630, 644-645, 331 NW2d 171 (1982); *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979) (opinions of Levin, J.).

Paragraph in brackets should be given when factually appropriate.

History

M Crim JI 9.1 (formerly CJI2d 9.1) was CJI 9:1:01, 9:1:04.

Reference Guide

Case Law

People v Bradovich, 305 Mich 329, 9 NW2d 560 (1943); *People v Bauer*, 216 Mich 659, 185 NW 694 (1921); *People v Davenport*, 165 Mich App 256, 418 NW2d 450 (1987); *People v Kimball*, 109 Mich App 273, 311 NW2d 343, remanded, 412 Mich 890, 313 NW2d 285 (1981); *People v Miller*, 28 Mich App 161, 184 NW2d 286 (1970).

M Crim JI 9.2 Attempt As Lesser Offense

(1)The defendant is also charged with the less serious crime of attempted _____. To prove that the defendant attempted to commit this crime, the prosecutor must prove the following elements beyond a reasonable doubt:

(2)First, that the defendant intended to commit _____, which is defined as [*state elements from the appropriate instructions defining the crime*].

(3)Second, that the defendant took some action toward committing the alleged crime, but failed to complete the crime. It is not enough to prove that the defendant made preparations for committing the crime. Things like planning the crime or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the crime would have been completed if it had not been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the crime that the defendant is charged with attempting and not some other objective.

Use Note

Any attempt to commit an offense is a specific intent crime. *See People v Langworthy*, 416 Mich 630, 644-645, 331 NW2d 171 (1982); *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979) (opinions of Levin, J.).

History

M Crim JI 9.2 (formerly CJI2d 9.2) was CJI 9:1:02.

Reference Guide

Case Law

People v Adams, 416 Mich 53, 330 NW2d 634 (1982).

M Crim JI 9.3 Impossibility No Defense

A person can be found guilty of attempting to commit a crime even if [he / she] could not finish the crime because circumstances turned out to be different than [he / she] expected or [he / she] was stopped before [he / she] could finish.

History

M Crim JI 9.3 (formerly CJI2d 9.3) was CJI 9:1:03.

Reference Guide

Statutes

MCL 750.92.

Case Law

People v Thousand, 465 Mich 149, 631 NW2d 694 (2001); *People v Jones*, 46 Mich 441, 9 NW 486 (1881).

M Crim JI 9.4 Abandonment As Defense to Attempt

(1)[The defense / One of the defenses] raised by the defendant is that [he / she] is not guilty of because [he / she] freely and completely gave up the idea of committing the crime. This defense is called abandonment.

(2)[Abandonment is (the only / an) issue in this case on which the defendant has the burden of proof.][1] To prove abandonment, the defendant must show that [he / she] gave up the idea of committing the crime. To decide whether the defendant has met the burden of proving [his / her] defense of abandonment, you must consider all the evidence that was admitted during the trial. If the evidence supporting the defense of abandonment outweighs the evidence against it, then you must find the defendant not guilty of _____.

(3)Abandonment must be a choice of free will. If the defendant gave up the idea of committing the crime because of unexpected problems or because something happened that made it more likely that [he / she] would be discovered or caught, [he / she] did not abandon the crime of [his / her] own free will.

(4)The abandonment of the attempted crime must be complete. If the defendant simply decided to commit the crime some other time or to commit it on a different victim or with a different criminal goal, [he / she] did not completely abandon the crime.

(5)An attempted crime may be abandoned at any time before it is actually completed [or before it becomes impossible to avoid completing it. If the defendant started something that could not be stopped, [he / she] cannot claim that [he / she] abandoned the crime. For example, a person who abandons an attempt to kill after firing a shot at an intended victim may not use abandonment as a defense to attempted murder.].[2]

(6)If you decide that the defendant freely and completely gave up the idea of committing the crime, then [he / she] is not guilty of _____, even if you believe beyond a reasonable doubt that the defendant committed the alleged attempt.

Use Note

[1] Use bracketed language particularly when additional defenses that must be disproved by the prosecutor are raised by the defendant.

[2] Use bracketed language when factually appropriate.

History

M Crim JI 9.4 (formerly CJI2d 9.4) was CJI 9:1:05-9:1:06.

Reference Guide

Case Law

People v Stapf, 155 Mich App 491, 400 NW2d 656 (1986); *People v McNeal*, 152 Mich App 404, 393 NW2d 907 (1986); *People v Kimball*, 109 Mich App 273, 311 NW2d 343, remanded, 412 Mich 890, 313 NW2d 285 (1981).

CHAPTER 10

Conspiracy, Solicitation, and Organized Crime

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M Crim JI 10.1 Conspiracy

(1)The defendant is charged with the crime of conspiracy to commit _____. Anyone who knowingly agrees with someone else to commit _____ is guilty of conspiracy.

(2)To prove the defendant's guilt, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(3)First, that the defendant and someone else knowingly agreed to commit _____.

(4)Second, that the defendant specifically intended to commit or help commit that crime.[1]

(5)Third, that this agreement took place or continued during the period from _____ to _____.

[(6)Now let me define the crime of _____:][2]

Use Note

[1] Any conspiracy to commit an offense is a specific intent crime. *See People v Atley*, 392 Mich 298, 310, 220 NW2d 465 (1974).

[2] Use when the crime charged has not been previously defined.

History

M Crim JI 10.1 (formerly CJI2d 10.1) was CJI 10:1:01.

Reference Guide

Statutes

MCL 750.157a.

Case Law

People v Justice (After Remand), 454 Mich 334, 346-347, 562 NW2d 652 (1997); *People v Blume*, 443 Mich 476, 505 NW2d 843 (1993); *People v Anderson*, 418 Mich 31, 340 NW2d 634 (1983); *People v Carter*, 415 Mich 558, 330 NW2d 314 (1982); *People v Atley*, 392 Mich 298, 220 NW2d 465 (1974); *People v Hammond*, 187 Mich App 105, 466 NW2d 335 (1991); *People v Juarez*, 158 Mich App 66, 73, 404 NW2d 222 (1987); *People v Ayoub*, 150 Mich App 150, 387 NW2d 848 (1985); *People v White*, 147 Mich App 31, 383 NW2d 597 (1985); *People v Cyr*, 113 Mich App 213, 317 NW2d 857 (1982).

M Crim JI 10.2 Agreement

(1)An agreement is the coming together or meeting of the minds of two or more people, each person intending and expressing the same purpose.

(2)It is not necessary for the people involved to have made a formal agreement to commit the crime or to have written down how they were going to do it.

(3)In deciding whether there was an agreement to commit a crime, you should think about how the members of the alleged conspiracy acted and what they said as well as all the other evidence.

(4)To find the defendant guilty of conspiracy, you must be satisfied beyond a reasonable doubt that there was an agreement to commit _____. However, you may infer that there was an agreement from the circumstances, such as how the members of the alleged conspiracy acted.

Use Note

While the conspiracy statute includes the commission of a legal act in an illegal manner, this provision of the statute has not been commonly utilized in Michigan. Thus, conspiracy as prosecuted ordinarily involves an agreement to violate the law.

History

M Crim JI 10.2 (formerly CJI2d 10.2) includes portions of CJI 10:1:02-10:1:04 and 10:1:12 and was last amended by the committee in October, 2004.

Reference Guide

Case Law

People v Atley, 392 Mich 298, 311, 220 NW2d 465 (1974); *People v Gay*, 149 Mich App 468, 386 NW2d 556 (1986); *People v Boose*, 109 Mich App 455, 311 NW2d 390 (1981).

M Crim JI 10.3 Membership

If there was a conspiracy, you must decide whether the defendant was a member of it. You may only consider what the defendant did and said during the time the conspiracy took place. A finding that the defendant was merely with other people who were members of a conspiracy is not enough by itself to prove that the defendant was also a member. In addition, the fact that a person did an act that furthered the purpose of an alleged conspiracy is not enough by itself to prove that that person was a member of the conspiracy. It is not necessary for all the members to know each other or know all the details of how the crime will be committed, but it must be shown beyond a reasonable doubt that the defendant agreed to commit the crime and intended to commit or help commit it.

History

M Crim JI 10.3 (formerly CJI2d 10.3) includes portions of CJI 10:1:03, 10:1:04, and 10:1:06.

Reference Guide

Case Law

People v Huey, 345 Mich 120, 75 NW2d 893 (1956); *People v Sobczak*, 344 Mich 465, 73 NW2d 921 (1955); *People v Bartlett*, 312 Mich 648, 20 NW2d 758 (1945); *People v Heidt*, 312 Mich 629, 20 NW2d 751 (1945); *People v Arnold*, 46 Mich 268, 9 NW 406 (1881); *People v O'Connor*, 48 Mich App 524, 210 NW2d 805 (1973); *People v Rosen*, 18 Mich App 457, 171 NW2d 488 (1969).

M Crim JI 10.4 Scope

(1)The defendant is not responsible for the acts of other members of the conspiracy unless those acts are part of the agreement or further the purposes of the agreement.

(2)If the defendant agreed to commit a completely different crime, then [he / she] is not guilty of conspiracy to commit _____.

(3)A person who joins a conspiracy after it has already been formed is only responsible for what [he / she] agreed to when joining, not for any agreement made by the conspiracy before [he / she] joined. [You may consider evidence of what the other members of the alleged conspiracy did or said before the defendant became a member, but only in order to determine the nature and purpose of the conspiracy after the defendant joined.]

(4)Members of a conspiracy are not responsible for what other members do or say after the conspiracy ends.

Use Note

Use bracketed material where there is such evidence.

History

M Crim JI 10.4 (formerly CJI2d 10.4) was CJI 10:1:05, 10:1:07, 10:1:09, 10:1:10.

Reference Guide

Case Law

People v Blakes, 382 Mich 570, 170 NW2d 832 (1969); *People v Huey*, 345 Mich 120, 75 NW2d 893 (1956); *People v Cooper*, 326 Mich 514, 40 NW2d 708 (1950); *People v Heidt*, 312 Mich 629, 20 NW2d 751 (1945); *People v Ryan*, 307 Mich 610, 12 NW2d 474 (1943); *People v Roxborough*, 307 Mich 575, 12 NW2d 466 (1943); *People v Ranney*, 304 Mich 315, 8 NW2d 80 (1943); *People v Garska*, 303 Mich 313, 6 NW2d 527 (1942); *People v Beller*, 294 Mich 464, 293 NW 720 (1940); *People v Foley*, 59 Mich 553, 26 NW 699 (1886); *People v Knapp*, 26 Mich 112 (1872); *People v Iaconnelli*, 112 Mich App 725, 781, 317 NW2d 540, modified, 116 Mich App 176, 321 NW2d 684 (1982); *People v Missouri*, 100 Mich App 310, 299 NW2d 346 (1980).

M Crim JI 10.5 Case Must Be Considered as to Each Defendant

(1)Each defendant in this case is entitled to have his guilt or innocence decided individually. You must decide whether each defendant was a member of the alleged conspiracy as if he were being tried separately. To determine whether each defendant was a member of the alleged conspiracy, you must decide whether each individual defendant intentionally joined with anyone else to commit _____. In conspiracy cases it is often difficult to decide each defendant's case on its own because of the amount of evidence that is admitted against the other defendants. [If any evidence was limited to (one defendant / some defendants) you should not consider it as to any other defendants.]

(2)It is not enough to find that there was a criminal agreement to commit _____. Even if you do find that there was a conspiracy, you must still determine whether each defendant separately was a member of that conspiracy.

History

M Crim JI 10.5 (formerly CJI2d 10.5) was CJI 10:1:11.

Reference Guide

Case Law

People v Heidt, 312 Mich 629, 645, 20 NW2d 751 (1945); *People v Garska*, 303 Mich 313, 6 NW2d 527 (1942).

M Crim JI 10.6 Solicitation to Commit a Felony

(1)The defendant is charged with solicitation to commit _____. To prove the defendant's guilt, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant, through words or actions, offered, promised, or gave money, services, or anything of value [or forgave or promised to forgive a debt or obligation owed] to another person.[1]

(3)Second, that the defendant intended that what [he / she] said or did would cause _____ to be committed.[2] The crime of _____ is defined as [*summarize all the elements of the crime solicited*].

(4)The prosecutor does not have to prove that the person the defendant solicited actually committed, attempted to commit, or intended to commit _____.

Use Note

Under prior MCL 750.157b(1), the trial court was required to instruct *sua sponte* on inciting second-degree murder in every case where the defendant was charged with inciting first-degree murder. *People v Richendollar*, 85 Mich App 74, 270 NW2d 530 (1978). That requirement should apply under the amended statute as well.

[1] The language in this paragraph may be tailored to fit the facts of the case.

[2] This is a specific intent crime.

History

M Crim JI 10.6 (formerly CJI2d 10.6) was CJI 10:2:01.

Reference Guide

Statutes

MCL 750.157b(1).

Case Law

People v Thousand, 465 Mich 149, 631 NW2d 694 (2001); *People v Rehkopf*, 422 Mich 198, 205, 370 NW2d 296 (1985); *People v Vandelinder*, 192 Mich App 447, 481 NW2d 787 (1992); *People v Chapman*, 80 Mich App 583, 264 NW2d 69 (1978).

M Crim JI 10.7 Renunciation as a Defense to Solicitation

(1)The defendant has raised the defense that [he / she] is not guilty of solicitation because [he / she] freely and completely renounced, or gave up, [his / her] criminal purpose. To prove this defense, the defendant must prove each of the following by a greater weight of the evidence:

(2)First, that [he / she] gave up [his / her] criminal purpose voluntarily. Voluntarily means a true change of heart not influenced by outside circumstances. If the defendant gave up criminal purpose because of unexpected problems or resistance or because something happened that made it more likely that [he / she] would be discovered or caught, [he / she] did not renounce [his / her] criminal purpose voluntarily.

(3)Second, that [he / she] gave up [his / her] criminal purpose completely. Completely means permanently and unconditionally. If the defendant simply decided to commit the crime some other time or to commit it on a different victim or with a different criminal goal, [he / she] did not renounce [his / her] criminal purpose completely.

(4)Third, that [he / she] let the person [he / she] solicited know that [he / she] was renouncing [his / her] criminal purpose.

(5)Fourth, that [he / she] either warned the police in time and cooperated with them, or that [he / she] made a real effort in some other way to prevent _____ from happening.

(6)Fifth, that _____ did not in fact happen.

(7)If the defendant fails to prove any of these things, then [he / she] has not proved [his / her] defense that [he / she] renounced [his / her] criminal purpose.

(8)In deciding whether the defendant has proved this defense, you should think about all of the evidence that was admitted during the trial. If you are satisfied that the evidence supporting renunciation outweighs the evidence against it, then the defendant has met [his / her] burden of proof and you must find [him / her] not guilty.

[(9)Renunciation is the only issue in this case that the defendant has the burden of proving. If you decide that [he / she] has failed to prove this defense, you must still consider whether the prosecutor has met (his / her) burden of proving each of the elements of solicitation beyond a reasonable doubt.]

History

M Crim JI 10.7 (formerly CJI2d 10.7) was CJI 10:2:02-10:2:03.

Reference Guide

Statutes

MCL 750.157b(4).

Case Law

Martin v Ohio, 480 US 228 (1987); *Patterson v New York*, 432 US 197 (1977).

M Crim JI 10.8 Racketeering – Conducting an Enterprise

(1) The defendant is charged with the crime of conducting a racketeering enterprise. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was an employee of, or was associated with, an enterprise. An enterprise may be an individual person, a sole proprietorship, a partnership, a corporation, a limited liability company, a trust, a union, an association, a governmental unit, any other legal entity, or any other association of persons.[1]

(3) Second, that the defendant knowingly conducted, or participated in, the affairs of the enterprise, directly or indirectly, through a pattern of racketeering.

An act of racketeering is committing, attempting to commit, or conspiring to commit a listed offense for financial gain, or aiding and abetting, soliciting, coercing, or intimidating another to commit a listed offense for financial gain.

(a) The listed offenses that the defendant is accused of committing are [*identify specific violations from MCL 750.159g(a) through (rr)*[2]].

(b) [*Provide elements of identified violation(s).*][3]

If you find that the defendant committed acts of racketeering, you must also determine whether [he / she] engaged in a pattern of racketeering, which means committing at least two acts of racketeering to which all of the following characteristics apply:

(a) the acts have the same or a substantially similar purpose, result, participants, victim, or method of commission, or are otherwise interrelated by distinguishing characteristics, and are not isolated acts;

(b) the acts pose a threat of continued criminal activity; and

(c) at least one act occurred in Michigan after April 1, 1996 and the last act occurred not more than ten years after the act before it.

It is up to you to decide whether the prosecutor has proved beyond a reasonable doubt both that the defendant committed acts of racketeering and that [he / she] engaged in a pattern of racketeering to conduct or participate in the affairs of an enterprise.

Use Note

1. The court may choose to include whatever portions of the sentence that it finds appropriate.

2. The following offenses are listed in MCL 750.159g:

(a) tobacco tax statutes [MCL 205.428];

(b) hazardous waste statutes [MCL 324.11151];

(c) controlled substances statutes [MCL 333.7401 through 333.7461];

(d) controlled substances statutes (ephedrine or pseudoephedrine) [MCL 333.7340, 333.7340c, and 333.17766c];

(e) welfare fraud statutes [MCL 400.60];

(f) Medicaid fraud statutes [MCL 400.604, 400.605, and 400.607];

(g) gaming control statutes [MCL 432.218];

(h) liquor control statutes [MCL 436.1909];

(i) securities fraud statutes [MCL 451.2508];

(j) statutes prohibiting dissemination of pornography to minors [MCL 722.675 and 722.677];

(k) animal fighting statutes [MCL 750.49]

(l) arson statutes [MCL 750.72, 750.73, 750.74, 750.75, 750.77];

(m) banking statutes [MCL 750. 93 through 750.96];

(n) breaking and entering or home invasion statutes [MCL 750.110 and 750.110a];

(o) bribery statutes [MCL 750.117 through 750.121 and 750.124];

(p) jury tampering statutes [MCL 750.120a];

(q) child sexually abusive activity statutes [MCL 750.145c];

(r) Internet and computer crimes [MCL 750.145d];

(s) financial transaction device statutes [MCL 750.157n, 750.157p, 750.157q, 750.157r, 750.157s, 750.157t, and 750.157u];

(t) embezzlement statutes [MCL 750.174, 750.175, 750.176, 750.180, 750.181, 750.182];

(u) bomb and explosive statutes [MCL 750.200, et seq];

(v) extortion statutes [MCL 750.213];

(w) false pretenses statutes [MCL 750.218];

(x) firearms statutes [MCL 750.223(2), 750.224(1)(a), (b) or (c), 750.224b, 750.224c, 750.224e(1), 750.226, 750.227, 750.234a, 750.234b, 750.237a];

(y) forgery and counterfeiting statutes [MCL 750.248, et seq];

(z) state securities fraud statutes [MCL 750.271 through 750.274];

(aa) food stamps and coupons statutes [MCL 750.300a];

(bb) gambling statutes [MCL 750.301 through 750.305a and 750.313];

(cc) murder statutes [MCL 750.316 and 750.317];

(dd) horse racing statutes [MCL 750.330, 750.331 and 750.332];

(ee) kidnapping statutes [MCL 750.349, 750.349a and 750.350];

(ff) larceny statutes [MCL 750.356, et seq];

(gg) money laundering statutes [MCL 750411k];

(hh) perjury statutes [MCL 750.422, 750.423, 750.424, and 750.425];

(ii) prostitution statutes [MCL 750.452, 750.455, 750.457, 750.458 and 750.459];

(jj) human trafficking statutes [MCL 750.462a, et seq];

(kk) robbery statutes [MCL 750.529 through 750.531];

(*ll*) possession of stolen property statutes [MCL 750.535 and 750.535a];

(mm) terrorism statutes [MCL 750.543a et se;

(nn) obscenity statutes [MCL 752.365];

(oo) identity theft statutes [MCL 445.61 through 445.77];

(pp) offenses committed in this or another state that constitute federal racketeering [18 USC 1961(1)];

(qq) offenses committed in this or another state in violation of federal law substantially similar to (a) through (pp);

(rr) offenses committed in another state in violation of the laws of that state that are substantially similar to (a) through (pp).

3. Do not read the first sentence of the instruction for the specific violation, which begins, "The defendant is charged with the crime of . . . ."

History

M Crim JI 10.8 was adopted January 2018.

Reference Guide

Statutes

MCL 750.159f, .159g, .159h, .159i and .159j.

M Crim JI 10.8a Acquiring Interest in Racketeering Enterprise Property

(1) The defendant is charged with the crime of acquiring or maintaining an enterprise or property for an enterprise by racketeering. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant acquired or maintained an interest in or control of an enterprise, or acquired or maintained an interest in real or personal property used to conduct the business of an enterprise. An enterprise may be an individual person, a sole proprietorship, a partnership, a corporation, a limited liability company, a trust, a union, an association, a governmental unit, any other legal entity, or any other association of persons.[1]

(3) Second, that the defendant knowingly acquired or maintained an interest in or control of the enterprise or its property, directly or indirectly, through a pattern of racketeering.

An act of racketeering is committing, attempting to commit, or conspiring to commit a listed offense for financial gain, or aiding and abetting, soliciting, coercing, or intimidating another to commit a listed offense for financial gain.

(a) The listed offenses that the defendant is accused of committing are [*identify specific violations from MCL 750.159g(a) through (rr)*[2]].

(b) [*Provide elements of identified violation(s).*][3]

If you find that the defendant committed acts of racketeering, you must also determine whether [he / she] engaged in a pattern of racketeering to acquire or maintain an interest in or control of the enterprise or its property, which means committing at least two acts of racketeering to which all of the following characteristics apply:

(a) the acts have the same or a substantially similar purpose, result, participants, victim, or method of commission, or are otherwise interrelated by distinguishing characteristics, and are not isolated acts;

(b) the acts pose a threat of continued criminal activity; and

(c) at least one act occurred in Michigan after April 1, 1996 and the last act occurred not more than ten years after the incident before it.

It is up to you to decide whether the prosecutor has proved beyond a reasonable doubt both that the defendant committed the acts of racketeering, and that [he /she] engaged in a pattern of racketeering to acquire or maintain an interest in or control of the enterprise or its property.

Use Note

1. The court may choose to include whatever portions of the sentence that it finds appropriate.

2. The following offenses are listed in MCL 750.159g:

(a) tobacco tax statutes [MCL 205.428];

(b) hazardous waste statutes [MCL 324.11151];

(c) controlled substances statutes [MCL 333.7401 through 333.7461];

(d) controlled substances statutes (ephedrine or pseudoephedrine) [MCL 333.7340, 333.7340c, and 333.17766c];

(e) welfare fraud statutes [MCL 400.60];

(f) Medicaid fraud statutes [MCL 400.604, 400.605, and 400.607];

(g) gaming control statutes [MCL 432.218];

(h) liquor control statutes [MCL 436.1909];

(i) securities fraud statutes [MCL 451.2508];

(j) statutes prohibiting dissemination of pornography to minors [MCL 722.675 and 722.677];

(k) animal fighting statutes [MCL 750.49]

(l) arson statutes [MCL 750.72, 750.73, 750.74, 750.75, 750.77];

(m) banking statutes [MCL 750. 93 through 750.96];

(n) breaking and entering or home invasion statutes [MCL 750.110 and 750.110a];

(o) bribery statutes [MCL 750.117 through 750.121 and 750.124];

(p) jury tampering statutes [MCL 750.120a];

(q) child sexually abusive activity statutes [MCL 750.145c];

(r) Internet and computer crimes [MCL 750.145d];

(s) financial transaction device statutes [MCL 750.157n, 750.157p, 750.157q, 750.157r, 750.157s, 750.157t, and 750.157u];

(t) embezzlement statutes [MCL 750.174, 750.175, 750.176, 750.180, 750.181, 750.182];

(u) bomb and explosive statutes [MCL 750.200, et seq];

(v) extortion statutes [MCL 750.213];

(w) false pretenses statutes [MCL 750.218];

(x) firearms statutes [MCL 750.223(2), 750.224(1)(a), (b) or (c), 750.224b, 750.224c, 750.224e(1), 750.226, 750.227, 750.234a, 750.234b, 750.237a];

(y) forgery and counterfeiting statutes [MCL 750.248, et seq];

(z) state securities fraud statutes [MCL 750.271 through 750.274];

(aa) food stamps and coupons statutes [MCL 750.300a];

(bb) gambling statutes [MCL 750.301 through 750.305a and 750.313];

(cc) murder statutes [MCL 750.316 and 750.317];

(dd) horse racing statutes [MCL 750.330, 750.331 and 750.332];

(ee) kidnapping statutes [MCL 750.349, 750.349a and 750.350];

(ff) larceny statutes [MCL 750.356, et seq];

(gg) money laundering statutes [MCL 750411k];

(hh) perjury statutes [MCL 750.422, 750.423, 750.424, and 750.425];

(ii) prostitution statutes [MCL 750.452, 750.455, 750.457, 750.458 and 750.459];

(jj) human trafficking statutes [MCL 750.462a, et seq];

(kk) robbery statutes [MCL 750.529 through 750.531];

(*ll*) possession of stolen property statutes [MCL 750.535 and 750.535a];

(mm) terrorism statutes [MCL 750.543a et seq];

(nn) obscenity statutes [MCL 752.365];

(oo) identity theft statutes [MCL 445.61 through 445.77];

(pp) offenses committed in this or another state that constitute federal racketeering [18 USC 1961(1)];

(qq) offenses committed in this or another state in violation of federal law substantially similar to (a) through (pp);

(rr) offenses committed in another state in violation of the laws of that state that are substantially similar to (a) through (pp).

3. Do not read the first sentence of the instruction for the specific violation, which begins, "The defendant is charged with the crime of . . . ."

History

M Crim JI 10.8a was adopted January 2018.

Reference Guide

Statutes

MCL 750.159f, .159g, .159h, .159i and .159j.

M Crim JI 10.8b Use of Proceeds from Racketeering

(1) The defendant is charged with the crime of receiving proceeds from a pattern of racketeering and using them to establish or operate an enterprise. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant received any sort of property that was the proceeds of a pattern of racketeering.

An act of racketeering is committing, attempting to commit, or conspiring to commit a listed offense for financial gain, or aiding and abetting, soliciting, coercing, or intimidating another to commit a listed offense for financial gain.

(a) The listed offenses that the prosecutor charges were committed for financial gain are [*identify specific violations from MCL 750.159g(a) through (rr)*[1]].

(b) [*Provide elements of identified violation(s).*][2]

A pattern of racketeering means at least two acts of racketeering were committed to which all of the following characteristics apply:

(a) the acts have the same or a substantially similar purpose, result, participants, victim, or method of commission, or are otherwise interrelated by distinguishing characteristics, and are not isolated acts;

(b) the acts pose a threat of continued criminal activity; and

(c) at least one act occurred in Michigan after April 1, 1996 and the last incident occurred not more than ten years after the act before it.

It is up to you to decide whether the prosecutor has proved that the defendant received property and that the property was the proceeds of a pattern of racketeering. The prosecutor does not have to prove that the defendant was the person who committed the acts of racketeering, only that the defendant received the proceeds.

(3) Second, that the defendant knew that the property that [he / she] received was obtained through a pattern of racketeering.

(4) Third, that the defendant used or invested that property to [establish or operate an enterprise / acquire real or personal property to be used for operating an enterprise]. An enterprise may be an individual person, a sole proprietorship, a partnership, a corporation, a limited liability company, a trust, a union, an association, a governmental unit, any other legal entity, or any other association of persons.[3]

Use Note

1. The following offenses are listed in MCL 750.159g:

(a) tobacco tax statutes [MCL 205.428];

(b) hazardous waste statutes [MCL 324.11151];

(c) controlled substances statutes [MCL 333.7401 through 333.7461];

(d) controlled substances statutes (ephedrine or pseudoephedrine) [MCL 333.7340, 333.7340c, and 333.17766c];

(e) welfare fraud statutes [MCL 400.60];

(f) Medicaid fraud statutes [MCL 400.604, 400.605, and 400.607];

(g) gaming control statutes [MCL 432.218];

(h) liquor control statutes [MCL 436.1909];

(i) securities fraud statutes [MCL 451.2508];

(j) statutes prohibiting dissemination of pornography to minors [MCL 722.675 and 722.677];

(k) animal fighting statutes [MCL 750.49]

(l) arson statutes [MCL 750.72, 750.73, 750.74, 750.75, 750.77];

(m) banking statutes [MCL 750. 93 through 750.96];

(n) breaking and entering or home invasion statutes [MCL 750.110 and 750.110a];

(o) bribery statutes [MCL 750.117 through 750.121 and 750.124];

(p) jury tampering statutes [MCL 750.120a];

(q) child sexually abusive activity statutes [MCL 750.145c];

(r) Internet and computer crimes [MCL 750.145d];

(s) financial transaction device statutes [MCL 750.157n, 750.157p, 750.157q, 750.157r, 750.157s, 750.157t, and 750.157u];

(t) embezzlement statutes [MCL 750.174, 750.175, 750.176, 750.180, 750.181, 750.182];

(u) bomb and explosive statutes [MCL 750.200, et seq];

(v) extortion statutes [MCL 750.213];

(w) false pretenses statutes [MCL 750.218];

(x) firearms statutes [MCL 750.223(2), 750.224(1)(a), (b) or (c), 750.224b, 750.224c, 750.224e(1), 750.226, 750.227, 750.234a, 750.234b, 750.237a];

(y) forgery and counterfeiting statutes [MCL 750.248, et seq];

(z) state securities fraud statutes [MCL 750.271 through 750.274];

(aa) food stamps and coupons statutes [MCL 750.300a];

(bb) gambling statutes [MCL 750.301 through 750.305a and 750.313];

(cc) murder statutes [MCL 750.316 and 750.317];

(dd) horse racing statutes [MCL 750.330, 750.331 and 750.332];

(ee) kidnapping statutes [MCL 750.349, 750.349a and 750.350];

(ff) larceny statutes [MCL 750.356, et seq];

(gg) money laundering statutes [MCL 750411k];

(hh) perjury statutes [MCL 750.422, 750.423, 750.424, and 750.425];

(ii) prostitution statutes [MCL 750.452, 750.455, 750.457, 750.458 and 750.459];

(jj) human trafficking statutes [MCL 750.462a, et seq];

(kk) robbery statutes [MCL 750.529 through 750.531];

(*ll*) possession of stolen property statutes [MCL 750.535 and 750.535a];

(mm)terrorism statutes [MCL 750.543a et seq];

(nn) obscenity statutes [MCL 752.365];

(oo) identity theft statutes [MCL 445.61 through 445.77];

(pp) offenses committed in this or another state that constitute federal racketeering [18 USC 1961(1)];

(qq) offenses committed in this or another state in violation of federal law substantially similar to (a) through (pp);

(rr) offenses committed in another state in violation of the laws of that state that are substantially similar to (a) through (pp).

2. Do not read the first sentence of the instruction for the specific violation, which begins, "The defendant is charged with the crime of . . . ."

3. The court may choose to include whatever portions of the sentence that it finds appropriate.

History

M Crim JI 10.8b was adopted January 2018.

Reference Guide

Statutes

MCL 750.159f, .159g, .159h, .159i and .159j.

CHAPTER 11

Weapons

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M Crim JI 11.1 Carrying Concealed Weapon-Pistol

(1)The defendant is charged with the crime of carrying a concealed pistol. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

[*Use the following if defendant is charged with carrying a pistol concealed on person:*]

(2)First, that the defendant knowingly carried a pistol. It does not matter why the defendant was carrying the pistol, but to be guilty of this crime the defendant must have known that [he / she] was carrying a pistol.*

(3)Second, that this pistol was concealed on or about the person of the defendant. Complete invisibility is not required. A pistol is concealed if it cannot easily be seen by those who come into ordinary contact with the defendant.

[*Use the following if defendant is charged with carrying a pistol carried in vehicle:*]

(4)First, that a pistol was in a vehicle that the defendant was in.*

(5)Second, that the defendant knew the pistol was there.

(6)Third, that the defendant took part in carrying or keeping the pistol in the vehicle.

Use Note

*The definition of pistol, M Crim JI 11.3, should be included in the instructions only where there is some question of the article being a pistol. See M Crim JI 11.10-11.15 for exemptions.

History

M Crim JI 11.1 (formerly CJI2d 11.1) was CJI 11:1:01.

Reference Guide

Statutes

MCL 750.227, .231, .231a

Case Law

People v Sturgis, 427 Mich 392, 397 NW2d 783 (1986); *People v Butler*, 413 Mich 377, 384-385, 319 NW2d 540 (1982); *People v Henderson*, 391 Mich 612, 616-617, 218 NW2d 2 (1974); *People v Green*, 260 Mich App 392, 677 NW2d 677 NW2d 363 (2004), overruled on other grounds, *People v Anstey*, 476 Mich 436, 719 NW2d 579 (2006); *People v Nimeth*, 236 Mich App 616, 621, 601 NW2d 393 (1999); *People v Combs*, 160 Mich App 666, 408 NW2d 420 (1987); *People v Lane*, 102 Mich App 11, 300 NW2d 717 (1980); *People v Stone*, 100 Mich App 24, 28, 298 NW2d 607 (1980); *People v Jackson*, 43 Mich App 569, 204 NW2d 367 (1972); *People v Jones*, 12 Mich App 293, 296, 162 NW2d 847 (1968).

M Crim JI 11.2 Carrying Concealed Weapon-Dangerous Weapon

(1)The defendant is charged with the crime of carrying a concealed weapon. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

[*Use the following if defendant is charged with carrying a weapon concealed on person:*]

(2)First, that the defendant knowingly carried a [dagger / dirk / stiletto / double-edged, nonfolding stabbing instrument / dangerous stabbing weapon]. It does not matter why the defendant was carrying the weapon, but to be guilty of this crime the defendant must have known that it was a weapon.*

(3)Second, that this [dagger / dirk / stiletto / double-edged, nonfolding stabbing instrument / dangerous stabbing weapon] was concealed. Complete invisibility is not required. A weapon is concealed if it cannot easily be seen by those who come into ordinary contact with the defendant.

[*Use the following if defendant is charged with carrying a weapon carried in vehicle:*]

(4)First, that the instrument or item was a [dagger / dirk / stiletto / double-edged, nonfolding stabbing instrument / dangerous stabbing weapon].

(5)Second, that the instrument or item was in a vehicle that the defendant was in.

(6)Third, that the defendant knew the instrument or item was in the vehicle.

(7)Fourth, that the defendant took part in carrying or keeping the instrument or item in the vehicle.

Use Note

**Define term used:*

M Crim JI 11.4 Dangerous Stabbing Weapon

M Crim JI 11.5 Dirk, Dagger, and Stiletto

If the defendant is charged with carrying a double-edged, nonfolding stabbing instrument, no further definition of that term is necessary.

History

M Crim JI 11.2 (formerly CJI2d 11.2) was CJI 11:1:02; amended April, 1999.

Reference Guide

Statutes

MCL 750.227, .231, .231a.

Case Law

People v Lynn, 459 Mich 53, 586 NW2d 534 (1998); *People v Smith*, 393 Mich 432, 225 NW2d 165 (1975); *People v Vaines*, 310 Mich 500, 17 NW2d 729 (1945); *People v Goolsby*, 284 Mich 375, 378, 279 NW 867 (1938); *People v Johnson*, 175 Mich App 56, 59, 437 NW2d 302 (1989).

M Crim JI 11.3 Definition of Pistol

(1)A pistol is a firearm. A firearm includes any weapon which will, or is designed to, or may readily be converted to expel a projectile by action of an explosive.

(2)The shape of the pistol is not important as long as it is twenty-six inches or less in length.

(3)It does not matter whether or not the pistol was capable of firing a projectile or whether it was loaded.

History

M Crim JI 11.3 (formerly CJI2d 11.3) was CJI 11:1:03. Amended in May 2016 (pending public comment) and adopted with no further changes in January 2017.

Reference Guide

Statutes

MCL 8.3t, 750.222(a), .227, .231, .231a.

Case Law

People v Peals, 476 Mich 636 (2006); *People v Humphrey*, 312 Mich App 309 (2015).

M Crim JI 11.3a Definition of Pneumatic Gun

A pneumatic gun means any implement, designed as a gun, that will expel a BB or pellet by spring, gas, or air. Pneumatic gun includes a paintball gun that expels by pneumatic pressure plastic balls filled with paint for the purpose of marking the point of impact.

History

Added in May 2016 (pending public comment) and adopted with no further changes in January 2017.

Reference Guide

Statutes

MCL 750.222(g); 123.1101(d).

M Crim JI 11.4 Definition of Dangerous Stabbing Weapon

(1)A dangerous stabbing weapon is any object that is carried as a weapon for bodily assault or defense and that is likely to cause serious physical injury or death when used as a stabbing weapon.

(2)Some objects, such as guns or bombs, are dangerous because they are specifically designed to be dangerous. Other objects are designed for peaceful purposes but may be used as dangerous weapons. The way an object is carried determines whether or not it is a dangerous weapon. If an object is carried for use as a stabbing weapon, and is likely to cause serious physical injury or death when used as a stabbing weapon, it is a dangerous stabbing weapon.

(3)You must decide from all of the facts and circumstances whether the evidence shows that the _____ in question here was a dangerous stabbing weapon.

Use Note

In *People v Lynn*, 459 Mich 53, 60, 586 NW2d 534 (1998), the Michigan Supreme Court held that where the defendant is charged with carrying a "dangerous weapon" contrary to MCL 750.227, "the burden is on the prosecution to prove that the instrument … was used, or intended for use, as a weapon for bodily assault or defense. The fact that a pointed instrument, such as a machete, has great potential as a dangerous weapon does not render it a dangerous weapon per se."

History

M Crim JI 11.4 (formerly CJI2d 11.4) was CJI 11:1:04.

Reference Guide

Statutes

MCL 750.227, .231, .231a.

Case Law

People v Smith, 393 Mich 432, 225 NW2d 165 (1975); *People v Vaines*, 310 Mich 500, 17 NW2d 729 (1945); *People v Goolsby*, 284 Mich 375, 279 NW 867 (1938); *People v Morris*, 8 Mich App 688, 155 NW2d 270 (1967).

M Crim JI 11.5 Definition of Dirk, Dagger, and Stiletto

(1)A dirk is a straight knife with a pointed blade.

(2)A dagger is a knife with a short, pointed blade.

(3)A stiletto is a small dagger with a slender, tapering blade.

Use Note

Choose appropriate definition.

History

M Crim JI 11.5 (formerly CJI2d 11.5) was CJI 11:1:06-11:1:08.

M Crim JI 11.6 Defense-Firearm Inoperable [*deleted*]

This instruction was stricken as an incorrect statement of the law. *People v Humphrey*, 312 Mich App 309; 877 NW2d 770 (2015).

History

M Crim JI 11.6 (formerly CJI2d 11.6) was CJI 11:1:09. Deleted January 2017.

M Crim JI 11.7 Defense—Defendant Unaware of Weapon

(1)An essential element of the crime of carrying a concealed weapon is that the defendant must have knowingly carried the weapon.

(2)If you are not convinced beyond a reasonable doubt that the defendant knew that the weapon was [on (his / her) person / in the automobile], then you must find the defendant not guilty.

History

M Crim JI 11.7 (formerly CJI2d 11.7) was CJI 11:1:10.

Reference Guide

Statutes

MCL 750.227, .231, .231a.

Case Law

People v Williamson, 200 Mich 342, 346, 166 NW 917 (1918); *People v Emery*, 150 Mich App 657, 389 NW2d 472 (1986).

M Crim JI 11.8 Self-Defense Is Not a Defense to Carrying a Concealed Weapon

It does not matter if the defendant was carrying the weapon for [his / her] own protection. Self-defense is not a defense to this charge.

History

M Crim JI 11.8 (formerly CJI2d 11.8) was CJI 11:1:11.

Reference Guide

Case Law

P*eople v Hernandez-Garcia*, 477 Mich 1039, 728 NW2d 406 (2007); *People v Hernandez-Garcia*, 266 Mich App 416, 701 NW2d 191 (2005); *People v Townsel*, 13 Mich App 600, 164 NW2d 776 (1968).

M Crim JI 11.9 Exemption—Hunting Knife

(1)A hunting knife is a large, heavy, wide-bladed knife with a single cutting edge that curves up to a point. It is typically used to skin and cut up game.

(2)This law does not apply to hunting knives adapted and carried as hunting knives. The prosecutor has the burden of proving beyond a reasonable doubt that the knife involved was not a hunting knife.

Use Note

This instruction is to be given when the trial court determines that some evidence relating to the hunting knife exemption was admitted at trial. *See People v Henderson*, 391 Mich 612, 218 NW2d 2 (1974).

History

M Crim JI 11.9 (formerly CJI2d 11.9) was CJI 11:1:05, 11:1:12; amended September, 2007.

Reference Guide

Statutes

MCL 750.227(1).

Case Law

People v Payne, 180 Mich App 283, 285, 446 NW2d 629 (1989); *People v Zysk*, 149 Mich App 452, 386 NW2d 213 (1986).

M Crim JI 11.10 Exemption-Pistol Carried by Licensee

This law does not apply to anyone who has a valid license to carry a concealed pistol. [However, if there are any restrictions on the license, the person must follow those restrictions.][1] The prosecutor has the burden of proving beyond a reasonable doubt that the defendant [did not have a license / was carrying the pistol in violation of the restrictions on the license].[2]

Use Note

This instruction is to be given when the trial court determines that some evidence relating to the license exemption was admitted at trial. *See People v Henderson*, 391 Mich 612, 218 NW2d 2 (1974).

[1] Use bracketed material when restrictions are an issue.

[2] Use bracketed material after slash mark when restrictions are an issue.

History

M Crim JI 11.10 (formerly CJI2d 11.10) was CJI 11:1:13-11:1:14.

Reference Guide

Statutes

MCL 750.227(2), .231a.

M Crim JI 11.11 Exemption-Weapon Carried in Home, Place of Business, or on Land Possessed by Defendant

This law does not apply to a person who carries a [pistol / knife / dagger / dirk / stiletto / dangerous stabbing weapon] in [his / her] home, place of business, or on other land [he / she] possesses. The prosecutor has the burden of proving beyond a reasonable doubt that the defendant was carrying the _____ outside of [his / her] own home or place of business or off other land [he / she] possessed.

Use Note

This instruction is to be given when the trial court determines that some evidence relating to the exemption of carrying a weapon in one's own home, place of business, or other possessed land was admitted at trial. *See People v Henderson*, 391 Mich 612, 218 NW2d 2 (1974).

History

M Crim JI 11.11 (formerly CJI2d 11.11) was CJI 11:1:15.

Reference Guide

Statutes

MCL 750.227(1).

Case Law

People v Pasha, 466 Mich 378, 645 NW2d 275 (2002).

M Crim JI 11.12 Exemption-Pistol Carried by Agent of Manufacturer

This law does not apply to an authorized agent of a licensed manufacturer of firearms who is engaged in the ordinary transportation of pistols as merchandise. The prosecutor has the burden of proving beyond a reasonable doubt that the defendant was not doing so.

Use Note

This instruction is to be given when the trial court determines that some evidence that the defendant was an authorized agent of a licensed manufacturer of firearms who was engaged in the ordinary transportation of pistols as merchandise was admitted at trial.

History

M Crim JI 11.12 (formerly CJI2d 11.12) was CJI 11:1:16.

Reference Guide

Statutes

MCL 750.231a(1)(b).

M Crim JI 11.13 Exemption-Antique Firearm

(1)This law does not apply to a person who carries an antique gun. However, the antique gun must be completely unloaded and in a closed case or container designed for the storage of firearms [in the trunk of the vehicle / and it must not be easily accessible to the people in the vehicle].

[(2)An antique gun is any gun made in or before 1898 that is not designed or redesigned for using rimfire or conventional centerfire ignition with fixed ammunition.]

[(3)Antique guns also include any guns using a matchlock, flintlock, percussion cap, or similar type of ignition system or replicas of these systems, no matter what year the guns were made.]

[(4)An antique gun is also any gun made in or before 1898 that uses fixed ammunition of a kind that is no longer made in the United States and that is not readily available in commercial trade.]

(5)The prosecutor has the burden of proving beyond a reasonable doubt that the weapon was not an antique gun.

Use Note

This instruction is to be given when the trial court determines that evidence sufficient to satisfy MCL 776.20 relating to the antique gun exemption was introduced at trial.

Use bracketed portions as applicable.

History

M Crim JI 11.13 (formerly CJI2d 11.13) was CJI 11:1:17. Amended February 2016.

Reference Guide

Statutes

MCL 750.231a(1)(c), (2).

M Crim JI 11.14 Exemption-Licensed Pistol Carried for a Lawful Purpose

(1)This law does not apply to a person who carries a licensed pistol in a vehicle for a lawful purpose. However, the pistol must be licensed, completely unloaded, and in a closed case or container designed for the storage of firearms [in the trunk of the vehicle / and it must not be easily accessible to the people in the vehicle].

(2)The prosecutor has the burden of proving beyond a reasonable doubt that the defendant was not carrying the pistol for a lawful purpose.

Use Note

This instruction is to be given when the trial court determines that evidence sufficient to satisfy MCL 776.20, relating to the carrying of a licensed pistol for a lawful purpose, was introduced at trial.

History

M Crim JI 11.14 (formerly CJI2d 11.14) was CJI 11:1:18. Amended February 2016.

Reference Guide

Statutes

MCL 750.231a(1)(e).

M Crim JI 11.15 Exemption-Pistol Carried En Route to Hunting or Target Shooting Area [*Deleted*]

Note: This instruction was deleted by the Committee in February 2016 when it was fully included within M Crim JI 11.14.

M Crim JI 11.16 Exemption-Short-barreled Shotgun

(1)This law does not apply to a short-barreled shotgun or short-barreled rifle that is lawfully made, manufactured, transferred or possessed under federal law. The prosecutor has the burden of proving beyond a reasonable doubt that this exception does not apply.

Use Note

This instruction is to be given only when, as provided under MCL 776.20, the trial court determines that sufficient evidence was admitted at trial establishing that the firearm is exempt from the statutory prohibition. A short-barreled shotgun or rifle may be exempt if it is registered under the National Firearms Registration Act. 26 USC 5845. A defendant should be able to provide a Bureau of Alcohol, Tobacco, Firearms and Explosives registration form for making or transferring such weapons and/or tax or tax exempt registration forms to invoke this exception. 26 USC 5841; 27 CFR (Code of Federal Regulations) Part 478. Antique firearms or replicas of antique firearms, as defined under federal law in 18 USC 921(a)(16), are exempt. A "curio" or "relic" firearm listed by the United States Attorney General is also exempt; those are listed by the Bureau of Alcohol, Tobacco, Firearms and Explosives. See http://www.atf.gov/files/publications/firearms/curios-relics/p-5300-11-firearms-curios-or-relics-list. pdf. If it is claimed that the firearm is an antique, a replica of an antique, a curio, or a relic listed by the United States Attorney General, the court may wish to reference the applicable content of those materials when instructing the jury.

History

M Crim JI 11.16 (formerly CJI2d 11.16) was added in 1990. Amended February 2016.

Reference Guide

Statutes

MCL 28.422, 750.224b(3).

M Crim JI 11.17 Going Armed with Firearm or Dangerous Weapon with Unlawful Intent

(1)The defendant is charged with the crime of going armed with a dangerous weapon with unlawful intent. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant went armed with a _____.[1]

(3)Second, at that time the defendant intended to use this weapon unlawfully against someone else.[2]

Use Note

[1] Define term used:

M Crim JI 11.3 Pistol

M Crim JI 11.3a Pneumatic Gun

M Crim JI 11.5 Dirk, Dagger, and Stiletto

M Crim JI 11.18 Knife and Razor

M Crim JI 11.19 Dangerous Weapon

[2] This is a specific intent crime.

History

M Crim JI 11.17 (formerly CJI2d 11.17) was CJI 11:2:01; amended September, 2013.

Reference Guide

Statutes

MCL 750.226.

Case Law

People v Smith, 393 Mich 432, 437, 225 NW2d 165 (1975); *People v Davenport*, 89 Mich App 678, 682, 282 NW2d 179 (1979); *People v Flinnon*, 78 Mich App 380, 260 NW2d 106 (1977).

M Crim JI 11.18 Definition of Knife and Razor

(1)A knife is an instrument having a handle and at least one sharp-edged blade. The blade must be over three inches long. [It could also be a dangerous weapon without being over three inches long.]

(2)A razor is a sharp-edged cutting instrument for shaving off or cutting hair.

Use Note

Choose appropriate definition.

History

M Crim JI 11.18 (formerly CJI2d 11.18) was CJI 11:2:02-11:2:03.

Reference Guide

Statutes

MCL 750.226.

M Crim JI 11.19 Definition of Dangerous Weapon

(1)A dangerous weapon is any object that is used in a way that is likely to cause serious physical injury or death.

(2)Some objects, such as guns or bombs, are dangerous because they are specifically designed to be dangerous. Other objects are designed for peaceful purposes but may be used as dangerous weapons. The way an object is used or intended to be used in an assault determines whether or not it is a dangerous weapon. If an object is used in a way that is likely to cause serious physical injury or death, it is a dangerous weapon.

(3)You must decide from all of the facts and circumstances whether the evidence shows that the _____ in question here was a dangerous weapon.

Use Note

M Crim JI 11.19 should be used when the charge is carrying a dangerous weapon with unlawful intent under MCL 750.226.

History

M Crim JI 11.19 (formerly CJI2d 11.19) was CJI 11:2:04.

Reference Guide

Statutes

MCL 750.226.

Case Law

People v Vaines, 310 Mich 500, 17 NW2d 729 (1945); *People v Goolsby*, 284 Mich 375, 279 NW 867 (1938); *People v Morris*, 8 Mich App 688, 155 NW2d 270 (1967).

M Crim JI 11.20 Careless, Reckless, or Negligent Use of Firearm with Injury or Death Resulting

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

(2)First, that someone was [injured / killed].

(3)Second, that the [injury / death] was caused by the discharge of a gun.

[*Choose (4) or (5):*]

[(4)Third, that the gun was discharged by the defendant.]

[(5)Third, that at the time of the discharge the gun was under the immediate control of the defendant and that the defendant caused or allowed the gun to be discharged.]

(6)Fourth, that the discharge was the result of the defendant's carelessness, recklessness, or negligence.[2]

[(7)Fifth, the shooting was not the result of the defendant's willfulness or wantonness.][3]

Use Note

[1] Use when instructing on the crime as a lesser offense.

[2] Give the definition of negligence, M Crim JI 11.21.

[3] Use when instructing on the crime as a lesser offense.

History

M Crim JI 11.20 (formerly CJI2d 11.20) was CJI 11:3:01.

Reference Guide

Statutes

MCL 752.861.

M Crim JI 11.21 Definition of Negligence

(1)The prosecutor must prove beyond a reasonable doubt that the defendant was guilty of at least ordinary negligence in the shooting of this gun. Ordinary negligence is more than slight negligence and slight negligence is not a crime. Because of that, I need to tell you the difference between ordinary and slight negligence.

(2)Slight negligence means doing something that is not usually dangerous, something that only an extremely careful person would have thought could cause injury. In this case, if you find that the defendant was only slightly negligent, then you must find [him / her] not guilty.

(3)Ordinary negligence means not taking reasonable care under the circumstances as they were at the time. If someone does something that is usually dangerous, something that a sensible person would know could hurt someone, that is ordinary negligence. If the defendant did not do what a sensible person would have done under the circumstances, then [he / she] is guilty of ordinary negligence.

(4)The fact that an accident occurred or that someone was injured does not, by itself, mean that the defendant was negligent.

History

M Crim JI 11.21 (formerly CJI2d 11.21) was CJI 11:3:02.

Reference Guide

Statutes

MCL 752.861.

Case Law

Felgner v Anderson, 375 Mich 23, 30, 133 NW2d 136 (1965); *Bahel v Manning*, 112 Mich 24, 70 NW 327 (1897); *People v Hollis*, 30 Mich App 218, 186 NW2d 8 (1971).

M Crim JI 11.22 Definition of Willfully and Wantonly

(1)Willfully means that the defendant knowingly created the danger and intended to cause injury.

(2)Wantonly means that the defendant knowingly created the danger and knew what would probably happen when [he / she] did it.

History

M Crim JI 11.22 (formerly CJI2d 11.22) was CJI 11:3:03-11:3:04.

Reference Guide

Case Law

People v McCarty, 303 Mich 629, 633, 6 NW2d 919 (1942); *People v Orr*, 243 Mich 300, 308, 220 NW 777 (1928); *People v Campbell*, 237 Mich 424, 428-429, 212 NW 97 (1927); *Detroit v Pillon*, 18 Mich App 373, 376, 171 NW2d 484 (1969).

M Crim JI 11.23 Intentionally Pointing a Firearm Without Malice

[The defendant is charged with the crime of / You may also consider the lesser charge of*] pointing a firearm at or toward another person. To prove this charge, the prosecutor must prove beyond a reasonable doubt that the defendant was intentionally pointing the gun at or toward another person [but without intending to threaten or harm anyone]*.

Use Note

*Use when instructing on the crime as a lesser offense.

This is a specific intent crime.

History

M Crim JI 11.23 (formerly CJI2d 11.23) was CJI 11:4:01.

Reference Guide

Statutes

MCL 750.233.

Case Law

People v Chamblis, 395 Mich 408, 424, 236 NW2d 473 (1975); *People v Heikkala*, 226 Mich 332, 333-334, 197 NW 366 (1924).

M Crim JI 11.24 Discharge of Firearm While Intentionally Aimed Without Malice

(1)[The defendant is charged with the crime of / You may also consider the lesser charge of[1]] discharging a firearm intentionally pointed at another person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant pointed a gun at or toward another person.

(3)Second, that the defendant intended to point the gun [but did not intend to threaten or harm anyone][2].

(4)Third, that while pointing the gun the defendant discharged it [but no one was injured][3].

Use Note

[1] Use when instructing on the crime as a lesser offense.

[2] This is a specific intent crime.

[3] Use parenthetical expression only if necessary to distinguish this offense from that described in M Crim JI 11.25.

History

M Crim JI 11.24 (formerly CJI2d 11.24) was CJI 11:4:02.

Reference Guide

Statutes

MCL 750.234.

Case Law

People v Chamblis, 395 Mich 408, 424, 236 NW2d 473 (1975); *People v Heikkala*, 226 Mich 332, 333-334, 197 NW 366 (1924).

M Crim JI 11.25 Discharge of Firearm Causing Injury While Intentionally Aimed Without Malice

(1)[The defendant is charged with the crime of / You may also consider the lesser charge of*] injuring another person by discharging a firearm that was intentionally aimed at that person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant pointed a gun at or toward another person.

(3)Second, that the defendant intended to point the gun [but did not intend to threaten or harm anyone]*.

(4)Third, that while pointing the gun the defendant discharged it and injured the other person.

Use Note

*Use when instructing on the crime as a lesser included offense.

This is a specific intent crime.

History

M Crim JI 11.25 (formerly CJI2d 11.25) was CJI 11:4:03.

Reference Guide

Statutes

MCL 750.235.

Case Law

People v Chamblis, 395 Mich 408, 424, 236 NW2d 473 (1975); *People v Heikkala*, 226 Mich 332, 333-334, 197 NW 366 (1924).

M Crim JI 11.26 Reckless or Wanton Use of a Firearm

[The defendant is charged with the crime of / You may also consider the lesser charge of*] reckless [use / handling] of a firearm. To prove this charge, the prosecutor must prove beyond a reasonable doubt that the defendant [recklessly / heedlessly / willfully / (or) wantonly] [used / carried / handled / (or) fired] a gun without reasonable caution for the rights, safety, or property of others.

Use Note

*Use when instructing on the crime as a lesser offense.

History

M Crim JI 11.26 (formerly CJI2d 11.26) was CJI 11:5:01.

Reference Guide

Statutes

MCL 752.863a.

Case Law

People v Pritchett, 62 Mich App 570, 233 NW2d 655 (1975).

M Crim JI 11.26a Discharge of Firearm at Occupied Building [*deleted*]

Note: This instruction was deleted by the committee in March, 2016, in the course of revising portions of this chapter. The offense previously covered by this instruction is now included within M Crim JI 11.37a.

M Crim JI 11.26b Discharge of Firearm in Occupied Structure [*deleted*]

Note: This instruction was deleted by the committee in March, 2016, in the course of revising portions of this chapter. The offense previously covered by this instruction is now included within M Crim JI 11.37b.

M Crim JI 11.27 Failure to Present Pistol for Safety Inspection

(1)[The defendant is charged with the crime of / You may also consider the lesser charge of[1]] failing to take a pistol to the appropriate police agency for a safety inspection. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant either owned or had come into possession of a pistol at the time alleged.

(3)Second, that the defendant failed to bring the pistol to the appropriate police agency for safety inspection.

[(4)If you find that the defendant was excused from taking the pistol in for a safety inspection, then (he / she) must be found not guilty. The prosecutor has the burden of proving beyond a reasonable doubt that the defendant was not excused.][2]

Use Note

[1] Use when instructing on the crime as a lesser offense.

[2] This paragraph should be given only when the trial court determines there is some evidence that the defendant was excused from securing a safety inspection.

History

M Crim JI 11.27 (formerly CJI2d 11.27) was CJI 11:6:01.

Reference Guide

Statutes

MCL 28.432, 750.231b.

Case Law

OAG 1945-1946, No 0-3954, pp 467-468 (September 26, 1945).

M Crim JI 11.28 Sale or Possession of a Pocket Knife Opened by a Mechanical Device

(1)The defendant is charged with the crime of [selling / offering for sale / (or) possessing] a knife that looks like a pocket knife, but has a blade that can be opened mechanically by the flick of a button, pressure on the handle, or other mechanical device. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant [sold / offered for sale / (or) possessed] a knife.

(3)Second, that the knife looked like a pocket knife, but had a blade that could be opened mechanically by the flick of a button, pressure on the handle, or other mechanical device.

(4)A pocket knife is a knife that is made so that the blade can be folded into the handle for carrying.

History

M Crim JI 11.28 (formerly CJI2d 11.28) was CJI 11:7:01, 11:7:03.

Reference Guide

Statutes

MCL 750.226a.

M Crim JI 11.29 Manufacture, Sale, or Possession of Prohibited Weapons

(1)The defendant is charged with the crime of [manufacturing / selling / offering for sale / (or) possessing]:

[*Choose appropriate section or sections:*]

(a)a machine gun. A machine gun is a weapon from which a number of shots or bullets may be rapidly or automatically fired with one continuous pull of the trigger.

(b)a muffler or silencer. A muffler or silencer is a device for deadening or muffling the sound of a firing gun.

(c)a bomb. A bomb is a hollow container filled with gunpowder or other explosive or combustible material and designed to be set off by a fuse or other device.[1]

(d)a blackjack. A blackjack is a weapon consisting of a lead slug attached to a narrow strap, usually of leather.

(e)a slingshot.

(f)a billy. A billy or billy club is a small bludgeon that may be carried in the pocket.

(g)a sand club or sand bag. A sand bag or sand club is a small narrow bag filled with sand and used as a bludgeon.

(h)a bludgeon. A bludgeon is a short club, usually weighted at one end or bigger at one end than the other, and designed for use as a weapon.

(i)metal knuckles. Metal knuckles are pieces of metal designed to be worn over the knuckles in order to protect them in striking a blow and to make the blow more effective.

(j)a weapon designed for the purpose of rendering a person either temporarily or permanently disabled by the ejection, release, or emission of a gas or other substance.

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

(3)First, that the defendant knowingly [manufactured / sold / offered for sale / (or) possessed] a _____.[2]

(4)Second, that at the time [he / she] [manufactured / sold / offered for sale / (or) possessed] it, the defendant knew that the _____ was a weapon.

[(5)The defendant must be found not guilty if the (firearms / explosives / (or) munitions of war) were being manufactured under a contract with a department of the United States, or if the defendant was licensed by the Secretary of the Treasury of the United States or the secretary's delegate to manufacture, sell or possess _____.]

[(6)The defendant must be found not guilty if the device (he / she) is charged with possessing was a self-defense spray device, that is, a device that carries thirty-five grams or less of orthochlorobenzalmalononitrile and other

ingredients or a solution containing not more than 2 percent oleoresin capsicum, but that does not give off any other substance that will disable or injure a person.]

Use Note

Use bracketed material only when evidence as to those matters has been introduced.

[1] The statute lists bomb or bomb shell. Since bomb shell is an older term meaning bomb, it has not been used in the instructions.

[2] See M Crim JI 11.7 when knowledge is an issue.

Where necessary, define terms used:

M Crim JI 11.31Manufacture

M Crim JI 11.32Sell

M Crim JI 11.33Offer to Sell

History

M Crim JI 11.29 (formerly CJI2d 11.29) was CJI 11:8:01, 11:8:05. Amended October, 1991; September, 1992.

Reference Guide

Statutes

MCL 28.426a(1), 750.224, .224d, .227.

Case Law

People v Hill, 433 Mich 464, 446 NW2d 140 (1989); *People v Smith*, 393 Mich 432, 438 n2, 225 NW2d 165 (1975); *People v Brown*, 253 Mich 537, 235 NW 245 (1931); *People v Beasley*, 198 Mich App 40, 42, 497 NW2d 200 (1993); *People v Battles* #1, 109 Mich App 384, 387, 311 NW2d 793 (1981); *People v Malik*, 70 Mich App 133, 134, 245 NW2d 434 (1976); *People v Giacalone*, 23 Mich App 163, 178 NW2d 162 (1970).

M Crim JI 11.30 Manufacture, Sale, or Possession of Short-barreled Shotgun

(1)The defendant is charged with the crime of making, manufacturing, transferring, or possessing a short-barreled shotgun or rifle. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant knowingly [made / manufactured / transferred / possessed] a [shotgun / rifle].

(3)Second, that the [shotgun / rifle] was short-barreled, that is

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

(a)the shotgun had one or more barrels less than 18 inches long or the shotgun was less than 26 inches long overall.

(b)the rifle had one or more barrels less than 16 inches long or the rifle was less than 26 inches long overall.[1]

Use Note

[1] The definition of a short-barreled rifle and shotgun is found in MCL 750.222(k) and (*l*), respectively.

History

M Crim JI 11.30 (formerly CJI2d 11.30) was added in 1990. Amended February 2016.

Reference Guide

Statutes

MCL 8.3t, 750.224b.

Case Law

People v Hill, 433 Mich 464, 446 NW2d 140 (1989); *People v Walker*, 167 Mich App 377, 422 NW2d 8 (1988); *People v Walker*, 166 Mich App 299, 420 NW2d 194 (1988).

M Crim JI 11.31 Definition of Manufacture

To manufacture is to produce articles from raw or prepared materials by giving those materials new forms, qualities, properties or combinations, whether by hand labor or by machinery.

Use Note

This definition is to be used only with the weapons statute.

The definition is taken from *Miller v Peck*, 158 O St 17, 20, 106 NE2d 776 (1952).

History

M Crim JI 11.31 (formerly CJI2d 11.31) was CJI 11:8:02.

M Crim JI 11.32 Definition of Sell

Under this law, to sell means to transfer possession, give, or loan to someone else. It does not matter whether what is sold has any value.

Use Note

This definition is to be used only with the weapons statute.

History

M Crim JI 11.32 (formerly CJI2d 11.32) was CJI 11:8:03.

Reference Guide

Statutes

MCL 28.421, 750.222.

Case Law

Schmitt v Wright, 317 Ill App 384, 46 NE2d 184 (1943).

M Crim JI 11.33 Definition of Offer to Sell

Under this law, to offer to sell means to offer to transfer possession, give, or loan to someone else. It does not matter whether what is offered has any value or whether anything is to be received in exchange.

Use Note

This definition is to be used only with the weapons statute.

History

M Crim JI 11.33 (formerly CJI2d 11.33) was CJI 11:8:04.

Reference Guide

Statutes

MCL 28.421, 750.222.

Case Law

Schmitt v Wright, 317 Ill App 384, 46 NE2d 184 (1943).

M Crim JI 11.34 Possession of Firearm at Time of Commission or Attempted Commission of Felony (Felony Firearm)

(1)The defendant is also charged with the separate crime of possessing a firearm at the time [he / she] committed [or attempted to commit][1] the crime of _____.

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

(3)First, that the defendant committed [or attempted to commit] the crime of _____, which has been defined for you. It is not necessary, however, that the defendant be convicted of that crime.

(4)Second, that at the time the defendant committed [or attempted to commit] that crime [he / she] knowingly carried or possessed a firearm.

[*Use any of the following paragraphs when factually appropriate*:]

[(5)This charge includes possession of a firearm during either a completed crime or an attempted crime. An attempt has two elements. First, the defendant must have intended to commit the crime of _____. Second, the defendant must have taken some action toward committing the alleged crime, but failed to complete the crime. It is not enough to prove that the defendant made preparations for committing the crime. Things like planning the crime or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the crime would have been completed if it had not been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the crime the defendant is charged with attempting and not some other objective.][2]

[(6)It does not matter whether or not the firearm was capable of firing a projectile or whether it was loaded.]

[(7)A firearm includes any weapon which will, or is designed to, or may readily be converted to expel a projectile by action of an explosive.][3]

[(8)A pistol is a firearm.]

Use Note

Note that the statute states "felony" but explicitly excludes the felonies of carrying a concealed weapon, MCL 750.227, unlawful possession of a pistol by a licensee, MCL 750.227a, or altering firearms identification numbers, MCL 750.230. Do not use this instruction when these are the felonies charged.

[1] Attempt is part of the statutory definition of this offense, rather than a lesser included offense. When factually appropriate or requested, include attempt language in paragraphs (1), (3), and (4), and give (5) in its entirety.

[2] Any attempt to commit an offense is a specific intent crime. See *People v Langworthy*, 416 Mich 630, 644-645, 331 NW2d 171 (1982), and *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979) (opinion of Levin, J.).

[3] The prosecutor need not prove that the firearm was operable. *People v Peals*, 476 Mich 636, 720 NW2d 196 (2006).

History

M Crim JI 11.34 (formerly CJI2d 11.34) was CJI 11:9:01; amended November, 1990; May 2016 (pending public comment); January 2017.

Reference Guide

Statutes

MCL 8.3t, 750.227b.

Case Law

People v Peals, 476 Mich 636, 656, 720 NW2d 196 (2006); *People v Burgenmeyer*, 461 Mich 431, 606 NW2d 645 (2000); *People v Hill*, 433 Mich 464, 446 NW2d 140 (1989); *Wayne County Prosecutor v Recorder's Court Judge*, 406 Mich 374, 397-398, 280 NW2d 793 (1979); *People v Goree*, 296 Mich App 293, 819 NW2d 82 (2012); *People v Brooks*, 135 Mich App 193, 353 NW2d 118 (1984); *People v Prather*, 121 Mich App 324, 328 NW2d 556 (1982); *People v Perry*, 119 Mich App 98, 326 NW2d 437 (1982); *People v Gee*, 97 Mich App 422, 296 NW2d 52 (1980); *People v Elowe*, 85 Mich App 744, 272 NW2d 596 (1978); *People v Humphrey*, 312 Mich App 309 (2015).

M Crim JI 11.34a Using Pneumatic Gun in Furtherance of Commission or Attempted Commission of Felony (Felony Firearm)

(1)The defendant is also charged with the separate crime of using a pneumatic gun while committing [or attempting to commit][1] the crime of _____.

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

(3)First, that the defendant committed [or attempted to commit] the crime of _____, which has been defined for you. It is not necessary, however, that the defendant be convicted of that crime.

(4)Second, that at the time the defendant committed [or attempted to commit] that crime [he / she] used a pneumatic gun to further the commission of [or attempt to commit] that crime. A pneumatic gun is any implement, designed as a gun, that will expel a BB or pellet by spring, gas, or air [such as a paintball gun that expels by gas or air pressure plastic balls filled with paint for the purpose of marking the point of impact].

[*Use any of the following paragraphs when factually appropriate*:]

[(5)This charge includes use of a pneumatic gun in furtherance of either a completed crime or an attempted crime. An attempt has two elements. First, the defendant must have intended to commit the crime of _____. Second, the defendant must have taken some action toward committing the alleged crime, but failed to complete the crime. It is not enough to prove that the defendant made preparations for committing the crime. Things like planning the crime or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the crime would have been completed if it had not been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the crime the defendant is charged with attempting and not some other objective.][2]

[(6)It does not matter whether or not the pneumatic gun was capable of firing a projectile or whether it was loaded.]

Use Note

Note that the statute states "felony" but explicitly excludes the felonies of selling firearms/ammunition illegally, MCL 750.223, carrying a concealed weapon, MCL 750.227, unlawful possession of a pistol by a licensee, MCL 750.227a, and altering firearms identification numbers, MCL 750.230. Do not use this instruction when these are the felonies charged.

[1] Attempt is part of the statutory definition of this offense, rather than a lesser included offense. When factually appropriate or requested, include attempt language in paragraphs (1), (3), and (4), and give (5) in its entirety.

[2] Any attempt to commit an offense is a specific intent crime. See *People v Langworthy*, 416 Mich 630, 644-645, 331 NW2d 171 (1982), and *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979) (opinion of Levin, J.).

History

M Crim JI 11.34a was added in May 2016 (pending public comment) and adopted with changes in January 2017.

M Crim JI 11.34b Felony Firearm—Possession

Possession does not necessarily mean ownership. Possession means that either:

(1)the person has actual physical control of the thing as I do with the pen I am now holding, or

(2)the person knows the location of the firearm and has reasonable access to it.

Possession may be sole where one person alone possesses the firearm. Possession may be joint where two or more people share possession.

History

M Crim JI 11.34b (formerly CJI2d 11.34a) was adopted in May, 2012.

Reference Guide

Case Law

People v Hill, 433 Mich 464, 446 NW2d 140 (1989); *People v Williams*, 212 Mich App 607, 538 NW2d 89 (1995).

M Crim JI 11.34c Felony Firearm—Self-Defense

(1) An individual who has not or is not engaged in the commission of a crime at the time he or she uses deadly force may use deadly force against another individual anywhere he or she has the legal right to be, with no duty to retreat, if either of the following applies:

(a)The individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent death of or imminent great bodily harm to himself or herself or to another individual.

(b)The individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent sexual assault of himself or herself or of another individual.

(2)An individual who has not or is not engaged in the commission of a crime at the time he or she used force other than deadly force may use force other than deadly force against another individual anywhere he or she has the legal right to be, with no duty to retreat, if he or she honestly and reasonably believes that the use of that force is necessary to defend himself or herself or another individual from the imminent unlawful use of force by another individual.

History

M Crim JI 11.34c (formerly CJI2d 11.34b) was adopted in May, 2012.

Reference Guide

Case Law

People v Goree, 296 Mich App 293, 819 NW2d 82 (2012).

M Crim JI 11.35 Aiding and Abetting Felony Firearm: Direct Participation [*deleted*]

Note: This instruction was deleted by the committee in October, 2004. In *People v Johnson*, 411 Mich 50, 303 NW2d 442 (1981), the supreme court held that to be guilty of aiding and abetting felony-firearm one must aid another *in obtaining or retaining possession* of a firearm. In *People v Moore*, 470 Mich 56, 679 NW2d 41 (2004), *cert denied*, 543 US 947 (2004), the supreme court overruled *Johnson* and held that the broader test of aiding and abetting found in MCL 767.39 controls in felony-firearm prosecutions. Under *Moore* and the statute, the question becomes "whether the defendant's words or deeds 'procure[d], counsel[ed], aid[ed], or abet[ted]' another to carry or have in his possession a firearm during the commission or attempted commission of a felony-firearm offense." 470 Mich 59 (footnote omitted). Since "aiding and abetting felony-firearm should be no different from aiding and abetting the commission of any other offense," 470 Mich 67, the standard aiding and abetting instruction should be used rather than this more restrictive instruction that was patterned after *Johnson's* now-discredited holding. 470 Mich 56, 73-74.

The standard aiding and abetting instruction is M Crim JI 8.1.

M Crim JI 11.36 Aiding and Abetting Felony Firearm: Indirect Participation [*deleted*]

Note: This instruction was deleted by the committee in October, 2004. In *People v Johnson*, 411 Mich 50, 303 NW2d 442 (1981), the supreme court held that to be guilty of aiding and abetting felony-firearm one must aid another in *obtaining or retaining possession* of a firearm. In *People v Moore*, 470 Mich 56, 679 NW2d 41, *cert denied*, 543 US 947 (2004), the supreme court overruled *Johnson* and held that the broader test of aiding and abetting found in MCL 767.39 controls in felony-firearm prosecutions. Under *Moore* and the statute, the question becomes "whether the defendant's words or deeds 'procure[d], counsel[ed], aid[ed], or abet[ted]' another to carry or have in his possession a firearm during the commission or attempted commission of a felony-firearm offense." 470 Mich 59 (footnote omitted). Since "aiding and abetting felony-firearm should be no different from aiding and abetting the commission of any other offense," 470 Mich 67, the standard aiding and abetting instruction should be used rather than this more restrictive instruction that was patterned after Johnson's now-discredited holding. 470 Mich 56, 73-74.

The standard aiding and abetting instruction is M Crim JI 8.1.

M Crim JI 11.37 Discharge of a Firearm from Motor Vehicle

(1)The defendant is charged with intentionally discharging a firearm from a motor vehicle. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant discharged a firearm.[1]

(3)Second, that [he / she] did so intentionally, that is, on purpose.

(4)Third, that [he / she] did so from a [motor vehicle / snowmobile / off-road vehicle].[2]

(5)Fourth, that [he / she] discharged the firearm in a way that [endangered someone else / caused physical injury to (*name complainant*) / caused serious impairment of a body function to (*name complainant*) / caused the death of (*name complainant*)].

[*Use (6) where it is alleged that the complainant suffered serious impairment of a body function:*][3]

(6)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 the use of a foot, hand, finger, or thumb.

(c)Loss of an eye or ear or loss of the 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.

Use Note

[1] *Firearm* is defined in MCL 28.421(1)(c) and MCL 750.222(e).

[2] The definition of *motor vehicle* may be found at MCL 257.33.

[3] MCL 750.234a(5)(b) references MCL 257.58c for the definition of *serious impairment of a body function.*

This charge does not apply to a peace officer in the performance of the officer's duties, whether the officer was on or off his or her scheduled work shift. MCL 750.234a(2)(a).

Self-defense or defense of others is a defense to this charge. MCL 750.234a(2)(b). Appropriate instructions from M Crim JI 7.15 through 7.24 must be given where such a defense is raised.

History

M Crim JI 11.37 (formerly CJI2d 11.37) new June, 1991. Amended March 2016.

Reference Guide

Statutes

MCL 750.234a-.234c.

M Crim JI 11.37a Discharge of a Firearm at a Building

(1)The defendant is charged with intentionally discharging a firearm at a dwelling or potentially occupied structure. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant discharged a firearm.[1]

(3)Second, that [he / she] did so intentionally, that is, on purpose.

(4)Third, that [he / she] discharged the firearm at a building that [he / she] had reason to believe was either a dwelling or a potentially occupied structure.

A dwelling is a building where people usually live. It does not matter whether or not someone was actually in the building at the time.

A potentially occupied structure is a building that a reasonable person knows or should know was likely to be occupied by one or more persons due to its nature, function or location. It does not matter whether a person was actually present in the structure.

[*Read (5) where the prosecutor has charged that the offense has been aggravated by injury to or the death of the complainant*.]

(5)Fourth, that when the defendant discharged the firearm [he / she] [caused physical injury to / caused serious body injury to / caused the death of] (*name complainant*).

[*Use (6) where it is alleged that the complainant suffered serious body injury:*][2]

(6)*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 the use of a foot, hand, finger, or thumb.

(c)Loss of an eye or ear or loss of the 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.

Use Note

[1] *Firearm* is defined in MCL 28.421(1)(c) and MCL 750.222(e).

[2] MCL 750.234a(10)(b) references MCL 257.58c for the definition of *serious impairment of a body function.*

This charge does not apply to a peace officer in the performance of his or her duties. MCL 750.234b(6).

Self-defense or defense of others is a defense to this charge. MCL 750.234b(7). Appropriate instructions from M Crim JI 7.15 through 7.24 must be given where such a defense is raised.

History

M Crim JI 11.37a new March 2016.

Reference Guide

Statutes

MCL 750.234a-.234c.

M Crim JI 11.37b Discharge of a Firearm in a Building

(1)The defendant is charged with intentionally discharging a firearm in a dwelling or potentially occupied structure. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant discharged a firearm.[1]

(3)Second, that [he / she] did so intentionally, that is, on purpose.

(4)Third, that [he / she] discharged the firearm in a building that [he / she] had reason to believe was either a dwelling or a potentially occupied structure.

A dwelling is a building where people usually live. It does not matter whether or not someone was actually in the building at the time.

A potentially occupied structure is a building that a reasonable person knows or should know was likely to be occupied by one or more persons due to its nature, function or location. It does not matter whether a person was actually present in the structure.

(5)Fourth, that the defendant acted with reckless disregard for the safety of other persons.

[*Read (6) where the prosecutor has charged that the offense has been aggravated by injury to or the death of the complainant*.]

(6)Fifth, that when the defendant discharged the firearm, [he / she] [caused physical injury to / caused serious body injury to / caused the death of] (*name complainant*)].

[Use *(7) where it is alleged that the complainant suffered serious body injury:*][2]

(7)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 the use of a foot, hand, finger, or thumb.

(c)Loss of an eye or ear or loss of the 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.

Use Note

[1] *Firearm* is defined in MCL 28.421(1)(c) and MCL 750.222(e).

[2] MCL 750.234a(10)(b) references MCL 257.58c for the definition of *serious impairment of a body function.*

This charge does not apply to a peace officer in the performance of his or her duties. MCL 750.234b(6).

Self-defense or defense of others is a defense to this charge. MCL 750.234b(7). Appropriate instructions from M Crim JI 7.15 through 7.24 must be given where such a defense is raised.

History

M Crim JI 11.37b new March 2016.

Reference Guide

Statutes

MCL 750.234a-.234c.

M Crim JI 11.37c Discharge of a Firearm at a Police or Emergency Vehicle

(1)The defendant is charged with intentionally discharging a firearm at an emergency or law enforcement vehicle. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant discharged a firearm.[1]

(3)Second, that [he / she] did so intentionally, that is, on purpose.

(4) Third, that [he / she] discharged the firearm at a motor vehicle that [he / she] knew or had reason to believe was an emergency or law enforcement vehicle.[2]

Use Note

[1] *Firearm* is defined in MCL 28.421(1)(c) and MCL 750.222(e).

[2] The definition of *emergency or law enforcement vehicle* can be found in MCL 750.234c(2).

History

M Crim JI 11.37c new March 2016.

Reference Guide

Statutes

MCL 750.234a-.234c.

M Crim JI 11.38 Felon Possessing Firearm: Nonspecified Felony

The defendant is charged with possession of [a firearm / ammunition] after having been convicted of a felony. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(1)First, that the defendant [possessed / used / transported / sold / distributed / received / carried / shipped / purchased[1]] [a firearm / ammunition[2]] in this state.[3]

(2)Second, that the defendant was convicted of [*name felony*].[4]

[*Use the following paragraph only if the defendant offers some evidence that more than three years has passed since completion of the sentence on the underlying offense*.]

(3)Third, that less than three years had passed since [all fines were paid / all imprisonment was served / all terms of (probation / parole) were successfully completed].[5]

Use Note

[1] "Purchase" of ammunition is not barred under the statute.

[2] "Ammunition" is defined in MCL 750.224f(9)(a) as "any projectile that, in its current state, may be propelled from a firearm by an explosive."

[3] The prosecutor need not prove that the firearm was "operable." *People v Peals*, 476 Mich 636, 656, 720 NW2d 196 (2006).

[4] The judge, not the jury, determines whether the charged prior felony is a "felony" as defined in MCL 750.224f(9)(b), or a more serious "specified felony" as defined in MCL 750.224f(10). The jury determines whether the defendant has in fact been convicted of that charged prior felony. For prosecutions involving a "specified felony" use M Crim JI 11.38a.

[5] The judge's determination of the character of the felony as explained in Use Note 4 will determine whether the prohibition extends for three years or five years. Under subsection (1) of the statute, the three-year period applies to crimes defined in subsection (9)(b) as felonies; under subsection (2), the five-year ban applies to crimes defined as "specified" felonies in subsection (10).

History

M Crim JI 11.38 (formerly CJI2d 11.38) was added in October, 1993 when MCL 750.224f was enacted. The instruction was amended by the committee in September, 2001, in conjunction with the adoption of M Crim JI 11.38a, to separate the "felony" and "specified felony" versions of the offense. The possession of ammunition by felons was barred in a May 2014 statutory amendment. Amended September 2005, March 2014 and January 2016.

Reference Guide

Statutes

MCL 750.224f.

Case Law

Old Chief v United States, 519 US 172 (1997); *People v Dupree*, 486 Mich 693, 788 NW2d 399 (2010); *People v Peals*, 476 Mich 636, 656, 720 NW2d 196 (2006); *People v Perkins*, 473 Mich 626, 640, 703 NW2d 448 (2005) (affirming *People v Perkins*, 262 Mich App 267, 686 NW2d 237 (2004)); *People v Henderson*, 391 Mich 612, 218 NW2d 2 (1974); *People v Brown*, 249 Mich App 382, 642 NW2d 382 (2002); *People v Swint*, 225 Mich App 353, 379, 572 NW2d 666 (1997); *People v Tice*, 220 Mich App 47, 53-55, 558 NW2d 245 (1996).

M Crim JI 11.38a Felon Possessing Firearm: Specified Felony

The defendant is charged with possession of [a firearm / ammunition] after having been convicted of a specified felony. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(1)First, that the defendant [possessed / used / sold / distributed / received/ carried / shipped / transported / purchased[1]] [a firearm / ammunition[2]] in this state.[3]

(2)Second, that the defendant was convicted of [*name specified felony*].[4]

[*Use the following paragraphs only if the defendant offers some evidence that more than five years has passed since completion of the sentence on the underlying offense and that his or her firearm rights have been restored, MCL 28.424.*]

(3)Third, that less than five years had passed since [all fines were paid / all imprisonment was served / all terms of (probation / parole) were successfully completed].[5]

(4)Fourth, that the defendant's right to [possess / use / transport / sell / receive] [a firearm / ammunition] has not been restored pursuant to Michigan law.[6]

Use Note

[1] "Purchase" of ammunition is not barred under the statute.

[2] "Ammunition" is defined in MCL 750.224f(9)(a) as "any projectile that, in its current state, may be propelled from a firearm by an explosive."

[3] The prosecutor need not prove that the firearm was "operable." *People v Peals*, 476 Mich 636, 656, 720 NW2d 196 (2006).

[4] The judge, not the jury, determines whether the charged prior felony is a "felony" as defined in MCL 750.224f(9)(b), or a more serious "specified felony" as defined in MCL 750.224f(10). The jury determines whether the defendant has in fact been convicted of that charged prior felony. For prosecutions involving a "nonspecified felony" use M Crim JI 11.38.

[5] The judge's determination of the character of the felony as explained in Use Note 4 will determine whether the prohibition extends for three years or five years. Under subsection (1) of the statute, the three-year period applies to crimes defined in subsection (9)(b) as felonies; under subsection (2), the five-year ban applies to crimes defined as "specified" felonies in subsection (10).

[6] This paragraph is to be given when the court determines that some evidence relating to restoration was admitted at trial. See *People v Henderson*, 391 Mich 612, 218 NW2d 2 (1974), addressing the burden of going forward and the burden of proof where a defendant submits evidence that he or she was licensed to carry a concealed weapon.

History

This instruction was adopted by the committee in September, 2001 to separate the "specified felony" offense from the "felony" offense and to incorporate prosecutions under the former theory predicated upon the defendant's failure to secure restoration of his or her firearm rights. The possession of ammunition by felons was barred in a May 2014 statutory amendment. Amended September 2005, March 2014 and January 2016.

Reference Guide

Statutes

MCL 750.224f.

Case Law

People v Peals, 476 Mich 636, 656, 720 NW2d 196 (2006); *People v Henderson*, 391 Mich 612, 218 NW2d 2 (1974).

CHAPTER 12

Narcotics

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M Crim JI 12.1 Unlawful Manufacture of a Controlled Substance

(1)The defendant is charged with the crime of illegally manufacturing [(*state weight*) of a mixture containing][1] a controlled substance, _____. Manufacturing means producing or processing a controlled substance. It is alleged in this case that the defendant manufactured _____ by [*list specific acts*].[2] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant manufactured a controlled substance.

(3)Second, that the substance manufactured was _____.

(4)Third, that the defendant knew [he / she] was manufacturing _____.

[(5)Fourth, that the substance was in a mixture that weighed (*state weight*).][1]

[(6)Fifth, that the defendant was not legally authorized to manufacture this substance.][3]

[(7)Sixth, that the defendant was not (preparing / compounding) this substance for (his / her) own use.][4]

Use Note

[1] Use the bracketed portion when the controlled substance is a narcotic drug classified in Schedule 1 or 2, or a cocaine-related substance as found in MCL 333.7214(a)(iv).

[2] Such specific acts of manufacturing may include extraction from natural substances, chemical synthesis, packaging or repackaging the substance, or labeling or relabeling the container.

[3] This paragraph should be given only when the defense has presented some competent evidence beyond a mere assertion that the defendant was authorized to possess the substance. If the defense presents such evidence, the prosecution must prove lack of authorization beyond a reasonable doubt. *People v Pegenau*, 447 Mich 278, 523 NW2d 325 (1994).

[4] This paragraph should be given only if some evidence has been presented that the defendant prepared or compounded the substance for his or her own use.

History

M Crim JI 12.1 (formerly CJI2d 12.1) was CJI 12:2:00, 12:2:01, 12:2:02; amended June, 1991.

Reference Guide

Statutes

MCL 333.7106(2).

Case Law

People v Marion, 250 Mich App 446, 617 NW2d 521 (2002); *People v Hunter*, 201 Mich App 671, 506 NW2d 611 (1993); *People v Barajas*, 198 Mich App 551, 499 NW2d 396 (1993), aff'd, 444 Mich 556, 557, 513 NW2d 772 (1994); *People v Pearson*, 157 Mich App 68, 72, 403 NW2d 498 (1987); *People v Velasquez*, 125 Mich App 1, 335 NW2d 705 (1983); *People v Puertas*, 122 Mich App 626, 332 NW2d 399 (1983); *People v Stahl*, 110 Mich App 757, 313 NW2d 103 (1981).

M Crim JI 12.1a Owning, Possessing or Using Vehicles, Buildings, Structures or Areas Used for Manufacturing Controlled Substances

(1)The defendant is charged with the crime of owning, possessing, or using [a vehicle / a building / a structure / an area / a place] as a location for manufacturing [*identify controlled substance*]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant [owned / possessed / used] [*describe property*], [a vehicle / a building / a structure / an area / a place].

(3)Second, that the property was used to manufacture [*identify controlled substance*]. [1]

(4)Third, that the defendant knew or had reason to know that the [vehicle / building / structure / area / place] was used to manufacture [*identify controlled substance*].

[*Select that which has been charged:*][2]

(5)Fourth, that a person less than 18 years old was present at the time.[3]

(6)Fourth, that hazardous waste[4] was [generated / treated / stored / disposed].[5]

(7)Fourth, that the violation occurred within 500 feet of [a residence / a business / a church[6] / school property[7]].[8]

(8)Fourth, that the alleged violation involved the [possession / placement / use] of a [firearm / device designed or intended to injure a person].[9]

(9)Fourth, that the controlled substance was methamphetamine.[10]

Use Note

[1] The jury may be instructed on the definition of "manufacture," which can be found in MCL 333.7401c(7)(c).

[2] Knowingly owning, possessing, or using the described property is a 10-year offense. MCL 333.7401c(2)(a). Various aggravating factors increase the maximum term of imprisonment. *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), requires that factors that increase a maximum sentence be charged and proved beyond a reasonable doubt. If there are multiple aggravating factors, they will be charged in separate counts. Where applicable, provide the appropriate instruction for the charged offense in each count.

[3] MCL 333.7401c(2)(b).

[4] If appropriate, the jury should be instructed on the definition of "hazardous waste," as provided in MCL 333.7401c(7)(a), which incorporates the definition found in MCL 324.11103.

[5] MCL 333.7401c(2)(c).

[6] The statute references "or other house of worship" in MCL 333.7401c(2)(d); appropriate terminology may be substituted.

[7] MCL 333.7401c(7)(f) incorporates MCL 333.7410 for the definition of "school property."

[8] MCL 333.7401c(2)(d).

[9] MCL 333.7401c(2)(e).

[10] MCL 333.7401c(2)(f).

History

Adopted January 2016.

Reference

MCL 333.7401c.

M Crim JI 12.1b Owning or Possessing Chemicals or Laboratory Equipment for Manufacturing Controlled Substances

(1) The defendant is charged with the crime of owning or possessing [chemicals / laboratory equipment] for use in manufacturing a controlled substance. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [owned / possessed] [a chemical / laboratory equipment[1]].

[*Select (3) where methamphetamine is the controlled substance, and do not instruct from (4) or (5). Select (4) where some other controlled substance is involved, and (5) where appropriate.*]

(3) Second, that the defendant knew or had reason to know that the [chemical / laboratory equipment] was going to be used to manufacture[2] methamphetamine.[3]

or

(4) Second, that the defendant knew or had reason to know that the [chemical / laboratory equipment] was going to be used to manufacture a controlled substance.[2]

(5) Third, that [*Select that which has been charged:*][4]

(a) a person less than 18 years old was present at the time.[5]

(b) hazardous waste[6] was [generated / treated / stored / disposed].[7]

(c) the alleged violation occurred within 500 feet of [a residence / a business / a church[8] / school property[9]].[10]

(d) the alleged violation involved the [possession / placement / use] of a [firearm / device designed or intended to injure a person].[11]

Use Note

Where the charged offense involves methamphetamine and paragraph (3) is used, do not instruct on paragraphs (4) or (5).

[1] "Laboratory equipment" is defined in MCL 333.7401c(7)(b).

[2] The jury may be instructed on the definition of "manufacture," which may be found in MCL 333.7401c(7)(c).

[3] MCL 333.7401c(2)(f).

[4] Knowingly owning or possessing the described chemicals or equipment is a 10-year offense. MCL 333.7401c(2)(a). Various aggravating factors increase the maximum term of imprisonment. *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), requires that factors that increase a maximum sentence be charged and proved

beyond a reasonable doubt. If there are multiple aggravating factors, they will be charged in separate counts. Where applicable, provide the appropriate instruction for the charged offense in each count.

[5] MCL 333.7401c(2)(b).

[6] If appropriate, the jury should be instructed on the definition of "hazardous waste," as provided in MCL 333.7401c(7)(a), which incorporates the definition found in MCL 324.11103.

[7] MCL 333.7401c(2)(c).

[8] The statute references "or other house of worship" in MCL 333.7401c(2)(d); appropriate terminology may be substituted.

[9] MCL 333.7401c(7)(f) incorporates MCL 333.7410 for the definition of "school property."

[10] MCL 333.7401c(2)(d).

[11] MCL 333.7401c(2)(e).

History

Adopted January 2016; amended July 2017.

Reference

MCL 333.7401c.

M Crim JI 12.1c Providing Chemicals or Laboratory Equipment for Manufacturing Controlled Substances

(1)The defendant is charged with the crime of providing [chemicals / laboratory equipment] to another person for use in manufacturing [*identify controlled substance*]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant provided [a chemical / laboratory equipment[1]] to another person.

(3)Second, that the defendant knew or had reason to know that the [chemical / laboratory equipment] was going to be used to manufacture [*identify controlled substance*].[2]

[*Select that which has been charged:*][3]

(4)Third, that a person less than 18 years old was present at the time.[4]

(5)Third, that hazardous waste[5] was [generated / treated / stored / disposed].[6]

(6)Third, that the violation occurred within 500 feet of [a residence / a business / a church[7] / school property[8]].[9]

(7)Third, that the alleged violation involved the [possession / placement / use] of a [firearm / device designed or intended to injure a person].[10]

(8)Third, that the controlled substance was methamphetamine.[11]

Use Note

[1] "Laboratory equipment" is defined in MCL 333.7401c(7)(b).

[2] The jury may be instructed on the definition of "manufacture," which may be found in MCL 333.7401c(7)(c).

[3] Providing the described chemicals or equipment is a 10-year offense. MCL 333.7401c(2)(a). Various aggravating factors increase the maximum term of imprisonment. *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), requires that factors that increase a maximum sentence be charged and proved beyond a reasonable doubt. If there are multiple aggravating factors, they will be charged in separate counts. Where applicable, provide the appropriate instruction for the charged offense in each count.

[4] MCL 333.7401c(2)(b).

[5] If appropriate, the jury should be instructed on the definition of "hazardous waste," as provided in MCL 333.7401c(7)(a), which incorporates the definition found in MCL 324.11103.

[6] MCL 333.7401c(2)(c).

[7] The statute references "or other house of worship" in MCL 333.7401c(2)(d); appropriate terminology may be substituted.

[8] MCL 333.7401c(7)(f) incorporates MCL 333.7410 for the definition of "school property."

[9] MCL 333.7401c(2)(d).

[10] MCL 333.7401c(2)(e).

[11] MCL 333.7401c(2)(f).

History

Adopted January 2016.

Reference

MCL 333.7401c.

M Crim JI 12.2 Unlawful Delivery of a Controlled Substance

(1)The defendant is charged with the crime of illegally delivering [(*state weight*) of a mixture containing] a controlled substance. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant delivered [*identify controlled substance*].

(3)Second, that the defendant knew that [he / she] delivered a controlled substance.

[(4)Third, that the controlled substance that the defendant delivered [was in a mixture that] weighed (*state weight*).][1]

[(5)[Third / Fourth], that the defendant was not legally authorized to deliver this substance.][2]

[(6)"Delivery" means that the defendant transferred or attempted to transfer the substance to another person, knowing that it was a controlled substance and intending to transfer it to that person. [An attempt has two elements. First, the defendant must have intended to deliver the substance to someone else. Second, the defendant must have taken some action toward delivering the substance, but failed to complete the delivery. It is not enough to prove that the defendant made preparations for delivering the substance. Things like planning the crime or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the crime would have been completed if it had not been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the crime the defendant is charged with attempting and not some other goal.][3]

Use Note

Because the statutory definition of delivery includes actual, constructive, or attempted transfer of a substance, attempted delivery is not a lesser included offense. MCL 333.7105(1).

[1] This bracketed material should be given where the controlled substance is a narcotic drug classified in Schedule 1 or 2, or a cocaine-related substance as found in MCL 333.7214(a)(iv).

[2] This paragraph should be given only when the defense has presented some competent evidence beyond a mere assertion that the defendant was authorized to deliver the substance. If the defense presents such evidence, the prosecution must prove lack of authorization beyond a reasonable doubt. *People v Pegenau*, 447 Mich 278, 523 NW2d 325 (1994).

[3] Use bracketed material defining attempt only in cases involving act falling short of completed delivery. Any attempt is a specific intent crime. *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979) (opinion of Levin, J.).

McFadden v United States, 576 US ___; 135 S Ct 2298 (2015), held that a prosecutor need not prove that the defendant intended to deliver any particular controlled substance, only that he or she intended to deliver some controlled substance.

History

M Crim JI 12.2 (formerly CJI2d 12.2) was CJI 12:2:00, 12:2:01, 12:2:03; amended October, 1993; amended August, 2016.

Reference Guide

Statutes

MCL 333.7401, .7105(1), .7214(a)(iv).

Case Law

People v Mass, 464 Mich 615, 628 NW2d 540 (2001); *People v Pegenau*, 447 Mich 278, 523 NW2d 325 (1994); *People v Steele*, 429 Mich 13, 26 n10, 412 NW2d 206 (1987); *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979); *People v Delgado*, 404 Mich 76, 86, 273 NW2d 395 (1978); *People v Collins*, 298 Mich App 458, 828 NW2d 392 (2012); *People v Maleski*, 220 Mich App 518, 522, 560 NW2d 71 (1996); *People v Brown*, 163 Mich App 273, 413 NW2d 766 (1987); *People v Tate*, 134 Mich App 682, 352 NW2d 297 (1984); *People v Williams*, 54 Mich App 448, 450, 221 NW2d 204 (1974).

McFadden v United States, 576 US ___; 135 S Ct 2298 (2015).

M Crim JI 12.2a Delivery of a Controlled Substance Causing Death

(1)The defendant is charged with the crime of delivery of a controlled substance[1] causing death. To prove this charge, the prosecution must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant delivered a controlled substance to another person. "Delivery" means that the defendant transferred the substance to another person knowing that it was a controlled substance and intending to transfer it to that person.

(3)Second, that the substance delivered was a controlled substance.

(4)Third, that the defendant knew [he / she] was delivering a controlled substance.

(5)Fourth, that the controlled substance was consumed by [*state name of person who consumed*].

(6)Fifth, that consuming the controlled substance caused the death of [*state victim's name*].[2]

Use Note

[1] The controlled substance must be a schedule 1 or 2 controlled substance other than marijuana, MCL 750.317a.

[2] Concerning causation, see M Crim JI 16.15, Act of Defendant Must be Cause of Death.

History

M Crim JI 12.2a (formerly CJI2d 12.2a) was adopted by the committee in May, 2008, for the crime found at MCL 750.317a.

Reference Guide

Statutes

MCL 750.317a.

M Crim JI 12.2b Unlawful Delivery of Controlled Substances or Gamma-butyrolactone to Commit Criminal Sexual Conduct

(1)The defendant is charged with the crime of delivering [a controlled substance/gamma-butyrolactone] with intent to commit criminal sexual conduct. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant delivered or caused to be delivered [a controlled substance/gamma-butyrolactone] or a mixture or compound[1] containing [a controlled substance/gamma-butyrolactone] to [*name complainant*]. "Delivery" means that the defendant intentionally transferred or attempted to transfer the substance to another person, or caused that substance to be delivered to another person.[2]

(3)Second, that the defendant knew [he / she] was delivering [a controlled substance/gamma-butyrolactone] or a mixture or compound containing [a controlled substance/gamma-butyrolactone] to [*name complainant*] or causing the substance to be delivered to [him / her].

(4)Third, that [*name complainant*] did not consent to have [a controlled substance/gamma-butyrolactone] delivered to [him / her].

(5)Fourth, that when the defendant delivered the substance or caused it to be delivered to [*name complainant*], the defendant intended to commit an act of criminal sexual penetration or sexual contact against [*name complainant*] or intended to attempt an act of criminal sexual penetration or contact against [*name complainant*], or intended to assault [*name complainant*] with the intent to sexually penetrate or have sexual contact with [him/her], as I [have described / will describe] [that offense / those offenses] to you.[3]

Use Note

[1] Various statutes, including MCL 333.7401b pertaining to gamma-butyrolactone, provide that "any material, compound, mixture, or preparation containing" a controlled substance is included within the scope of the prohibition. The court may opt to use any or all of those terms where appropriate.

[2] *Delivery* is generally defined in MCL 333.7105(1), and includes "attempted" transfers of a controlled substance.

[3] Generally, the charge of delivering a controlled substance or gamma-butyrolactone under MCL 333.7401a will accompany a criminal sexual conduct charge or charges, so providing the elements of that charge or those charges will be sufficient to satisfy this element. However, the language of this element may have to be modified in instances where an independent count of criminal sexual conduct has not been charged, and the court may have to provide the elements of one or more criminal sexual conduct offenses.

M Crim JI 12.3 Unlawful Possession of a Controlled Substance with Intent to Deliver

(1)The defendant is charged with the crime of illegally possessing with intent to deliver [*state weight*] of a [mixture containing a] controlled substance. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant possessed[1] [*identify controlled substance*].

(3)Second, that the defendant knew that [he / she] possessed a controlled substance.

(4)Third, that the defendant intended to deliver the controlled substance to someone else.

(5)Fourth, that the controlled substance that the defendant intended to deliver [was in a mixture that] weighed (*state weight*).[2]

[(6)Fifth, that the defendant was not legally authorized to deliver the controlled substance.][3]

Use Note

[1] For a definition of possession, see M Crim JI 12.7.

[2] This bracketed material should be given where the controlled substance is a narcotic drug classified in Schedule 1 or 2, or a cocaine-related substance as found in MCL 333.7214(a)(iv).

[3] This paragraph should be given only when the defense has presented some competent evidence beyond a mere assertion that the defendant was authorized to deliver the substance. If the defense presents such evidence, the prosecution must prove lack of authorization beyond a reasonable doubt. *People v Pegenau*, 447 Mich 278, 523 NW2d 325 (1994).

McFadden v United States, 576 US ___; 135 S Ct 2298 (2015), held that a prosecutor need not prove that the defendant intended to deliver any particular controlled substance, only that he or she intended to deliver some controlled substance.

History

M Crim JI 12.3 (formerly CJI2d 12.3) was CJI 12:2:00, 12:2:01, 12:2:04; amended August, 2016.

Reference Guide

Statutes

MCL 333.7401,.7105(1), .7214(a)(iv).

Case Law

People v Konrad, 449 Mich 263, 273, 536 NW2d 517 (1995); *People v Pegenau*, 447 Mich 278, 523 NW2d 325 (1994); *People v Wolfe*, 440 Mich 508, 519-520, 489 NW2d 748 (1992); *People v Allen*, 390 Mich 383, 212 NW2d 21 (1973); *People v Harper*, 365 Mich 494, 506-507, 113 NW2d 808, 813-814 (1962); cert den, 371 US 930 (1962); *Peterson v Oceana Circuit Judge*, 243 Mich 215, 219 NW2d 934 (1928); *People v Germaine*, 234 Mich 623, 627, 208 NW 705, 706 (1926); *People v Johnson*, 68 Mich App 697, 243 NW2d 715 (1976). *McFadden v United States*, 576 US ___; 135 S Ct 2298 (2015).

M Crim JI 12.4 Defendant Is a Practitioner or an Agent

[*Choose (1) or (2):*]

[(1)The preparation of a controlled substance by a (*state practitioner*) in the course of his professional practice or employment is legal. If you find that the defendant was a (*state practitioner*) and that he was preparing (*list substance*), you must also be convinced beyond a reasonable doubt that he was not doing so in the course of his professional practice in order to convict him of manufacturing.]

[(2)The preparation of a controlled substance by a pharmacist or physician, or by an authorized agent under the supervision of a pharmacist or physician, for research, teaching, or chemical analysis and not for sale, is legal. If you find that the defendant was a pharmacist or physician, or an authorized agent under the supervision of a pharmacist or physician, and that he was preparing or compounding (*list substance*), you must also be convinced beyond a reasonable doubt that he was not doing so in the course of his professional practice in order to convict him of manufacturing.]

Use Note

This instruction should be given only if some evidence has been presented that the defendant was a practitioner or agent. *People v Wooster*, 143 Mich App 513, 515-518, 372 NW2d 353 (1985); *People v Bates*, 91 Mich App 506, 513-516, 283 NW2d 785 (1979).

History

M Crim JI 12.4 (formerly CJI2d 12.4) was CJI 12:2:05.

Reference Guide

Statutes

MCL 333.7106(2), .7109(3).

M Crim JI 12.5 Unlawful Possession of a Controlled Substance

(1)The defendant is charged with the crime of knowingly or intentionally possessing [(*state weight*) of a mixture containing] the controlled substance, [*identify controlled substance*]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant possessed[1] [*identify controlled substance*].

(3)Second, that the defendant knew that [he / she] possessed a controlled substance.

[(4)Third, that the substance that the defendant possessed [was in a mixture that] weighed (*state weight*).][2]

[(5)[Third / Fourth], that the substance was not obtained by a valid prescription given to the defendant.][3]

[(6) [Third / Fourth / Fifth], that the defendant was not otherwise authorized to possess this substance.][4]

Use Note

[1] For a definition of possession, see M Crim JI 12.7.

[2] This bracketed material should be given where the controlled substance is a narcotic drug classified in Schedule 1 or 2, or a cocaine-related substance as found in MCL 333.7214(a)(iv).

[3] This paragraph should be given only if some evidence has been presented that the defendant had a valid prescription for the substance. See *People v Little*, 87 Mich App 50, 54-55, 273 NW2d 583 (1978), and Use Note 4 below.

[4] This paragraph should be given only when the defense has presented some competent evidence beyond a mere assertion that the defendant was authorized to possess the substance. If the defense presents such evidence, the prosecution must prove lack of authorization beyond a reasonable doubt. *People v Pegenau*, 447 Mich 278, 523 NW2d 325 (1994).

McFadden v United States, 576 US ___; 135 S Ct 2298 (2015), held that a prosecutor need not prove that the defendant intended to deliver any particular controlled substance, only that he or she intended to deliver some controlled substance.

History

M Crim JI 12.5 (formerly CJI2d 12.5) was CJI 12:3:00-12:3:01; amended October, 1993; amended August, 2016.

Reference Guide

Statutes

MCL 333.7403, .7214(a)(iv), .26424, .26427, .26428.

Case Law

State v McQueen, 493 Mich 135, 828 NW2d 644 (2013); *People v Kolanek*, 491 Mich 382, 817 NW2d 528 (2012); *People v Pegenau*, 447 Mich 278, 523 NW2d 325 (1994); *People v Allen*, 390 Mich 383, 212 NW2d 21 (1973); *People v Harper*, 365 Mich 494, 506-507, 113 NW2d 808, 813-814 (1962); cert den, 371 US 930 (1962); *Peterson v Oceana Circuit Judge*, 243 Mich 215; 219 NW 934 (1928); *People v Germaine*, 234 Mich 623, 627, 208 NW 705, 706 (1926); *People v Redden*, 290 Mich App 65, 799 NW2d 184 (2010); *People v Binder (On Remand)*, 215 Mich App 30, 544 NW2d 714 (1996); *People v Puertas*, 122 Mich App 626, 332 NW2d 399 (1983); *People v Stahl*, 110 Mich App 757, 313 NW2d 103 (1981); *People v Delongchamps*, 103 Mich App 151, 302 NW2d 626 (1981); *People v Little*, 87 Mich App 50, 54-55, 273 NW2d 583 (1978); *People v Gould*, 61 Mich App 614, 233 NW2d 109 (1975*); People v Mumford*, 60 Mich App 279, 282-283, 230 NW2d 395 (1975); *People v Davenport*, 39 Mich App 252, 197 NW2d 521 (1972).

M Crim JI 12.6 Unlawful Use of a Controlled Substance

(1)The defendant is charged with the crime of illegally using a controlled substance, _____. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant used a controlled substance.

(3)Second, that the substance used was _____.

(4)Third, that at the time [he / she] used it, the defendant knew the substance was _____.

[(5)Fourth, that the substance was not obtained by a valid prescription given to the defendant.][1]

[(6)Fifth, that the defendant was not otherwise authorized by law to use this substance.][2]

Use Note

[1] This paragraph should be given only if some evidence has been presented that the defendant had a valid prescription. See *People v Little*, 87 Mich App 50, 54-55, 273 NW2d 583 (1978), and Use Note 2 below.

[2] This paragraph should be given only when the defense has presented some competent evidence beyond a mere assertion that the defendant was authorized to possess the substance. If the defense presents such evidence, the prosecution must prove lack of authorization beyond a reasonable doubt. *People v Pegenau*, 447 Mich 278, 523 NW2d 325 (1994).

History

M Crim JI 12.6 (formerly CJI2d 12.6) was CJI 12:4:01; amended October, 1993.

Reference Guide

Case Law

People v Pegenau, 447 Mich 278, 523 NW2d 325 (1994); *People v Little*, 87 Mich App 50, 54-55, 273 NW2d 583 (1978).

M Crim JI 12.7 Meaning of Possession

Possession does not necessarily mean ownership. Possession means that either:

(1)the person has actual physical control of the [substance / thing], as I do with the pen I'm now holding, or

(2)the person has the right to control the [substance / thing], even though it is in a different room or place.

Possession may be sole, where one person alone possesses the [substance / thing].

Possession may be joint, where two or more people each share possession.

It is not enough if the defendant merely knew about the [*state substance or thing*]; the defendant possessed the [*state substance or thing*] only if [he / she] had control of it or the right to control it, either alone or together with someone else.

Use Note

In felony firearm cases, see M Crim JI 11.34b for the applicable definition of *constructive possession*.

History

M Crim JI 12.7 (formerly CJI2d 12.7) was adopted in June, 1995.

Reference Guide

Case Law

People v Burgenmeyer, 461 Mich 431, 606 NW2d 645 (2000); *People v Williams*, 212 Mich App 607, 538 NW2d 89 (1995).

M Crim JI 12.8 Maintaining a Drug House

(1)The defendant is charged with the crime commonly known as knowingly maintaining or keeping a drug house. To prove this charge the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant knowingly kept or maintained a [building / dwelling / vehicle / vessel / (*describe other place*)].

(3)Second, that this [building / dwelling / vehicle / vessel / (*describe other place*)] was:

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

(a)frequented by persons for the purpose of illegally using controlled substances.

(b)used for illegally keeping controlled substances.

(c)used for illegally selling controlled substances.

(4)Third, that the defendant knew that the [building / dwelling / vehicle / vessel / (*describe other place*)] was frequented or used for such illegal purposes.

History

M Crim JI 12.8 (formerly CJI2d 12.8) was adopted by the committee in October, 2002, to reflect the elements of this offense. MCL 333.7405(1)(d).

Reference Guide

Statutes

MCL 333.7405(1)(d).

Case Law

People v Thompson, 477 Mich 146, 156-157, 730 NW2d 708 (2007).

CHAPTER 13

Police and Prisons

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M Crim JI 13.1 Assaulting, Resisting, or Obstructing a Police Officer

(1)The defendant is charged with the crime of [assaulting / battering / wounding / resisting / obstructing / opposing / endangering] a [*state authorized person*] who was performing [his / her] duties.[1] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant [assaulted / battered / wounded / resisted / obstructed / opposed / endangered] a [*state authorized person*].[2] ["Obstruct" includes the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.] [The defendant must have actually resisted by what (he / she) said or did, but physical violence is not necessary.]

(3)Second, that the defendant knew or had reason to know that the person the defendant [assaulted / battered / wounded / resisted / obstructed / opposed / endangered] was a [*state authorized person*] performing [his / her] duties at the time.

[*Use the following paragraphs as warranted by the charge and proofs.*]

(4)Third, that such [assaulting / battering / wounding / resisting / obstructing / opposing / endangering] caused the death of the officer.

(5)Third, that such [assaulting / battering / wounding / resisting / obstructing / opposing / endangering] caused serious impairment of a body function to the officer.[3]

(6)Third, that such [assaulting / battering / wounding / resisting / obstructing / opposing / endangering] caused a bodily injury requiring medical attention or medical care to the officer.

Use Note

[1] This instruction is to be used when the defendant is charged with violating MCL 750.81d. A defendant could be charged with assaulting or obstructing an officer performing duties under MCL 750.479. In that case, see M Crim JI 13.2.

[2] "Person" for purposes of this statute is defined to include police officers, deputy sheriffs, firefighters, and emergency medical service personnel, among others. MCL 750.81d(7)(b).

[3] "Serious impairment of a body function" is as defined in the Michigan vehicle code, MCL 257.58c. See M Crim JI 15.12.

History

M Crim JI 13.1 (formerly CJI2d 13.1) was adopted in October, 2004, to reflect the elements of the offense created in 2002 by 2002 PA 266, MCL 750.81d. The prior instruction addressed the elements of a similar offense now encompassed by MCL 750.479 as amended by 2002 PA 270 and found at M Crim JI 13.2.

Reference Guide

Statutes

MCL 257.58c, 750.81d, .479.

Case Law

People v Moreno, 491 Mich 38, 814 NW2d 624 (2012).

M Crim JI 13.2 Assaulting or Obstructing Officer Performing Duties

(1)The defendant is charged with the crime of [assaulting / battering / wounding / obstructing / endangering] a [*state authorized person*] who was acting in the performance of [his / her] duties.[1] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant [assaulted / battered / wounded / obstructed / endangered] a [*state authorized person*][2] who was performing [his / her] duties. ["Obstruct" includes the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.][3]

(3)Second, that the defendant knew the person [assaulted / battered / wounded / obstructed / endangered] was then a [*state authorized person*] performing [his / her] duties.

(4)Third, that the defendant's actions were intended by the defendant, that is, not accidental.

[*Use the following paragraphs when warranted by the charge and proofs:*]

(5)Fourth, that such [assaulting / battering / wounding / obstructing / endangering] caused the death of [*state authorized person*].

(6)Fourth, that such [assaulting / battering / wounding / obstructing / endangering] caused serious impairment of a body function to the [*state authorized person*].[4]

(7)Fourth, that such [assaulting / battering / wounding / obstructing / endangering] caused a bodily injury requiring medical attention or medical care to [*state authorized person*].[5]

Use Note

[1] This instruction should be used when the defendant is charged with violating MCL 750.479. A defendant could be charged under MCL 750.81d with assaulting, resisting, or obstructing an officer. In that event, see M Crim JI 13.1.

[2] The statute lists authorized persons as medical examiner, township treasurer, judge, magistrate, probation officer, parole officer, prosecutor, city attorney, court employee, court officer, or other officer or duly authorized person. MCL 750.479(1)(a).

[3] "Obstruct" is defined in MCL 750.479(8)(a), as amended in 2002.

[4] "Serious impairment of a body function" is defined in MCL 750.479(8)(b), as amended in 2002, to be as defined in the Michigan vehicle code, MCL 257.58c. See M Crim JI 15.12.

[5] This aggravating circumstance could, of course, be the charged or a lesser offense if warranted by the evidence.

History

M Crim JI 13.2 (formerly CJI2d 13.2) was adopted in October, 2004, to reflect the statutory changes found in 2002 PA 270, MCL 750.479.

Reference Guide

Statutes

MCL 257.58c, 750.81d, .479.

Case Law

People v Moreno, 491 Mich 38, 814 NW2d 624 (2012); *People v Philabaun*, 461 Mich 255, 602 NW2d 371 (1999); *People v Little*, 434 Mich 752, 456 NW2d 237 (1990); *People v King*, 236 Mich 405, 210 NW 235 (1926); *People v Chapo*, 283 Mich App 360, 770 NW2d 68 (2009); *People v Delong*, 128 Mich App 1, 339 NW2d 659 (1983); *People v Van Wasshenova*, 121 Mich App 672, 329 NW2d 452 (1982); *People v Gleisner*, 115 Mich App 196, 320 NW2d 340 (1982); *People v Kelley*, 78 Mich App 769, 260 NW2d 923 (1977); *People v Weatherspoon*, 6 Mich App 229, 232, 148 NW2d 889 (1967).

M Crim JI 13.3 Interference with a Police Officer Serving Process [*deleted*]

Note. This instruction was deleted by the committee in October, 2004, in the course of revising portions of this chapter. The offense previously covered by this instruction is now included within M Crim JI 13.2.

M Crim JI 13.4 Assaulting a Police Officer [*deleted*]

Note. This instruction was deleted by the committee in October, 2004, in the course of revising portions of this chapter. The offense previously covered by this instruction is now included within M Crim JI 13.2.

M Crim JI 13.5 Legal Arrest

(1)An arrest is legal if it is:

[*Choose one of the following:*]

(2)Made by an officer relying on an arrest warrant for the defendant issued by a court.

(3)Made by an officer for a crime that [(he / she) reasonably believed] was committed in [his / her] presence, if it was made as soon as reasonably possible afterward.

(4)Made by an officer who had reasonable cause to believe that the crime of _____ was committed by the defendant. "Reasonable cause" means having enough information to lead an ordinarily careful person to believe that the defendant had committed the crime of _____.

(5)Made by an officer for [*state other basis*].

Use Note

This instruction should be used only when the legality of the arrest resisted is in dispute. The committee believes that the legality of the arrest is no longer an element of the offenses found at MCL 750.81d and MCL 750.479. However, the committee retained this instruction since it may prove useful in other circumstances. The trial court should select the appropriate paragraph and tailor paragraph (5), if used, for arrests in those special statutory circumstances not covered by the other paragraphs.

History

M Crim JI 13.5 (formerly CJI2d 13.5) was added in 1990.

Reference Guide

Statutes

MCL 750.81d, .479, 764.1 et seq., .15-.15b.

M Crim JI 13.6a Fleeing and Eluding in the First Degree

(1)The defendant is charged with the crime of fleeing and eluding in the first degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that a [police / conservation] officer was in uniform and was performing [his / her] lawful duties [and that any vehicle driven by the officer was adequately marked as a law enforcement vehicle].

(3)Second, that the defendant was driving a motor vehicle.

(4)Third, that the officer ordered that the defendant stop [his / her] vehicle.

(5)Fourth, that the defendant knew of the order.

(6)Fifth, that the defendant refused to obey the order by trying to flee or avoid being caught.

(7)Sixth, that the violation resulted in the death of another individual.

History

M Crim JI 13.6a (formerly CJI2d 13.6a) was added in September, 1997, to reflect the elements of fleeing and eluding in the first degree in accordance with subsection (1)(5) of 1996 PA 586, MCL 750.479a(5). This offense is a 15-year felony.

Reference Guide

Statutes

MCL 257.602a, 750.479a(5).

Case Law

People v Schaefer, 473 Mich 418, 438-439, 703 NW2d 774 (2005), modified in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d 822 (2006), overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010); *People v Wood*, 276 Mich App 669, 741 NW2d 574 (2007).

M Crim JI 13.6b Fleeing and Eluding in the Second Degree

(1)The defendant is charged with the crime of fleeing and eluding in the second degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that a [police / conservation] officer was in uniform and was performing [his / her] lawful duties [and that any vehicle driven by the officer was adequately marked as a law enforcement vehicle].

(3)Second, that the defendant was driving a motor vehicle.

(4)Third, that the officer ordered that the defendant stop [his / her] vehicle.

(5)Fourth, that the defendant knew of the order.

(6)Fifth, that the defendant refused to obey the order by trying to flee or avoid being caught.

[*Choose one or more of the following alternatives:*]

(7)Sixth, that the violation resulted in serious impairment of a body function* to an individual.

or

(8)Sixth, that the defendant has one or more prior convictions for first-, second-, or third-degree fleeing and eluding; attempted first-, second-, or third-degree fleeing and eluding; or fleeing and eluding under a current or former law of this state prohibiting substantially similar conduct.

or

(9)Sixth, that the defendant has any combination of two or more prior convictions for fourth-degree fleeing and eluding, attempted fourth-degree fleeing and eluding, or fleeing and eluding under a current or former law of this state prohibiting substantially similar conduct.

Use Note

*The statute, MCL 750.479a(9), incorporates the statutory definition of "serious impairment of body function" found at MCL 257.58c: "Serious impairment of a body function" includes, but is not limited to, 1 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.

History

M Crim JI 13.6b (formerly CJI2d 13.6b) was added in September, 1997, to reflect the elements of fleeing and eluding in the second degree in accordance with subsection (1)(4) of 1996 PA 586, MCL 750.479a(4). This offense is a ten-year felony. Paragraph (7) of this instruction was modified in September, 2003, to indicate that rather than "serious injury" the conduct must cause "serious impairment of a body function" in accordance with 2002 PA 270, effective July 15, 2002.

Reference Guide

Statutes

MCL 750.479a(4).

M Crim JI 13.6c Fleeing and Eluding in the Third Degree

(1)The defendant is charged with the crime of fleeing and eluding in the third degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that a [police / conservation] officer was in uniform and was performing [his / her] lawful duties [and that any vehicle driven by the officer was adequately marked as a law enforcement vehicle].

(3)Second, that the defendant was driving a motor vehicle.

(4)Third, that the officer ordered that the defendant stop [his / her] vehicle.

(5)Fourth, that the defendant knew of the order.

(6)Fifth, that the defendant refused to obey the order by trying to flee or avoid being caught.

[*Choose one or more of the following alternatives:*]

(7)Sixth, that the violation resulted in a collision or accident.

or

(8)Sixth, some portion of the violation took place in an area where the speed limit was 35 miles per hour or less [whether as posted or as a matter of law].

or

(9)Sixth, that the defendant has a prior conviction for fleeing and eluding in the fourth-degree, attempted fleeing and eluding in the fourth-degree, or fleeing and eluding under a current or former law of this state prohibiting substantially similar conduct.

History

M Crim JI 13.6c (formerly CJI2d 13.6c) was added in September, 1997, to reflect the elements of fleeing and eluding in the third degree in accordance with subsection (1)(3) of 1996 PA 586, MCL 750.479a(3). This offense is a five-year felony.

Reference Guide

Statutes

MCL 750.479a(3).

Case Law

People v Abramski, 257 Mich App 71, 665 NW2d 501 (2003); *People v Grayer*, 235 Mich App 737, 741-742, 599 NW2d 527 (1999), appeal after remand, 252 Mich App 349, 651 NW2d 818 (2002).

M Crim JI 13.6d Fleeing and Eluding in the Fourth Degree

(1)The defendant is charged with the crime of fleeing and eluding in the fourth degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that a [police / conservation] officer was in uniform and was performing [his / her] lawful duties [and that any vehicle driven by the officer was adequately marked as a law enforcement vehicle].

(3)Second, that the defendant was driving a motor vehicle.

(4)Third, that the officer ordered that the defendant stop [his / her] vehicle.

(5)Fourth, that the defendant knew of the order.

(6)Fifth, that the defendant refused to obey the order by trying to flee or avoid being caught.

History

M Crim JI 13.6d (formerly CJI2d 13.6d) was added in September, 1997, to reflect the elements of fleeing and eluding in the fourth degree in accordance with subsection (1)(2) of 1996 PA 586, MCL 750.479a(2). This offense is a two-year felony.

Reference Guide

Statutes

MCL 750.479a(2).

Case Law

People v Green, 260 Mich App 710, 680 NW2d 477 (2004); *People v Landrie*, 124 Mich App 480, 335 NW2d 11 (1983); *People v Harrell*, 54 Mich App 554, 221 NW2d 411 (1974), aff'd, 398 Mich 384, 247 NW2d 829 (1976).

M Crim JI 13.7 Aiding the Escape of a Prisoner

(1)The defendant is charged with the crime of assisting the escape of a prisoner. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that _____ was a prisoner in [*state place of confinement*].

(3)Second, that _____ was legally committed to or held in this facility.

[*Choose one of the four alternatives that follow:*]

[*First Alternative:*]

(4)Third, that the defendant knowingly took or sent a [*state object*] into [*state place of confinement*], intending to help a prisoner escape.*

(5)Fourth, that this [*state object*] could be used to help the prisoner escape.

[*Second Alternative:*]

(6)Third, that the defendant intentionally assisted a prisoner who was trying to escape. It does not matter whether the escape itself was made or even attempted, but the defendant must have intended to assist the escape of the prisoner.*

[*Third Alternative:*]

(7)Third, that the defendant's act helped a prisoner escape.

(8)Fourth, that the defendant knew when [he / she] did this act that it created a substantial risk that a prisoner would escape.

[*Fourth Alternative:*]

(9)Third, that the defendant helped a prisoner escape by the use of force.

Use Note

*These alternatives are for use where the escape may not have been completed and where there might be some question of the sufficiency of the voluntary act of the defendant.

History

M Crim JI 13.7 (formerly CJI2d 13.7) was CJI 13:3:01.

Reference Guide

Statutes

MCL 750.183.

Case Law

People v Gardineer, 334 Mich 663, 55 NW2d 145 (1952); *People v Hamaker*, 92 Mich 11, 52 NW 82 (1892); *People v Potts*, 55 Mich App 622, 223 NW2d 96 (1974).

M Crim JI 13.8 Breaking, Escaping, or Attempting to Break or Escape from Prison

(1)The defendant is charged with the crime of escaping or attempting to escape from prison. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant had been sentenced to a term of imprisonment and was serving that term at the time of the alleged crime.

(3)Second, that the facility the defendant was held in was a prison. [The term "prison" includes a state prison, penitentiary, reformatory, state house of correction, community residential (corrections) center operated or leased by the department of corrections, and prison camp. It also includes the grounds, farm, shop, road camp, and any place of employment operated by the facility or under the control of the facility's officers, the corrections department, a police officer, or any other person authorized to care for, keep, or supervise an inmate for any reason.][1]

(4)Third, that the administrative offices of [*state penal facility*] are located in _____ County.

(5)Fourth, that the defendant:

[*Choose one of the following:*]

(a)escaped from prison.

(b)attempted to escape from prison. An attempt has two elements. First, the defendant must have intended to escape from prison. Second, the defendant must have taken some action toward escaping, but failed to complete the escape. It is not enough to prove that the defendant made preparations for escaping. Things like planning the escape or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the escape would have been completed if it hadn't been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the escape and not some other goal.[2]

(c)escaped from the custody of a [guard / prison official / employee of the prison] while outside of the prison.

(d)had been released from prison under a work pass program but [violated the terms of the release / failed to return to prison within the time ordered to return]. A work pass program allows a prisoner to leave prison in order to work, but [he / she] is under the supervision of the prison and must obey the rules of the prison and return within the time [he / she] is ordered to return.

(e)left the prison without being legally discharged from it.

(f)escaped from a mental health facility to which [he / she] had been admitted from prison.[3]

Use Note

[1] Use appropriate bracketed material if there is some question about whether or not the facility was a prison. The definition of prison is from MCL 750.193(2).

[2] Escape is a general intent crime. See *People v Spald*ing, 17 Mich App 73, 169 NW2d 163 (1969), construing the prison escape statute. But see *People v Benevides*, 204 Mich App 188, 192, 514 NW2d 208 (1994), holding that "prison escape requires proof that the defendant intended to escape from known confinement." However, any attempt to commit an offense is a specific intent crime. See *People v Langworthy*, 416 Mich 630, 644-645, 331 NW2d 171 (1982); *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979) (Opinion of Levin, J.).

[3] The admission to a mental health facility must have been pursuant to MCL 330.2000.

History

M Crim JI 13.8 (formerly CJI2d 13.8) was CJI 13:4:01.

Reference Guide

Statutes

MCL 750.193(2).

Case Law

People v Langworthy, 416 Mich 630, 644-645, 331 NW2d 171 (1982); *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979) (Opinion of Levin, J.); *People v Luther*, 394 Mich 619, 232 NW2d 184 (1975); *People v Sheets*, 223 Mich App 651, 567 NW2d 478 (1997); *People v Benevides*, 204 Mich App 188, 192, 514 NW2d 208 (1994); *People v Wyngaard*, 159 Mich App 304, 406 NW2d 280 (1987); *People v Stephens*, 103 Mich App 640, 303 NW2d 51 (1981); *People v Martin*, 100 Mich App 447, 298 NW2d 900 (1980); *People v Stubblefield*, 100 Mich App 354, 356, 299 NW2d 4 (1980); *People v Crawford*, 66 Mich App 581, 591, 239 NW2d 670 (1976); *People v Spalding*, 17 Mich App 73, 169 NW2d 163 (1969).

M Crim JI 13.9 Lawfulness of Confinement / Affirmative Defense

(1)There has been some evidence that the defendant was illegally imprisoned at the time of [his / her] [attempt to] escape. A person has the right to [attempt to] escape if [he / she] is illegally imprisoned or if [his / her] imprisonment has legally ended.

[(2)Just because a conviction has been reversed or the defendant is appealing a point of law that led to (his / her) imprisonment does not make the imprisonment illegal. In such a situation, a prisoner is not justified in escaping and must use proper methods to challenge (his / her) conviction.]

Use Note

This instruction should be given only where unlawfulness of confinement has been raised as an affirmative defense.

History

M Crim JI 13.9 (formerly CJI2d 13.9) was CJI 13:4:02.

Reference Guide

Case Law

People v Marsh, 156 Mich App 831, 402 NW2d 100 (1986).

M Crim JI 13.10 Jail Escape—Defendant Sentenced to Jail

(1)The defendant is charged with the crime of escaping or attempting to escape from jail. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant had been sentenced to jail for a [misdemeanor / felony].

(3)Second, that the defendant:

[*Choose one of the following:*]

(a)broke out of jail and escaped.

(b)broke out of jail, though [he / she] did not actually escape.

(c)left the jail without being legally discharged from it.

(d)attempted to escape from jail. An attempt has two elements. First, the defendant must have intended to escape from jail. Second, the defendant must have taken some action toward escaping, but failed to complete the escape. It is not enough to prove that the defendant made preparations for escaping. Things like planning the escape or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the escape would have been completed if it hadn't been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the escape and not some other goal.

Use Note

Escape is a general intent crime. See *People v Spalding*, 17 Mich App 73, 169 NW2d 163 (1969), construing the prison escape statute. However, any attempt to commit an offense is a specific intent crime. *See People v Langworthy*, 416 Mich 630, 644-645, 331 NW2d 171 (1982); *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979) (Opinion of Levin, J.).

History

M Crim JI 13.10 (formerly CJI2d 13.10) was CJI 13:6:01.

Reference Guide

Statutes

MCL 750.195.

Case Law

People v Langworthy, 416 Mich 630, 644-645, 331 NW2d 171 (1982); *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979) (Opinion of Levin, J.); *People v Spalding*, 17 Mich App 73, 169 NW2d 163 (1969).

M Crim JI 13.11 Jail Escape—Pending Trial or Transfer to Prison

(1)The defendant is charged with the crime of escaping or attempting to escape from jail. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant was in jail [or a legal place of confinement] awaiting examination, trial, arraignment, sentencing for a [misdemeanor / felony], or transfer to or from prison after conviction.

(3)Second, that the defendant:

[*Choose one of the following:*]

(a)broke out of jail and escaped.

(b)broke out of jail, though [he / she] did not actually escape.

(c)left the jail without being legally discharged from it.

(d)attempted to escape from jail. An attempt has two elements. First, the defendant must have intended to escape from jail. Second, the defendant must have taken some action toward escaping, but failed to complete the escape. It is not enough to prove that the defendant made preparations for escaping. Things like planning the escape or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the escape would have been completed if it hadn't been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the escape and not some other goal.

(e)broke out of jail or escaped while in or being transferred to or from a courtroom or courthouse, or a place where court is held.

Use Note

Escape is a general intent crime. See *People v Spalding*, 17 Mich App 73, 169 NW2d 163 (1969), construing the prison escape statute. However, any attempt to commit an offense is a specific intent crime. See *People v Langworthy*, 416 Mich 630, 644-645, 331 NW2d 171 (1982); *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979) (opinion of Levin, J.).

History

M Crim JI 13.11 (formerly CJI2d 13.11) was CJI 13:6:02.

Reference Guide

Statutes

MCL 750.197, .197a.

Case Law

People v Langworthy, 416 Mich 630, 644-645, 331 NW2d 171 (1982); *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979) (Opinion of Levin, J.); *People v Taylor*, 238 Mich App 259, 604 NW2d 783 (1999); *People v Jones*, 190 Mich App 509, 476 NW2d 646 (1991); *People v Spalding*, 17 Mich App 73, 169 NW2d 163 (1969).

M Crim JI 13.12 Jail—Definition

A jail includes any place operated by [_____ County / the City of _____] for detaining people charged with or convicted of a crime [or contempt of court].

Use Note

This instruction should be given on request of either party.

History

M Crim JI 13.12 (formerly CJI2d 13.12) was CJI 13:6:03.

Reference Guide

Statutes

MCL 750.195(4).

M Crim JI 13.13 Escape from Day Parole

A person released from jail in order to [work / look for work / conduct business / go to school / get medical treatment / get substance abuse treatment / get mental health counselling] is not guilty of jail escape simply because [he / she] is late returning to jail. The prosecutor must prove beyond a reasonable doubt that the defendant intended to escape when [he / she] failed to return to the jail on time.

Use Note

This instruction should be given only where the defendant is charged with escape after failing to return from day parole.

History

M Crim JI 13.13 (formerly CJI2d 13.13) was CJI 13:6:04.

Reference Guide

Statutes

MCL 801.251(1).

M Crim JI 13.14 Breaking Jail with Violence

(1)The defendant is charged with the crime of breaking out of [and escaping from / but not escaping from] [*state place of confinement*] by using violence. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant was confined at [*state place of confinement*].

(3)Second, that [he / she] was legally confined there.

(4)Third, that [he / she] broke out of [*state place of confinement*] [and escaped / but did not escape].

(5)Fourth, that [he / she] did this by using [violence / threats of violence / a dangerous weapon].

Use Note

When the use of a dangerous weapon is alleged, give the definition of dangerous weapon, M Crim JI 11.18. See *People v Macklin*, 46 Mich App 297, 208 NW2d 62 (1973).

History

M Crim JI 13.14 (formerly CJI2d 13.14) was CJI 13:8:01.

Reference Guide

Statutes

MCL 750.197c.

Case Law

People v Cousins, 139 Mich App 583, 596, 363 NW2d 285 (1984); *People v Anderson*, 83 Mich App 744, 747, 269 NW2d 288 (1978); *People v Macklin*, 46 Mich App 297, 208 NW2d 62 (1973).

M Crim JI 13.15 Assaulting Employee of Place of Confinement

(1)The defendant is charged with the crime of assaulting an employee of [*state place of confinement*]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant was confined at [*state place of confinement*].

(3)Second, that [he / she] was legally confined there.

(4)Third, that [he / she] assaulted an employee of [*state place of confinement*]. To prove that there was an assault, the prosecutor must prove each of the following elements beyond a reasonable doubt: [*state elements of assault*].*

(5)Fourth, that at the time of the assault, the defendant knew that [*name complainant*] was an employee of [*state place of confinement*].

Use Note

*Use M Crim JI 17.1. This is a specific intent crime. See *People v Norwood*, 123 Mich App 287, 333 NW2d 255, lv den, 417 Mich 1006 (1983).

When the use of a dangerous weapon is alleged, give the definition of dangerous weapon, M Crim JI 11.18. See *People v Macklin*, 46 Mich App 297, 208 NW2d 62 (1973).

Place of confinement in this context may include a prison. See *People v Wingo*, 95 Mich App 101, 290 NW2d 93 (1980).

History

M Crim JI 13.15 (formerly CJI2d 13.15) was CJI 13:8:02; amended October, 1993.

Reference Guide

Statutes

MCL 750.197c.

Case Law

People v Clay, 463 Mich 971, 623 NW2d 597 (2001), (*After Remand*) 468 Mich 261, 661 NW2d 572 (2003); *People v Neal*, 233 Mich App 649, 592 NW2d 95 (1999); *People v Ovalle*, 222 Mich App 463, 564 NW2d 147 (1997); *People v Terry*, 217 Mich App 660, 553 NW2d 23 (1996); *People v Hurse*, 152 Mich App 811, 394 NW2d 119 (1986); *People v Norwood*, 123 Mich App 287, 333 NW2d 255, lv den, 417 Mich 1006 (1983); *People v Johnson*, 115 Mich App 630, 321 NW2d 752 (1982); *People v Bellafant*, 105 Mich App 788, 307 NW2d 422 (1981); *People v Boyd*, 102 Mich App 112, 300 NW2d 760 (1980); *People v Wingo*, 95 Mich App 101, 290 NW2d 93 (1980); *People v Macklin*, 46 Mich App 297, 208 NW2d 62 (1973).

M Crim JI 13.16 Forfeiting a Bond

(1)The defendant is charged with the crime of forfeiting a bond that was posted in a criminal case. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant gave a bond in a criminal proceeding in which a felony was charged. [(*State offense*) is a felony.]

(3)Second, that the defendant forfeited that bond by intentionally or recklessly violating a condition of the bond. In this case, the prosecution claims the condition of the defendant's bond that was violated was [*state condition*].

(4)Third, that the defendant had notice of the condition of the bond that the prosecution claims was violated.

History

M Crim JI 13.16 (formerly CJI2d 13.16) was adopted by the committee in June, 1994.

Reference Guide

Statutes

MCL 750.199a.

Case Law

People v Demers, 195 Mich App 205, 208, 489 NW2d 173 (1992); *People v Rorke*, 80 Mich App 476, 478-479, 264 NW2d 30 (1978).

M Crim JI 13.17 Absconding on a Bond

The defendant is charged with the crime of absconding on a bond posted in a criminal case. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(1)First, that the defendant gave a bond in a criminal proceeding in which a felony was charged. [(*State charge*) is a felony.] [A bond is an agreement to do certain things, including to appear in court when required.]

(2)Second, that the defendant absconded on the bond. Absconding means to leave the jurisdiction of the court or to hide or conceal oneself in order to avoid legal process.

History

M Crim JI 13.17 (formerly CJI2d 13.17) was adopted by the committee in June, 1994.

Reference Guide

Statutes

MCL 750.199a.

Case Law

People v Perryman, 432 Mich 235, 439 NW2d 243 (1989); *People v Williams*, 243 Mich App 333, 620 NW2d 906 (2000); *People v McClain*, 218 Mich App 613, 554 NW2d 608 (1996); *People v Demers*, 195 Mich App 205, 208, 489 NW2d 173 (1992); *People v Litteral*, 75 Mich App 38, 41, 254 NW2d 643 (1977).

M Crim JI 13.18 Disarming a Peace Officer/Corrections Officer

(1)The defendant is charged with taking a [firearm / (*state type of weapon*)] from the lawful possession of a [*state title of (peace officer / corrections officer)*].* To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant knew or had reason to believe that the person from whom the [firearm / (*state type of weapon*)] was taken was a [*state title of (peace officer / corrections officer)*].

(3)Second, that at the time of the offense the [*state title of (peace officer / corrections officer)*] was performing [his / her] duties as a [*state title of (peace officer / corrections officer)*].

(4)Third, that the defendant took the [firearm / (*state type of weapon*)] without the consent of the [*state title of (peace officer / corrections officer)*].

(5)Fourth, that at the time of the offense the [*state title of (peace officer / corrections officer)*] was authorized by [his / her] employer to carry the [firearm / (*state type of weapon*)] in the line of duty.

Use Note

**Peace officer* is defined by statute, MCL 750.479b(5)(b), as is *corrections officer*, MCL 750.479b(5)(a).

History

M Crim JI 13.18 (formerly CJI2d 13.18) was adopted by the committee in March, 1995 to reflect the elements of the new offense of disarming an officer, added by 1994 PA 33, effective June 1, 1994, MCL 750.479b.

Reference Guide

Statutes

MCL 750.479b.

M Crim JI 13.19 False Report of a Felony

(1)The defendant is charged with making a false report in connection with a felony 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 to a [state trooper / deputy sheriff / police officer / (*state other peace officer*)] that a crime had been committed.

(3)Second, that this report was false as to either the fact or the detail[s] of the crime.

(4)Third, that when the defendant made the report, the defendant knew it was false.

(5)Fourth, that the defendant intended to make a false report 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 Note

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

History

M Crim JI 13.19 (formerly CJI2d 13.19) was adopted by the committee in October, 2002; amended in May, 2003.

Reference Guide

Case Law

People v Chavis, 468 Mich 84, 94, 658 NW2d 469 (2003).

M Crim JI 13.20 Concealing Facts or Misleading the Police

(1)The defendant is charged with the crime of [concealing a material fact / making a false or misleading statement / providing a false or misleading document] to a peace officer in a criminal investigation. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that [*name complainant*] was a peace officer who was conducting an investigation of a criminal offense.[1]

(3)Second, that the crime being investigated by [*name complainant*] was [*identify criminal offense*].

(4)Third, that [*name complainant*] informed the defendant that [he / she] was conducting a criminal investigation.

(5)Fourth, that the defendant

[*Choose from the following:*]

(a)concealed information relating to that investigation from the officer by some trick, scheme, or device. Using a trick, scheme, or device means acting in a way intended to deceive others.

(b)provided false information regarding that investigation to the peace officer in a [statement / document] that the defendant knew was false or misleading.

(6)Fifth, that the defendant acted knowingly and willfully. That is, the defendant [concealed the information / provided the false information] voluntarily and intentionally with the intent to deceive, and not because of mistake or some other innocent reason.

(7)Sixth, that the [information allegedly concealed / allegedly false information provided] involved a material fact. A material fact is information that a reasonable person would use to decide whether to do or not do something. A fact is material if it has the capacity or natural tendency to influence an officer's decision how to proceed with an investigation.

[*Use (8) and/or (9) in appropriate cases:*]

(8)You may consider whether the officer relied on the information in deciding whether it was a material fact. However, it is not a defense to the charge that the officer did not rely on the information if you determine beyond a reasonable doubt that the defendant intended to [conceal the information from the officer by trick, scheme, or device / provide false information].

(9)It is not a defense to the charge that the officer was able to obtain the information from another source or by different means if you determine beyond a reasonable doubt that the defendant intended to [conceal the information from the officer by trick, scheme, or device / provide false information].

Use Note

[1] If there is a contest as to whether the investigating individual was a peace officer, an instruction on the appropriate

definition involved should be given. See MCL 750.479c(5)(b).

M Crim JI 13.20a should be given where the defendant claims to have been the victim of the crime being investigated, acted out of duress, or remained silent or otherwise exercised Fifth Amendment rights.

History

M Crim JI 13.20 was adopted in June 2015.

Reference Guide

Statutes

MCL 750.479c(1), (2), and (5); MCL 780.811(a)

Staff Comments

The baseline of the offense is a "serious" misdemeanor, MCL 780.811. The statute does not apply to investigations of other misdemeanors, and a violation is punishable by 93 days in jail and /or a fine of $500. The penalty is then aggravated depending on the offense under investigation, the greatest penalty being a four-year felony. Because the maximum possible penalty is enhanced depending on the offense that was under investigation, the offense for which the investigation was being conducted must be found by the jury beyond a reasonable doubt. *Blakely v Washington*, 542 US 296, 124 S Ct 2531, 159 L Ed 2d 403 (2004). On conviction, MCL 750.479c(2) must be consulted to ascertain into which group of offenses being investigated the conviction falls for sentencing purposes.

M Crim JI 13.20a Misleading the Police; Defenses

(1)The defendant says that [he / she] has a legal defense to the charge.

[*Choose (2) or (3):*]

(2)The defendant says that the statute does not apply because

[*Choose appropriate provision(s):*]

(a)the defendant was the alleged victim of the crime being investigated.

(b)the defendant's action was done under duress because the defendant had a reasonable fear that [he / she / (name other person)] was in danger of physical harm from

[*Select appropriate relationship:*]

(i)the defendant's [spouse / former spouse].

(ii)a person with whom the defendant had a dating relationship.[1]

(iii)a person with whom the defendant has a child in common.

(iv)a [resident / former resident] of a household with the defendant.

(3)The defendant says that, when [he / she] was informed by a peace officer that the officer was conducting a criminal investigation, the defendant

[*Choose appropriate provision(s):*]

(a)told the officer that [he / she] was exercising [his / her] Fifth Amendment rights.

(b)simply refused to answer.

(4)If you find that the evidence raises a reasonable doubt as to whether

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

(a)the statute applies,

(b)the defendant exercised [Fifth Amendment rights / simply refused to answer], then you must find the defendant not guilty.

Use Note

[1] "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between two persons in a business or social context.

History

M Crim JI 13.20a was adopted in June 2015.

Reference Guide

Statutes

MCL 750.479c(3) and (4)

CHAPTER 14 *Perjury*

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M Crim JI 14.1 Perjury Committed in Courts

(1)The defendant is charged with the crime of perjury in a court proceeding. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant was legally required to take an oath in a proceeding in a court of justice. [An oath is a solemn promise to tell the truth.]*

(3)Second, that the defendant took that oath.

(4)Third, that while under that oath the defendant made a false statement. The statement that is alleged to have been made in this case is that [*give details of alleged false statement*].

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

Use Note

*If appropriate, substitute "affirmation" for "oath."

History

M Crim JI 14.1 (formerly CJI2d 14.1) was CJI 14:1:01 and was last amended by the committee in October, 2004.

Reference Guide

Statutes

MCL 750.422.

Case Law

People v Lively, 470 Mich 248, 680 NW2d 878 (2004); *People v Cash*, 388 Mich 153, 162; 200 N.W.2d 83 (1972); *People v McIntire*, 232 Mich App 71, 116, 591 NW2d 231 (1998), rev'd on other grounds, 461 Mich 147, 599 NW2d 102 (1999); *People v Kozyra*, 219 Mich App 422, 428-429, 556 NW2d 512 (1996); *People v Honeyman*, 215 Mich App 687, 691, 546 NW2d 719 (1996); *People v Jeske*, 128 Mich App 596, 604, 341 NW2d 778 (1983); *People v Kasparis*, 107 Mich App 294, 309 NW2d 241 (1981*); People v Hoag*, 89 Mich App 611, 619, 281 NW2d 137 (1979); *People v Longuemire*, 87 Mich App 395, 275 NW2d 12 (1978).

M Crim JI 14.2 Perjury

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

(2)First, that the defendant took an oath to tell the truth. [An oath is a solemn promise to tell the truth.]*

(3)Second, that the oath was [authorized / required] by a law of the state of Michigan. An oath is [authorized / required] by [*state law of requirement under which the oath was allegedly taken*].

(4)Third, that while under oath the defendant made a false statement. The statement that is alleged to have been false in this case is that [*give details of alleged false statement*].

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

Use Note

*If appropriate, substitute "affirmation" for "oath."

History

M Crim JI 14.2 (formerly CJI2d 14.2) was CJI 14:2:01 and was last amended by the committee in October, 2004.

Reference Guide

Statutes

MCL 750.423.

Case Law

People v Lively, 470 Mich 248, 680 NW2d 878 (2004); *People v Ramos*, 430 Mich 544, 424 NW2d 509 (1988); *People v Mankin*, 225 Mich 246, 250, 196 NW 426 (1923); *Smith v Hubbell*, 142 Mich 637, 648-649, 106 NW2d 547 (1906); *People v Jeske*, 128 Mich App 596, 341 NW2d 778 (1983); *People v Kasparis*, 107 Mich App 294, 300, 309 NW2d 241 (1981).

M Crim JI 14.3 Subornation of Perjury

(1)The defendant is charged with the crime of persuading another person to commit perjury. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant tried to get another person to make a false statement under oath.*

(3)Second, that the defendant knew that the statement was false at that time.

(4)Third, that as a result the other person made a false statement under oath.

(5)Fourth, that the oath was [authorized / required] by a law of the state of Michigan. An oath is [authorized / required] by [*state law or requirement under which the oath was allegedly taken*].

Use Note

*If appropriate, substitute "affirmation" for "oath."?

History

M Crim JI 14.3 (formerly CJI2d 14.3) was CJI 14:3:01 and was last amended by the committee in October, 2004.

Reference Guide

Statutes

MCL 750.424.

Case Law

People v Lively, 470 Mich 248, 680 NW2d 878 (2004); *People v McCumby*, 130 Mich App 710, 344 NW2d 338 (1983); *People v Sesi*, 101 Mich App 256, 264, 300 NW2d 535 (1980).

M Crim JI 14.4 Attempted Subornation of Perjury

(1)The defendant is charged with the crime of attempting to persuade another person to commit perjury. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant did or said something in an effort to persuade another person to make a false statement under oath. It does not matter whether anyone actually made a false statement under oath. This crime is completed as soon as the defendant tried to persuade another person to make a false statement.*

(3)Second, that the defendant knew that the statement was false at that time.

(4)Third, that the oath was [authorized / required] by a law of the state of Michigan. An oath is [authorized / required] by [*state law or requirement under which the oath was allegedly taken*].

Use Note

*If appropriate, substitute "affirmation" for "oath."?

History

M Crim JI 14.4 (formerly CJI2d 14.4) was CJI 14:4:01 and was last amended by the committee in October, 2004.

Reference Guide

Statutes

MCL 750.425.

Case Law

People v Lively, 470 Mich 248, 680 NW2d 878 (2004); *People v Mosley*, 338 Mich 559, 567, 61 NW2d 785 (1953); *People v Clement*, 127 Mich 130, 132, 86 NW 535 (1901); *People v Sesi*, 101 Mich App 256, 300 NW2d 535 (1980).

CHAPTER 15

Traffic Offenses

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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

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

History

M Crim JI 15.1 (formerly CJI2d 15.1) was added in 1990. Amended October, 1993; amended June, 1995 to reflect statutory changes in 1994 PA 449 and 450; amended September, 2003, to reflect the statutory changes in 2003 PA 61, effective September 30, 2003; amended December 2014 to reflect changes under 2012 PA 543; amended December 2015 to reflect changes under 2008 PA 463.

Reference Guide

Statutes

MCL 257.625.

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.

History

M Crim JI 15.1a was added in December 2015 to reflect changes under 2008 PA 463.

Reference Guide

Statutes

MCL 257.625.

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 _____.

History

M Crim JI 15.2 (formerly CJI2d 15.2) was amended October, 1993; amended June, 1995; amended September, 2003, to reflect the statutory changes in 2003 PA 61, effective September 30, 2003.

Reference Guide

Statutes

MCL 257.625.

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

[1]If 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*).

History

M Crim JI 15.3 (formerly CJI2d 15.3) was amended October, 1993, and June, 1995 to reflect changes in 1994 PA 449 and 450; amended September, 2003, to reflect statutory changes in 2003 PA 61, effective September 30, 2003. Amended December 2014 to reflect changes under 2012 PA 543; amended August 2017.

Reference Guide

Statutes

MCL 257.35a, .625.

Case Law

People v Yamat, 475 Mich 49, 714 NW2d 335 (2006); *People v Wood*, 450 Mich 399, 538 NW2d 351 (1995); *People v Pomeroy (On Rehearing)*, 419 Mich 441, 355 NW2d 98 (1984); *City of Plymouth v Longeway*, 296 Mich App 1, 818 NW2d 419, leave denied, 492 Mich 868, 819 NW2d 577 (2012); *People v Stephen*, 262 Mich App 213, 685 NW2d 309 (2004); *People v Solmonson*, 261 Mich App 657, 683 NW2d 761 (2004); *People v Nickerson*, 227 Mich App 434, 575 NW2d 804 (1998); *People v Hawkins (On Remand)*, 181 Mich App 393, 448 NW2d 858 (1989); *People v Smith*, 164 Mich App 767, 417 NW2d 261 (1987); *People v Walters*, 160 Mich App 396, 402, 407 NW2d 662 (1987); *People v Schinella*, 160 Mich App 213, 407 NW2d 621 (1987); *People v Raisanen*, 114 Mich App 840, 844, 319 NW2d 693 (1982); *People v Kelley*, 60 Mich App 162, 230 NW2d 357 (1975); *People v Tracy*, 18 Mich App 529, 171 NW2d 562 (1969).

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.

History

M Crim JI 15.3a (formerly CJI2d 15.3a) was added in September, 2010, amended March, 2016.

After reviewing the unpublished per curiam decision in *People v Wilds*, No. 311644, 2013 Mich App LEXIS 599 (Apr 2, 2013), the committee determined in 2015 that this instruction should be amended to provide a scienter element.

Reference Guide

Statutes

MCL 257.625.

Case Law

People v Koon, 494 Mich 1, 832 NW2d 724 (2013).

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.

History

M Crim JI 15.4 (formerly CJI2d 15.4) was amended October, 1993; amended September, 2003, to reflect statutory changes in 2003 PA 61, effective September 30, 2003. Amended December 2014 to reflect changes under 2012 PA 543.

Reference Guide

Statutes

MCL 257.625b.

Case Law

People v Lambert, 395 Mich 296, 305, 235 NW2d 338 (1975); *People v Walters*, 160 Mich App 396, 401, 407 NW2d 662 (1987).

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."

History

M Crim JI 15.5 (formerly CJI2d 15.5) was amended October, 1993, and June, 1995, to reflect the changes in 1994 PA 449 and 450; amended September, 2003, to reflect the statutory changes in 2003 PA 61, effective September 30, 2003; and amended September, 2010, to reflect the statutory changes in 2008 PA 463, effective October 31, 2010. The Use Note to this instruction was added by the committee in May, 2008. Amended December 2014 to reflect changes under 2012 PA 543; amended December 2015 to reflect changes under 2008 PA 463.

Reference Guide

Statutes

MCL 257.625.

Case Law

People v Wager, 460 Mich 118, 594 NW2d 487 (1999); *People v Campbell*, 236 Mich App 490, 601 NW2d 114 (1999); *People v Smith*, 182 Mich App 436, 453 NW2d 257 (1990); *People v Nicolaides*, 148 Mich App 100, 383 NW2d 620 (1985); *People v Carter*, 78 Mich App 394, 259 NW2d 883 (1977), modified, 402 Mich 851, 261 NW2d 182 (1978); *People v Krulikowski*, 60 Mich App 28, 230 NW2d 290 (1975); *People v Kozar*, 54 Mich App 503, 221 NW2d 170 (1974).

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 Nicolaides*, 148 Mich App 100; 383 NW2d 620 (1985).

History

M Crim JI 15.6 (formerly CJI2d 15.6) was CJI2d 15.7. Amended October, 1993; amended June, 1995, to reflect the changes in 1994 PA 449 and 450; amended September, 2010, to reflect the changes in 2008 PA 463, effective October 31,

2010; amended December 2014 to reflect changes under 2012 PA 543; amended December 2015 to reflect changes under 2008 PA 463.

Reference Guide

Statutes

MCL 257.625.

Case Law

People v Nicolaides, 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 Nicolaides*, 148 Mich App 100; 383 NW2d 620 (1985).

History

M Crim JI 15.6a (formerly CJI2d 15.6a) was adopted February, 2010, to address the typical drunk driving case. It was re-identified as a substantive instruction in December 2015 to reflect changes under 2008 PA 463.

Reference Guide

Statutes

MCL 257.625.

Case Law

People v Nicolaides, 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

History

M Crim JI 15.7 (formerly CJI2d 15.7) was CJI2d 15.8; amended October, 1993; amended September, 2003, to comply with the special verdict requirements of 2003 PA 61, MCL 257.625(18)-(19), effective September 30, 2003; amended December 2015 to be in accord with the holding in *People v Nicolaides*, 148 Mich App 100, 383 NW2d 620 (1985).

Reference Guide

Statutes

MCL 257.625

Case Law

People v Nicolaides, 148 Mich App 100, 383 NW2d 620 (1985)

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

History

M Crim JI 15.7a was added December 2015 to reflect changes under 2008 PA 463.

Reference Guide

Statutes

MCL 257.625

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.

History

M Crim JI 15.9 (formerly CJI2d 15.9) was CJI 15:2:05; amended by the committee in September, 2003.

Reference Guide

Statutes

MCL 257.625a(9).

Case Law

South Dakota v Neville, 459 US 553 (1983).

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 operating[1] 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.

History

M Crim JI 15.11 (formerly CJI2d 15.11) was adopted in October, 1991. Amended September, 2005; September, 2006. Amended December 2014 to reflect changes under 2012 PA 543.

Reference Guide

Statutes

MCL 257.625.

Case Law

People v Schaefer, 473 Mich 418, 703 NW2d 774 (2005); *People v Lardie*, 452 Mich 231, 551 NW2d 656 (1996); *People v Tims*, 449 Mich 83, 95, 534 NW2d 675 (1995); *People v Kulpinski*, 243 Mich App 8, 620 NW2d 537 (2000).

M Crim JI 15.11a Operating with Any Amount of Schedule 1 or 2 Controlled Substance 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 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.

(6)Fifth, that the defendant's operation of the vehicle caused[1] 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).

History

M Crim JI 15.11a (formerly CJI2d 15.11a) was adopted in September, 2006, amended March, 2016.

After reviewing the unpublished per curiam decision in *People v Wilds*, No. 311644, 2013 Mich App LEXIS 599 (Apr 2, 2013), the committee determined in 2015 that this instruction should be amended to comport with the statutory language.

Reference Guide

Statutes

MCL 257.625.

Case Law

People v Koon, 494 Mich 1, 832 NW2d 724 (2013).

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 caused[2] a serious impairment of a body function[3] 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.

History

M Crim JI 15.12 (formerly CJI2d 15.12) was adopted in October, 1991. Amended September, 2005; September, 2006. Amended December 2014 to reflect changes under 2012 PA 543.

Reference Guide

Statutes

MCL 257.58c, .625.

Case Law

People v Schaefer, 473 Mich 418, 703 NW2d 774 (2005); *People v Lardie*, 452 Mich 231, 551 NW2d 656 (1996); *People v Tims*, 449 Mich 83, 95, 534 NW2d 675 (1995); *People v Kulpinski*, 243 Mich App 8, 620 NW2d 537 (2000).

M Crim JI 15.12a Operating With Any Amount of Schedule 1 or 2 Controlled Substance 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 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.

(6)Fifth, that the defendant's operation of the vehicle caused[1] a serious impairment of a body function[2] 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] 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.

History

M Crim JI 15.12a (formerly CJI2d 15.12a) was adopted in September, 2006, amended March, 2016.

After reviewing the unpublished per curiam decision in *People v Wilds*, No. 311644, 2013 Mich App LEXIS 599 (Apr 2, 2013), the committee determined in 2015 that this instruction should be amended to comport with the statutory language.

Reference Guide

Statutes

MCL 257.625, 257.58c.

Case Law

People v Koon, 494 Mich 1, 832 NW2d 724 (2013); *People v Schaefer*, 473 Mich 418, 438-439, 703 NW2d 774 (2005).

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.

History

M Crim JI 15.13 (formerly CJI2d 15.13) was adopted in October, 1993; amended in June, 1995, to reflect statutory changes in 1994 PA 449 and 450. Amended September, 2003; September, 2005; February, 2010.

Reference Guide

Statutes

MCL 257.625m.

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.

History

M Crim JI 15.14 (formerly CJI2d 15.14) was adopted in March, 1995. Amended October, 2002; September, 2003 (to reflect the changes in 2003 PA 61, effective September 30, 2003); April, 2006 (to reflect the changes in 2005 PA 3,

effective April 1, 2005); May, 2013.

Reference Guide

Statutes

MCL 257.58c, .617, .617a, .618, .619.

Case Law

People v Oliver, 242 Mich App 92, 617 NW2d 721 (2000).

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.

History

M Crim JI 15.14a (formerly CJI2d 15.14a) was adopted by the committee in April 2006.

Reference Guide

Statutes

MCL 257.619.

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 highway[2] 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).

History

M Crim JI 15.15 (formerly CJI2d 15.15) was adopted by the committee in September, 2005.

Reference Guide

Statutes

MCL 257.626.

Case Law

People v Bartel, 213 Mich App 726, 728-729, 540 NW2d 491 (1995).

M Crim JI 15.16 Reckless Driving Causing Death [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 of[1]] reckless driving causing death. 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 highway[2] 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 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] 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).

History

M Crim JI 15.16 (formerly CJI2d 15.16) was adopted by the committee in October, 2010, to reflect changes made to MCL 257.626, effective October 31, 2010.

Reference Guide

Statutes

MCL 257.626.

Case Law

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 of[1]] 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 highway[2] 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 caused[3] a serious impairment of a body function[4] 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)).

[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.

History

M Crim JI 15.17 (formerly CJI2d 15.17) was adopted by the committee in October, 2010, to reflect changes made to MCL 257.626, effective October 31, 2010.

Reference Guide

Statutes

MCL 257.58c, .626.

Case Law

People v Schaefer, 473 Mich 418, 438-439, 703 NW2d 774 (2005); *People v Bartel*, 213 Mich App 726, 728-729, 540 NW2d 491 (1995).

M Crim JI 15.18 Moving Violation Causing Death [Use for Acts Committed on or After October 31, 2010]

(1)[The defendant is charged with the crime of [*state charge*]. / You may consider the lesser charge of committing a moving traffic violation that causes 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 committed the following moving violation: [*describe the moving violation*].

(3)The moving violation of [*describe the moving violation*] was a cause of the death of [*name deceased*]. 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.

History

M Crim JI 15.18 (formerly CJI2d 15.18) was adopted by the Committee in September, 2010, for use with MCL 257.601d(1), added by 2008 PA 463, effective October 31, 2010.

Reference Guide

Statutes

MCL 257.601d(1).

Case Law

People v Tims, 449 Mich 83, 534 NW2d 675 (1995).

M Crim JI 15.19 Moving Violation 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 [*state charge*]. / You may consider the lesser charge of committing a moving traffic violation that causes the 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 committed the following moving violation: [*describe the moving violation*].

(3)Second, that the defendant's operation of the vehicle caused[1] a serious impairment of a body function[2] 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] 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). *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.

History

M Crim JI 15.19 (formerly CJI2d 15.19) was adopted by the Committee in September, 2010, for use with MCL 257.601d(2), added by 2008 PA 463, effective October 31, 2010.

Reference Guide

Statutes

MCL 257.58c, .601d(2).

Case Law

People v Schaefer, 473 Mich 418, 438-439, 703 NW2d 774 (2005).

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.

History

M Crim JI 15.20 (formerly CJI2d 15.20) was adopted in September, 2012.

Reference Guide

Statutes

MCL 257.904.

Case Law

People v Nunley, 491 Mich 686, 690, 821 NW2d 642 (2012).

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 15.23 Permitting Another Person to Drive Motor Vehicle While License Suspended / Revoked

(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]. 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].

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.

History

M Crim JI 15.23 was adopted March 2018.

Reference Guide

Statutes

MCL 257.904(2) and (7).

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).

History

M Crim JI 15.24 was adopted March 2018.

Reference Guide

Statutes

MCL 257.904(2) and (7).

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).

History

M Crim JI 15.25 was adopted March 2018.

Reference Guide

Statutes

MCL 257.904(2) and (7).

CHAPTER 16

Homicide

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M Crim JI 16.1 First-degree Premeditated Murder

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

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

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

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

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

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

Use Note

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

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

[3] This is a specific intent crime.

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

History

M Crim JI 16.1 (formerly CJI2d 16.1) was CJI 16:2:01; amended October, 1993.

Reference Guide

Statutes

MCL 750.316.

Case Law

People v Langworthy, 416 Mich 630, 650, 331 NW2d 171 (1982); *People v Woods*, 416 Mich 581, 331 NW2d 707 (1982), cert denied, 462 US 1134 (1983); *People v Doss*, 406 Mich 90, 276 NW2d 9 (1979); *People v Van Wyck*, 402 Mich 266, 269, 262 NW2d 638 (1978); *People v Vail*, 393 Mich 460, 468-469, 227 NW2d 535 (1975); *People v Hansen*, 368 Mich 344, 350-351, 118 NW2d 422 (1962); *People v Scott*, 6 Mich 287, 293 (1859); *People v Hopson*, 178 Mich App 406, 410, 444 NW2d 167 (1989); *People v Morrin*, 31 Mich App 301, 329-330, 187 NW2d 434 (1971).

M Crim JI 16.2 Lying in Wait

(1)It is alleged in this case that the killing was done willfully, with premeditation and deliberation, by lying in wait.

(2)Lying in wait means that the defendant hid [himself / herself], planning to take another person by surprise.

(3)While lying in wait, the defendant must have intended to kill [*name deceased* / another person].

(4)The lying in wait must have lasted only long enough to show beyond a reasonable doubt that the killing was done willfully, with premeditation and deliberation.

Use Note

This instruction may be used, where factually appropriate, in connection with M Crim JI 16.1, First-degree Premeditated Murder.

History

M Crim JI 16.2 (formerly CJI2d 16.2) was CJI 16:1:11, 16:1:12.

Reference Guide

Statutes

MCL 750.316.

Case Law

People v Repke, 103 Mich 459, 468, 61 NW 861 (1895); *People v Johnson*, 113 Mich App 650, 661, 318 NW2d 525 (1982).

M Crim JI 16.3 Poisoning

(1)It is alleged in this case that the killing was done willfully, with premeditation and deliberation, by poisoning.

(2)Poisoning means that a substance was deliberately introduced into [*name deceased*]'s body, causing death.

(3)When [he / she] administered the poison, the defendant must have intended to kill [*name deceased* / another person].

(4)The circumstances of the poisoning must convince you beyond a reasonable doubt that the killing was done willfully, with premeditation and deliberation.

Use Note

This instruction may be used, where factually appropriate, in connection with M Crim JI 16.1, First-degree Premeditated Murder.

History

M Crim JI 16.3 (formerly CJI2d 16.4) was CJI 16:1:11, 16:1:13.

Reference Guide

Statutes

MCL 750.316.

Case Law

People v Taylor, 418 Mich 904, 904, 341 NW2d 468 (1983); *People v Austin*, 221 Mich 635, 644-645, 192 NW 590 (1923); *People v Brown*, 37 Mich App 192, 194 NW2d 560 (1971).

M Crim JI 16.4 First-degree Felony Murder

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

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

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

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

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

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

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

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

Use Note

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

History

M Crim JI 16.4 (formerly CJI2d 16.5) was CJI 16:2:02.

Reference Guide

Statutes

MCL 750.316(1)(b).

Case Law

People v Gillis, 474 Mich 105, 712 NW2d 419 (2006); *People v Nowack*, 462 Mich 392, 401, 614 NW2d 78 (2000); *People v Dumas*, 454 Mich 390, 563 NW2d 31 (1997); *People v Reeves*, 448 Mich 1, 528 NW2d 160 (1995); *People v Dykhouse*, 418 Mich 488, 495, 345 NW2d 150 (1984); *People v Aaron*, 409 Mich 672, 299 NW2d 304 (1980); *People v Magyar*, 250 Mich App 408, 648 NW2d 215 (2002); *People v Bigelow*, 229 Mich App 218, 581 NW2d 744 (1998); *People v Gimotty*, 216 Mich App 254, 549 NW2d 39 (1996); *People v Malach*, 202 Mich App 266, 507 NW2d 834 (1993); *People v Thew*, 201 Mich App 78, 506 NW2d 547 (1993); *People v Brannon*, 194 Mich App 121, 124-125, 486 NW2d 83 (1992); *People v Sanders (On Remand),* 190 Mich App 389, 476 NW2d 157 (1991); *People v Bush*, 187 Mich App 316, 327, 466 NW2d 736 (1991), *disapproved in part on other grounds*, *People v Cronin*, 494 Mich 867, 832 NW2d 199 (2013); *In re Robinson*, 180 Mich App 454, 462, 447 NW2d 765 (1989); *People v Goddard*, 135 Mich App 128, 134, 352 NW2d 367 (1984), rev'd on other grounds, 429 Mich 505, 418 NW2d 881 (1988).

M Crim JI 16.4a First-degree Murder—Peace Officer

The defendant is charged with first-degree murder of a [peace / corrections] officer in the performance of [his / her] duties. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

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

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

(3)Third, that [*name deceased*] was at the time a peace officer or a corrections officer.*

(4)Fourth, that [*name deceased*] was at the time lawfully engaged in the performance of [his / her] duties as a peace officer or a corrections officer.

(5)Fifth, that the defendant knew at the time that [*name deceased*] was so engaged.

Use Note

*MCL 750.316(2)(b) defines *corrections officer*. MCL 750.316(2)(d) defines *peace officer* as any police or conservation officer.

History

M Crim JI 16.4a (formerly CJI2d 16.4a) was adopted by the committee in March, 1995 to reflect the changes in the first-degree murder statute made by 1994 PA 267, effective October 1, 1994.

Reference Guide

Statutes

MCL 750.316.

Case Law

People v Herndon, 246 Mich App 371, 633 NW2d 276 (2001); *People v Clark*, 243 Mich App 424, 622 NW2d 344 (2000).

M Crim JI 16.4b Murder During Commission of Felony

In determining whether the act causing death occurred while the defendant was [committing / attempting to commit / helping someone else commit] the crime of [*state felony*], you should consider:

(1)the length of time between the commission of [*state felony*] and the murder,

(2)the distance between the scene of [*state felony*] and the scene of the murder,

(3)whether there is a causal connection between the murder and [*state felony*],

(4)whether there is continuity of action between [*state felony*] and the murder, and

(5)whether the murder was committed during an attempt to escape.

Use Note

Use this instruction where there is a dispute as to whether the murder was committed during the "perpetration of, or attempt to perpetrate" the predicate felony.

History

M Crim JI 16.4b (formerly CJI2d 16.4b) was adopted by the committee in September, 2006.

Reference Guide

Case Law

People v Gillis, 474 Mich 105, 140-141, 712 NW2d 419 (2006), cert denied, 550 US 920 (2007).

M Crim JI 16.5 Second-degree Murder

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

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

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

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

Use Note

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

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

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

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

History

M Crim JI 16.5 (formerly CJI2d 16.5) was CJI 16:3:01-16:3:02.

Reference Guide

Statutes

MCL 750.317.

Case Law

People v Goecke, *People v Baker* and *People v Hoskinson*, 457 Mich 442, 579 NW2d 868 (1998); *People v Dykhouse*, 418 Mich 488, 508-509, 345 NW2d 150 (1984); *People v Langworthy*, 416 Mich 630, 331 NW2d 171 (1982); *People v Woods*, 416 Mich 581, 627, 331 NW2d 707 (1982); *People v Aaron*, 409 Mich 672, 728, 299 NW2d 304 (1980); *People v Hansen*, 368 Mich 344, 350-351; 118 NW2d 422 (1962); *People v Djordjevic*, 230 Mich App 459, 584 NW2d 610 (1998); *People v Johnson*, 187 Mich App 621, 468 NW2d 307 (1991).

M Crim JI 16.6 Element Chart—First-degree Premeditated and Second-degree Murder

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

Use Note

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

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

History

M Crim JI 16.6 (formerly CJI2d 16.6) was CJI 16:3:02A; amended March, 1995.

M Crim JI 16.7 Element Chart—First-degree Felony and Second-degree Murder

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

Use Note

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

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

History

M Crim JI 16.7 (formerly CJI2d 16.7) was CJI 16:3:02B; amended March, 1995.

M Crim JI 16.8 Voluntary Manslaughter

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

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

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

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

Use Note

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

History

M Crim JI 16.8 (formerly CJI2d 16.8) was CJI 16:4:01; amended March, 1995.

Reference Guide

Statutes

MCL 750.321, .324, .329, 752.861.

Case Law

People v Reese, 491 Mich 127, 815 NW2d 85 (2012); *People v Pouncey*, 437 Mich 382, 388, 471 NW2d 346 (1991); *People v Doss*, 406 Mich 90, 96-99, 276 NW2d 9 (1979); *People v Townes*, 391 Mich 578, 588-589, 218 NW2d 136 (1974); *People v Carter*, 387 Mich 397, 418; 197 NW2d 57 (1972); *People v Younger*, 380 Mich 678, 681-682; 158 NW2d 493 (1968); *People v Bucsko*, 241 Mich 1, 3; 216 NW 372 (1927); *People v Onesto*, 203 Mich 490, 496; 170 NW 38 (1918); *People v Droste*, 160 Mich 66, 79; 125 NW 87 (1910); *People v Holmes*, 111 Mich 364, 69 NW 501 (1896); *People v Stubenvoll*, 62 Mich 329, 331; 28 NW 883 (1886); *Wellar v People*, 30 Mich 16, 19 (1874); *Maher v People*, 10 Mich 212, 218-219 (1862); *People v Scott*, 6 Mich 287, 294 (1859); *People v Elkhoja*, 251 Mich App 417, 651 NW2d 408 (2002), vacated in part on other grounds, 467 Mich 916, 658 NW2d 153 (2003); *People v Sullivan*, 231 Mich App 510, 519-520, 586 NW2d 578 (1998); *People v King*, 98 Mich App 146, 296 NW2d 211 (1980).

M Crim JI 16.9 Voluntary Manslaughter as a Lesser Included Offense of Murder

(1)The crime of murder may be reduced to voluntary manslaughter if the defendant acted out of passion or anger brought about by adequate cause and before the defendant had a reasonable time to calm down. For manslaughter, the following two things must be present:

(2)First, when the defendant acted, [his / her] thinking must be disturbed by emotional excitement to the point that a reasonable person might have acted on impulse, without thinking twice, from passion instead of judgment. This emotional excitement must have been the result of something that would cause a reasonable person to act rashly or on impulse. The law does not say what things are enough to do this. That is for you to decide.

(3)Second, the killing itself must result from this emotional excitement. The defendant must have acted before a reasonable time had passed to calm down and return to reason. The law does not say how much time is needed. That is for you to decide. The test is whether a reasonable time passed under the circumstances of this case.

Use Note

This instruction should be given after murder instructions, as part of the main charge to the jury. If jurors express confusion or return to request reinstruction on voluntary manslaughter, the trial court should combine M Crim JI 16.9 (which explains the difference between murder and voluntary manslaughter) with M Crim JI 16.8 (which explains the essential elements of voluntary manslaughter).

History

M Crim JI 16.9 (formerly CJI2d 16.9) was CJI 16:4:02; amended September, 1998.

Reference Guide

Statutes

MCL 750.321.

Case Law

People v Sullivan, 231 Mich App 510, 520, 586 NW2d 578 (1998).

M Crim JI 16.10 Involuntary Manslaughter

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

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

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

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

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

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

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

Use Notes

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

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

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

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

History

M Crim JI 16.10 (formerly CJI2d 16.10) was CJI 16:4:03-16:4:04 and was amended by the committee in September, 1995, to reflect the supreme court's decision in *People v Datema*, 448 Mich 585, 533 NW2d 272 (1995).

Reference Guide

Case Law

People v Holtschlag, 471 Mich 1, 684 NW2d 730, on reh'g, remanded on other grounds, 471 Mich 1202, 686 NW2d 746 (2004); *People v Lardie*, 452 Mich 231, 244, 551 NW2d 656 (1996); *People v Datema*, 448 Mich 585, 533 NW2d 272 (1995); *People v Heflin*, 434 Mich 482, 507-508, 518, 567, 456 NW2d 10 (1990); *People v Beach*, 429 Mich 450, 477, 418 NW2d 861 (1988); *People v Woods*, 416 Mich 581, 627, 331 NW2d 707 (1982); *People v Townes*, 391 Mich 578, 590-591, 218 NW2d 136 (1974); *People v Orr*, 243 Mich 300, 307, 220 NW 777 (1928); *People v Campbell*, 237 Mich 424, 429, 212 NW 97 (1927); *People v Ryczek*, 224 Mich 106, 110, 194 NW 609 (1923); *People v Barnes*, 182 Mich 179, 198, 148 NW 400 (1914); *People v Beardsley*, 150 Mich 206, 209, 113 NW 1128 (1907); *People v McMullan*, 284 Mich App 149, 771 NW2d 810 (2009); *People v McCoy*, 223 Mich App 500, 504, 566 NW2d 667 (1997); *People v Giddings*, 169 Mich App 631, 634-635, 426 NW2d 732 (1988); *Wayne County Prosecutor v Recorder's Court Judge*, 117 Mich App 442, 324 NW2d 43 (1982); *People v Ogg*, 26 Mich App 372, 182 NW2d 570 (1970).

M Crim JI 16.11 Involuntary Manslaughter—Firearm Intentionally Aimed

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

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

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

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

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

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

Use Note

[1] This is a specific intent crime.

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

History

M Crim JI 16.11 (formerly CJI2d 16.11) was CJI 16:4:06.

Reference Guide

Case Law

People v Heflin, 434 Mich 482, 497-498, 456 NW2d 10 (1990).

M Crim JI 16.12 Involuntary Manslaughter with Motor Vehicle [Use for Acts Occurring Before October 31, 2010] [*deleted*]

Note. This instruction was deleted in May, 2010, due to the repeal of the statute governing involuntary manslaughter with a motor vehicle, MCL 750.325, by 2008 PA 463, effective October 31, 2010. The offense previously covered by this instruction is dealt with in M Crim JI 15.16.

M Crim JI 16.13 Involuntary Manslaughter—Failure to Perform Legal Duty

(1)The defendant is charged with the crime of involuntary manslaughter resulting from a failure to perform a legal duty. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant had a legal duty to [*name deceased*]. The legal duty charged here is [*state legal duty*]. [A legal duty is one imposed by law or contract.]

(3)Second, that the defendant knew of the facts that gave rise to the duty.

(4)Third, that the defendant willfully neglected or refused to perform that duty and [his / her] failure to perform it was grossly negligent to human life.

(5)Fourth, that the death of [*name deceased*] was directly caused by defendant's failure to perform this duty, that is, that [*name deceased*] died as a result of [*state act or omission causing death*].

Use Note

See M Crim JI 16.18, Gross Negligence.

History

M Crim JI 16.13 (formerly CJI2d 16.13) was CJI 16:4:08.

M Crim JI 16.14 Negligent Homicide [Use for Acts Occurring Before October 31, 2010] [*deleted*]

Note. This instruction was deleted in May, 2010, due to the repeal of the negligent homicide statute, MCL 750.324, by 2008 PA 463, effective October 31, 2010. The offense previously covered by this instruction is dealt with in M Crim JI 15.16.

M Crim JI 16.15 Act of Defendant Must Be Cause of Death

[There may be more than one cause of death.] It is not enough that the defendant's act made it possible for the death to occur. In order to find that the death of [*name deceased*] was caused by the defendant, you must find beyond a reasonable doubt that the death was the natural or necessary result of the defendant's act.

Use Note

This instruction is designed for use where there is an issue as to whether the act of the defendant caused death, or whether death was caused by some intervening cause.

Where the conduct of the deceased may have caused or contributed to death, give M Crim JI 16.20, Contributory Negligence.

Where a physically susceptible victim or improper medical treatment is involved, see M Crim JI 16.16, Susceptible Victim/Improper Medical Treatment.

Do not use this instruction for cases involving aiding and abetting, concert of action, or conspiracy.

In *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010), the Michigan Supreme Court cautioned trial courts against providing inadequate jury instructions on the causation element for the crime of operating a motor vehicle while intoxicated, causing death.

History

M Crim JI 16.15 (formerly CJI2d 16.15) was CJI 16:1:01.

Reference Guide

Case Law

People v Bowles, 461 Mich 555, 560, 607 NW2d 715 (2000), affirming *People v Bowles*, 234 Mich App 345, 594 NW2d 100 (1999); *People v Barnes*, 182 Mich 179, 198, 148 NW 400 (1914); *People v Daniels*, 172 Mich App 374, 381, 431 NW2d 846 (1988); *People v Clark*, 171 Mich App 656, 659, 431 NW2d 88 (1988); *People v Jeglum*, 41 Mich App 247, 199 NW2d 854 (1972); *People v Scott*, 29 Mich App 549, 185 NW2d 576 (1971).

M Crim JI 16.16 Susceptible Victim / Improper Medical Treatment

(1)If the defendant unlawfully injured [*name deceased*] and started a series of events that naturally or necessarily resulted in [*name deceased*]'s death, it is no defense that:

[*Choose one or more of (2), (3), or (4):*]

(2)the injury was not the only cause of death.

(3)[*name deceased*] was already weak or ill and this contributed to [his / her] death.

(4)the immediate cause of death was medical treatment. It is a defense, however, if the medical treatment was grossly erroneous or grossly unskillful and the injury might not have caused death if [*name deceased*] had not received such treatment.

History

M Crim JI 16.16 (formerly CJI2d 16.16) was CJI 16:1:02-16:1:03.

Reference Guide

Case Law

People v Townsend, 214 Mich 267, 279, 183 NW 177 (1921); *People v Cook*, 39 Mich 236, 240 (1878); *People v Herndon*, 246 Mich App 371, 633 NW2d 376 (2001); *People v Webb*, 163 Mich App 462, 465, 415 NW2d 9 (1987); *People v Dolen*, 89 Mich App 277, 282, 279 NW2d 539 (1977); *People v Flenon*, 42 Mich App 457, 202 NW2d 471 (1972); *People v Jones*, 12 Mich App 677, 163 NW2d 266 (1968).

M Crim JI 16.17 Degrees of Negligence

(1)Gross negligence is an element of manslaughter with a motor vehicle; ordinary negligence is an element of negligent homicide; slight negligence is not a crime at all. Because of that, I need to tell you the differences between slight, ordinary, and gross negligence.

(2)Slight negligence means doing something that is not usually dangerous, something that only an extremely careful person would have thought could cause injury. In this case, if you find that the defendant was only slightly negligent, then you must find [him / her] not guilty.

(3)Ordinary negligence means not taking reasonable care under the circumstances as they were at the time. If someone does something that is usually dangerous, something that a sensible person would know could hurt someone, that is ordinary negligence. If the defendant did not do what a sensible person would have done under the circumstances, then that is ordinary negligence.

(4)[*Give M Crim JI 16.18, Gross Negligence.*]

(5)The degree of negligence separates negligent homicide from manslaughter. For manslaughter, there must be gross negligence; for negligent homicide, there must be ordinary negligence. If the defendant was not negligent at all, or if [he / she] was only slightly negligent, then [he / she] is not guilty of either manslaughter or negligent homicide.

(6)The fact that an accident occurred or that someone was killed does not, by itself, mean that the defendant was negligent.

History

M Crim JI 16.17 (formerly CJI2d 16.17) was CJI 16:5:02.

Reference Guide

Case Law

People v Campbell, 237 Mich 424, 429, 212 NW 97 (1927); *People v Jeglum*, 41 Mich App 247, 253, 199 NW2d 854 (1972).

M Crim JI 16.18 Gross Negligence

(1)Gross negligence means more than carelessness. It means willfully disregarding the results to others that might follow from an act or failure to act. In order to find that the defendant was grossly negligent, you must find each of the following three things beyond a reasonable doubt:

(2)First, that the defendant knew of the danger to another, that is, [he / she] knew there was a situation that required [him / her] to take ordinary care to avoid injuring another.

(3)Second, that the defendant could have avoided injuring another by using ordinary care.

(4)Third, that the defendant failed to use ordinary care to prevent injuring another when, to a reasonable person, it must have been apparent that the result was likely to be serious injury.

Use Note

Use where gross negligence is an element of the crime charged.

See M Crim JI 16.20, Contributory Negligence, where appropriate.

History

M Crim JI 16.18 (formerly CJI2d 16.18) was CJI 16:4:05.

Reference Guide

Case Law

People v Orr, 243 Mich 300, 307, 220 NW 777 (1928); *People v Rettelle*, 173 Mich App 196, 199, 433 NW2d 401 (1988).

M Crim JI 16.19 Unreasonable Rate of Speed

(1)The defendant is charged with driving at an unreasonable speed. Whether the defendant was driving at an unreasonable speed does not depend on the speed limit.

(2)The defendant may have driven faster than the speed limit and still have been travelling at a reasonable speed. On the other hand, [he / she] may have been driving under the speed limit but at a speed that was unreasonably fast under the circumstances.

(3)To decide if the defendant was driving too fast, you must consider all of the circumstances, including the weather, visibility, road conditions, time of day or night, and the other traffic.

History

M Crim JI 16.19 (formerly CJI2d 16.19) was CJI 16:5:03.

Reference Guide

Statutes

MCL 750.326.

M Crim JI 16.20 Contributory Negligence

If you find that [*name deceased*] was negligent, you may only consider that negligence in deciding whether the defendant's conduct was a substantial cause of the accident.

Use Note

This instruction is for use when involuntary manslaughter or negligent homicide is charged.

History

M Crim JI 16.20 (formerly CJI2d 16.20) was CJI 16:1:04 and was amended by the committee in 1995.

Reference Guide

Case Law

People v Tims, 449 Mich 83, 97-98, 534 NW2d 675 (1995); *People v Campbell*, 237 Mich 424, 212 NW 97 (1927); *People v Barnes*, 182 Mich 179, 148 NW 400 (1914); *People v Werner*, 254 Mich App 528, 659 NW2d 688 (2002); *People v Moore*, 246 Mich App 172; 631 NW2d 779 (2001); *People v Burt*, 173 Mich App 332, 433 NW2d 366 (1988); *People v Clark*, 171 Mich App 656, 431 NW2d 88 (1988); *People v Richardson*, 170 Mich App 470, 428 NW2d 698 (1988).

M Crim JI 16.21 Inferring State of Mind

(1)You must think about all the evidence in deciding what the defendant's state of mind was at the time of the alleged killing.

(2)The defendant's state of mind may be inferred from the kind of weapon used, the type of wounds inflicted, the acts and words of the defendant, and any other circumstances surrounding the alleged killing.

[*Use paragraphs (3), (4), and (5) for inferring intent from the use of a dangerous weapon, where appropriate:*]

(3)You may infer that the defendant intended to kill if [he / she] used a dangerous weapon in a way that was likely to cause death. Likewise, you may infer that the defendant intended the usual results that follow from the use of a dangerous weapon.

(4)A gun is a dangerous weapon.

(5)A dangerous weapon is any instrument that is used in a way that is likely to cause serious physical injury or death.

[*Use paragraph (6) for inferring premeditation and deliberation, where appropriate:*]

(6)Premeditation and deliberation may be inferred from any actions of the defendant which show planning or from any other circumstances surrounding the killing. The prosecutor need not prove a motive for the killing. But, you may consider evidence of motive in deciding if there was premeditation and deliberation. Motive by itself does not prove premeditation and deliberation.

History

M Crim JI 16.21 (formerly CJI2d 16.21) was CJI 16:1:08-16:1:10.

Reference Guide

Case Law

People v Woods, 416 Mich 581, 613, 331 NW2d 707 (1982); *People v Richardson*, 409 Mich 126, 144, 293 NW2d 332 (1980); *People v Wright*, 408 Mich 1, 18-19, 289 NW2d 1 (1980); *People v Martin*, 392 Mich 553, 561-562, 221 NW2d 336 (1974); *Wellar v People*, 30 Mich 16 (1874); *People v Lewis*, 168 Mich App 255, 270, 423 NW2d 637 (1988); *People v Youngblood*, 165 Mich App 381, 387, 418 NW2d 472 (1988); *People v Kvam*, 160 Mich App 189, 193, 408 NW2d 71 (1987); *People v Furman*, 158 Mich App 302, 308, 404 NW2d 246 (1987); *People v Lyles*, 67 Mich App 620, 242 NW2d 452 (1976); *People v Stinson*, 58 Mich App 243, 248, 227 NW2d 303 (1975); *People v Macklin*, 46 Mich App 297, 304, 208 NW2d 62 (1973); *People v Morrin*, 31 Mich App 301, 319, 187 NW2d 434 (1971); *People v Geiger*, 10 Mich App 339, 343, 159 NW2d 383 (1968).

M Crim JI 16.22 Transferred Intent

If the defendant intended to kill one person, but by mistake or accident killed another person, the crime is the same as if the first person had actually been killed.

Use Note

Use where factually appropriate.

History

M Crim JI 16.22 (formerly CJI2d 16.22) was CJI 16:1:05.

Reference Guide

Case Law

People v Hodge, 196 Mich 546, 162 NW 966 (1917); *People v Lovett*, 90 Mich App 169, 172, 283 NW2d 357 (1979).

M Crim JI 16.23 State of Mind

(1)You have heard evidence concerning the defendant's mental condition at the time of the alleged crime.

(2)It is not enough that the defendant did an act that caused death. In addition, the defendant must have had a certain state of mind when [he / she] did that act. In deciding whether the defendant had the required state of mind you may consider such things as [the defendant's history of mental problems and / the defendant's intellectual disability and] all of the circumstances surrounding the alleged crime.

(3)If you have a reasonable doubt about whether the defendant had the required state of mind at the time of the alleged crime, you must find the defendant not guilty of [*state crime(s) to which defense applies*].

Caution

In *People v Carpenter*, 464 Mich 223, 627 NW2d 276 (2001), the Supreme Court abolished the defense of diminished capacity. Accordingly, the third sentence of paragraph (2) should not be used.

Use Note

Do not use this instruction where the defense is insanity.

History

M Crim JI 16.23 (formerly CJI2d 16.23) was CJI 16:1:06-16:1:07. Amended January 2016.

Reference Guide

Case Law

People v Carpenter, 464 Mich 223, 627 NW2d 276 (2001).

M Crim JI 16.24 Degrees of Murder

If you find the defendant guilty of murder, you must state in your verdict whether it is murder in the first degree or murder in the second degree.

History

M Crim JI 16.24 (formerly CJI2d 16.24) was CJI 16:1:14.

Reference Guide

Statutes

MCL 750.318.

M Crim JI 16.25 Unanimity of Verdict on Premeditated and Felony Murder

(1)You have been instructed on the two types of first-degree murder. Those two types are premeditated murder and felony murder.

(2)A verdict in a criminal case must be unanimous. To be unanimous, each of you must agree upon which type of first-degree murder has been proved or that both types of first-degree murder have been proved.

(3)If you return a verdict of guilty of first-degree murder, your unanimous verdict must specify whether all of you have found the defendant guilty of:

(a)premeditated murder, or

(b)felony murder, or

(c)both.

History

M Crim JI 16.25 (formerly CJI2d 16.25) was CJI 16:2:05.

Reference Guide

Case Law

Schad v Arizona, 501 US 624 (1991); *People v Smielewski*, 235 Mich App 196, 206, 596 NW2d 636 (1999); *People v Densmore*, 87 Mich App 434, 274 NW2d 811 (1978); *People v Sparks*, 82 Mich App 44, 266 NW2d 661 (1978); *People v Olsson*, 56 Mich App 500, 506, 224 NW2d 691 (1974).

M Crim JI 16.26 Felony Murder—Codefendants

(1)You should consider each defendant separately. Each one is entitled to have [his / her] case decided on the evidence and the law that applies to [him / her].

(2)It is not enough merely to find that the defendants agreed to commit the crime of [*state underlying felony*].

(3)Instead, you must determine as to each defendant separately whether [he / she] intended to kill, whether [he / she] intended to do great bodily harm, or whether [he / she] created a very high risk of death or great bodily harm knowing that death or such harm was the probable result of what [he / she] did.

Use Note

This instruction should be given where two or more defendants are tried jointly for felony murder. It may be used in conjunction with M Crim JI 2.19, Multiple Defendants-Consider Evidence and Law As It Applies to Each Defendant.

History

M Crim JI 16.26 (formerly CJI2d 16.26) was CJI 16:2:03A.

CHAPTER 17

Assault

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M Crim JI 17.1 Definition of Assault [*For Use Where There Has Been No Battery*]

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

(2) First, that the defendant either attempted to commit a battery on [*name complainant*] or did an act that would cause a reasonable person to fear or apprehend an immediate battery. A battery is a forceful, violent, or offensive touching of the person or something closely connected with the person of another.*

(3) Second, that the defendant intended either to commit a battery upon [*name complainant*] or to make [*name complainant*] reasonably fear an immediate battery. [An assault cannot happen by accident.]

(4) Third, that at the time, the defendant had the ability to commit a battery, appeared to have the ability, or thought [he / she] had the ability.

Use Note

* If the victim's consent or the nature of the touching is at issue, use of M Crim JI 17.14, Definition of Force and Violence, or M Crim JI 17.15, Definition of Touching, is recommended.

History

M Crim JI 17.1 (formerly CJI2d 17.1) was CJI 17:6:01, 17:1:03; amended September, 1998, September, 2008.

Reference Guide

Statutes

MCL 750.81.

Case Law

People v Jones, 443 Mich 88, 504 NW2d 158 (1993); *People v Joeseype Johnson*, 407 Mich 196, 210, 284 NW2d 718 (1979); *People v Sanford*, 402 Mich 460, 479, 265 NW2d 1 (1978); *People v Davis* and *People v Perez*, 277 Mich App 676, 747 NW2d 555 (2008); *People v Terry*, 217 Mich App 660, 553 NW2d 23 (1996); *People v Laster*, 169 Mich App 768, 426 NW2d 806 (1988); *People v Ng*, 156 Mich App 779, 786, 402 NW2d 500 (1986); *People v Etchison*, 123 Mich App 448, 453, 333 NW2d 309 (1983); *People v LeBlanc*, 120 Mich App 343, 346, 327 NW2d 471 (1982); *People v Boyd*, 102 Mich App 112, 300 NW2d 760 (1980); *People v Smith (On Rehearing)*, 89 Mich App 478, 280 NW2d 862 (1979), cert den sub nom *Michigan v Smith*, 452 US 914 (1981); *People v Banks*, 51 Mich App 685, 216 NW2d 461 (1974); *People v Maxwell*, 36 Mich App 127, 128, 193 NW2d 176 (1971); *People v Patskan*, 29 Mich App 354, 357, 185 NW2d 398 (1971), rev'd on other grounds, 387 Mich 701, 199 NW2d 458 (1972).

M Crim JI 17.2 Definition of Assault and Battery [*For Use Where Battery Is Shown*]

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

(2) First, that the defendant committed a battery on [*name complainant*]. A battery is a forceful, violent, or offensive touching of the person or something closely connected with the person of another.[1] The touching must have been intended by the defendant, that is, not accidental, and it must have been against [*name complainant*]'s will. It does not matter whether the touching caused an injury.

(3) Second, that the defendant intended either to commit a battery upon [*name complainant*] or to make [*name complainant*] reasonably fear an immediate battery.[2]

Use Note

[1] If the victim's consent or the nature of the touching is at issue, use of M Crim JI 17.14, Definition of Force and Violence, or M Crim JI 17.15, Definition of Touching, is recommended.

[2] All assaults are specific intent crimes. *People v Joeseype Johnson*, 407 Mich 196, 284 NW2d 718 (1979).

History

M Crim JI 17.2 (formerly CJI2d 17.2) was CJI 17:6:02; amended September, 1998.

Reference Guide

Case Law

People v Joeseype Johnson, 407 Mich 196, 284 NW2d 718 (1979); *Tinkler v Richter*, 295 Mich 396, 401, 295 NW 201 (1940); *People v Lakeman*, 135 Mich App 235, 353 NW2d 493 (1984).

M Crim JI 17.2a Domestic Assault

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

(2) First, that the defendant [assaulted / assaulted and battered][1] [*name complainant*].

A battery is the forceful, violent, or offensive touching of a person or something closely connected with him or her.[2] The touching must have been intended by the defendant, that is, not accidental, and it must have been against [*name complainant*]'s will.

An assault is an attempt to commit a battery or an act that would cause a reasonable person to fear or apprehend an immediate battery. The defendant must have intended either to commit a battery or to make [*name complainant*] reasonably fear an immediate battery.[3] [An assault cannot happen by accident.] At the time of an assault, the defendant must have had the ability to commit a battery, or must have appeared to have the ability, or must have thought [he / she] had the ability.

(3) Second, that at the time [*name complainant*]: [*Select one or more of the following:*]

(a)was the defendant's spouse

(b)was the defendant's former spouse

(c)had a child in common with the defendant

(d)was a resident or former resident of the same household as the defendant

(e)was a person with whom the defendant had or previously had a dating relationship. A "dating relationship" means frequent, intimate association primarily characterized by the expectation of affectional involvement. It does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.

Use Note

[1] Use either or both as warranted by the evidence.

[2] If the victim's consent or nature of the touching is at issue, use of M Crim JI 17.14, Definition of Force and Violence, or M Crim JI 17.15, Definition of Touching, is recommended.

[3] All assaults are specific intent crimes. *People v Joeseype Johnson*, 407 Mich 196, 284 NW2d 718 (1979).

History

M Crim JI 17.2a (formerly CJI2d 17.2a) was adopted by the committee in September, 2001, to reflect the elements

of the offense found at MCL 750.81(2). Amended October, 2002; May, 2008; September, 2008.

Reference Guide

Statutes

MCL 750.81(2).

M Crim JI 17.3 Assault with Intent to Murder

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

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

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

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

Use Note

*This is a specific intent crime.

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

History

M Crim JI 17.3 (formerly CJI2d 17.3) was CJI 17:2:01.

Reference Guide

Statutes

MCL 750.83.

Case Law

People v Taylor, 422 Mich 554, 375 NW2d 1 (1985); *People v Joeseype Johnson*, 407 Mich 196, 284 NW2d 718 (1979); *People v Beard*, 171 Mich App 538, 541, 431 NW2d 232 (1988); *People v Lipps*, 167 Mich App 99, 106, 421 NW2d 586 (1988); *People v Burnett*, 166 Mich App 741, 421 NW2d 278 (1988); *People v Hughes*, 160 Mich App 117, 119, 407 NW2d 638 (1987); *People v Cochran*, 155 Mich App 191, 399 NW2d 44 (1986); *People v Haggart*, 142 Mich App 330, 341, 370 NW2d 345 (1985).

M Crim JI 17.4 Mitigating Circumstances

(1) The defendant can only be guilty of the crime of assault with intent to commit murder if [he / she] would have been guilty of murder had the person [he / she] assaulted actually died. If the assault took place under circumstances that would have reduced the charge to manslaughter if the person had died, the defendant is not guilty of assault with intent to commit murder.

(2) Voluntary manslaughter is different from murder in that for manslaughter, the following things must be true:

(3) First, when the defendant acted, [his / her] thinking must have been disturbed by emotional excitement to the point that an ordinary person might have acted on impulse, without thinking twice, from passion instead of judgment. This emotional excitement must have been caused by something that would cause an ordinary person to act rashly or on impulse. The law does not say what things are enough to do this. That is for you to decide. [If the defendant is mentally or emotionally impaired in some way, you may consider that.]

(4) Second, the killing itself must have resulted from this emotional excitement. The defendant must have acted before a reasonable time had passed to calm down and before reason took over again. The law does not say how much time is needed. That is for you to decide. The test is whether a reasonable time passed under the circumstances of this case.

(5) If you find that the crime would have been manslaughter had the person died, then you must find the defendant not guilty of assault with intent to murder [and decide whether (he / she) is guilty of any lesser offense].*

Use Note

*Use this bracketed material when the court will instruct on lesser included offenses.

History

M Crim JI 17.4 (formerly CJI2d 17.4) was CJI 17:2:02.

Reference Guide

Case Law

People v Mortimer, 48 Mich 37, 40, 11 NW 776 (1882); *Maher v People*, 10 Mich 212, 218-219 (1862); *People v Lipps*, 167 Mich App 99, 106, 421 NW2d 586 (1988).

M Crim JI 17.5 Assault with Intent to Commit a Felony

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

(2) First, that the defendant either attempted to commit a battery on [*name complainant*] or did an act that would cause a reasonable person to fear or apprehend an immediate battery. A battery is a forceful or violent touching of the person or something closely connected with the person.*

(3) Second, that the defendant intended either to injure [*name complainant*] or intended to make [*name complainant*] reasonably fear an immediate battery.

(4) Third, that at the time, the defendant had the ability to commit a battery, appeared to have the ability, or thought [he / she] had the ability.

(5) Fourth, that when [he / she] assaulted [*name complainant*], the defendant intended to commit the crime of [*state felony charged*]. It does not matter whether the crime of [*state felony charged*] was actually committed.

(6) The crime of [*state felony charged*] is defined as follows: [*define crime—see instructions under felony charged*].

Use Note

* If the victim's consent or the nature of the touching is at issue, use of M Crim JI 17.14, Definition of Force and Violence, or M Crim JI 17.15, Definition of Touching, is recommended.

History

M Crim JI 17.5 (formerly CJI2d 17.5) was CJI 17:7:01. Amended September, 2008.

Reference Guide

Statutes

MCL 750.87.

M Crim JI 17.6 Assault and Infliction of Serious Injury (Aggravated Assault)

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

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

(3) Second, that the defendant intended to injure [*name complainant*] [or intended to make (*name complainant*) reasonably fear an immediate battery].

(4) Third, that the assault caused a serious or aggravated injury. A serious or aggravated injury is a physical injury that requires immediate medical treatment or that causes disfigurement, impairment of health, or impairment of a part of the body.

Use Note

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

[2] Rarely, serious injury will result from an attempt to frighten. In that instance a further or substitute instruction on assault should be given: "An assault is also any forceful or violent act done with the intention of frightening someone else. The act must be such as would cause a reasonable person to be afraid of being injured."?

History

M Crim JI 17.6 (formerly CJI2d 17.6) was CJI 17:5:01.

Reference Guide

Statutes

MCL 750.81a.

Case Law

People v Joeseype Johnson, 407 Mich 196, 210, 284 NW2d 718 (1979); *Tinkler v Richter*, 295 Mich 396, 401, 295 NW 201 (1940); *People v Brown*, 97 Mich App 606, 296 NW2d 121 (1980); *People v Van Diver*, 80 Mich App 352, 263 NW2d 370 (1977); *People v Turner*, 37 Mich App 226, 194 NW2d 546 (1971).

M Crim JI 17.7 Assault with Intent to Do Great Bodily Harm Less Than Murder

(1) [The defendant is charged with the crime of _____ / You may also consider the lesser charge of][1] assault with intent to do great bodily harm less than murder. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

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

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

(4) Third, that the defendant intended to cause great bodily harm. Actual injury is not necessary, but if there was an injury, you may consider it as evidence in deciding whether the defendant intended to cause great bodily harm. Great bodily harm means any physical injury that could seriously harm the health or function of the body.

Use Note

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

History

M Crim JI 17.7 (formerly CJI2d 17.7) was CJI 17:3:01-17:3:02. This instruction was modified by the committee in May, 2007, to reflect that an injury to be serious need not be permanent.

Reference Guide

Statutes

MCL 750.84.

Case Law

People v Joeseype Johnson, 407 Mich 196, 284 NW2d 718 (1979); *People v Smith*, 217 Mich 669, 187 NW 304 (1922); *People v Howard*, 179 Mich 478, 146 NW 315 (1914); *People v Troy*, 96 Mich 530, 537, 56 NW 102 (1893) *People v Miller*, 91 Mich 639, 52 NW 65 (1892); *People v Stinnett*, 163 Mich App 213, 413 NW2d 711 (1987); *People v Eggleston*, 149 Mich App 665, 386 NW2d 637 (1986); *People v Mitchell*, 149 Mich App 36, 385 NW2d 717 (1986); *People v Cunningham*, 21 Mich App 381, 175 NW2d 781 (1970).

M Crim JI 17.8 Dangerous Weapon

The intent with which an assault is made can sometimes be determined by whether a dangerous weapon was used. A dangerous weapon is any instrument that is used in a way that is likely to cause serious physical injury or death.

History

M Crim JI 17.8 (formerly CJI2d 17.8) was CJI 17:3:03.

Reference Guide

Case Law

People v Counts, 318 Mich 45, 27 NW2d 338 (1947); *People v Buckner*, 144 Mich App 691, 375 NW2d 794 (1985); *People v Mack*, 112 Mich App 605, 317 NW2d 190 (1981); *People v Cunningham*, 21 Mich App 381, 175 NW2d 781 (1970).

M Crim JI 17.9 Assault with a Dangerous Weapon

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

(2) First, that the defendant either attempted to commit a battery on [*name complainant*] or did an act that would cause a reasonable person to fear or apprehend an immediate battery. A battery is a forceful or violent touching of the person or something closely connected with the person.[2]

(3) Second, that the defendant intended either to injure [*name complainant*] or to make [*name complainant*] reasonably fear an immediate battery.

(4) Third, that at the time, the defendant had the ability to commit a battery, appeared to have the ability, or thought [he / she] had the ability.

(5) Fourth, that the defendant committed the assault with a [*state dangerous weapon alleged*].[3]

Use Note

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

[2] If the victim's consent or nature of the touching is at issue, use of M Crim JI 17.14, Definition of Force and Violence; or M Crim JI 17.15, Definition of Touching, is recommended.

[3] Where necessary, define term used:

M Crim JI 17.10____ Definition of Dangerous Weapon;

M Crim JI 17.11____Definition of Firearm—Gun, Revolver, Pistol;

M Crim JI 17.12____Definition of Brass Knuckles

History

M Crim JI 17.9 (formerly CJI2d 17.9) was CJI 17:4:01; amended September, 2008.

Reference Guide

Statutes

MCL 750.82.

Case Law

People v Burgess, 419 Mich 305, 307, 353 NW2d 444 (1984); *People v Joeseype Johnson*, 407 Mich 196, 210, 284 NW2d 718 (1979); *People v Crook,* 162 Mich App 106, 412 NW2d 661 (1987); *People v Strong*, 143 Mich App 442, 372 NW2d 335 (1985); *People v Lakeman*, 135 Mich App 235, 353 NW2d 493 (1984); *People v Davis*, 126 Mich App 66, 337 NW2d 315 (1983); *People v Rivera*, 120 Mich App 50, 327 NW2d 386 (1982); *People v Dozier*, 39 Mich App 88, 197 NW2d 314 (1972); *People v Crane*, 27 Mich App 201, 183 NW2d 307 (1970).

M Crim JI 17.10 Definition of Dangerous Weapon

(1) A dangerous weapon is any object that is used in a way that is likely to cause serious physical injury or death.

(2) Some objects, such as guns or bombs, are dangerous because they are specifically designed to be dangerous. Other objects are designed for peaceful purposes but may be used as dangerous weapons. The way an object is used or intended to be used in an assault determines whether or not it is a dangerous weapon. If an object is used in a way that is likely to cause serious physical injury or death, it is a dangerous weapon.

(3) You must decide from all of the facts and circumstances whether the evidence shows that the _____ in question here was a dangerous weapon.

History

M Crim JI 17.10 (formerly CJI2d 17.10) was CJI 17:4:03.

Reference Guide

Statutes

MCL 750.82.

Case Law

People v Brown, 406 Mich 215, 277 NW2d 155 (1979); *People v Goolsby*, 284 Mich 375, 279 NW 867 (1938); *People v Malkowski*, 198 Mich App 610, 614, 499 NW2d 450 (1993); *People v Sheets*, 138 Mich App 794, 360 NW2d 301 (1984); *People v Bender*, 124 Mich App 571, 335 NW2d 85 (1983); *People v Kay*, 121 Mich App 438, 328 NW2d 424 (1982); *People v Dixon*, 99 Mich App 847, 849, 298 NW2d 647 (1980); *People v Hale*, 96 Mich App 343, 292 NW2d 204, vacated on other grounds, 409 Mich 937, 298 NW2d 421 (1980); *People v Van Diver*, 80 Mich App 352, 263 NW2d 370 (1977); *People v Buford*, 69 Mich App 27, 244 NW2d 351 (1976); *People v Kildow*, 19 Mich App 194, 172 NW2d 492 (1969); *People v Ragland*, 14 Mich App 425, 165 NW2d 639 (1968).

M Crim JI 17.11 Definition of Firearm-Gun, Revolver, Pistol

(1) A gun [revolver / pistol] is a firearm. A firearm includes any weapon which is designed to or may readily be converted to expel a projectile by action of an explosive.

[(2) It does not matter whether or not the gun (revolver / pistol) was capable of firing a projectile or whether it was loaded.]

History

M Crim JI 17.11 (formerly CJI2d 17.11) was CJI 17:4:02, 17:4:06.

Reference Guide

Statutes

MCL 8.3; MCL 8.3t.

Case Law

People v Jones, 150 Mich App 440, 387 NW2d 875 (1986); *People v Prather*, 121 Mich App 324, 328 NW2d 556 (1982).

M Crim JI 17.12 Definition of Brass Knuckles

Brass knuckles are linked metal rings or a metal bar held or worn over the fingers in order to protect them in striking a blow and to make the blow more effective.

Use Note

The additional dangerous weapons listed in the statute require no definition.

History

M Crim JI 17.12 (formerly CJI2d 17.12) was CJI 17:4:04.

Reference Guide

Statutes

MCL 750.82.

M Crim JI 17.13 Defense—Firearm Inoperable

A gun that is so [out of repair / taken apart with parts missing / welded together / plugged up] that it is totally unusable as a firearm and cannot be easily made operable is not included in this law.

Use Note

This instruction should be used only in prosecutions for assault with a dangerous weapon (felonious assault), MCL 750.82.

History

M Crim JI 17.13 (formerly CJI2d 17.13) was CJI 17:4:05.

Reference Guide

Case Law

People v Stevens, 409 Mich 564, 297 NW2d 120 (1980); *People v Jones*, 150 Mich App 440, 387 NW2d 875 (1986).

M Crim JI 17.14 Definition of Force and Violence

As used in these instructions, the words "force and violence" mean any use of physical force against another person so as to harm or embarrass [him / her].

History

M Crim JI 17.14 (formerly CJI2d 17.14) was CJI 17:6:03.

Reference Guide

Case Law

People v Burk, 238 Mich 485, 488, 213 NW 717 (1927).

M Crim JI 17.15 Definition of Touching

For a battery to occur, the touching must have been intended by the defendant, that is, not accidental, and it must have been against [*name complainant*]'s will. It does not matter whether the touching caused an injury.

History

M Crim JI 17.15 (formerly CJI2d 17.15) was CJI 17:6:04.

Reference Guide

Case Law

Tinkler v Richter, 295 Mich 396, 401, 295 NW 201 (1940); *People v Lakeman*, 135 Mich App 235, 353 NW2d 493 (1984).

M Crim JI 17.16 Actual Injury Is Not Necessary

An assault does not have to cause an actual injury. [However, if there was an injury, you may consider the injury with the other evidence in determining whether there was an assault.]*

Use Note

*Give material in brackets when there is an actual injury.

History

M Crim JI 17.16 (formerly CJI2d 17.16) was CJI 17:1:02.

Reference Guide

Case Law

People v Joeseype Johnson, 407 Mich 196, 210, 284 NW2d 718 (1979); *People v Carlson*, 160 Mich 426, 125 NW 361 (1910); *People v Lakeman*, 135 Mich App 235, 353 NW2d 493 (1984); *People v Bryant*, 80 Mich App 428, 433, 264 NW2d 13 (1978).

M Crim JI 17.17 Mistake—Assault on a Third Person

If the defendant intended to assault one person, but by mistake or accident assaulted another person, the crime is the same as if the first person had actually been assaulted.

History

M Crim JI 17.17 (formerly CJI2d 17.17) was CJI 17:1:05.

Reference Guide

Case Law

People v Hodge, 196 Mich 546, 162 NW 966 (1917); *People v Raher*, 92 Mich 165, 52 NW 625 (1892); *People v Hurse*, 152 Mich App 811, 394 NW2d 119 (1986).

M Crim JI 17.18 Child Abuse, First Degree

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

[*Choose (2) or (3):*]

(2) First, that [*name defendant*] is the [parent / guardian] of [*name child*].

(3) First, that [*name defendant*] had care or custody of or authority over [*name child*] when the abuse allegedly happened, regardless of the length of time the child was cared for by, in the custody of, or subject to the authority of that person.

(4) Second, that the defendant either knowingly or intentionally caused [serious physical harm / serious mental harm] to [*name child*].

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

(a)By "serious physical harm" I mean any physical injury to a child that seriously impairs the child's health or physical well-being, including, but not limited to, brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut.

(b)By "serious mental harm" I mean an injury to a child's mental condition that results in visible signs of an impairment in the child's judgment, behavior, ability to recognize reality, or ability to cope with the ordinary demands of life.

(5) Third, that [*name child*] was at the time under the age of 18.

Use Note

The jury should be instructed on parental discipline, M Crim JI 17.24, when this is raised as a defense.

History

M Crim JI 17.18 (formerly CJI2d 17.18) was CJI 17:8:01. Amended by the committee September, 1995; September, 2000; May, 2009.

Reference Guide

Statutes

MCL 750.136b.

Case Law

People v Maynor, 470 Mich 289, 683 NW2d 565 (2004); *People v Kelley*, 433 Mich 882, 446 NW2d 821, rev'g 176 Mich App 219, 439 NW2d 315 (1989); *People v Daoust*, 228 Mich App 1, 577 NW2d 179 (1998); *People v Jackson*, 140 Mich App 283, 287, 364 NW2d 310 (1985).

M Crim JI 17.19 Child Abuse, Second Degree (Willful Failure to Provide, or Abandonment)

(1) The defendant is charged with the crime of second-degree child abuse. To establish this charge, the prosecution must prove each of the following elements beyond a reasonable doubt:

[*Choose (2) or (3):*]

(2) First, that [*name defendant*] is the [parent / guardian] of [*name child*].

(3) First, that [*name defendant*] had care or custody of or authority over [*name child*] when the abuse allegedly happened.

(4) Second, that the defendant willfully [failed to provide food, clothing, or shelter necessary for the welfare of (*name child*) / abandoned (*name child*)].

(5) Third, that as a result, [*name child*] suffered [serious physical harm / serious mental harm].

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

(a)By "serious physical harm" I mean any physical injury to a child that seriously impairs the child's health or physical well-being, including, but not limited to, brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut.

(b)By "serious mental harm" I mean an injury to a child's mental condition that results in visible signs of an impairment in the child's judgment, behavior, ability to recognize reality, or ability to cope with the ordinary demands of life.

(6) Fourth, that [*name child*] was at the time under the age of 18.

Use Note

It is unclear whether this is a specific intent crime.

The jury should be instructed on parental discipline, M Crim JI 17.24, when this is raised as a defense.

History

M Crim JI 17.19 (formerly CJI2d 17.19) was CJI 17:8:02A. Amended September, 2000.

Reference Guide

Statutes

MCL 750.136b.

M Crim JI 17.20 Child Abuse, Second Degree (Reckless Act)

(1) The defendant is charged with second-degree child abuse. To establish this charge, the prosecution must prove each of the following elements beyond a reasonable doubt:

[*Choose (2) or (3):*]

(2) First, that [*name defendant*] is the [parent / guardian] of [*name child*].

(3) First, that [*name defendant*] had care or custody of or authority over [*name child*] when the abuse allegedly happened.

(4) Second, that the defendant did some reckless act.

(5) Third, that as a result, [*name child*] suffered serious physical harm. By "serious physical harm" I mean any physical injury to a child that seriously impairs the child's health or physical well-being, including, but not limited to, brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut.

(6) Fourth, that [*name child*] was at the time under the age of 18.

Use Note

The statutory language indicates this is a general intent crime. The jury should be instructed on parental discipline, M Crim JI 17.24, when this is raised as a defense.

History

M Crim JI 17.20 (formerly CJI2d 17.20) was CJI 17:8:02B. Amended September, 2000.

Reference Guide

Statutes

MCL 750.136b.

M Crim JI 17.20a Child Abuse, Second Degree (Act Likely to Cause Serious Harm)

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

[*Choose (2) or (3):*]

(2) First, that [*name defendant*] is the [parent / guardian] of [*name child*].

(3) First, that [*name defendant*] had care or custody of or authority over [*name child*] when the abuse allegedly happened, regardless of the length of time the child was cared for by, in the custody of, or subject to the authority of that person.

(4) Second, that the defendant knowingly or intentionally did an act likely to cause serious physical or mental harm to [*name child*] regardless of whether such harm resulted.

[*Choose (a) or (b) or both:*]

(a)By "serious physical harm" I mean any physical injury to a child that seriously impairs the child's health or physical well-being, including, but not limited to, brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut.

(b)By "serious mental harm" I mean an injury to a child's mental condition that results in visible signs of an impairment in the child's judgment, behavior, ability to recognize reality, or ability to cope with the ordinary demands of life.

(5) Third, that [*name child*] was at the time under the age of 18.

Use Note

The jury should be instructed on parental discipline, M Crim JI 17.24, when this is raised as a defense.

History

M Crim JI 17.20a (formerly CJI2d 17.20a) was adopted in September, 2000, to reflect the expanded definition of second-degree child abuse found in 1999 PA 273, MCL 750.136b. Amended May, 2009.

Reference Guide

Statutes

MCL 750.136b.

M Crim JI 17.20b Child Abuse, Second Degree (Cruel Act)

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

[*Choose (2) or (3):*]

(2) First, that [*name defendant*] is the [parent / guardian] of [*name child*].

(3) First, that [*name defendant*] had care or custody of or authority over [*name child*] when the abuse allegedly happened, regardless of the length of time the child was cared for by, in the custody of, or subject to the authority of that person.

(4) Second, that the defendant knowingly or intentionally did an act that was cruel to [*name child*]. "Cruel" means brutal, inhuman, sadistic, or that which torments, regardless of whether harm results.

(5) Third, that [*name child*] was at the time under the age of 18.

Use Note

The jury should be instructed on parental discipline, M Crim JI 17.24, when this is raised as a defense.

History

M Crim JI 17.20b (formerly CJI2d 17.20b) was adopted in September, 2000, to reflect the expanded definition of second-degree child abuse found in 1999 PA 273, MCL 750.136b. Amended May, 2009.

Reference Guide

Statutes

MCL 750.136b.

M Crim JI 17.21 Child Abuse, Third Degree

(1) The defendant is charged with the crime of third-degree child abuse. To establish this charge, the prosecution must prove each of the following elements beyond a reasonable doubt:

[*Choose (2) or (3):*]

(2) First, that [*name defendant*] is the [parent / guardian] of [*name child*].

(3) First, that [*name defendant*] had care or custody of or authority over [*name child*] when the abuse allegedly happened.

[*Choose (4) or (5):*]

(4) Second, that the defendant either knowingly or intentionally caused physical harm to [*name child*].

(5) Second, that the defendant knowingly or intentionally committed an act that under the circumstances posed an unreasonable risk of harm or injury to [*name child*] and the act resulted in physical harm.

(6) Third, that [*name child*] was at the time under the age of 18.

Use Note

The jury should be instructed on parental discipline, M Crim JI 17.24, when this is raised as a defense.

History

M Crim JI 17.21 (formerly CJI2d 17.21) was CJI 17:8:03. Amended September, 1995; September, 2011; May, 2013.

Reference Guide

Statutes

MCL 750.136b.

M Crim JI 17.22 Child Abuse, Fourth Degree (Willful Failure to Provide, or Abandonment)

(1) The defendant is charged with the crime of fourth-degree child abuse. To establish this charge, the prosecution must prove each of the following elements beyond a reasonable doubt:

[*Choose (2) or (3):*]

(2) First, that [*name defendant*] is the [parent / guardian] of [*name child*].

(3) First, that [*name defendant*] had care or custody of or authority over [*name child*] when the abuse allegedly happened.

(4) Second, that the defendant willfully [failed to provide food, clothing, or shelter necessary for the welfare of (*name child*) / abandoned (*name child*)].

(5) Third, that as a result, [*name child*] suffered physical harm.

(6) Fourth, that [*name child*] was at the time under the age of 18.

Use Note

It is unclear whether this is a specific intent crime.

The jury should be instructed on parental discipline, M Crim JI 17.24, when this is raised as a defense.

History

M Crim JI 17.22 (formerly CJI2d 17.22) was CJI 17:8:04A.

Reference Guide

Statutes

MCL 750.136b.

M Crim JI 17.23 Child Abuse, Fourth Degree (Unreasonable Risk of Harm or Injury)

(1) The defendant is charged with the crime of fourth-degree child abuse. To establish this charge, the prosecution must prove each of the following elements beyond a reasonable doubt:

[*Choose (2) or (3):*]

(2) First, that [*name defendant*] is the [parent / guardian] of [*name child*].

(3) First, that [*name defendant*] had care or custody of or authority over [*name child*] when the abuse allegedly happened.

[*Choose (4) or (5):*]

(4) Second, that the defendant knowingly or intentionally committed an act that under the circumstances posed an unreasonable risk of harm or injury to [*name child*]. Actual injury is not necessary.

(5) Second, that the defendant's omission or reckless act caused physical harm to [*name child*].

(6) Third, that [*name child*] was at the time under the age of 18.

Use Note

For conviction, jurors need not all agree on paragraphs (4) or (5) as long as they unanimously agree that either paragraph (4) or (5) was proved beyond a reasonable doubt. The statutory language indicates this is a general intent crime.

The jury should be instructed on parental discipline, M Crim JI 17.24, when this is raised as a defense.

History

M Crim JI 17.23 (formerly CJI2d 17.23) was CJI 17:8:04B; amended September, 2010.

Reference Guide

Statutes

MCL 750.136b.

M Crim JI 17.24 Parental Discipline

(1) It is not a crime to discipline a child. A parent [or guardian, or any person otherwise allowed by law or authorized by the parent or guardian] may use force to discipline a child. But this does not mean that any amount of force may be used. The law permits only such force as is reasonable.

(2) The defendant is not required to prove that the acts alleged here were reasonable. The prosecutor must prove beyond a reasonable doubt that the force used was not reasonable as discipline.

Use Note

This instruction should be given only when the defense of parental discipline is raised.

History

M Crim JI 17.24 (formerly CJI2d 17.24) was CJI 17:8:05.

Reference Guide

Statutes

MCL 750.136b(9).

M Crim JI 17.24a Defense of Reasonable Response to Act of Domestic Violence

(1) The defendant has raised the defense that [his / her] conduct was a reasonable response to an act of domestic violence. The defendant has the burden of proving this defense. To satisfy this burden, the evidence must persuade you that it is more likely than not that [his / her] conduct was a reasonable response to an act of domestic violence, given all of the facts and circumstances known to [him / her] at the time.

[*Select applicable parts of (2) or (3) as appropriate.*]

(2) "Domestic violence" means the occurrence of any of the following acts by a person that is not an act of self-defense:

(a)Causing or attempting to cause physical or mental harm to a family or household member.

(b)Placing a family or household member in fear of physical or mental harm.

(c)Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.

(d)Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(3) "Family or household member" includes any of the following:

(a)A spouse or former spouse.

(b)An individual with whom the person resides or has resided.

(c)An individual with whom the person has or has had a dating relationship. "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affection involvement. Dating relationship does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.

(d)An individual with whom the person is or has engaged in a sexual relationship.

(e)An individual to whom the person is related or was formerly related by marriage.

(f)An individual with whom the person has a child in common.

(g)The minor child of an individual described above.

(4) If the defendant has proved that [his / her] conduct was a reasonable response to an act of domestic violence in light of the facts and circumstances known to [him / her] at the time, you must find [him / her] not guilty of [*specify degree*] child abuse. If [he / she] has failed to prove this defense, [his / her] defense that [his / her] conduct was a reasonable response to an act of domestic violence fails.

Use Note

Supplemental instructions may be necessary depending on the facts of the case.

History

M Crim JI 17.24a (formerly CJI2d 17.24a) was adopted by the committee in September, 2009.

Reference Guide

Statutes

MCL 400.1501, 750.136b.

M Crim JI 17.25 Stalking

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

(2) First, that the defendant committed two or more willful, separate, and noncontinuous acts of unconsented contact[1] with [*name complainant*].

(3) Second, that the contact would cause a reasonable individual to suffer emotional distress.

(4) Third, that the contact caused [*name complainant*] to suffer emotional distress.[2]

(5) Fourth, that the contact would cause a reasonable individual to feel terrorized, frightened, intimidated, threatened, harassed, or molested.[3]

(6) Fifth, that the contact caused [*name complainant*] to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

[*For aggravated stalking, add the following:*]

(7) Sixth, the stalking

[was committed in violation of a court order]

[was committed in violation of a restraining order of which the defendant had actual notice]

[included the defendant making one or more credible threats[4] against [*name complainant*], a member of (his / her) family, or someone living in (his / her) household]

[was a second or subsequent stalking offense].

[*Where appropriate under the evidence, add the following:*]

(8) You have heard evidence that the defendant continued to make repeated unconsented contact with [name complainant] after [he / she] requested the defendant to discontinue that conduct or some different form of unconsented contact, and requested the defendant to refrain from any further unconsented contact. If you believe that evidence, you may, but are not required to, infer that the continued course of conduct caused [name complainant] to feel terrorized, frightened, intimidated, threatened, harassed, or molested. Even if you make that inference, remember that the prosecutor still bears the burden of proving all of the elements of the offense beyond a reasonable doubt.

Use Note

[1] *Unconsented contact* is defined at MCL 750.411h(1)(e).

[2] The second and third elements constitute *harassment* as defined at MCL 750.411h(1)(c).

[3] The fourth and fifth elements are part of *stalking* as defined at MCL 750.411h(1)(d).

[4] *Credible threat* is defined at MCL 750.411i(1)(b).

History

M Crim JI 17.25 (formerly CJI2d 17.25) was adopted in October, 1993, and amended by the committee in September, 2003, to add the second alternative under paragraph (7). That addition was prompted by *People v Threatt*, 254 Mich App 504, 657 NW2d 819 (2002), holding that if the stalking is alleged to violate a temporary restraining order, as opposed to an injunction, the defendant must have actual knowledge of the restraining order, although formal service is not required. Amended August 2017.

Reference Guide

Statutes

MCL 750.411h, .411i.

Case Law

People v Coones, 216 Mich App 721, 725-726, 550 NW2d 600 (1996); *People v Kieronski*, 214 Mich App 222, 542 NW2d 339 (1995); *People v White*, 212 Mich App 298, 536 NW2d 876 (1995).

M Crim JI 17.30 Vulnerable Adult Abuse, First Degree

(1) The defendant is charged with vulnerable adult abuse in the first degree. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that [*name defendant*] was a caregiver[1] of [*name complainant*].

(3) Second, that the defendant intentionally caused [serious physical harm / serious mental harm] to [*name complainant*].[2]

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

(a) By "serious physical harm" I mean an injury that threatens the life of a vulnerable adult, causes substantial bodily disfigurement, or seriously impairs the functioning or well-being of the vulnerable adult.

(b) By "serious mental harm" I mean an injury that results in a substantial alteration of mental functioning that is manifested in a visibly demonstrable manner.

(4) Third, that [*name complainant*] was at the time a "vulnerable adult." The term vulnerable adult means

[*Choose (a), (b), or (c) or any combination of the three:*][3]

(a) An individual age 18 or over who, because of age, developmental disability, mental illness, or physical handicap requires supervision or personal care or lacks the personal and social skills required to live independently.

(b) A person 18 years of age or older who is placed in an adult foster care family home or an adult foster care small group home.

(c) A person not less than 18 years of age who is suspected of being or believed to be abused, neglected, or exploited.

Use Notes

[1] *Caregiver* is defined by the statute as an individual who directly cares for or has physical custody of a vulnerable adult. MCL 750.145m(c).

[2] The statutory language indicates that this is a specific intent crime.

[3] The statute sets forth three separate definitions for the term *vulnerable adult*, which, in a particular case, may be limited to one or may include one or more of such definitions. MCL 750.145m(u).

History

M Crim JI 17.30 (formerly CJI2d 17.30) are for use in prosecutions for vulnerable adult abuse in the first degree under MCL 750.145n, as added by 1994 PA 149, effective October 1, 1994.

Reference Guide

Statutes

MCL 750.145m(u), .145n.

M Crim JI 17.31 Vulnerable Adult Abuse, Second Degree

(1) The defendant is charged with vulnerable adult abuse in the second degree. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that [*name defendant*] was a caregiver[1] or other person with authority over [*name complainant*].

(3) Second, that the defendant by [his / her] reckless act or reckless failure to act caused [serious physical harm / serious mental harm] to [*name of complainant*].[2]

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

(a)By "serious physical harm" I mean an injury that threatens the life of a vulnerable adult, causes substantial bodily disfigurement, or seriously impairs the functioning or well-being of the vulnerable adult.

(b)By "serious mental harm" I mean an injury that results in a substantial alteration of mental functioning that is manifested in a visibly demonstrable manner.

(4) By "reckless act or reckless failure to act" I mean that the defendant's conduct demonstrates a deliberate disregard of the likelihood that the natural tendency of the act or failure to act is to cause serious physical harm or serious mental harm.

(5) Third, that [*name complainant*] was at the time a "vulnerable adult."?The term *vulnerable adult* means

[*Choose (a), (b), or (c) or any combination of the three:*][3]

(a)An individual age 18 or over who, because of age, developmental disability, mental illness, or physical handicap requires supervision or personal care or lacks the personal and social skills required to live independently.

(b)A person 18 years of age or older who is placed in an adult foster care family home or an adult foster care small group home.

(c)A person not less than 18 years of age who is suspected of being or believed to be abused, neglected, or exploited.

Use Notes

[1] *Caregiver* is defined by the statute as an individual who directly cares for or has physical custody of a vulnerable adult. MCL 750.145m(c).

[2] The statutory language indicates that this is a general intent crime.

[3] The statute sets forth three separate definitions for the term *vulnerable adult*, which, in a particular case, may be limited to one or may include one or more of such definitions. MCL 750.145m(u).

History

M Crim JI 17.31 (formerly CJI2d 17.31) are for use in prosecutions for vulnerable adult abuse in the first degree under MCL 750.145n, as added by 1994 PA 149, effective October 1, 1994.

Reference Guide

Statutes

MCL 750.145m(u), .145n.

Case Law

People v Hudson, 241 Mich App 268, 280, 615 NW2d 784 (2000); *People v DeKorte*, 233 Mich App 564, 567, 593 NW2d 203 (1999).

M Crim JI 17.32 Vulnerable Adult Abuse, Third Degree

(1) The defendant is charged with vulnerable adult abuse in the third degree. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that [*name defendant*] was a caregiver[1] or other person with authority over [*name complainant*].

(3) Second, that the defendant intentionally caused physical harm to [*name complainant*]. By "physical harm" I mean any injury to a vulnerable adult's physical condition.[2]

(4) Third, that [*name complainant*] was at the time a "vulnerable adult." The term *vulnerable adult* means

[*Choose (a), (b), or (c) or any combination of the three:*][3]

(a) An individual age 18 or over who, because of age, developmental disability, mental illness, or physical handicap requires supervision or personal care or lacks the personal and social skills required to live independently.

(b) A person 18 years of age or older who is placed in an adult foster care family home or an adult foster care small group home.

(c) A person not less than 18 years of age who is suspected of being or believed to be abused, neglected, or exploited.

Use Notes

[1] *Caregiver* is defined by the statute as an individual who directly cares for or has physical custody of a vulnerable adult. MCL 750.145m(c).

[2] The statutory language indicates that this is a specific intent crime.

[3] The statute sets forth three separate definitions for the term *vulnerable adult*, which, in a particular case, may be limited to one or may include one or more of such definitions. MCL 750.145m(u).

History

M Crim JI 17.32 (formerly CJI2d 17.32) are for use in prosecutions for vulnerable adult abuse in the first degree under MCL 750.145n, as added by 1994 PA 149, effective October 1, 1994.

Reference Guide

Statutes

MCL 750.145m(u), .145n.

M Crim JI 17.33 Vulnerable Adult Abuse, Fourth Degree

(1) The defendant is charged with vulnerable adult abuse in the fourth degree. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that [*name defendant*] was a caregiver[1] or other person with authority over [*name complainant*].

(3) Second, that the defendant by [his / her] reckless act or reckless failure to act caused physical harm to [*name complainant*].[2]

(4) By "physical harm" I mean any injury to a vulnerable adult's physical condition.

(5) By "reckless act or reckless failure to act" I mean that the defendant's conduct demonstrates a deliberate disregard of the likelihood that the natural tendency of the act or failure to act is to cause serious physical harm or serious mental harm.

(6) Third, that [*name complainant*] was at the time a "vulnerable adult."?The term *vulnerable adult* means

[*Choose (a), (b), or (c) or any combination of the three:*][3]

(a)An individual age 18 or over who, because of age, developmental disability, mental illness, or physical handicap requires supervision or personal care or lacks the personal and social skills required to live independently.

(b)A person 18 years of age or older who is placed in an adult foster care family home or an adult foster care small group home.

(c)A person not less than 18 years of age who is suspected of being or believed to be abused, neglected, or exploited.

Use Notes

[1] *Caregiver* is defined by the statute as an individual who directly cares for or has physical custody of a vulnerable adult. MCL 750.145m(c).

[2] The statutory language indicates that this is a general intent crime.

[3] The statute sets forth three separate definitions for the term *vulnerable adult*, which, in a particular case, may be limited to one or may include one or more of such definitions. MCL 750.145m(u).

History

M Crim JI 17.33 (formerly CJI2d 17.33) are for use in prosecutions for vulnerable adult abuse in the first degree under MCL 750.145n, as added by 1994 PA 149, effective October 1, 1994.

Reference Guide

Statutes

MCL 750.145m(c), (u), .145n.

M Crim JI 17.34 Ethnic Intimidation

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

(2) First, that the defendant

[*Choose one or more of the following as the evidence warrants:*]

(a)caused physical contact with [*name complainant*]; [or]

(b)threatened, by what [he / she] said or did, to cause physical contact with [*name complainant*] and that there was reasonable cause to believe that such an act would occur; [or]

(c)damaged, destroyed, or defaced property of [*name complainant*]; [or]

(d)threatened, by what [he / she] said or did, to damage, destroy, or deface property of [*name complainant*] and that there was reasonable cause to believe that such an act would occur.

(3) Second that the defendant did this without just cause or excuse.*

(4) Third, that the defendant did so because of the [race / color / religion / gender / national origin] of [*name complainant*].

Use Note

* "Just cause or excuse" applies to justifications such as duress. The court may need to give additional instructions, e.g., M Crim JI 7.6 (definition of duress), depending on the facts of the case.

History

M Crim JI 17.34 (formerly CJI2d 17.34) was adopted by the committee in September, 1997, to reflect the elements of the offense of ethnic intimidation under MCL 750.147b. Amended February, 2010.

Reference Guide

Statutes

MCL 750.147b.

M Crim JI 17.35 Assault by Strangulation or Suffocation

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

(2) First, that the defendant committed a battery on [*name complainant*]. A battery is a forceful, violent, or offensive touching of another person or something closely connected with that other person.

(3) Second, that the touching must have been intended by the defendant, that is, not accidental, and it must have been against [*name complainant*]'s will. It does not matter whether the touching caused an injury.

(4) Third, that the battery was committed by strangulation or suffocation. Strangulation or suffocation means intentionally impeding normal circulation of the blood or breathing by applying pressure on the throat or neck or by blocking the nose or mouth.

History

M Crim JI 17.35 was adopted as a new instruction in September 2014 for a statutory amendment to the crime of assault with intent to commit great bodily harm, which provided penalties for committing an assault by strangulation or suffocation.

Reference Guide

Statutes

MCL 750.84(1)(b).

M Crim JI 17.36 Torture

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

(2) First, that the defendant had custody or physical control over [*name complainant*]. This means that the defendant used force or the threat of force either to confine [*name complainant*] by interfering with [his / her] liberty or to restrict [*name complainant*]'s freedom of movement.

(3) Second, that the defendant exercised custody or physical control over [*name complainant*] without [his / her] consent or without lawful authority to do so.

(4) Third, that at the time that the defendant had custody or physical control over [*name complainant*], [he / she] intentionally caused [great bodily injury / and/or / severe mental pain or suffering] to [*name complainant*].

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

(5) Great bodily injury means:

(a)causing a serious impairment of a body function, which includes any of the following [c*hoose any that fit the evidence*]:

(i)loss of [a limb / a foot / a hand / a finger / a thumb / an eye / an ear] or loss of the use of that part or those parts;

(ii)loss or substantial impairment of a bodily function;

(iii)serious visible disfigurement;

(iv)a comatose state for more than three days;

(v)measureable brain or mental impairment;

(vi)a skull or other serious bone fracture;

(vii)subdural bleeding or bruising;

(viii)loss of an organ;

or means

(b) internal injury, poisoning, serious burns or scalding, severe cuts, or multiple puncture wounds.

(6) Severe mental pain or suffering means a substantial change in mental functioning that can be perceived by another person. It must have been caused by the defendant in one or more of the following ways:

(a)intentionally causing great bodily injury to [*name complainant*] or threatening to cause great bodily harm to [him / her];

(b)administering mind-altering substances or performing a procedure that would disrupt [*name complainant*]'s senses or personality, or threatening to do so;

(c)threatening [*name complainant*] with imminent death; or

(d)threatening that another person will imminently be killed, subjected to great bodily injury, or given a mind-altering substance meant to disrupt the senses or personality.

(7) Fourth, that the defendant intended to cause [*name complainant*] to suffer cruel or extreme physical pain, or mental pain and suffering. The prosecutor does not need to prove that [*name complainant*] actually suffered any pain.\

History

M Crim JI 17.36 was adopted as a new instruction in April 2015 for the crime of torture.

Reference Guide

Statutes

MCL 750.85

CHAPTER 18 *Robbery*

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M Crim JI 18.1 Armed Robbery

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

(2)First, the defendant [used force or violence against / assaulted[1] / put in fear] [*state complainant's name*].[2]

(3)Second, the defendant did so while [he / she] was in the course of committing a larceny. A "larceny" is the taking and movement of someone else's property or money with the intent to take it away from that person permanently.[3]

"In the course of committing a larceny" includes acts that occur in an attempt to commit the larceny, or during the commission of the larceny, or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the property or money.

(4)Third, [*state complainant's name*] was present while defendant was in the course of committing the larceny.

(5)Fourth, that while in the course of committing the larceny, the defendant:

[*Choose one or more of the following as warranted by the charge and proofs:*]

(a)possessed a weapon designed to be dangerous and capable of causing death or serious injury; [or]

(b)possessed any other object capable of causing death or serious injury that the defendant used as a weapon; [or]

(c)possessed any [other] object used or fashioned in a manner to lead the person who was present to reasonably believe that it was a dangerous weapon4; [or]

(d)represented orally or otherwise that [he / she] was in possession of a weapon.

[*Add the following paragraph if appropriate:*]

(6)Fifth, the defendant inflicted an aggravated assault or serious injury to another while in the course of committing the larceny.

Use Note

[1] If needed, a definition of "assault" can be found at M Crim JI 17.1.

[2] The "complainant" need not be the owner or rightful possessor of the property taken. He or she can be "any person who is present" while the defendant was in the course of committing the underlying larceny. MCL 750.530.

[3] When permanent deprivation of the victim's property is in dispute, note the ruling in *People v Harverson*, 291 Mich App 171, 178, 804 NW2d 757 (2010), in which the court stated that "the intent to permanently deprive includes the retention of property without the purpose to return it within a reasonable time or the retention of property with the intent to

return the property on the condition that the owner pay some compensation for its return." If the issue is contested, the court may find it useful to expand upon the definition of "take it away from that person permanently" by explaining that it means the defendant must have intended to

> (a)withhold property or cause it to be withheld from a person permanently, or for such a long time that the person loses a significant part of its value, use, or benefit; or
>
> (b)dispose of the property in such a way that it is unlikely that the owner will get it back; or
>
> (c)keep the property with the intent to give it back only if the owner buys or leases it back, or pays a reward for it; or
>
> (d)sell, give, promise, or transfer any interest in the property; or
>
> (e)make the property subject to the claim of a person other than the owner.
>
> The court may select the factually appropriate paragraph(s) from these options.

[4] For a definition of "dangerous weapon," see M Crim JI 17.10.

History

M Crim JI 18.1 (formerly CJI2d 18.1) was substantially revised by the committee in October, 2004, to reflect the elements of the offense as set forth in 2004 PA 128, effective July 1, 2004, MCL 750.529.

Reference Guide

Statutes

MCL 750.529, .530.

Case Law

People v Randolph, 466 Mich 532, 648 NW2d 164 (2002); *People v Jolly*, 442 Mich 458, 468, 502 NW2d 177 (1993); *People v Harverson*, 291 Mich App 171, 178, 804 NW2d 757 (2010); *People v Scruggs*, 256 Mich App 303, 662 NW2d 849 (2003).

M Crim JI 18.2 Robbery

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

(2)First, the defendant [used force or violence against / assaulted[1] / put in fear] [*state complainant's name*].[2]

(3)Second, the defendant did so while [he / she] was in the course of committing a larceny. A "larceny" is the taking and movement of someone else's property or money with the intent to take it away from that person permanently.[3]

"In the course of a larceny" includes acts that occur in an attempt to commit the larceny, or during commission of the larceny, or in flight after the commission of the larceny, or in an attempt to retain possession of the property or money.

(4)Third, [*state complainant's name*] was present while defendant was in the course of committing the larceny.

Use Note

[1] If needed, a definition of "assault" can be found at M Crim JI 17.1.

[2] The "complainant" need not be the owner or rightful possessor of the property taken. He or she can be "any person who is present" while the defendant was in the course of committing or attempting to commit the underlying larceny.

[3] If the issue is contested, the court may find it helpful to expand upon the definition of "take it away from that person permanently" in accordance with *Use Note* 3 to M Crim JI 18.1.

History

M Crim JI 18.2 (formerly CJI2d 18.2) was substantially revised by the committee in October, 2004, to reflect the elements of the offense as set forth in 2004 PA 128, effective July 1, 2004. Amended February, 2012.

Reference Guide

Statutes

MCL 750.530.

Case Law

People v Williams, 491 Mich 164, 184, 814 NW2d 270 (2012); *People v Randolph*, 466 Mich 532, 648 NW2d 164 (2002); *People v Passage*, 277 Mich App 175, 743 NW2d 746 (2007).

M Crim JI 18.3 Assault with Intent to Commit Robbery Being Armed

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

(2)First, that the defendant assaulted [*name complainant*]. There are two ways to commit an assault. Either the defendant must have attempted or threatened to do immediate injury to [*name complainant*], and was able to do so, or the defendant must have committed an act that would cause a reasonable person to fear or apprehend an immediate injury.

(3)Second, that at the time of the assault, the defendant was armed with:

[*Choose one or more of the following:*]

(a)A weapon designed to be dangerous and capable of causing death or serious injury; [or with]

(b)Any [other] object capable of causing death or serious injury that the defendant used as a weapon; [or with]

(c)Any [other] object used or fashioned in a manner to lead the person who was assaulted to reasonably believe that it was a dangerous weapon.[1]

(4)Third, that at the time of the assault the defendant intended to commit robbery. Robbery occurs when a person assaults someone else and takes money or property from [him / her] or in [his / her] presence, intending to take it from the person permanently. It is not necessary that the crime be completed or that the defendant have actually taken any money or property. However, there must be proof beyond a reasonable doubt that at the time of the assault the defendant intended to commit robbery.[2]

Use Note

[1] These alternatives may be used singly or in combination depending on the evidence presented in the case. Alternative (a) should be used when there is evidence from which the jury could conclude that the defendant committed the assault while armed with such a per se dangerous weapon as a loaded gun. Alternative (b) should be used when there is evidence from which the jury could conclude that the defendant was armed with an object which, although not designed to be a dangerous weapon, is used as a weapon and, when so employed, is dangerous. A screwdriver used as a knife would fall into this category. Alternative (c) should be used when there is evidence from which the jury could conclude that the defendant was armed with an object used or fashioned in a manner to lead the victim to reasonably believe that the object is a dangerous weapon. Examples of objects that would fall into this category are unloaded or inoperable firearms, toy guns that look real, or a hand held in a pocket in such a way as to generate a reasonable belief that it is a dangerous weapon. See *People v Barkley*, 151 Mich App 234, 238, 390 NW2d 705 (1986).

[2] When permanent deprivation of the victim's property is in dispute, note the ruling in *People v Harverson*, 291 Mich App 171, 178, 804 NW2d 757 (2010), in which the court stated that "the intent to permanently deprive includes the retention of property without the purpose to return it within a reasonable time or the retention of property with the intent to return the property on the condition that the owner pay some compensation for its return." When the issue is contested, the court may find it useful to expand upon the definition of "permanently take away" by explaining that it means that the

defendant must have intended to

(a)withhold property or cause it to be withheld from a person permanently, or for such a long time that the person loses a significant part of its value, use, or benefit; or

(b)dispose of the property in such a way that it is unlikely that the owner will get it back; or

(c)keep the property with the intent to give it back only if the owner buys or leases it back, or pays a reward for it; or

(d)sell, give, promise, or transfer any interest in the property; or

(e)make the property subject to the claim of a person other than the owner.

The court may select the factually appropriate paragraph(s) from the above options.

In 2004, the Michigan Legislature amended the armed robbery statute (MCL 750.530) and defined "larceny" as including "acts that occur in an attempt to commit the larceny, or during commission of the larceny, or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the property." The 2004 statutory amendment eliminates the distinction between armed robbery and assault with intent to commit robbery being armed. As a practical matter, assault with intent to commit robbery is no longer a lesser included offense of armed robbery.

History

M Crim JI 18.3 (formerly CJI2d 18.3) was CJI 18:3:01. Amended September, 2008.

Reference Guide

Statutes

MCL 750.89, .530.

Case Law

People v Joeseype Johnson, 407 Mich 196, 284 NW2d 718 (1979); *People v Harverson*, 291 Mich App 171, 178, 804 NW2d 757 (2010); *People v Smith*, 152 Mich App 756, 761, 394 NW2d 94 (1986); *People v Barkley*, 151 Mich App 234, 238, 390 NW2d 705 (1986); *People v Harris*, 110 Mich App 636, 313 NW2d 354 (1981); *People v Krist*, 97 Mich App 669, 675, 296 NW2d 139 (1980).

M Crim JI 18.4 Assault with Intent to Commit Robbery Being Unarmed

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

(2)First, that the defendant assaulted [*name complainant*] with force or violence. There are two ways to commit an assault. The defendant must either have attempted or threatened to do immediate injury to [*name complainant*], and was able to do so, or the defendant must have committed an act that would cause a reasonable person to fear or apprehend an immediate battery.

(3)Second, that at the time of the assault the defendant intended to commit robbery. Robbery occurs when a person assaults someone else and takes money or property from [him / her] or in [his / her] presence, intending to take it from the person permanently. It is not necessary that the crime be completed or that the defendant has actually taken any money or property. However, there must be proof beyond a reasonable doubt that at the time of the assault the defendant intended to commit robbery.

Use Note

When permanent deprivation of the victim's property is in dispute, note the ruling in *People v Harverson*, 291 Mich App 171, 178, 804 NW2d 757 (2010), in which the court stated that "the intent to permanently deprive includes the retention of property without the purpose to return it within a reasonable time or the retention of property with the intent to return the property on the condition that the owner pay some compensation for its return." When the issue is contested, the court may find it useful to expand upon the definition of "permanently take away" by explaining that it means that the defendant must have intended to

(a)withhold property or cause it to be withheld from a person permanently, or for such a long time that the person loses a significant part of its value, use, or benefit; or

(b)dispose of the property in such a way that it is unlikely that the owner will get it back; or

(c)keep the property with the intent to give it back only if the owner buys or leases it back, or pays a reward for it; or

(d)sell, give, promise, or transfer any interest in the property; or

(e)make the property subject to the claim of a person other than the owner. The court may select the factually appropriate paragraph(s) from the above options.

History

M Crim JI 18.4 (formerly CJI2d 18.4) was CJI 18:4:01. Amended September, 2008; February, 2012.

Reference Guide

Statutes

MCL 750.88.

Case Law

People v Reeves, 458 Mich 236, 237, 580 NW2d 433 (1998); *People v Gardner*, 402 Mich 460, 265 NW2d 1 (1978); *People v Harverson*, 291 Mich App 171, 178, 804 NW2d 757 (2010); *People v Spry*, 74 Mich App 584, 254 NW2d 782 (1977).

M Crim JI 18.4a Carjacking

(1)The defendant is charged with the offense of carjacking. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, the defendant [used force or violence / threatened the use of force or violence / assaulted[1] / put in fear] [*state complainant's name*].

(3)Second, the defendant did so while [he / she] was in the course of committing a larceny of a motor vehicle. A "larceny" is the taking and movement of someone else's motor vehicle with the intent to take it away from that person permanently.[2]

"In the course of committing a larceny of a motor vehicle" includes acts that occur in an attempt to commit the larceny, or during commission of the larceny, or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the motor vehicle.

(4)Third, [*state complainant's name*] was the [operator / passenger / person in lawful possession / person attempting to recover possession] of the motor vehicle.

Use Note

[1] If needed, a definition of "assault" can be found at M Crim JI 17.1.

[2] If the issue is contested, the court may find it helpful to expand upon the definition of "take it away from that person permanently" in accordance with *Use Note* 3 to M Crim JI 18.1.

History

M Crim JI 18.4a (formerly CJI2d 18.4a) was substantially revised by the committee in October, 2004, to reflect the elements of the offense as set forth in 2004 PA 128, effective July 1, 2004, MCL 750.529a.

Reference Guide

Statutes

MCL 750.529a.

M Crim JI 18.5 Bank, Safe, and Vault Robbery

(1)The defendant is charged with the crime of bank, safe, and vault robbery. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant attempted to [break into / damage / destroy] a [*state type of money depository*], whether [he / she] succeeded or not.

(3)Second, that the defendant intended to commit [larceny / (*state other felony*)].* It is not necessary that the crime of [larceny / (*state other felony*)] be completed.

Use Note

*If larceny is charged, define as follows: Larceny means taking away someone else's property, intending to take it away from the person permanently.

This instruction should be followed by M Crim JI 18.7.

If the issue is contested, the court may find it helpful to expand upon the definition of "take it away from that person permanently," in accordance with *Use Note* 3 to M Crim JI 18.1.

History

M Crim JI 18.5 (formerly CJI2d 18.5) was CJI 18:5:01. Amended April, 2006.

Reference Guide

Statutes

MCL 750.531.

Case Law

People v Sawicki, 34 Mich App 240, 191 NW2d 104 (1971).

M Crim JI 18.6 Bank, Safe, and Vault Robbery (Alternative)

(1)The defendant is charged with the crime of bank, safe, and vault robbery. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

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

(a)First, that the defendant [confined / wounded] or attempted or threatened to [confine / kill / wound / put in fear] someone else. Second, that the defendant did so for the purpose of stealing from a [*state type of money depository*].

(b)First, that the defendant made or attempted to make someone else give [him / her] the means to open the [*state type of money depository*]. Second, that the defendant did so by using intimidation or threats.

(2)Second, that the defendant intended to commit [larceny / (*state other felony*)].* It is not necessary that the crime of [larceny / (*state other felony*)] be completed.

Use Note

*If larceny is charged, define as follows: Larceny means taking away someone else's property, intending to take it away from the person permanently.

This is a specific intent crime.

This instruction should be followed by M Crim JI 18.7.If the issue is contested, the court may find it helpful to expand upon the definition of "take it away from that person permanently," in accordance with Use Note 3 to M Crim JI 18.1.

History

M Crim JI 18.6 (formerly CJI2d 18.6) was CJI 18:5:02. Amended April, 2006.

Reference Guide

Statutes

MCL 750.531.

Case Law

People v Quigley, 217 Mich 213, 185 NW 787 (1921); *People v Avery*, 115 Mich App 699, 720, 321 NW2d 779 (1982).

M Crim JI 18.7 Definition of Attempt

An attempt has two elements. First, the defendant must have intended to commit the crime. Second, the defendant must have taken some action toward committing the alleged crime, but failed to complete the crime. It is not enough to prove that the defendant made preparations for committing the crime. Things like planning the crime or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the crime would have been completed if it had not been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the crime the defendant is charged with attempting and not some other goal.*

Use Note

*Any attempt to commit an offense is a specific intent crime. See *People v Langworthy*, 416 Mich 630, 644-645, 331 NW2d 171 (1982); *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979) (opinion of Levin, J.).

History

M Crim JI 18.7 (formerly CJI2d 18.7) was CJI 18:5:03.

Reference Guide

Case Law

People v Bauer, 216 Mich 659, 661, 185 NW 694 (1921); *People v Gardner*, 13 Mich App 16, 18, 163 NW2d 668 (1968).

CHAPTER 19 *Kidnapping and Parental Taking*

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M Crim JI 19.2 Kidnapping; Underlying Offense of Murder or Crime Involving Murder, Extortion, or Taking a Hostage, or No Underlying Offense 19-3

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M Crim JI 19.5 Kidnapping; Holding Victim for Labor or Services 19-6

M Crim JI 19.6 Parental Taking or Retention of a Child 19-7

M Crim JI 19.7 Affirmative Defense—Protection of a Child 19-8

M Crim JI 19.8 Unlawful Imprisonment 19-9

M Crim JI 19.1 Kidnapping

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

(2)First, that the defendant knowingly restrained another person. "Restrain" means to restrict a person's movements or to confine the person so as to interfere with that person's liberty without that person's consent or without legal authority. The restraint does not have to exist for any particular length of time and may be related or incidental to the commission of other criminal acts.

(3)Second, when the defendant did so, [he / she] intended to do one or more of the following:

[*Select appropriate subparagraph[s] based on the claims and evidence.*]

(a)hold that person for ransom or reward.

(b)use that person as a shield or hostage.

(c)engage in criminal sexual penetration or criminal sexual contact with that person.

(d)take that person outside of this state.

(e)hold that person in involuntary servitude.

(f) engage that person in child sexually abusive activity when that person was less than 18 years old. Child sexually abusive activity includes sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity.[1]

Use Note

[1] Child sexually abusive activity is defined in MCL 750.145c(1)(n) as a child engaging in a "listed sexual act." A listed sexual act is defined in MCL 750.145c(1)(i) as "sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity." Those terms, in turn, are each defined in MCL 750.145c(1), and the court may provide definitions where appropriate. See also M Crim JI 20.38, which defines these terms.

History

M Crim JI 19.1 (formerly CJI2d 19.1) was adopted in September, 2006 and amended to conform with a statutory amendment in August, 2016.

Reference Guide

Statutes

MCL 750.349(1).

M Crim JI 19.2 Kidnapping; Underlying Offense of Murder or Crime Involving Murder, Extortion, or Taking a Hostage, or No Underlying Offense

Note: This instruction was prepared to go with the first section of the statute. Check to see what section is alleged in the information before using.

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

(2)First, that the defendant forcibly confined or imprisoned [*name complainant*] against [*name complainant*]'s will.*

(3)Second, that the defendant did not have legal authority to confine [*name complainant*].

(4)Third, that while [he / she] was confining [*name complainant*], the defendant forcibly moved or caused [*name complainant*] to be moved from one place to another for the purpose of kidnapping or to [murder (*name complainant*) / get money or other valuables from (*name complainant*) / take (*name complainant*) as a hostage].

(5)Fourth, that the defendant intended to kidnap or confine [*name complainant*].

(6)Fifth, that the defendant acted willfully and maliciously. This means that the defendant knew that it was wrong to confine [*name complainant*] and knew that [he / she] did not have the legal authority to do so.

Use Note

This instruction is for use when the underlying offense is murder or a crime involving murder, extortion, or taking a hostage, or when there is no underlying offense.

*When consent is an issue, an appropriate instruction should be devised.

History

M Crim JI 19.2 (formerly CJI2d 19.2) was CJI 19:1:02.

Reference Guide

Statutes

MCL 750.349.

Case Law

People v Barker, 411 Mich 291, 307 NW2d 61 (1981); *People v Adams*, 389 Mich 222, 205 NW2d 415 (1973).

M Crim JI 19.3 Kidnapping; Intent to Extort Money or Other Valuables

Note: This instruction was prepared to go with the third section of the statute. Check to see what section is alleged in the information before using.

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

(2)First, that [*name complainant*] was forcibly seized, confined, or imprisoned.

(3)Second, that [*name complainant*] was confined against [his / her] will.[1]

(4)Third, that at the time the defendant intended to kidnap or confine [*name complainant*].

(5)Fourth, that the defendant kidnapped [*name complainant*] with the intent of getting money or other valuables for the release of [*name complainant*].[2]

(6)Fifth, that the defendant acted willfully and maliciously. This means that the defendant knew that it was wrong to confine [*name complainant*] and knew that [he / she] did not have the legal authority to do so.

Use Note

[1] When consent is an issue, an appropriate instruction should be devised.

[2] This is a specific intent crime.

History

M Crim JI 19.3 (formerly CJI2d 19.3) was CJI 19:1:03.

Reference Guide

Statutes

MCL 750.349.

M Crim JI 19.4 Kidnapping; Secret Confinement of Victim

Note: This instruction was prepared to go with the first or fourth sections of the statute. Check to see what section is alleged in the information before using.

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

(2)First, that the defendant forcibly confined or imprisoned [*name complainant*] against [*name complainant*]'s will.[1]

(3)Second, that the defendant did not have legal authority to confine [*name complainant*].

(4)Third, that the defendant kept [*name complainant*]'s location secret. In determining whether [*name complainant*] was secretly confined, you may consider where and for how long [he / she] was confined, and whether anyone else knew that [he / she] was confined or where [he / she] was confined.

(5)Fourth, that the defendant intended the confinement to be secret.

(6)Fifth, that the defendant acted willfully and maliciously. This means that the defendant knew that it was wrong to secretly confine [*name complainant*] and knew that [he / she] did not have the legal authority to do so.[2]

Use Note

[1] When consent is an issue, an appropriate instruction should be devised.

[2] This is a specific intent crime.

History

M Crim JI 19.4 (formerly CJI2d 19.4) was CJI 19:1:04.

Reference Guide

Statutes

MCL 750.349.

Case Law

People v Jaffray, 445 Mich 287, 309, 519 NW2d 108 (1994); *People v Wesley*, 421 Mich 375, 389-390, 365 NW2d 692 (1984); *People v Warren*, 228 Mich App 336, 344-345, 578 NW2d 692 (1998), aff'd in part and rev'd in part on other grounds, 462 Mich 415, 615 NW2d 691 (2000); *People v Johnson*, 171 Mich App 801, 806-807, 430 NW2d 828 (1988); *People v McNeal*, 152 Mich App 404, 412, 393 NW2d 907 (1986); *People v Walker*, 135 Mich App 311, 321, 355 NW2d 385 (1984).

M Crim JI 19.5 Kidnapping; Holding Victim for Labor or Services

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

(2)First, that the defendant forcibly confined or imprisoned [*name complainant*] against [*name complainant*]'s will.[1]

(3)Second, that the defendant did not have legal authority to confine [*name complainant*].

(4)Third, that the defendant acted willfully and maliciously. This means that the defendant knew that it was wrong to confine [*name complainant*] and knew that [he / she] did not have the legal authority to do so.

(5)Fourth, that the defendant intended to force or coerce [*name complainant*] to perform labor or services. This may be done through the wrongful use [or threatened use] of physical force or any other means.[2]

Use Note

This instruction was prepared to go with the fifth section of the statute. Check to see what section is charged in the information before using.

[1] Where consent or lawful authority is disputed, an appropriate instruction should be given.

[2] This is a specific intent crime.

History

M Crim JI 19.5 (formerly CJI2d 19.5) was CJI 19:1:05.

Reference Guide

Statutes

MCL 750.349.

Case Law

People v Wesley, 421 Mich 375, 390-391, 365 NW2d 692 (1984); *United States v Warren*, 772 F2d 827, 833-835 (11th Cir Fla 1985).

M Crim JI 19.6 Parental Taking or Retention of a Child

(1)The defendant is charged with unlawfully taking or retaining a child. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant took [*state name of child*], or that [he / she] kept [*state name of child*] for more than twenty-four hours.[1]

(3)Second, that the defendant intended to keep or conceal the child from:

[*Choose one of the following:*]

(a)The parent or legal guardian who had legal [custody / visitation rights] at the time.

(b)The person who had adopted the child.

(c)The person who had lawful charge of the child at the time.[2]

Use Note

[1] MCL 750.350a(1) states that an adoptive or natural parent of a child "shall not take that child, or retain that child for more than 24 hours." This language appears to indicate that the *actus reus* of this crime may be proved in one of two alternative ways. The first is by proof that the parent took the child, without regard to how long the parent kept the child. The second is by proof that the parent kept the child for more than 24 hours. Paragraph (2) of this instruction should be tailored to fit the facts of the particular case.

[2] This appears to be a specific intent crime. Neither MCL 750.350a nor the House Legislative Analysis accompanying it directly addresses the question as to whether apparent consent or a reasonable belief that lawful authority to take or keep the child exists, is a defense to this crime, or otherwise negates an essential element of the crime.

History

M Crim JI 19.6 (formerly CJI2d 19.6) was CJI 19:2:01.

Reference Guide

Statutes

MCL 750.350a.

Case Law

People v McBride, 204 Mich App 678, 516 NW2d 148 (1994); *People v Harvey*, 174 Mich App 58, 435 NW2d 456 (1989); *People v Fields*, 101 Mich App 287, 290-291, 300 NW2d 548 (1980); aff'd, 413 Mich 498, 320 NW2d 663 (1982).

M Crim JI 19.7 Affirmative Defense—Protection of a Child

(1)If the defendant [took / kept] the child to protect the child from an immediate and actual threat of physical or mental harm, abuse, or neglect, it is a defense to this charge.

2)This is [the only / an] issue in this case on which defendant has the burden of proof. In deciding whether the defendant has proved this defense, you should consider all of the evidence admitted during trial. If the evidence supporting this defense outweighs the evidence against it, then you must find the defendant not guilty.

(3)If you decide that the defendant has failed to prove this defense, you must still consider whether the prosecutor has met [his / her] burden of proving beyond a reasonable doubt each of the elements of unlawfully taking or retaining a child.

Use Note

Protection of a child is an affirmative defense that the defendant must prove. See MCL 750.350a(5).

History

M Crim JI 19.7 (formerly CJI2d 19.7) was CJI 19:2:02-19:2:03.

Reference Guide

Statutes

MCL 750.350a.

Case Law

Martin v Ohio, 480 US 228 (1987); *People v D'Angelo*, 401 Mich 167, 182, 257 NW2d 655 (1977); *People v Belanger*, 158 Mich App 522, 528-530, 405 NW2d 405 (1987); *People v Vera*, 153 Mich App 411, 417-418, 395 NW2d 339 (1986); *People v Kimball*, 109 Mich App 273, 286, 311 NW2d 343, modified, 412 Mich 890, 313 NW2d 285 (1981).

M Crim JI 19.8 Unlawful Imprisonment

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

(2)First, that the defendant knowingly restrained another person. "Restrain" means to forcibly restrict a person's movements or to forcibly confine the person so as to interfere with that person's liberty without that person's consent or without lawful authority. The restraint does not have to exist for any particular length of time and may be related or incidental to the commission of other criminal acts.

(3)Second, the defendant did so under one or more of the following circumstances:

[*Select from the following alternatives on the basis of the claims and evidence.*]

(a)The person is restrained by means of a weapon or dangerous instrument.[1]

(b)The restrained person was secretly confined, which means to keep the confinement or location of the restrained person a secret.

(c)The person was restrained to facilitate the commission of another felony or to facilitate flight after commission of another felony.

Use Note

[1] If necessary, consult M Crim JI 17.10, Definition of Dangerous Weapon.

History

M Crim JI 19.8 (formerly CJI2d 19.8) was adopted by the committee in September, 2006.

Reference Guide

Statutes

MCL 750.349b.

CHAPTER 20 *Sex Crimes*

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M Crim JI 20.1 Criminal Sexual Conduct in the First Degree

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

(2) First, that the defendant engaged in a sexual act that involved:

[*Choose (a), (b), (c), or (d):*]

(a) entry into [*name complainant*]'s [genital opening / anal opening] by the defendant's [penis / finger / tongue / (*name object*)]. Any entry, no matter how slight, is enough. It does not matter whether the sexual act was completed or whether semen was ejaculated.

(b) entry into [*name complainant*]'s mouth by the defendant's penis. Any entry, no matter how slight, is enough. It does not matter whether the sexual act was completed or whether semen was ejaculated.

(c) touching of [*name complainant*]'s [genital openings / genital organs] with the defendant's mouth or tongue.

(d) entry by [any part of one person's body / some object] into the genital or anal opening of another person's body. Any entry, no matter how slight, is enough. It is alleged in this case that a sexual act was committed by [*state alleged act*]. It does not matter whether the sexual act was completed or whether semen was ejaculated.

(3) [Follow this instruction with one or more of the nine alternatives, M Crim JI 20.3 to M Crim JI 20.11, as warranted by the evidence.]

(4) [Where the defendant is charged under MCL 750.520b(2)(b) with the twenty-five-year mandatory minimum for being seventeen years of age or older and penetrating a child under thirteen years old, instruct according to M Crim JI 20.30b.]

Use Notes

Option (2)(a) should be used to describe intercourse, anal intercourse, and most acts of penetration other than fellatio and cunnilingus.

Option (2)(b) should be used to describe fellatio. The instruction comports with the supreme court's order in *People v Johnson*, 432 Mich 931; 442 NW2d 625 (1989), which adopted Judge Michael Kelly's dissenting opinion in that case, 164 Mich App 634, 646; 418 NW2d 117 (1987). Judge Kelly concluded that fellatio requires penetration. Therefore, the jury must be instructed that proof of penetration, however slight, is necessary to convict where fellatio is alleged.

Option (2)(c) describes cunnilingus, with respect to which oral contact is sufficient by definition. *Johnson*, 164 Mich App at 649 n1.

Option (2)(d) should be used only in unusual cases, such as intercourse between persons other than the defendant, or anal or genital intercourse with entry into the defendant's body. For example, in *People v Hack*, 219 Mich App 299; 556 NW2d 187 (1996), and *People v Dilling*, 222 Mich App 44; 564 NW2d 56 (1997), the court of appeals held that the

defendants could be convicted for forcing a three-year-old to perform fellatio on a one-year-old. Although it is somewhat unclear, the statute's use of the adjective another before person's body in the definition of sexual penetration may exclude some acts from the statute, such as where the defendant forces the complainant to insert some object into the complainant's own body.

If more than one specific act of criminal sexual conduct is claimed, the trial court should instruct the jury that its verdict as to each alleged act must be unanimous. See *People v Yarger*, 193 Mich App 532; 485 NW2d 119 (1992), and *People v Van Dorsten*, 441 Mich 540; 494 NW2d 737 (1993). However, where a single act is charged with multiple aggravating circumstances, the jury need not be unanimous about which aggravating circumstance has been established as long as all jurors agree that one or more has been proven beyond a reasonable doubt. *People v Gadomski*, 232 Mich App 24, 30-32; 592 NW2d 75 (1998).

M Crim JI 20.30b should be given where the prosecutor charges that the crime was committed by a defendant who was seventeen years of age or older at the time of the offense, and the victim at that time was under the age of thirteen years, which triggers a mandatory minimum sentence under MCL 750.520b(2)(b). See *Alleyne v United States*, 570 US __; 133 S Ct 2151; 186 L Ed 2d 314 (2013), where the United States Supreme Court held that facts that would trigger a mandatory minimum sentence must be admitted by the defendant or proved beyond a reasonable doubt to the trier of fact.

History

M Crim JI 20.1 (formerly CJI2d 20.1) was CJI 20:2:01. Amended October, 1993; April, 1999; September, 2000; April 2015.

Reference Guide

Statutes

MCL 750.520b, .520f, .520l.

Case Law

People v Cooks, 446 Mich 503, 521 NW2d 275 (1994); *People v Van Dorsten*, 441 Mich 540; 494 NW2d 737 (1993); *People v Johnson*, 432 Mich 931; 442 NW2d 625 (1989); *People v Whitfield*, 425 Mich 116; 338 NW2d 206 (1986); *People v Langworthy*, 416 Mich 630; 331 NW2d 171 (1982); *People v Urynowicz*, 412 Mich 137; 312 NW2d 625 (1981); *People v Gadomski*, 232 Mich App 24, 30-32; 592 NW2d 75 (1998); *People v Dilling*, 222 Mich App 44, 564 NW2d 56 (1997); *People v Hack*, 219 Mich App 299, 556 NW2d 187 (1996); *People v Yarger*, 193 Mich App 532; 485 NW2d 119 (1992); *People v Bristol*, 115 Mich App 236; 320 NW2d 229 (1981); *People v Camon*, 110 Mich App 474; 313 NW2d 322 (1981); *People v Sommerville*, 100 Mich App 470, 299 NW2d 387 (1980). In *Alleyne v United States*, 570 US __; 133 S Ct 2151; 186 L Ed 2d 314 (2013), the United States Supreme Court held that facts that would trigger a mandatory minimum sentence must be admitted by the defendant or proved beyond a reasonable doubt to the trier of fact.

M Crim JI 20.2 Criminal Sexual Conduct in the Second Degree

(1) The defendant is charged with the crime of second-degree criminal sexual conduct. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant intentionally [touched (*name complainant*)'s / made (*name complainant*) touch (his / her) / permitted (*name complainant*) to touch (his / her)] [genital area / groin / inner thigh / buttock / (or) breast] or the clothing covering that area.

(3) Second, that this was done for sexual purposes or could reasonably be construed as having been done for sexual purposes.

(4) [*Follow this instruction with one or more of the 13 alternatives, M Crim JI 20.3 to M Crim JI 20.11d, as warranted by the evidence. See the table of contents on p. 20-1 for a list of the alternatives.*]

History

M Crim JI 20.2 (formerly CJI2d 20.2) was CJI 20:3:01, 20:3:02. Amended September, 1999; May, 2008; September, 2008.

Reference Guide

Statutes

MCL 750.520a(q), .520c, .520f, .520l.

Case Law

People v Lemons, 454 Mich 234, 253, 562 NW2d 447 (1997); *People v Piper*, 223 Mich App 642, 647, 567 NW2d 483 (1997); *People v Brewer*, 101 Mich App 194, 300 NW2d 491 (1980).

M Crim JI 20.3 Complainant Under Thirteen Years of Age

[Second / Third], that [*name complainant*] was less than thirteen years old at the time of the alleged act.

Use Note

Use this instruction in conjunction with M Crim JI 20.1, Criminal Sexual Conduct in the First Degree, M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, or M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

History

M Crim JI 20.3 (formerly CJI2d 20.3) was CJI 20:2:05.

Reference Guide

Case Law

People v Cash, 419 Mich 230, 351 NW2d 822 (1984).

M Crim JI 20.4 Complainant Between Thirteen and Sixteen Years of Age

(1) [Second / Third], that [*name complainant*] was thirteen, fourteen, or fifteen years old at the time of the alleged act.

[*Choose from options A through G:*]

A.[Same Household]:

(2) [Third / Fourth], that at the time of the alleged act the defendant and [*name complainant*] were living in the same household.

B.[Family Relationship]:

(3) [Third / Fourth], that [*name complainant*] is related to the defendant, either by blood or by marriage, as [*state relationship, e.g., first cousins*].

C.[Position of Authority]:

(4) [Third / *Fourth*], that at the time of the alleged act, the defendant was in a position of authority over [*name complainant*], and used this authority to coerce [*name complainant*] to submit to the sexual acts alleged. It is for you to decide whether, under the facts and circumstances of this case, the defendant was in a position of authority.

D.[School Teacher / Administrator]:

(5) [Third / Fourth], that at the time of the alleged act the defendant was [a teacher / a substitute teacher / an administrator] of [a public school / a *nonpublic* school / a school district / an intermediate school district] in which [*name complainant*] was enrolled.

E.[School Employee / Contractor/Volunteer]:

(6) [Third / Fourth], that at the time of the alleged act the defendant was [an employee / a contractual service provider] of [a public school / a nonpublic school / a school district / an intermediate school district] in which [*name complainant*] was enrolled, or was [a volunteer who was not a student in any public school or nonpublic school / an employee of this state or of a local unit of government of this state or of the United States] assigned to provide any service to that [public school / nonpublic school / school district / intermediate school district].

(7) [Fourth / Fifth], that the defendant used [his / her] [employee / contractual / volunteer] status to [gain access to / establish a relationship with] [*name complainant*].

F.[Child-Care Provider / Employee/Volunteer]:

(8) [Third / Fourth], that at the time of the alleged act, the defendant was [an employee / a contractual service provider / volunteer] of the child-care organization that [*name complainant*] attended.

(9) [Fourth / Fifth], that the alleged act occurred when [*name complainant*] was attending that child-care organization.

G.[Foster-Care Operator]:

(10) [Third / Fourth], that at the time of the alleged act, the defendant was a *licensed* operator of the [foster-family home / foster-family group home] where [*name complainant*] resided.

(11) [Fourth / Fifth], that the alleged act occurred when [*name* complainant] was residing at the [foster-family home / foster-family group home].

Use Note

Use this instruction in conjunction with M Crim JI 20.1, Criminal Sexual Conduct in the First Degree, M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, or M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

History

M Crim JI 20.4 (formerly CJI2d 20.4) was CJI 20:2:06. Amended September 1999; September 2008; January 2015.

Reference Guide

Statutes

MCL 750.520b(1)(b); MCL 750.520c(1)(b); MCL 750.520g(2)

Case Law

People v Cash, 419 Mich 230, 351 NW2d 822 (1984); *Boyer v Backus*, 282 Mich 701, 280 NW 756 (1938); *People v Phillips*, 251 Mich App 100, 649 NW2d 407 (2002); *People v Knapp*, 244 Mich App 361, 624 NW2d 227 (2001); *People v Reid*, 233 Mich App 457, 592 NW2d 767 (1999); *People v Premo*, 213 Mich App 406, 410–411, 540 NW2d 715 (1995); *People v Armstrong*, 212 Mich App 121, 536 NW2d 789 (1995); *People v Garrison*, 128 Mich App 640, 341 NW2d 170 (1983).

M Crim JI 20.5 Sexual Act in Conjunction with the Commission of a Felony

(1) [Second / Third], that the alleged sexual act occurred under circumstances that also involved [*state felony*].

(2) [*Give the elements of the felony alleged.*]

Use Note

Use this instruction in conjunction with M Crim JI 20.1, Criminal Sexual Conduct in the First Degree, M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, or M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

The jury must be instructed on all of the elements of the felony.

History

M Crim JI 20.5 (formerly CJI2d 20.5) was CJI 20:2:07.

Reference Guide

Statutes

MCL 750.520b(1)(c).

Case Law

People v Lockett, 295 Mich App 165, 814 NW2d 295 (2012); *People v White*, 168 Mich App 596, 425 NW2d 193 (1988); *People v Jones*, 144 Mich App 1, 373 NW2d 226 (1985).

M Crim JI 20.6 Aiders and Abettors—Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless

(1) [Second / Third], that before or during the alleged sexual act, the defendant was assisted by another person, who either did something or gave encouragement to assist the commission of the crime.

(2) [Third / Fourth], that [*name complainant*] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.

[*Choose one or more of (3), (4), or (5):*]

(3) Mentally incapable means that [*name complainant*] was suffering from a mental disease or defect that made [him / her] incapable of appraising either the physical or moral nature of [his / her] conduct.

(4) Mentally incapacitated means that [*name complainant*] was unable to understand or control what [he / she] was doing because of [drugs or alcohol given to (him / her) / something done to (him / her)] without [his / her] consent.

(5) Physically helpless means that [*name complainant*] was unconscious, asleep, or physically unable to communicate that [he / she] did not want to take part in the alleged act.

(6) [Fourth / Fifth], that the defendant knew or should have known that [*name complainant*] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.

Use Note

Use this instruction in conjunction with M Crim JI 20.1, Criminal Sexual Conduct in the First Degree, M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, or M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

See M Crim JI 8.1, Aiding and Abetting.

History

M Crim JI 20.6 (formerly CJI2d 20.6) was CJI 20:2:08; amended September, 2005.

Reference Guide

Statutes

MCL 767.39.

Case Law

People v Breck, 230 Mich App 450, 455, 584 NW2d 602 (1998); *People v Baker*, 157 Mich App 613, 403 NW2d 479 (1986); *People v Pollard (People v Clark),* 140 Mich App 216, 363 NW2d 453 (1985).

M Crim JI 20.7 Aiders and Abettors—Use of Force or Coercion

(1) [Second / Third], that before or during the alleged sexual act, the defendant was assisted by another person, who either did something or gave encouragement to assist the commission of the crime.

(2) [Third / Fourth], that the defendant used force or coercion to commit the sexual act.

Use Note

Use this instruction in conjunction with M Crim JI 20.1, Criminal Sexual Conduct in the First Degree, M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, or M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

See M Crim JI 8.1, Aiding and Abetting.

See M Crim JI 20.24, Definition of Sufficient Force.

History

M Crim JI 20.7 (formerly CJI2d 20.7) was CJI 20:2:09.

Reference Guide

Statutes

MCL 750.520b(1)(d)(ii).

Case Law

People v Vaughn, 186 Mich App 376, 465 NW2d 365 (1990).

M Crim JI 20.8 Armed with a Weapon

[Second / Third], that the defendant was armed at the time with:

[*Choose one or more of the following:*]

(a) A weapon [or with]

(b) Any [other] object capable of causing physical injury that the defendant used as a weapon [or with]

(c) Any [other] object used or fashioned in a manner to lead [*name complainant*] to reasonably believe that it was a weapon.

Use Note

Use this instruction in conjunction with M Crim JI 20.1, Criminal Sexual Conduct in the First Degree, M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, or M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

History

M Crim JI 20.8 (formerly CJI2d 20.8) was CJI 20:2:10.

Reference Guide

Statutes

MCL 750.520b(1)(e).

Case Law

People v Proveaux, 157 Mich App 357, 403 NW2d 135 (1987); *People v Sterling*, 154 Mich App 223, 397 NW2d 182 (1986); *People v Flanagan*, 129 Mich App 786, 342 NW2d 609 (1983); *People v Brown*, 105 Mich App 58, 306 NW2d 392 (1981), aff'd in part and vacated in part on other grounds sub nom *People v Robideau*, 419 Mich 458, 355 NW2d 592 (1984); *People v Davis*, 101 Mich App 198, 202, 300 NW2d 497 (1980).

M Crim JI 20.9 Personal Injury—Use of Force or Coercion

(1) [Second / Third], that the defendant caused personal injury to [*name complainant*].

(2) Personal injury means bodily injury, disfigurement, chronic pain, pregnancy, disease, loss or impairment of a sexual or reproductive organ, or mental anguish. Mental anguish means extreme pain, extreme distress, or extreme suffering, either at the time of the event or later as a result of it.

[(3) Here are some things you may think about in deciding whether (*name complainant*) suffered mental anguish:

(a) Was (*name complainant*) upset, crying, or hysterical during or after the event?

(b) Did (he / she) need psychological treatment?

(c) Did the incident interfere with (*name complainant*)'s ability to work or lead a normal life?

(d) Was (*name complainant*) afraid that (he / she) or someone else would be hurt or killed?

(e) Did (he / she) feel angry or humiliated?

(f) Did (*name complainant*) need medication for anxiety, insomnia, or other symptoms?

(g) Did the emotional effects of the incident last a long time?

(h) Did (*name complainant*) feel scared afterward about the possibility of being attacked again?

(i) Was the defendant (*name complainant*)'s parent?

(4) These are not the only things you should think about. No single factor is necessary. You must think about all the facts and circumstances to decide whether (*name complainant*) suffered mental anguish.][1]

(5) [Third / Fourth], the prosecutor must prove that the defendant used force or coercion to commit the sexual act. "Force or coercion" means that the defendant either used physical force or did something to make [*name complainant*] reasonably afraid of present or future danger.[2]

Use Note

[1] Paragraphs (3) and (4) are discretionary. If used, both paragraphs must be given together. The factors listed are taken from *People v Petrella*, 424 Mich 221, 270-271, 380 NW2d 11, 33 (1985).

[2] See M Crim JI 20.24, Definition of Sufficient Force. Use this instruction in conjunction with M Crim JI 20.1, Criminal Sexual Conduct in the First Degree, M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, or M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

History

M Crim JI 20.9 (formerly CJI2d 20.9) was CJI 20:2:11.

Reference Guide

Statutes

MCL 750.520a(n), .520b.

Case Law

People v Petrella, 424 Mich 221, 270-271, 380 NW2d 11, 33 (1985); *People v Eisen*, 296 Mich App 326, 820 NW2d 229 (2012); *People v Asevedo*, 217 Mich App 393, 551 NW2d 478 (1996); *People v Kraai*, 92 Mich App 398, 285 NW2d 309 (1979); *People v Payne*, 90 Mich App 713, 282 NW2d 456 (1979).

M Crim JI 20.10 Personal Injury—Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless

(1) [Second / Third], that the defendant caused personal injury to [*name complainant*].

(2) Personal injury means bodily injury, disfigurement, chronic pain, pregnancy, disease, loss or impairment of a sexual or reproductive organ, or mental anguish. Mental anguish means extreme pain, extreme distress, or extreme suffering, either at the time of the event or later as a result of it.

[(3) Here are some things you may think about in deciding whether (*name complainant*) suffered mental anguish:

(a) Was (*name complainant*) upset, crying, or hysterical during or after the event?

(b) Did (he / she) need psychological treatment?

(c) Did the incident interfere with (*name complainant*)'s ability to work or lead a normal life?

(d) Was (*name complainant*) afraid that (he / she) or someone else would be hurt or killed?

(e) Did (he / she) feel angry or humiliated?

(f) Did (he / she) need medication for anxiety, insomnia, or other symptoms?

(g) Did the emotional effects of the incident last a long time?

(h) Did (*name complainant*) feel scared afterward about the possibility of being attacked again?

(i) Was the defendant (*name complainant*)'s parent?

(4) These are not the only things you should think about. No single factor is necessary. You must think about all the facts and circumstances to decide whether (*name complainant*) suffered mental anguish.]*

(5) [Third / Fourth], the prosecutor must prove that [*name complainant*] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.

[*Choose one or more of (6), (7), or (8):*]

(6) Mentally incapable means that [*name complainant*] was suffering from a mental disease or defect that made [him / her] incapable of appraising either the physical or moral nature of [his / her] conduct.

(7) Mentally incapacitated means that [*name complainant*] was unable to understand or control what [he / she] was doing because of [drugs or alcohol given to (him / her) / something done to (him / her)] without [his / her] consent.

(8) Physically helpless means that [*name complainant*] was unconscious, asleep, or physically unable to communicate that [he / she] did not want to take part in the alleged act.

(9) Fourth, that the defendant knew or should have known that [*name complainant*] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.

Use Note

*Paragraphs (3) and (4) are discretionary. If used, both paragraphs must be given together. The factors listed are taken from *People v Petrella*, 424 Mich 221, 270-271, 380 NW2d 11 (1985).

Use this instruction in conjunction with M Crim JI 20.1, Criminal Sexual Conduct in the First Degree, M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, or M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

History

M Crim JI 20.10 (formerly CJI2d 20.10) was CJI 20:2:12; amended September, 2005.

Reference Guide

Case Law

People v Petrella, 424 Mich 221, 270-271, 380 NW2d 11 (1985).

M Crim JI 20.11 Sexual Act with Mentally Incapable, Mentally Disabled, Mentally Incapacitated, or Physically Helpless Person

(1) [Second / Third], that [*name complainant*] was [mentally incapable / mentally disabled / mentally incapacitated / physically helpless] at the time of the alleged act.

[*Choose one or more of (2), (3), (4), or (5):*]

(2) Mentally incapable means that [*name complainant*] was suffering from a mental disease or defect that made [him / her] incapable of appraising either the physical or moral nature of [his / her] conduct.

(3) Mentally disabled means that [*name complainant*] has a mental illness, is intellectually disabled, or has a developmental disability. "Mental illness" is a substantial disorder of thought or mood that significantly impairs judgment, behavior, or the ability to recognize reality and deal with the ordinary demands of life. "Intellectual disability" means significantly subaverage intellectual functioning that appeared before [*name complainant*] was 18 years old and impaired two or more of [his / her] adaptive skills.[1] "Developmental disability" means an impairment of general thinking or behavior that originated before the age of eighteen, has continued since it started or can be expected to continue indefinitely, is a substantial burden to [*name complainant*]'s ability to function in society, and is caused by [intellectual disability as described / cerebral palsy / epilepsy / autism / an impairing condition requiring treatment and services similar to those required for intellectual disability].

(4) Mentally incapacitated means that [*name complainant*] was [temporarily] unable to understand or control what [he / she] was doing because of [drugs, alcohol or another substance given to (him / her) / something done to (him / her)] without [his / her] consent.

(5) Physically helpless means that [*name complainant*] was unconscious, asleep, or physically unable to communicate that [he / she] did not want to take part in the alleged act.

(6) [Third / Fourth], that the defendant knew or should have known that [name complainant] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.

[*Choose (7) or (8*):]

(7) [Fourth / Fifth], that the defendant and [*name complainant*] were related to each other, either by blood or marriage, as [*state relationship, e.g., first cousins*].

(8) [Fourth / Fifth], that at the time of the alleged act the defendant was in a position of authority over [*name complainant*], and used this authority to coerce [*name complainant*] to submit to the sexual acts alleged. It is for you to decide whether, under the facts and circumstances of this case, the defendant was in a position of authority.

Use Note

Use this instruction in conjunction with M Crim JI 20.1, Criminal Sexual Conduct in the First Degree, M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, or M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

[1] The court may provide the jury with a definition of adaptive skills where appropriate. The phrase is defined in MCL 330.1100a(3), and means skills in 1 or more of the following areas:

(a) Communication.
(b) Self-care.
(c) Home living.
(d) Social skills.
(e) Community use.
(f) Self-direction.
(g) Health and safety.
(h) Functional academics.
(i) Leisure.
(j) Work.

History

M Crim JI 20.11 (formerly CJI2d 20.11) was CJI 20:2:13; amended September, 2005, June 2015, January 2016.

Reference Guide

Statutes

MCL 750.520b(1)(g), 767.39

Caselaw

People v Baker, 157 Mich App 613, 403 NW2d 479 (1986); *People v Pollard* (*People v Clark*), 140 Mich App 216, 363 NW2d 453 (1985).

M Crim JI 20.11a Department of Corrections Employee

(1)[Third / Sixth], that [*name complainant*] was under the jurisdiction of the department of corrections.

(2)[Fourth / Seventh], that the defendant was [an employee of / a contractual employee of / a volunteer with] the department of corrections.

(3)[Fifth / Eighth], that the defendant knew that [*name complainant*] was under the jurisdiction of the department of corrections.

Use Note

This aggravating circumstance is intended for use with M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, and M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

History

M Crim JI 20.11a (formerly CJI2d 20.11a) was adopted in September, 2008.

Reference Guide

Statutes

MCL 750.520c.

M Crim JI 20.11b Department of Corrections Vendor

(1)[Third / Sixth], that [*name complainant*] was under the jurisdiction of the department of corrections.

(2)[Fourth / Seventh], that the defendant was [an employee of / a contractual employee of / a volunteer with] a private vendor that operates a youth correctional facility.

(3)[Fifth / Eighth], that the defendant knew that [*name complainant*] was under the jurisdiction of the department of corrections.

Use Note

This aggravating circumstance is intended for use with M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, and M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

The youth correctional facility is operated under section 20g of the corrections code of 1953, 1953 PA 232, MCL 791.220g. The jury should be appropriately instructed if this issue is in dispute.

History

M Crim JI 20.11b (formerly CJI2d 20.11b) was adopted in September, 2008.

Reference Guide

Statutes

MCL 750.520c.

M Crim JI 20.11c County Corrections Employee

(1)[Third / Sixth], that [*name complainant*] was a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program.

(2)[Fourth / Seventh], that the defendant was [an employee of / a contractual employee of / a volunteer with] the county or the department of corrections.

(3)[Fifth / Eighth], that the defendant knew that [*name complainant*] was under the county's jurisdiction.

Use Note

This aggravating circumstance is intended for use with M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, and M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

History

M Crim JI 20.11c (formerly CJI2d 20.11c) was adopted in September, 2008.

Reference Guide

Statutes

MCL 750.520c.

M Crim JI 20.11d Pretrial and Juvenile Detainees

(1) [Third / Sixth], that the defendant knew or had reason to know that a court had [detained the (*name complainant*) in a facility while (*name complainant*) was awaiting a trial or hearing / committed (*name complainant*) to a facility as a result of (*name complainant*) having been found responsible for committing an act that would be a crime if committed by an adult].

(2) [Fourth / Seventh], that the defendant was [an employee of / a contractual employee of / a volunteer with] the facility in which [*name complainant*] was detained or to which [*name complainant*] was committed.

Use Note

This aggravating circumstance is intended for use with M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, and M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

History

M Crim JI 20.11d (formerly CJI2d 20.11d) was adopted in September, 2008.

Reference Guide

Statutes

MCL 750.520c.

M Crim JI 20.12 Criminal Sexual Conduct in the Third Degree

(1) The defendant is charged with the crime of third-degree criminal sexual conduct. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant engaged in a sexual act that involved:

[*Choose one of the following:*]

(a) entry into [name complainant]'s [genital opening / anal opening] by the defendant's [penis / finger / tongue / (*name object*)]. Any entry, no matter how slight, is enough. It does not matter whether the sexual act was completed or whether semen was ejaculated.

(b) entry into [*name complainant*]'s mouth by the defendant's penis. Any entry, no matter how slight, is enough. It does not matter whether the sexual act was completed or whether semen was ejaculated.

(c) touching of [name complainant]'s [genital openings / genital organs] with the defendant's mouth or tongue.

(d) entry by [any part of one person's body / some object] into the genital or anal opening of another person's body. Any entry, no matter how slight, is enough. It is alleged in this case that a sexual act was committed by [*state alleged act*]. It does not matter whether the sexual act was completed or whether semen was ejaculated.

(3) [*Follow this instruction with one or more of the following alternatives, M Crim JI 20.14, M Crim JI 20.14a, M Crim JI, 20.14b, M Crim JI, 20.14c, M Crim JI, 20.14d, M Crim JI 20.15, M Crim JI 20.16, or M Crim JI, 20.16a, as warranted by the evidence.*]

Use Note

Option (2)(a) should be used to describe intercourse, anal intercourse, and most acts of penetration other than fellatio and cunnilingus.

Option (2)(b) should be used to describe fellatio. The instruction comports with the supreme court's order in *People v Johnson*, 432 Mich 931, 442 NW2d 625 (1989), which adopted Judge Michael Kelly's dissenting opinion in that case, 164 Mich App 634, 646, 418 NW2d 117 (1987). Judge Kelly concluded that fellatio requires penetration. Therefore, the jury must be instructed that proof of penetration, however slight, is necessary to convict where fellatio is alleged.

Option (2)(c) describes cunnilingus, with respect to which oral contact is sufficient by definition. *Johnson*, 164 Mich App at 649 n1.

Option (2)(d) should be used only in unusual cases, such as intercourse between persons other than the defendant, or anal or genital intercourse with entry into the defendant's body. Although it is somewhat unclear, the statute's use of the adjective *another* before *person's body* in the definition of sexual penetration may exclude some acts from the statute, such as where the defendant forces the complainant to insert some object into the complainant's own body.

History

M Crim JI 20.12 (formerly CJI2d 20.12) was CJI 20:4:01. Amended October, 1993; September, 1996; September, 2000.

Reference Guide

Statutes

MCL 750.520d, .520l.

Case Law

People v Petrella, 424 Mich 221, 239, 380 NW2d 11 (1985); *People v Urynowicz*, 412 Mich 137, 312 NW2d 625 (1981); *People v Legg*, 197 Mich App 131, 494 NW2d 797 (1992); *People v Hale*, 142 Mich App 451, 370 NW2d 382 (1985); *People v Jansson*, 116 Mich App 674, 323 NW2d 508 (1982).

M Crim JI 20.13 Criminal Sexual Conduct in the Fourth Degree

(1) The defendant is charged with the crime of fourth-degree criminal sexual conduct. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant intentionally [touched (*name complainant*)'s / made (*name complainant*) touch (his / her)] [genital area / groin / inner thigh / buttock / (or) breast] or the clothing covering that area.

(3) Second, that this touching was done for sexual purposes or could reasonably be construed as having been done for sexual purposes.

(4) [*Follow this instruction with M Crim JI 20.14a, M Crim JI, 20.14b, M Crim JI, 20.14c, M Crim JI, 20.14d, M Crim JI 20.15, M Crim JI 20.16, or M Crim JI, 20.16a, as warranted by the evidence*.]

Use Note

Use this instruction where the facts describe an offensive touching.

Where an offensive touching involving an employee of the Department of Corrections is alleged, an appropriate instruction conforming to MCL 750.520e(1)(c) should be drafted.

History

M Crim JI 20.13 (formerly CJI2d 20.13) was CJI 20:5:01, 20:5:02; amended September, 1992; September, 1999.

Reference Guide

Statutes

MCL 750.520e, .520l.

Case Law

People v Petrella, 424 Mich 221, 239 n10, 380 NW2d 11 (1985).

M Crim JI 20.14 Complainant Between Thirteen and Sixteen Years of Age

Second, that [*name complainant*] was thirteen, fourteen, or fifteen years old at the time of the alleged act.

Use Note

Use this instruction in conjunction with M Crim JI 20.12, Criminal Sexual Conduct in the Third Degree.

History

M Crim JI 20.14 (formerly CJI2d 20.14) was CJI 20:4:05.

M Crim JI 20.14a Complainant Between Thirteen and Sixteen Years of Age and Defendant Five or More Years Older

Third, that [*name complainant*] was thirteen, fourteen, or fifteen years old at the time of the alleged act and defendant was then five or more years older than that.

Use Note

Use this instruction only in connection with the offense of criminal sexual conduct in the fourth degree, M Crim JI 20.13.

History

M Crim JI 20.14a (formerly CJI2d 20.14a) was adopted by the committee in September, 1996.

M Crim JI 20.14b Complainant Sixteen or Seventeen Years of Age

(1)[Second / Third], that [*name complainant*] was sixteen or seventeen years old at the time of the alleged act.

[*Choose Option A or B:*]

A.[School Teacher / Administrator]:

(2)[Third / Fourth], that at the time of the alleged act, the defendant was [a teacher / a substitute teacher / an administrator] of [a public school / a nonpublic school / a school district / an intermediate school district] in which [*name complainant*] was enrolled.[1]

B.[School Employee / Contractor / Volunteer / Government Employee]:

(3)[Third / Fourth], that at the time of the alleged act, the defendant was

[Choose *Option 1 or 2*:]

1.[School Employee / Contractor]:

[an employee / a contractual service provider] of [a public school / a nonpublic school / a school district / an intermediate school district] in which [*name complainant*] was enrolled.

2.(Volunteer / Government Employee):

[a nonstudent volunteer / an employee of this state or of a local unit of government of this state or of the United States] assigned to provide any service to the [public school / nonpublic school / school district / intermediate school district] in which [*name complainant*] was enrolled.

(4)[Fourth / Fifth], that the defendant used that status to [gain access to / establish a relationship with] [*name complainant*].[2]

Use Note

Use this instruction where appropriate in conjunction with M Crim JI 20.12, Criminal Sexual Conduct in the Third Degree, or M Crim JI 20.13, Criminal Sexual Conduct in the Fourth Degree. If the complainant is less than 16 years old, M Crim JI 20.4 (Complainant Thirteen, Fourteen, or Fifteen Years of Age) may apply. If the complainant is over 18 years old, M Crim JI 20.14c (Complainant at Least Sixteen but Less Than Twenty-Six Years of Age Receiving Special Education Services) may apply.

[1] This paragraph does not apply if the complainant was emancipated or if the defendant and the complainant are lawfully married to each other. MCL 750.520d(1)(e)(i).

[2] This element only applies to Option B.

History

M Crim JI 20.14b was added January 2015.

Reference Guide

Statutes

MCL 750.520d(1)(e); MCL 750.520e(1)(f)

M Crim JI 20.14c Complainant At Least Sixteen But Less Than Twenty-Six Years of Age Receiving Special Education Services

(1) [Second / Third], that [*name complainant*] was at least sixteen years old but less than twenty-six years old at the time of the alleged act and was receiving special education services.

[*Choose Option A or B:*]

A.[Teacher / Administrator / Employee / Contractor]:

(2)[Third / Fourth], that at the time of the alleged act, the defendant was [a teacher / a substitute teacher / an administrator / an employee / a contractual service provider] of [a public school / a nonpublic school / a school district / an intermediate school district] from which [*name complainant*] was receiving special education services.[1]

B.[Volunteer / Government Employee]:

(3)[Third / Fourth], that at the time of the alleged act, the defendant was [a nonstudent volunteer / an employee of this state or of a local unit of government of this state or of the United States] assigned to provide any service to the [public school / nonpublic school / school district / intermediate school district] in which [*name complainant*] was enrolled.

(4)[Fourth / Fifth], that the defendant used that status [to gain access to / establish a relationship with] [*name complainant*].[2]

Use Note

Use this instruction where appropriate in conjunction with M Crim JI 20.12, Criminal Sexual Conduct in the Third Degree, or M Crim JI 20.13, Criminal Sexual Conduct in the Fourth Degree.

[1] This paragraph does not apply if the defendant and the complainant are lawfully married to each other. MCL 750.520d(1)(f)(i).

[2] This element only applies to Option B.

History

M Crim JI 20.14c was added January 2015.

Reference Guide

Statutes

MCL 750.520d(1)(f); MCL 750.520e(1)(g)

M Crim JI 20.14d Complainant At Least Sixteen Years Old and Attending Day-Care or Residing in Foster-Care

(1)[Second / Third], that *[name complainant]* was at least sixteen years old and was [attending child-care at (*name of organization*) / residing in foster-care at (*name of facility*)] at the time of the alleged act.

[*Choose Option A or B:*]

A.[Child-Care Contractor / Employee / Volunteer]:

(2) [Third / Fourth], that at the time of the alleged act, the defendant was [an employee / a contractual service provider / volunteer] of [*name of organization*], which is a child-care organization.

B.[Foster-Care Provider]:

(3)[Third / Fourth], that at the time of the alleged act, the defendant was a licensed operator of [*name of facility*], which is a [foster-family home / foster-family group home].

Use Note

Use this instruction where appropriate in conjunction with M Crim JI 20.12, Criminal Sexual Conduct in the Third Degree, or with M Crim JI 20.13, Criminal Sexual Conduct in the Fourth Degree.

History

M Crim JI 20.14d was added January 2015.

Reference Guide

Statutes

MCL 750.520d(1)(g); MCL 750.520e(1)(h)

Staff Comment

The decision whether the institution where the complainant was attending or residing is a child-care organization or foster-care facility, as defined in §1 of 1973 PA 116, MCL 722.111, under MCL 750.520d or MCL 750.520e, appears to be a legal question decided by the court, if challenged by the defendant. This Comment has not been approved by the Supreme Court, and should not be considered an authoritative construction of the applicable statutes.

M Crim JI 20.15 Use of Force or Coercion

[Second / Third], that the defendant used force or coercion to commit the sexual act. "Force or coercion" means that the defendant either used physical force or did something to make [*name complainant*] reasonably afraid of present or future danger.

Use Note

Use this instruction in conjunction with M Crim JI 20.12, Criminal Sexual Conduct in the Third Degree, or M Crim JI 20.13, Criminal Sexual Conduct in the Fourth Degree.

See M Crim JI 20.24, Definition of Sufficient Force.

History

M Crim JI 20.15 (formerly CJI2d 20.15) was CJI 20:4:06, 20:5:03.

Reference Guide

Statutes

MCL 750.520d, .520e.

Case Law

People v Eisen, 296 Mich App 326, 820 NW2d 229 (2012).

M Crim JI 20.16 Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless

(1)[Second / Third], that [*name complainant*] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.

[*Choose one or more of (a), (b), or (c):*]

(a)Mentally incapable means that [*name complainant*] was suffering from a mental disease or defect that made [him / her] incapable of appraising either the physical or moral nature of [his / her] conduct.

(b)Mentally incapacitated means that [*name complainant*] was unable to understand or control what [he / she] was doing because of [drugs or alcohol given to (him / her) / something done to (him / her)] without [his / her] consent.

(c)Physically helpless means that [*name complainant*] was unconscious, asleep, or physically unable to communicate that [he / she] did not want to take part in the alleged act.

(2)[Third / Fourth], that the defendant knew or should have known that [*name complainant*] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.

Use Note

Use this instruction in conjunction with M Crim JI 20.12, Criminal Sexual Conduct in the Third Degree, or M Crim JI 20.13, Criminal Sexual Conduct in the Fourth Degree.

History

M Crim JI 20.16 (formerly CJI2d 20.16) was CJI 20:4:07, 20:5:04; amended September 2005.

Reference Guide

Statutes

MCL 750.520d, .520e.

M Crim JI 20.16a Related Within Third Degree

[Second / Third], that the defendant is related to the complainant by blood or marriage within the third degree as [*state relationship claimed*].

[The defendant has the burden of proving by a preponderance of the evidence (his / her) claim that the complainant was in a position of authority over (him / her) and used that authority to force the defendant to engage in the sexual conduct.]

Use Note

Use this instruction in conjunction with M Crim JI 20.12, Criminal Sexual Conduct in the Third Degree, or M Crim JI 20.13, Criminal Sexual Conduct in the Fourth Degree.

MCL 750.520d(1)(d) provides that this crime is committed only if the sexual conduct "occurs under circumstances not otherwise prohibited by this chapter." *People v Goold*, 241 Mich App 333, 615 NW2d 794 (2000).

History

M Crim JI 20.16a (formerly CJI2d 20.16a) was added by the committee in September, 1996 to reflect the changes in the statute made by 1996 PA 155.

Reference Guide

Statutes

MCL 750.520d, .520e.

Case Law

People v Goold, 241 Mich App 333, 615 NW2d 794 (2000).

M Crim JI 20.17 Assault with Intent to Commit Criminal Sexual Conduct Involving Penetration

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

(2) First, that the defendant either attempted to commit a battery on [*name complainant*] or did an act that would cause a reasonable person to fear or apprehend an immediate battery. A battery is a forceful or violent touching [without lawful consent]* of the person or something closely connected with the person of another.

(3) Second, that the defendant intended either to injure [*name complainant*] or intended to make [*name complainant*] reasonably fear an immediate battery.

(4) Third, that at the time, the defendant had the ability to commit a battery, appeared to have the ability, or thought [he / she] had the ability.

(5) Fourth, that when the defendant assaulted [*name complainant*], the defendant intended to commit a sexual act involving criminal sexual penetration. This means that the defendant must have intended some actual entry into one person's [genital opening / anal opening / mouth] with another person's [penis / finger / tongue / (*state object*)].

(6) It is not required that the defendant actually began to commit the sexual act. To prove this charge, the prosecutor must prove that the defendant made an attempt or a threat while intending to commit the act.

(7) An actual touching or penetration is not required. To prove this charge, the prosecutor must prove that the defendant committed the assault and intended to commit criminal sexual penetration.

Use Note

*Use the bracketed material only if consent is not a defense to the criminal sexual conduct that is the object of the assault.

History

M Crim JI 20.17 (formerly CJI2d 20.17) was CJI 20:6:01; amended September, 1999; September, 2000; September, 2005; September, 2008.

Reference Guide

Statutes

MCL 750.520g.

Case Law

People v Starks, 473 Mich 227, 236, 701 NW2d 136 (2005); *People v Nickens*, 470 Mich 622, 633, 685 NW2d 657 (2004); *People v Cornell*, 466 Mich 335, 646 NW2d 127 (2002*); People v Snell*, 118 Mich App 750, 325 NW2d 563 (1982); *People v Love*, 91 Mich App 495, 283 NW2d 781 (1979).

M Crim JI 20.18 Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact)

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

(2) First, that the defendant either attempted to commit a battery on [*name complainant*] or did an act that would cause a reasonable person to fear or apprehend an immediate battery. A battery is a forceful or violent touching [without lawful consent]* of the person or something closely connected with the person of another.

(3) Second, that the defendant intended either to injure [*name complainant*] or to make [*name complainant*] reasonably fear an immediate battery.

(4) Third, that at the time, the defendant had the ability to commit a battery, appeared to have the ability, or thought [he / she] had the ability.

(5) Fourth, that when the defendant assaulted [*name complainant*], the defendant intended to commit a sexual act involving criminal sexual contact. This means that the defendant must have specifically intended to [touch (*name complainant*)'s / have (*name complainant*) touch (his / her)] genital area, groin, inner thigh, buttock, breast, or the clothing covering those areas.

(6) Fifth, that when the defendant assaulted [*name complainant*], the defendant must have specifically intended to do the act involving criminal sexual contact for the purpose of sexual arousal or gratification.

(7) Sixth [*Follow this instruction with one or more of the alternatives found at M Crim JI 20.3 through 20.11d as warranted by the evidence.*]

(8) However, an actual touching or penetration is not required.

Use Note

*Use the bracketed material only if consent is not a defense to the criminal sexual conduct that is the object of the assault.

History

M Crim JI 20.18 (formerly CJI2d 20.18) was CJI 20:6:02; amended September, 1992; September, 1999; September, 2005; May, 2008; September, 2008.

Reference Guide

Statutes

MCL 750.520g, .520l.

Case Law

People v Snell, 118 Mich App 750, 325 NW2d 563 (1982).

M Crim JI 20.19 Complainant Under Sixteen Years of Age

[Fifth / Sixth], that [*name complainant*] was less than sixteen years old at the time of the alleged act.

Use Note

Use this instruction in conjunction with M Crim JI 20.17, Assault with Intent to Commit Criminal Sexual Conduct Involving Penetration.

History

M Crim JI 20.19 (formerly CJI2d 20.19) was CJI 20:6:03; amended September, 1992.

M Crim JI 20.20 Sexual Assault in Conjunction with the Commission of a Felony

(1)[Fifth / Sixth], that the alleged assault occurred under circumstances that also involved [*state felony*].

(2)[*Give the elements of the felony alleged.*]

Use Note

Use this instruction in conjunction with M Crim JI 20.17, Assault with Intent to Commit Criminal Sexual Conduct Involving Penetration.

When this section is used, the jury must be instructed on all of the elements of the felony.

History

M Crim JI 20.20 (formerly CJI2d 20.20) was CJI 20:6:04; amended September, 1992.

Reference Guide

Statutes

MCL 750.520b(1)(c).

Case Law

People v Lockett, 295 Mich App 165, 814 NW2d 295 (2012); *People v White*, 168 Mich App 596, 425 NW2d 193 (1988); *People v Jones*, 144 Mich App 1, 373 NW2d 226 (1985).

M Crim JI 20.21 Armed with a Weapon

[Fifth / Sixth], that the defendant was armed at the time with:

[*Choose one or more of the following:*]

(a) A weapon [or with]

(b) Any [other] object capable of causing physical injury that the defendant used as a weapon [or with]

(c) Any [other] object used or fashioned in a manner to lead [*name complainant*] to reasonably believe that it was a weapon.

Use Note

Use this instruction in conjunction with M Crim JI 20.17, Assault with Intent to Commit Criminal Sexual Conduct Involving Penetration.

History

M Crim JI 20.21 (formerly CJI2d 20.21) was CJI 20:6:05; amended September, 1992.

Reference Guide

Statutes

MCL 750.520g.

M Crim JI 20.22 Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless

(1)[Fifth / Sixth], that [*name complainant*] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.

[*Choose one or more of (a), (b), or (c):*]

(a) Mentally incapable means that [*name complainant*] was suffering from a mental disease or defect that made [him / her] incapable of appraising either the physical or moral nature of [his / her] conduct.

(b) Mentally incapacitated means that [*name complainant*] was unable to understand or control what [he / she] was doing because of [drugs or alcohol given to (him / her) / something done to (him / her)] without [his / her] consent.

(c) Physically helpless means that [*name complainant*] was unconscious, asleep, or physically unable to communicate that [he / she] did not want to take part in the alleged act.

(2)[Sixth / Seventh], that the defendant knew or should have known that [*name complainant*] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.

Use Note

Use this instruction in conjunction with M Crim JI 20.17, Assault with Intent to Commit Criminal Sexual Conduct Involving Penetration.

History

M Crim JI 20.22 (formerly CJI2d 20.22) was CJI 20:6:06; amended September, 1992; September, 2005.

Reference Guide

Statutes

MCL 750.520g.

M Crim JI 20.23 Use of Force or Coercion in Attempt

[Fifth / Sixth], that the defendant used force or coercion in attempting or threatening to commit the sexual act. "Force or coercion" means that the defendant either used physical force or did something to make [*name complainant*] reasonably afraid of present or future danger.

Use Note

Use this instruction in conjunction with M Crim JI 20.17, Assault with Intent to Commit Criminal Sexual Conduct Involving Penetration.

See M Crim JI 20.24, Definition of Sufficient Force.

History

M Crim JI 20.23 (formerly CJI2d 20.23) was CJI 20:6:07; amended September, 1992.

Reference Guide

Statutes

MCL 750.520g.

Case Law

People v Eisen, 296 Mich App 326, 820 NW2d 229 (2012).

M Crim JI 20.24 Definition of Sufficient Force

[*Choose any of the following that are applicable:*]

(1) It is enough force if the defendant overcame [*name complainant*] by physical force.

(2) It is enough force if the defendant threatened to use physical force on [*name complainant*] and [*name complainant*] believed that the defendant had the ability to carry out those threats.

(3) It is enough force if the defendant threatened to get even with [*name complainant*] in the future, and [*name complainant*] believed that the defendant had the ability to carry out those threats.

(4) It is enough force if the defendant threatened to kidnap [*name complainant*], or threatened to force [*name complainant*] to do something against [his / her] will, or threatened to physically punish someone, and [*name complainant*] believed that the defendant had the ability to carry out those threats.

(5) It is enough force if the defendant was giving [*name complainant*] a medical exam or treatment and did so in a way or for a reason that is not recognized as medically acceptable. A physical exam by a doctor that includes inserting fingers into the vagina or rectum is not in itself criminal sexual conduct. You must decide whether the defendant did the exam or treatment as an excuse for sexual purposes and in a way that is not recognized as medically acceptable.

(6) It is enough force if the defendant, through concealment or by the element of surprise, was able to overcome [achieve sexual contact with]* [*name complainant*].

(7) It is enough force if the defendant used force to induce the victim to submit to the sexual act or to seize control of the victim in a manner facilitating commission of the sexual act without regard to the victim's wishes.

Use Note

*Use the bracketed expression "achieve sexual contact" when criminal sexual contact in the fourth degree is charged. See MCL 750.520e(1)(b)(v).

History

M Crim JI 20.24 (formerly CJI2d 20.24) was CJI 20:2:14. Amended September, 2000.

Reference Guide

Statutes

MCL 750.520b(1)(f), .520e(1).

Case Law

People v Carlson, 466 Mich 130, 644 NW2d 704 (2002); *People v Crippen*, 242 Mich App 278, 617 NW2d 760 (2000); *People v Regts*, 219 Mich App 294, 296-298, 555 NW2d 896 (1996); *People v Premo*, 213 Mich App 406, 540 NW2d 715 (1995).

M Crim JI 20.25 Testimony of the Victim Need Not Be Corroborated

To prove this charge, it is not necessary that there be evidence other than the testimony of [*name complainant*], if that testimony proves guilt beyond a reasonable doubt.

Use Note

This is a permissive instruction. It is especially appropriate where the defense has argued lack of corroboration.

History

M Crim JI 20.25 (formerly CJI2d 20.25) was CJI 20:1:01.

Reference Guide

Statutes

MCL 750.520h.

Case Law

People v Smith, 149 Mich App 189, 195, 385 NW2d 654 (1986); *People v Norwood*, 70 Mich App 53, 57, 245 NW2d 170 (1976).

M Crim JI 20.26 The Victim Need Not Resist

To prove this charge, the prosecutor does not have to show that [*name complainant*] resisted the defendant.

Use Note

This is a permissive instruction. It is especially appropriate where the defense has argued lack of resistance.

History

M Crim JI 20.26 (formerly CJI2d 20.26) was CJI 20:1:02.

Reference Guide

Statutes

MCL 750.520i.

Case Law

People v Nelson, 79 Mich App 303, 318, 261 NW2d 299 (1977), aff'd in part, vacated in part on other grounds, 406 Mich 1020, 281 NW2d 134 (1979).

M Crim JI 20.27 Consent

(1) There has been evidence in this case about the defense of consent. A person consents to a sexual act by agreeing to it freely and willingly, without being forced or coerced.

(2) It is not necessary to show that [*name complainant*] resisted the defendant to prove that this crime was committed. Nor is it necessary to show that [*name complainant*] did anything to lessen the danger to [himself / herself].

(3) In deciding whether or not the [*name complainant*] consented to the act, you should consider all of the evidence. It may help you to think about the following questions:

(a)Was [*name complainant*] free to leave and not take part in the sexual act?

[(b)Did the defendant threaten (*name complainant*) with present or future injury?]

[(c)Did the defendant use force, violence, or coercion?]

[(d)Did the defendant display a weapon?]

[(e)*Name any other relevant circumstances*.]

(4) If you find that the evidence raises a reasonable doubt as to whether [*name complainant*] consented to the act freely and willingly, then you must find the defendant not guilty.

Use Note

Consent is an affirmative defense. No evidence of nonconsent need be placed in evidence by the prosecution. This instruction should be given only where there is evidence of consent. It is also obviously inappropriate where the victim is mentally disabled, physically helpless, or below the age of consent.

History

M Crim JI 20.27 (formerly CJI2d 20.27) was CJI 20:1:03.

Reference Guide

Statutes

MCL 750.520j.

Case Law

People v LaLone, 432 Mich 103, 437 NW2d 611 (1989); *People v Hackett*, 421 Mich 338, 365 NW2d 120 (1984); *People v Arenda*, 416 Mich 1, 330 NW2d 814 (1982); *People v Stull*, 127 Mich App 14, 338 NW2d 403 (1983); *People v Thompson*, 117 Mich App 522, 324 NW2d 22 (1982); *People v Hearn*, 100 Mich App 749, 755, 300 NW2d 396 (1980).

M Crim JI 20.28 Uncharged Acts in Criminal Sexual Conduct Cases

(1)You have heard evidence that was introduced to show that the defendant has engaged in improper sexual conduct for which the defendant is not on trial.

(2)If you believe this evidence, you must be very careful to consider it for only one, limited purpose, that is, to help you judge the believability of testimony of [*name complainant*] regarding the act(s) for which the defendant is now on trial.

(3)You must not consider this evidence for any other purpose. For example, you must not decide that it shows that the defendant is a bad person or that the defendant is likely to commit crimes. You must not convict the defendant here because you think [he / she] is guilty of other bad conduct.

Use Note

This instruction is for use when evidence of other acts has been introduced to show that there existed similar sexual familiarity between the defendant and the complainant to help the jury in judging the credibility of the complainant's testimony. *People v DerMartzex*, 390 Mich 410, 213 NW2d 97 (1973).

History

M Crim JI 20.28 (formerly CJI2d 20.28) was CJI 20:1:04; amended May, 2010.

Reference Guide

Court Rules

MRE 404(b).

Case Law

People v Jones, 417 Mich 285, 335 NW2d 465 (1983); *People v DerMartzex*, 390 Mich 410, 213 NW2d 97 (1973); *People v Jenness*, 5 Mich 305, 323-324 (1858); *People v Wright*, 161 Mich App 682, 687, 411 NW2d 826 (1987).

M Crim JI 20.28a Evidence of Other Acts of Child Sexual Abuse

(1)The prosecution has introduced evidence of claimed acts of sexual misconduct by the defendant with [a minor / minors] for which [he / she] is not on trial.

(2)Before you may consider such alleged acts as evidence against the defendant, you must first find that the defendant actually committed those acts.

(3)If you find that the defendant did commit those acts, you may consider them in deciding if the defendant committed the [offense / offenses] for which [he / she] is now on trial.

(4) You must not convict the defendant here solely because you think [he / she] is guilty of other bad conduct. The evidence must convince you beyond a reasonable doubt that the defendant committed the alleged crime, or you must find [him / her] not guilty.

History

M Crim JI 20.28a (formerly CJI2d 20.28a) was adopted by the committee in September, 2006, for use with MCL 768.27a, effective January 1, 2006. The instruction was renumbered from M Crim JI 5.8b in May, 2008, to be more specifically accessible in criminal sexual conduct prosecutions. This instruction was further modified in September, 2009, to incorporate the cautionary component of M Crim JI 4.11.

Reference Guide

Statutes

MCL 28.722, 768.27a.

M Crim JI 20.29 Limiting Instruction on Expert Testimony (in Child Criminal Sexual Conduct Cases)

(1) You have heard [*name expert*]'s opinion about the behavior of sexually abused children.

(2) You should consider that evidence only for the limited purpose of deciding whether [*name complainant*]'s acts and words after the alleged crime were consistent with those of sexually abused children.

(3) That evidence cannot be used to show that the crime charged here was committed or that the defendant committed it. Nor can it be considered an opinion by [*name expert*] that [*name complainant*] is telling the truth.

Use Note

This instruction is intended for use where expert testimony is offered to rebut an inference that a child complainant's behavior is inconsistent with that of actual victims of child sexual abuse. *People v Beckley*, 434 Mich 691, 725, 456 NW2d 391 (1990).

History

M Crim JI 20.29 (formerly CJI2d 20.29) was CJI 20:1:06.

Reference Guide

Court Rules

MRE 702-703.

Case Law

Daubert v Merrell Dow Pharms, 509 US 579 (2004); *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 685 NW2d 391 (2004); *People v Peterson* and *People v Smith*, 450 Mich 349, 352-353, 537 NW2d 857 (1995); *People v Beckley*, 434 Mich 691, 456 NW2d 391 (1990); *People v Steele*, 283 Mich App 472, 769 NW2d 256 (2009); *People v Dobek*, 274 Mich App 58, 732 NW2d 546 (2007).

M Crim JI 20.30 Criminal Sexual Conduct—No Spousal Exception

The defendant may be convicted of [*state crime*] even if [*name complainant*] is [his / her] spouse.

Use Note

Use only where the defendant and the complainant are married at the time of the offense or trial.

History

M Crim JI 20.30 (formerly CJI2d 20.30) was CJI 20:1:05.

Reference Guide

Statutes

MCL 750.520l.

M Crim JI 20.30a Criminal Sexual Conduct, One Wrongful Act—Multiple Aggravating Circumstances

The defendant is charged with criminal sexual conduct in the [*state degree*] degree. The prosecutor claims that the alleged sexual act was accompanied by one or more aggravating circumstances as explained earlier in my instructions.

If you all agree that the defendant committed the sexual act alleged, it is not necessary that you all agree on which of these aggravating circumstances accompanied the act, as long as you all agree that the prosecutor has proved at least one of the circumstances beyond a reasonable doubt.

Use Note

This instruction is intended for use where the prosecutor's theory of the case is that the defendant committed one sexual act accompanied by more than one aggravating circumstance.

History

M Crim JI 20.30a (formerly CJI2d 20.30a) was adopted in September, 2006.

M Crim JI 20.30b Defendant Seventeen Years of Age or Older and Victim Under the Age of Thirteen

(1) If you find that the defendant is guilty of first-degree criminal sexual conduct, then you must decide whether the prosecutor has proved each of the following elements beyond a reasonable doubt:

(2) First, that [*name complainant*] was less than thirteen years old when the offense occurred, and,

(3) Second, that the defendant was seventeen years of age or older when the offense occurred.

Use Note

M Crim JI 20.30b should be given where the charge is that the crime was committed by a defendant who was seventeen years of age or older at the time of the offense, and the victim at that time was under the age of thirteen years, which triggers a mandatory minimum sentence under MCL 750.520b(2)(b).

History

M Crim JI 20.30b was adopted in April 2015.

Reference Guide

Statutes

MCL 750.520b(2)(b)

Case Law

In *Alleyne v United States*, 570 US __; 133 S Ct 2151; 186 L Ed 2d 314 (2013), the United States Supreme Court held that facts that would trigger a mandatory minimum sentence must be admitted by the defendant or proved beyond a reasonable doubt to the trier of fact.

M Crim JI 20.31 Gross Indecency

(1) The defendant is charged with the crime of committing an act of gross indecency. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant engaged in a sexual act that involved one or more of the following:[1]

[*Choose (a), (b), (c), (d), (e), or (f):*]

(a) entry into another person's [vagina / anus] by the defendant's [penis / finger / tongue / (*name object*)]. Any entry, no matter how slight, is enough. It does not matter whether the sexual act was completed or whether semen was ejaculated.

or

(b) entry into another person's mouth by the defendant's penis. Any entry, no matter how slight, is enough. It does not matter whether the sexual act was completed or whether semen was ejaculated.

or

(c) touching of another person's [genital openings / genital organs] with the defendant's mouth or tongue.

or

(d) entry by [any part of one person's body / some object] into the genital or anal opening of another person's body. Any entry, no matter how slight, is enough. It is alleged in this case that a sexual act was committed by [*state alleged act*]. It does not matter whether the sexual act was completed or whether semen was ejaculated.

or

(e) masturbation of oneself or another.

or

(f) masturbation in the presence of a minor, whether in a public place or private place.

[*Add (3) unless only (2)(f) is being given.*]

(3) Second, that the sexual act was committed in a public place. A place is public when a member of the public, who is in a place the public is generally invited or allowed to be, could have been exposed to or viewed the act.[2]

Use Note

[1] This list of acts is not intended to be exhaustive. See *People v Drake*, 246 Mich App 637, 633 NW2d 469 (2001).

[2] If necessary, the court may add that if the sexual act is committed in a public place, the consent of the participants or the acquiescence of any observer is not a defense.

History

M Crim JI 20.31 (formerly CJI2d 20.31) was last revised in May, 2002, to reflect the holding of the court of appeals in *People v Bono* (On Remand), 249 Mich App 115, 641 NW2d 278 (2002).

Reference Guide

Case Law

People v Williams, 462 Mich 861, 613 NW2d 721 (2000); *People v Bono (On Remand)*, 249 Mich App 115, 641 NW2d 278 (2002*); People v Drake*, 246 Mich App 637, 633 NW2d 469 (2001).

M Crim JI 20.32 Sodomy

The defendant is charged with the crime of sodomy. To prove this charge, the prosecutor must prove that the defendant voluntarily engaged in anal intercourse with another person. Anal intercourse is defined as a man penetrating the anus of another person with his penis. Any entry into the anus, no matter how slight, is enough. It does not matter whether the sexual act was completed or whether semen was ejaculated.

Use Note

If the defendant is charged with a sexual act with an animal, an instruction addressing that situation should be prepared.

History

M Crim JI 20.32 (formerly CJI2d 20.32) was CJI 20:8:01.

Reference Guide

Statutes

MCL 750.158, .159.

Case Law

Lawrence v Texas, 539 US 558 (2003); *People v Helzer*, 404 Mich 410, 273 NW2d 44 (1978); *People v Schmitt*, 275 Mich 575, 267 NW 741 (1936); *People v Coulter*, 94 Mich App 531, 288 NW2d 448 (1980); *People v Carrier*, 74 Mich App 161, 254 NW2d 35 (1977); *People v Vasquez*, 39 Mich App 573, 197 NW2d 840 (1972); *People v Haggerty*, 27 Mich App 594, 183 NW2d 862 (1970); *People v Askar*, 8 Mich App 95, 153 NW2d 888 (1967); *People v Dexter*, 6 Mich App 247, 148 NW2d 915 (1967).

M Crim JI 20.33 Indecent Exposure

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

(2) First, that the defendant exposed [his / her] [*state part of body*].

(3) Second, that the defendant knew that [he / she] was exposing [his / her] [*state part of body*].

[*Use the following paragraph only if a violation of MCL 750.335a(2)(b) is charged.*]

(4) Third, that the defendant was fondling [his / her] [genitals / pubic area / buttocks / breasts*].

(5) [Third / Fourth], that the defendant did this in a place under circumstances in which another person might reasonably have been expected to observe it and which created a substantial risk that someone might be offended or in a place where such exposure is likely to be an offense against your community's generally accepted standards of decency and morality. In determining this, you must think about the nature of the act and all of the circumstances surrounding the act. [*State any other relevant factors, e.g., the age and experience of the persons who observed the act, the purpose of the act, etc.*]

Use Note

*Breasts is an option only for females.

History

M Crim JI 20.33 (formerly CJI2d 20.33) was CJI 20:9:01; amended September, 1998; September, 2005; April, 2006.

Reference Guide

Statutes

MCL 750.335a.

Case Law

In re Certified Question from US Dist Court, Eastern Dist, 420 Mich 51, 63, 359 NW2d 513 (1984); *People v Helzer*, 404 Mich 410, 273 NW2d 44 (1978); *People v Hildabridle*, 353 Mich 562, 563-564, 92 NW2d 6 (1958); *In re Kemmerer*, 309 Mich 313, 15 NW2d 652 (1944), cert denied, 329 US 767 (1946); *People v Ring*, 267 Mich 657, 255 NW 373 (1934); *People v Kratz*, 230 Mich 334, 337, 203 NW114 (1925); *People v Neal*, 266 Mich App 654, 702 NW2d 696 (2005); *People v Huffman*, 266 Mich App 354, 360, 702 NW2d 621 (2005), cert denied, 549 US 814 (2006); *People v Vronko*, 228 Mich App 649, 653, 579 NW2d 138 (1998); *People v Wilson*, 95 Mich App 440, 291 NW2d 73 (1980); *People v Winford*, 59 Mich App 404, 229 NW2d 474 (1975), aff'd, 404 Mich 400, 273 NW2d 54 (1978); *People v Griffes*, 13 Mich App 299, 164 NW2d 426 (1968).

M Crim JI 20.34 Pandering

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

[*Choose (2) or (3):*]

(2) First, that the defendant [forced / persuaded / encouraged / tricked] [*state name*] to become a prostitute. A prostitute is a person who does sexual acts for money.

(3) First, that the defendant [took / agreed to take / gave / agreed to give] money or anything of value for making or attempting to make [*state name*] become a prostitute. A prostitute is a person who does sexual acts for money.

(4) Second, that the defendant did this knowingly and intentionally.

History

M Crim JI 20.34 (formerly CJI2d 20.34) was CJI 20:10:01, 20:10:02. Amended September, 2000.

Reference Guide

Statutes

MCL 750.455.

Case Law

People v Morey, 461 Mich 325, 603 NW2d 250 (1999); *People v Rocha*, 110 Mich App 1, 312 NW2d 657 (1981).

M Crim JI 20.35 Accepting the Earnings of a Prostitute

(1) The defendant is charged with the crime of making a profit from the earnings of a prostitute. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [received / took] [money / something of value] from a prostitute. A prostitute is a person who does sexual acts for money.

(3) Second, that the defendant knew that the woman was a prostitute when the defendant [received / took] the [money / valuable thing].

(4) Third, that the defendant knew when [he / she] [received / took] it that the [money / valuable thing] had been earned by prostitution.

(5) Fourth, that the defendant did not give the prostitute anything of value in exchange. If you find that the defendant did give something of value to her, you must decide whether the defendant made a profit from her earnings, that is, whether the defendant [received / took] some of her earnings without giving anything in return. The evidence must convince you that the defendant intended to make a profit and actually [received / took] [money / something of value] without giving anything in return.

History

M Crim JI 20.35 (formerly CJI2d 20.35) was CJI 20:11:01.

Reference Guide

Statutes

MCL 750.457.

Case Law

People v Jackson, 280 Mich 6, 273 NW 327 (1937); *People v Harrison*, 75 Mich App 556, 561, 255 NW2d 682 (1977).

M Crim JI 20.36 Inference of Lack of Consideration

(1) It is up to you to determine whether the defendant knowingly [received / took] the earnings of a prostitute. If you find that the defendant did so and this fact is not explained, you may infer that the defendant [received / took] the earnings without giving anything of value in return. However, you do not have to make this inference.

(2) Only you have the right to decide whether the facts and circumstances of this case, as shown by the evidence, justify an inference that the defendant accepted the earnings of a prostitute without giving anything in return.

(3) If you have a reasonable doubt as to whether the defendant made a profit from the prostitution of the woman in this case, you must find the defendant not guilty.

History

M Crim JI 20.36 (formerly CJI2d 20.36) was CJI 20:11:02.

Reference Guide

Statutes

MCL 750.457.

Case Law

People v Jackson, 280 Mich 6, 273 NW 327 (1937); *People v Brown*, 36 Mich App 187, 193 NW2d 426 (1971); *People v Hill*, 32 Mich App 404, 188 NW2d 896 (1971).

M Crim JI 20.37 Use of Computer to Commit Specified Crimes

[*M Crim JI 20.37 (formerly CJI2d 20.37) was adopted by the Committee in October 2004, to set forth the elements of MCL 750.145d as last amended by 2000 PA 185, effective September 18, 2000. It was renumbered, effective October 2014, as M Crim JI 35.10.*]

M Crim JI 20.38 Child Sexually Abusive Activity – Causing or Allowing

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

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

(3) Child sexually abusive activity includes:

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

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

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

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

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

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

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

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

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

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

Use Note

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

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

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

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

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

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

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

History

M Crim JI 20.38 was adopted in June 2016.

Reference Guide

Statutes

MCL 750.145c.

M Crim JI 20.38a Child Sexually Abusive Activity – Producing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Use Note

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

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

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

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

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

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

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

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

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

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

History

M Crim JI 20.38a was adopted in June 2016.

Reference Guide

Statutes

MCL 750.145c.

M Crim JI 20.38b Child Sexually Abusive Activity – Distributing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Use Note

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

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

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

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

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

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

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

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

History

M Crim JI 20.38b was adopted in June 2016.

Reference Guide

Statutes

MCL 750.145c.

M Crim JI 20.38c Child Sexually Abusive Activity – Possessing or Accessing

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Second, that the defendant possessed or accessed a portrayal of a person appearing to be under the age of 18,

knowing that the person portrayed appeared to be under the age of 18, and all of the following conditions apply:

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

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

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

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

Use Note

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

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

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

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

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

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

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

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

History

M Crim JI 20.38c was adopted in June 2016.

Reference Guide

Statutes

MCL 750.145c.

M Crim JI 20.39 Sex Offenders Registration Act Violations-Failure to Register

(1) The defendant is charged with failing to register as a sex offender. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that the defendant has been convicted of [*identify offense*], which required [him / her] to register as a sex offender.

(3) Second, that the defendant [resided / was employed / attended school] in the [county / city / village / township] of [*name political entity*] when [he / she] was required to register.[1]

(4) Third, that the defendant failed to register as a sex offender with the [Michigan State Police / county sheriff's department / local police agency] in the [county / city / village / township] where [he / she] [resided[2] / worked / went to school].[3]

(5) Fourth, that the defendant's failure to register was willful.[4] "Willful" means that the defendant freely chose not to register and was not stopped from registering by circumstances [he / she] did not control. It is not necessary for the prosecutor to prove that the defendant had a bad purpose or the purpose to do something wrong when [he / she] failed to register.

Use Note

Take note that enforcement of certain provisions of the statute is in question under the pretrial summary disposition decision in *Doe v Snyder*, No. 12-11194 (ED Mich, March 31, 2015).

[1] M Crim JI 20.39k describes the in-person requirement for registration.

[2] M Crim JI 20.39l defines *residence* and *domicile*.

[3] M Crim JI 20.39j should be used as the venue instruction.

[4] Failure to register requires "willful" conduct. MCL 28.729(1). However, it is not a specific intent crime; instead, it requires only the knowing exercise of choice. *See People v Lockett*, 253 Mich App 651, 655, 659 NW 2d 681 (2003).

History

Instructions for violations of the Sex Offenders Registration Act were adopted August 2015.

Reference Guide

Statutes

MCL 28.724(5), (6), 28.729(1).

Case Law

People v Lockett, 253 Mich App 651, 655, 659 NW2d 681 (2003).

M Crim JI 20.39a Sex Offenders Registration Act Violations - Failure to Notify

(1) The defendant is charged with being a sex offender who failed to notify authorities of a reportable change in [his / her] sex offender registry information. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that the defendant has been convicted of [*identify offense*], which would require [him / her] to provide certain information for the sex offender registry and to immediately report changes in the registry information to the [Michigan State Police / county sheriff's department / local police agency] when the defendant:

[*Choose applicable provisions*]

(a) changes or vacates where [he / she] is [residing / domiciled] [, and / or]

(b) changes or discontinues where [he / she] is [employed / attending an institution of higher education] [, and / or]

(c) changes [his / her] [name / motor vehicle ownership or use / e-mail or Internet communications address].

(3) Second, that the defendant

[*Choose applicable provisions:*]

(a) changed or vacated [his / her] [residence / domicile] [, and / or]

(b) changed or discontinued where [he / she] was [employed / attending an institution of higher education] [, and / or]

(c) changed [his / her] [name / motor vehicle ownership or use / e-mail or Internet communications address].

(4) Third, that the defendant failed to notify[1] the [Michigan State Police / county sheriff's department / local police agency] in the [county / city / village / township] where [he / she] lived[2] of the change in registry information within three days.[3]

(5) Fourth, that the defendant's failure to register was willful.[4] "Willful" means that the defendant freely chose not to provide notification of a change in registry information and was not stopped from doing so by circumstances [he / she] did not control. It is not necessary for the prosecutor to prove that the defendant had a bad purpose or the purpose to do something wrong when [he / she] failed to notify.

Use Note

Take note that enforcement of certain provisions of the statute is in question under the pretrial summary disposition decision in *Doe v Snyder*, No. 12-11194 (ED Mich, March 31, 2015).

[1] M Crim JI 20.39k describes the obligation to provide in-person notification of changes.

[2] M Crim JI 20.39j should be used as the venue instruction.

[3] MCL 28.725(1) requires "immediate" notification of listed changes. MCL 28.722(g) defines *immediate* as within three days.

[4] Failure to register requires "willful" conduct. MCL 28.729(1). However, it is not a specific intent crime; instead, it requires only the knowing exercise of choice. *See People v Lockett*, 253 Mich App 651, 655, 659 NW 2d 681 (2003).

History

Instructions for violations of the Sex Offenders Registration Act were adopted August 2015.

Reference Guide

Statutes

MCL 28.725(1), 28.729(1).

Case Law

People v Lockett, 253 Mich App 651, 655, 659 NW2d 681 (2003).

M Crim JI 20.39b – Sex Offenders Registration Act Violations - Failure to Report Before Moving to Another State or Moving to or Visiting Another Country for More Than Seven Days

(1) The defendant is charged with being a sex offender who failed to report in person to notify authorities that [he / she] was going to move to another [state / country]. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that the defendant has been convicted of [*identify offense*], which would require [him / her] to register as a sex offender who must notify the [Michigan State Police / county sheriff's department / local police agency] before

[*Choose from the following*:]

(a) moving to another [state / country].

(b) visiting another country for more than seven days.

(3) Second, that the defendant was a resident[1] of the [county / city / village / township] of [*name political entity*] in Michigan as of [*provide date that the defendant was alleged to have lived in Michigan*].

(4) Third, that the defendant

[*Choose from the following*:]

(a) moved to [*identify state or country*].

(b) visited [*identify country*] for more than seven days.

(5) Fourth, that the defendant failed to notify[2] the [Michigan State Police / county sheriff's department / local police agency] that [he / she] was

[*Choose from the following*:]

(a) moving to [*identify state or country*]

(b) visiting [*identify country*] for more than seven days

no later than [three days / twenty-one days][3] before [he / she] [moved / visited].[4]

(6) Fifth, that the defendant's failure to report was willful.[5] "Willful" means that the defendant freely chose not to report before [moving to another (state / country) / visiting another country for more than seven days], and was not stopped from doing so by circumstances [he / she] did not control. But, it is not necessary for the prosecutor to prove that the defendant had a bad purpose or the purpose to do something wrong when [he / she] failed to report.

Use Note

Take note that enforcement of certain provisions of the statute is in question under the pretrial summary disposition decision in *Doe v Snyder*, No. 12-11194 (ED Mich, March 31, 2015).

[1] "Residence" and "domicile" are defined in M Crim JI 20.39*l*.

[2] M Crim JI 20.39k describes the obligation to provide in-person notification of changes.

[3] Use three days if the defendant moved to another state, and twenty-one days if the defendant moved to or visited another country. Moving to another state requires "immediate" notification under MCL 28.725(6). MCL 28.722(g) defines *immediate* as within three days. Moving to or visiting another country requires notification within twenty-one days under MCL 28.725(7).

[4] M Crim JI 20.39j should be used as the venue instruction.

[5] Failure to register requires "willful" conduct. MCL 28.729(1). However, it is not a specific intent crime; instead, it requires only the knowing exercise of choice. *See People v Lockett*, 253 Mich App 651, 655, 659 NW2d 681 (2003).

History

Instructions for violations of the Sex Offenders Registration Act were adopted August 2015.

Reference Guide

Statutes

MCL 28.725(1), 28.729(1).

Case Law

People v Lockett, 253 Mich App 651, 655, 659 NW2d 681 (2003).

M Crim JI 20.39c Sex Offenders Registration Act Violations – Providing False or Misleading Information

(1) The defendant is charged with being a sex offender who provided false or misleading sex offender registry information. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that the defendant has been convicted of [*identify offense*], which would require [him / her] to provide certain information for the sex offenders registry.

(3) Second, that [*name witness who prepared the registration or took the defendant's notification/verification information*] took information provided by the defendant concerning [his / her / the]

[*Choose applicable provision(s)*:]

(a) name(s) or any alias(es) that [he / she] used [, and / or]

(b) social security number [, and / or]

(c) date of birth [, and / or]

(d) address or location of [his / her] domicile or temporary lodging [, and / or]

(e) employer(s) [, and / or]

(f) school(s) [he / she] [is attending / will be attending] [, and / or]

(g) telephone number(s) [, and / or]

(h) e-mail or instant messaging address(es), including login name(s) and identifier(s) [, and / or]

(i) motor vehicle(s), aircraft(s) or water vessel(s) [, and / or]

(j) driver's license or state identification card number [, and / or]

(k) passport or immigration documents [, and / or]

(l) occupational or professional license(s).

(4) Third, that the information provided by the defendant concerning [his / her / the]

[*Choose applicable provision(s)*:]

(a) name(s) or any alias(es) that [he / she] used [, and / or]

(b) social security number [, and / or]

(c) date of birth [, and / or]

(d) address or location of [his / her] domicile or temporary lodging [, and / or]

(e) employer(s) [, and / or]

(f) school(s) [he / she] [is attending / will be attending] [, and / or]

(g) telephone number(s) [, and / or]

(h) email or instant messaging address(es), including login name(s) and identifier(s) [, and / or]

(i) motor vehicle(s), aircraft(s) or water vessel(s) [, and / or]

(j) driver's license or state identification card number [, and / or]

(k) passport or immigration documents [, and / or]

(l) occupational or professional license(s)

was false or misleading.

(5) Fourth, that the defendant provided false or misleading information willfully.[1] "Willfully" means that the defendant freely chose to provide false or misleading information, knowing that the information was false or misleading. It is not necessary for the prosecutor to prove that the defendant had a bad purpose or the purpose to do something wrong when [he / she] failed to notify.

Use Note

Take note that enforcement of certain provisions of the statute is in question under the pretrial summary disposition decision in *Doe v Snyder*, No. 12-11194 (ED Mich, March 31, 2015).

[1] Providing false or misleading information requires "willful" conduct. MCL 28.729(1). However, it is not a specific intent crime; instead, it requires only the knowing exercise of choice. *See People v Lockett*, 253 Mich App 651, 655, 659 NW2d 681 (2003).

Use the general venue instruction – M Crim JI 3.10.

History

Instructions for violations of the Sex Offenders Registration Act were adopted August 2015.

Reference Guide

Statutes

MCL 28.727(6), 28.727(1)(a)-(m), 28.729(1).

Case Law

People v Lockett, 253 Mich App 651, 655, 659 NW2d 681 (2003).

M Crim JI 20.39d Sex Offenders Registration Act Violations – Identification Requirements

(1) The defendant is charged with being a sex offender who failed to obtain and maintain a valid vehicle operator's license or a state identification card. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that the defendant has been convicted of [*identify offense*], which requires [him / her] to obtain and maintain a valid vehicle operator's license or a state identification card with an accurate digitized photograph of the defendant.

(3) Second, that the defendant was instructed by [*name witness who directed the defendant to obtain a driver's license*] to [obtain a driver's license or state identification card / obtain a more current digitized photograph for the defendant's driver's license or state identification card].

(4) Third, that the defendant failed or refused to [obtain a driver's license or state identification card / obtain a more current digitized photograph for the defendant's driver's license or state identification card] as instructed.

(5) Fourth, that the failure to [obtain a driver's license or state identification card / obtain a more current digitized photograph of a driver's license or state identification card] was willful. "Willful" means that the defendant freely chose not to [obtain a driver's license or state identification card / obtain a more current digitized photograph for the defendant's driver's license or state identification card] and was not stopped from registering by circumstances [he / she] did not control. It is not necessary that the prosecutor prove that the defendant had a bad purpose or the purpose to do something wrong when [he / she] failed to sign the registration and notice.[1]

Use Note

Take note that enforcement of certain provisions of the statute is in question under the pretrial summary disposition decision in *Doe v Snyder*, No. 12-11194 (ED Mich, March 31, 2015).

[1] Failure to register requires "willful" conduct. MCL 28.729(1). However, it is not a specific intent crime; instead, it requires only the knowing exercise of choice. *See People v Lockett*, 253 Mich App 651, 655, 659 NW2d 681 (2003).

Use the general venue instruction – M Crim JI 3.10.

History

Instructions for violations of the Sex Offenders Registration Act were adopted August 2015.

Reference Guide

Statutes

MCL 28.725b(7), 28.729(1).

Case Law

People v Lockett, 253 Mich App 651, 655, 659 NW2d 681 (2003).

M Crim JI 20.39e Sex Offenders Registration Act Violations-Failure to Verify

(1) The defendant is charged with failing to verify his residence as a sex offender. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that the defendant was convicted of [*identify offense*], which required [him / her] to verify where [he / she] was living in [*provide the month that the defendant was to verify according to the defendant's birthday and the tier of his or her offense*].[1]

(3) Second, that the defendant failed to report in person and verify [his / her] address with the [Michigan State Police / county sheriff's department / local police agency] in the [county / city / village / township] where the defendant's residence or domicile[2] was located[3] on [*provide the month that the defendant was to verify according to the defendant's birthday and the tier of his or her offense*].[1]

Use Note

Take note that enforcement of certain provisions of the statute is in question under the pretrial summary disposition decision in *Doe v Snyder*, No. 12-11194 (ED Mich, March 31, 2015).

[1] Tiers, offenses, and reporting dates are set forth in full, below.

[2] "Residence" and "domicile" are defined in M Crim JI 20.39l.

[3] Use the general venue instruction – M Crim JI 3.10.

History

Instructions for violations of the Sex Offenders Registration Act were adopted August 2015.

Reference Guide

Statutes

MCL 28.725a(3), 28.729(2).

Case Law

People v Lockett, 253 Mich App 651, 655; 659 NW2d 681 (2003).

Staff Comment

Failure to verify does not include a "willful" requirement in the punishment section, MCL 28.729(2). However, "impossibility" may be a defense. *See People v Likine*, 492 Mich 367, 823 NW2d 50 (2012).

Verification schedules for offenders are as follows:

Tier 1 Offenders: Verify once a year during the month of their birth.

Tier 1 Offenses are:

Offense Name	Statute
Child Sexually Abusive Activity or Material Possession	MCL 750.145c(4)
Aggravated Indecent Exposure, if victim was under 18 years old	MCL 750.335(2)(b)
Criminal Sexual Conduct 4th Degree, if victim was over 17 years old	MCL 750.520e
Unlawful Imprisonment, if victim was less than 18 years old	MCL 750.349b
Assault w/ Intent to Commit Criminal Sexual Conduct 2nd, if victim was more than 17 years old	MCL 750.520g(2)
Capturing/ Distributing Image of Unclothed Person if victim was under 18 years old	MCL 750.539j
Any violation of state law or local ordinance that by its nature constitutes a sexual offense against an individual who was under 18 years old	MCL 28.722(s)(vi)
Any offense committed by a person who was, at the time of the offense, a sexually delinquent person.	
Any offense substantially similar to a listed offense under a law of the United States, any state, or any country or under tribal or military law.	

Tier 2 Offenders: Verify twice a year per the schedule below.

Birth Month	Reporting Months
January	January and July
February	February and August
March	March and September
April	April and October
May	May and November
June	June and December
July	January and July
August	February and August
September	March and September
October	April and October
November	May and November
December	June and December

Tier 2 Offenses are:

Offense Name	Statute
Accosting, Enticing, or Soliciting a Child for Immoral Purposes	MCL 750.145a
Accosting, Enticing, or Soliciting a Child for Immoral Purposes w/ a prior conviction.	MCL 750.145b
Child Sexually Abusive Activity or Material Producing/Financing	MCL 750.145c(2)
Child Sexually Abusive Activity or Material Distributing/Promoting	MCL 750.145c(3)

Use of Internet/Computer System/ Prohibited Communication	MCL 750.145d(1)(a)
Crime Against Nature or Sodomy	MCL 740.158
Gross Indecency Between Male Persons, if victim was between 13 and 17 years old	MCL 750.338
Gross Indecency Between Female Persons, if victim was between 13 and 17 years old	MCL 750.338a
Gross Indecency Between Male and Female Persons, if victim was between 13 and 17 years old	MCL 750.338b
Soliciting, Accosting, or Inviting to Commit Prostitution or Immoral Act if victim was less than 18 years old	MCL 750.448
Pandering	MCL 750.455
Criminal Sexual Conduct 2nd Degree, if victim was over 13 years old	MCL 750.520c
Criminal Sexual Conduct 4th Degree, if victim was between 13 and 17 years old	MCL 750.520e
Assault w/ Intent to Commit 2nd Degree Criminal Sexual Conduct, if victim was between 13 and 17 years old	MCL 750.520g(2)
Any offense substantially similar to a listed offense under the law of the United States, any state, or any country, or under tribal or military law.	

Tier 3 Offenders: Verify four times a year per the schedule below.

Birth Month	Reporting Months
January	January, April, July, and October.
February	February, May, August, and November.
March	March, June, September, and December.
April	January, April, July, and October
May	February, May, August, and November.
June	March, June, September, and December
July	January, April, July, and October
August	February, May, August, and November
September	March, June, September, and December
October	January, April, July, and October
November	February, May, August and November
December	March, June, September, and December

Tier 3 offenses are:

Offense Name	Statute
Gross Indecency Between Male Persons, if victim was under 13 years old	MCL 750.338
Gross Indecency Between Female Persons, if victim was under 13 years old	MCL 750.338a
Gross Indecency Between Male and Female Persons, if victim was under 13 years old	MCL 750.338b
Kidnapping, if victim was under 18 years old	MCL 750.349

Child Kidnapping, if victim was under 13 years old	MCL 750.350
1st Degree Criminal Sexual Conduct	MCL 750.520b
2nd Degree Criminal Sexual Conduct	MCL 750.520c
3rd Degree Criminal Sexual Conduct	MCL 750.520d
4th Degree Criminal Sexual Conduct, if victim was under 13 years old	MCL 750.520e
Assault w/ Intent to Commit Criminal Sexual Conduct involving Sexual Penetration	MCL 750.520(g)(1)
Assault w/Intent to Commit Criminal Sexual Conduct 2nd, if victim was under 13 years old	MCL 750.520g(2)
Any offense substantially similar to the listed offense under a law of the United States, any state, or any country or under tribal or military law.	

M Crim JI 20.39f Sex Offenders Registration Act Violations - Failure to Sign Registration and Notice

(1) The defendant is charged with being a sex offender who failed to sign a registration and notice form after its completion. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that the defendant has been convicted of [*identify offense*], which requires [him / her] to provide certain information for the sex offender registry and to sign a registration and notice form after it was completed and notice of the defendant's reporting duties had been described to [him / her].

(3) Second, that the registration and notice form was completed by [*name witness who prepared the form*], and that the form explained the defendant's duties to register, verify domicile, and report changes.

(4) Third, that the defendant failed or refused to sign the form.

(5) Fourth, that the failure to sign the registration and notice was willful. "Willful" means that the defendant freely chose not to sign the form and was not stopped from doing so by circumstances [he / she] did not control. It is not necessary that the prosecutor prove that the defendant had a bad purpose or the purpose to do something wrong when [he / she] failed to sign the registration and notice.

Use Note

Take note that enforcement of certain provisions of the statute is in question under the pretrial summary disposition decision in *Doe v Snyder*, No. 12-11194 (ED Mich, March 31, 2015).

Failing to sign the notice requires "willful" conduct. MCL 28.729(3). However, it is not a specific intent crime; instead, it requires only the knowing exercise of choice. *See People v Lockett*, 253 Mich App 651, 655, 659 NW2d 681 (2003).

Use the general venue instruction – M Crim JI 3.10.

History

Instructions for violations of the Sex Offenders Registration Act were adopted August 2015.

Reference Guide

Statutes

MCL 28.727(4), 28.729(3).

Case Law

People v Lockett, 253 Mich App 651, 655, 659 NW2d 681 (2003).

M Crim JI 20.39g Sex Offenders Registration Act Violations - Failure to Pay Registration Fee

(1) The defendant is charged with being a sex offender who failed to pay a sex offender registration or verification fee. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that the defendant has been convicted of [*identify offense*], which requires [him / her] to register as a sex offender and pay fees for registration and verification of information.

[*Choose (3) or (4):*]

(3) Second, that the defendant was registered as a sex offender by [*name witness who prepared the registration and notification form*], and was informed of [his / her] obligation to pay the registration fee.

(4) Second, that the defendant reported to verify [his / her] residence or domicile with the [Michigan State Police / county sheriff's department / local police agency], and was informed of [his / her] obligation to pay the verification fee.

(5) Third, that the defendant failed or refused to pay the fee.

(6) Fourth, that the failure to pay was willful. "Willful" means that the defendant freely chose not to pay and was not stopped from paying by circumstances [he / she] did not control.[1]

[*Instruct as follows where the defendant claims that he/she was indigent.*]

(7) The defendant contends that [he / she] was too poor to pay the fee, so the failure to pay was not willful. In order to present this defense, there must be some evidence that the defendant presented information to the [Michigan State Police / county sheriff's department / local police agency] where [he / she] reported showing that [he / she] could not pay. If the defendant was too poor to pay the fee and presented information to the [Michigan State Police / county sheriff's department / local police agency], the failure to pay was not willful. The burden is on the prosecutor to show that the failure to pay was willful.[2]

Use Note

Take note that enforcement of certain provisions of the statute is in question under the pretrial summary disposition decision in *Doe v Snyder*, No. 12-11194 (ED Mich, March 31, 2015).

[1] Failure to pay requires "willful" conduct. MCL 28.729(1). However, it is not a specific intent crime; instead, it requires only the knowing exercise of choice. *See People v Lockett*, 253 Mich App 651, 655, 659 NW2d 681 (2003).

[2] Payment may be delayed under MCL 28.725b(3) where the defendant presents evidence of indigency to the reporting agency.

Use the general venue instruction – M Crim JI 3.10.

History

Instructions for violations of the Sex Offenders Registration Act were adopted August 2015.

Reference Guide

Statutes

MCL 28.725a(6), 28.725b(3), 28.729(4)

Case Law

People v Lockett, 253 Mich App 651, 655, 659 NW2d 681 (2003).

M Crim JI 20.39h Sex Offenders Registration Act Violations – Registering Agent Offenses

(1) The defendant is charged with violating the Sex Offenders Registration Act by improperly using or disclosing non-public offender information. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that [*name offender*] is an individual who is required to be registered under the Michigan Sex Offenders Registration Act.

(3) Second, the defendant had knowledge of registration information for [*name offender*].

(4) Third, that the defendant [divulged / used / published][1]

[*Choose applicable provision(s):*]

(a) the identity of the victim of [*name offender*]'s offense [, and / or]

(b) [*name offender*]'s social security number [, and / or]

(c) any arrests of [*name offender*] that did not result in a conviction [, and / or]

(d) any of [*name offender*]'s travel or immigration document numbers [, and / or]

(e) any e-mail or instant messaging addresses, or any login names or other identifiers assigned to [*name offender*] [, and / or]

(f) [*name offender*]'s driver's license number.

Use Note

Take note that enforcement of certain provisions of the statute is in question under the pretrial summary disposition decision in *Doe v Snyder*, No. 12-11194 (ED Mich, March 31, 2015).

[1] The non-public offender information is found at MCL 28.728(3)

Use the general venue instruction – M Crim JI 3.10.

History

Instructions for violations of the Sex Offenders Registration Act were adopted August 2015.

Reference Guide

Statutes

MCL 28.730(4), 28.728(3).

M Crim JI 20.39i Sex Offenders Registration Act Violations – Student Safety Zone Offenses

(1) The defendant is charged with being a sex offender who violated school safety zone limitations. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that the defendant has been convicted of [*identify offense*] and was registered as a sex offender, which prohibits [him / her] from [living / working / loitering] within 1000 feet of school property.

A school includes a public, private, denominational or parochial institution offering developmental kindergarten, kindergarten, or education for grades 1 through 12, but does not include a home school.

School property means any building, facility, structure, or real property owned, leased, or otherwise controlled by a school on a continuous basis for the purposes of providing education instruction or to be used by students under the age of 19 years for sports or other recreational activities.

(3) Second, that defendant [resided / worked / loitered] within 1000 feet of the property of [*name instructional institution*], which is a school.

[*Provide the following definition if appropriate or if the jury asks for the meaning of loitering*]

Loitering means remaining for a period of time within the 1000-foot zone under circumstances that a reasonable person would determine was for the primary purpose of observing or contacting someone less than 18 years of age.

Use Note

Take note that enforcement of certain provisions of the statute is in question under the pretrial summary disposition decision in *Doe v Snyder*, No. 12-11194 (ED Mich, March 31, 2015).

Use the general venue instruction – M Crim JI 3.10.

History

Instructions for violations of the Sex Offenders Registration Act were adopted August 2015.

Reference Guide

Statutes

MCL 28.733, 28.734, 28.735.

M Crim JI 20.39j Sex Offenders Registration Act Violations – Venue

(1) The prosecutor must also prove when and where the crime occurred by proving both of the following beyond a reasonable doubt.

(2) First, that the crime occurred [on or about (*state date alleged*) / between the dates of (*state period of time alleged*)].

(3) Second, that [the defendant's last registered address or residence / the defendant's actual address or residence / the place where the defendant was arrested for the crime] was within the [county / city / village / township] of [*name political entity*].

[*If there is a question where the defendant resided, provide appropriate instruction(s) below*]

(a) The defendant's residence is in the [county / city / township / village] where the defendant habitually sleeps and keeps [his / her] personal effects, and where the defendant regularly uses as [his / her] place of lodging.

(b) If the defendant has more than one residence, or if [his / her] spouse has a separate residence, the defendant resides at the place where [he / she] spends the greater part of [his / her] time.

(c) If the defendant is homeless or has no permanent or temporary residence, [his / her] residence is the [city / township / village] where [he / she] spends the greater part of [his / her] time.

Use Note

Take note that enforcement of certain provisions of the statute is in question under the pretrial summary disposition decision in *Doe v Snyder*, No. 12-11194 (ED Mich, March 31, 2015).

Use this venue instruction for failure to register under the act or for violations under MCL 28.725.

History

Instructions for violations of the Sex Offenders Registration Act were adopted August 2015.

Reference Guide

Statutes

MCL 28.729(8), 28.722(p)

Case Law

People v Dowdy, 489 Mich 373, 802 NW2d 239 (2011).

M Crim JI 20.39k Sex Offenders Registration Act Violations – Registration / Notification / Verification In-person Requirement

In order to [register / verify registration information / provide notification of changes to registration information], the defendant is required to report in person to the [Michigan State Police / county sheriff's department / local police agency] in the [county / city / village / township] where [his / her] residence or domicile is located.

Use Note

Take note that enforcement of certain provisions of the statute is in question under the pretrial summary disposition decision in *Doe v Snyder*, No. 12-11194 (ED Mich, March 31, 2015).

Use this instruction where there is a question whether the defendant registered, verified or notified properly.

Use M Crim JI 20.39*l* if there is some question where the defendant lived.

History

Instructions for violations of the Sex Offenders Registration Act were adopted August 2015.

Reference Guide

Statutes

MCL 28.724(5), (6), 28.725(1), 28.724a(2), 28.725a(3*)*.

M Crim JI 20.39*l* Sex Offenders Registration Act Violations – Definitions – Residence / Domicile

(1) As I have explained to you, the prosecutor has the burden of proving beyond a reasonable doubt that

[*Select (a) or (b):*]

(a) the defendant's residence or domicile was in the [county / city / township / village] of [*name political entity*].

(b) the defendant moved from [his / her] residence or domicile in the [county / city / township / village] of [*name political entity*].

[*Select any of the following that may apply:*]

(2) The defendant's residence is in the [county / city / township / village] where the defendant habitually sleeps and keeps [his / her] personal effects, and that the defendant regularly uses as [his / her] place of lodging.

(3) If the defendant has more than one residence, or if [his / her] spouse has a separate residence, the defendant resides at the place where [he / she] spends the greater part of [his / her] time.

(4) If the defendant is homeless or has no permanent or temporary residence, [his / her] residence is the [county / city / township / village] where [he / she] spends the greater part of [his / her] time.

(5) The defendant's domicile is the place where [he / she] intends to stay, and to which [he / she] returns after going somewhere else.

Use Note

Take note that enforcement of certain provisions of the statute is in question under the pretrial summary disposition decision in *Doe v Snyder*, No. 12-11194 (ED Mich, March 31, 2015).

Use this instruction if there is some question where the defendant lived or if the defendant was homeless, or in cases where the prosecutor alleges that the defendant moved without notifying appropriate authorities.

History

Instructions for violations of the Sex Offenders Registration Act were adopted August 2015.

Reference Guide

Statutes

MCL 28.722(p)

Case Law

People v Dowdy, 489 Mich 373, 802 NW2d 239 (2011).

M Crim JI 20.40 Accosting a Child for Immoral Purposes

(1) The defendant is charged with the crime of accosting a child for an immoral purpose. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [accosted, enticed, or solicited[1] / encouraged] [*name complainant*].

[*Choose either (3) or (4), depending on the age of the complainant:*]

(3) Second, that [*name complainant*] was less than 16 years old. It does not matter whether the defendant knew [*name complainant*]'s age.

(4) Second, that the defendant believed [*name complainant*] was less than 16 years old. It does not matter if [*name complainant*] was older as long as the prosecutor proves that the defendant believed [*name complainant*] was less than 16 years old.

[*Choose either (5) or (6)*:] [2]

(5) Third, that when the defendant accosted, enticed, or solicited [*name complainant*], [he / she] intended to induce or force [*name complainant*] to [commit an immoral act / submit to an act of sexual intercourse / submit to an act of gross indecency / submit to an act of depravity / submit to an act of delinquency].[3] It does not matter whether [*name complainant*] actually submitted to the [immoral act / sexual intercourse / gross indecency / act of depravity / act of delinquency].

(6) Third, that the defendant encouraged [*name complainant*] to [engage in an immoral act / engage in sexual intercourse / engage in an act of gross indecency / engage in an act of depravity / engage in an act of delinquency].[3] It does not matter whether [*name complainant*] actually engaged in the [immoral act / sexual intercourse / gross indecency / act of depravity / act of delinquency].

Use Note

[1] The court may choose to provide dictionary definitions for these terms at this point, or may do so if asked for definitions by the jury or the parties.

[2] If the prosecutor has charged that the defendant "accosted, enticed or solicited" the complainant, use paragraph (5) for the third element. If the prosecutor has charged that the defendant "encouraged" the complainant, use paragraph (6) for the third element.

[3] The statute does not define any of these acts. No statute or case law defines the phrases "immoral act" or "act of depravity" (though the phrase "immoral act" was tied to sexual intercourse between a male child and a female adult in *People v Riddle*, 322 Mich 199, 33 NW2d 759 (1948), and to an act of "gross indecency" in *People v Pippin*, 316 Mich 191, 25 NW2d 164 (1946)). MCL 750.520a(r) equates sexual intercourse with sexual penetration (which also includes cunnilingus, fellatio and anal intercourse). In *People v Tennyson*, 487 Mich 730, 790 NW2d 354 (2010), the Supreme Court associated an "act of delinquency" with violation of a statute or ordinance by a minor. The meaning of "gross indecency" was discussed in *People v Lino*, 447 Mich 567, 527 NW2d 434 (1994).

History

This instruction was adopted effective July 2016.

Reference Guide

Statutes

MCL 750.145a.

Case Law

People v Kowalski, 489 Mich 488, 803 NW2d 200 (2011); *People v Gaines*, 306 Mich App 289, 856 NW2d 222 (2014).

CHAPTER 21 *Extortion*

M Crim JI 21.1 Extortion—Threatening Injury 21-2

M Crim JI 21.2 Extortion—Accusation of Crime 21-3

M Crim JI 21.3 Definition of Threat 21-4

M Crim JI 21.4 Definition of Against His or Her Will 21-5

M Crim JI 21.5 Abandonment of Intent to Injure 21-6

M Crim JI 21.6 Truth Is Not a Defense 21-7

M Crim JI 21.1 Extortion—Threatening Injury

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

(2) First, that the defendant threatened to injure [(*name complainant*) / (*name complainant*)'s property / someone in (*name complainant*)'s immediate family], that is, that the defendant threatened to [*state nature of threat*].[1]

(3) Second, that the defendant made this threat by saying it or by writing it down. [A gesture alone is not enough.]

(4) Third, that the defendant made the threat willfully, without just cause or excuse,[2] and with the intent to [get money by doing it / make the person threatened (do / not do) something against the person's will / (*state other goal*)].[3]

Use Note

[1] Define threat, M Crim JI 21.3.

[2] "Just cause or excuse" applies to justifications such as duress. The court may need to give additional instructions, e.g., M Crim JI 7.6 (definition of duress), depending on the facts of the case.

[3] This is a specific intent crime.

Use M Crim JI 21.4, Definition of Against His or Her Will, when necessary.

History

M Crim JI 21.1 (formerly CJI2d 21.1) was CJI 21:1:01. The instruction was modified by the committee in September, 2001, to clarify the malice and intent elements of the offense.

Reference Guide

Statutes

MCL 750.213.

Case Law

People v Harris, 495 Mich 120, 845 NW2d 477 (2014); *People v Poindexter*, 138 Mich App 322, 361 NW2d 346 (1984); *People v Krist*, 97 Mich App 669, 676, 296 NW2d 139 (1980); *People v Bruno*, 30 Mich App 375, 186 NW2d 339 (1971).

M Crim JI 21.2 Extortion—Accusation of Crime

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

(2)First, that the defendant threatened to accuse [*name complainant*] of [*state crime or nature of threat*].

(3)Second, that the defendant made this threat by saying it or by writing it down. [A gesture alone is not enough.]

(4)Third, that the defendant made the threat willfully, without just cause or excuse, and with the intent to [get money by doing it / make the person threatened (do / not do) something against the person's will / (*state other goal*)].*

Use Note

*This is a specific intent crime.

Define "against the person's will" when necessary, M Crim JI 21.4.

History

M Crim JI 21.2 (formerly CJI2d 21.2) was CJI 21:1:02. The instruction was modified by the committee in September, 2001 to clarify the malice and intent elements of the offense.

Reference Guide

Statutes

MCL 750.213.

Case Law

People v Percin, 330 Mich 94, 47 NW2d 29 (1951); *People v Watson*, 307 Mich 378, 11 NW2d 926 (1943); *People v Whittemore*, 102 Mich 519, 61 NW 13 (1894).

M Crim JI 21.3 Definition of Threat

A threat for the purpose of extortion is a written or spoken statement of an intent to injure another person or that person's property or family. A threat does not have to be stated in any particular words. It can be said in general or vague terms, without saying exactly what kind of injury is being threatened. It can also be made by suggestion. However, a threat has to be definite enough to be understood by a person of ordinary intelligence as being a threat of injury.

History

M Crim JI 21.3 (formerly CJI2d 21.3) was CJI 21:1:03.

Reference Guide

Case Law

People v Harris, 495 Mich 120, 845 NW2d 477 (2014); *People v Krist*, 97 Mich App 669, 296 NW2d 139 (1980).

M Crim JI 21.4 Definition of Against His or Her Will

A person acts against [his / her] will if [he / she] only does the act in order to avoid injury to [himself / herself] or a member of [his / her] immediate family or to avoid personal disgrace. In other words, an act is against a person's will when circumstances force [him / her] to make a choice and [he / she] has to choose the lesser of two evils.

History

M Crim JI 21.4 (formerly CJI2d 21.4) was CJI 21:1:04.

Reference Guide

Case Law

People v Krist, 97 Mich App 669, 673, 296 NW2d 139 (1980).

M Crim JI 21.5 Abandonment of Intent to Injure

The crime of extortion is complete if the defendant made a threat and if at that time [he / she] intended to [get money by doing it / make the person threatened do something against the person's will / (*state other goal*)]. It does not matter whether the threat was successful or whether the person the defendant threatened became afraid. It also does not matter whether the person who was threatened actually did what the defendant wanted. The crime is complete when the threat is made, and it is not a defense that the defendant later gave up, or abandoned, [his / her] intent or that [he / she] never injured anyone. No act besides the threat itself is necessary.

History

M Crim JI 21.5 (formerly CJI2d 21.5) was CJI 21:1:05.

Reference Guide

Case Law

People v Percin, 330 Mich 94, 47 NW2d 29 (1951); *People v Poindexter*, 138 Mich App 322, 361 NW2d 346 (1984).

M Crim JI 21.6 Truth Is Not a Defense

If you find that the defendant threatened to charge [*name complainant*] with a crime and that [he / she] did this in order to [get money by doing it / make the person threatened do something against the person's will / (*state other goal*)], it is not a defense that the charges against [*name complainant*] were true.

History

M Crim JI 21.6 (formerly CJI2d 21.6) was CJI 21:1:06.

Reference Guide

Case Law

People v Maranian, 359 Mich 361, 375, 102 NW2d 568 (1960); *People v Whittemore*, 102 Mich 519, 61 NW 13 (1894).

CHAPTER 22 *General Property*

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M Crim JI 22.1 Fair Market Value Test

(1)The test for the value of property is the reasonable and fair market value of the property at the time and in the area of the [*state crime*].

(2)Fair market value is defined as the price the property would have sold for in the open market at that time and in that place [if the following things were true: the owner wanted to sell but did not have to, the buyer wanted to buy but did not have to, the owner had a reasonable time to find a buyer, and the buyer knew what the property was worth and what it could be used for].

Use Note

If larceny in installments is involved, see M Crim JI 22.4.

History

M Crim JI 22.1 (formerly CJI2d 22.1) was CJI 22:1:01.

Reference Guide

Case Law

People v Hanenberg, 274 Mich 698, 265 NW 506 (1936); *People v Brown*, 179 Mich App 131, 445 NW2d 801 (1989); *People v Johnson*, 133 Mich App 150, 155, 348 NW2d 716 (1984).

M Crim JI 22.2 Definition of Owner—Larceny

"Owner" in this case means the actual owner of the property [or any other person whose consent was necessary before the property could be taken].

Use Note

This instruction is for use in agency situations or where some person other than the owner had custody of the property.

History

M Crim JI 22.2 (formerly CJI2d 22.2) was CJI 22:1:02.

Reference Guide

Case Law

People v Hatch, 156 Mich App 265, 267, 401 NW2d 344 (1986).

M Crim JI 22.3 Honest Taking—Larceny

When someone takes property because [he / she] honestly believes that [he / she] has the right to [take / use] it, this is not larceny, even if the person who took it was mistaken.

Use Note

Use when appropriate.

History

Crim JI 22.3 (formerly CJI2d 22.3) was CJI 22:1:03.

Reference Guide

Case Law

People v Hillhouse, 80 Mich 580, 45 NW 484 (1890); *People v Karasek*, 63 Mich App 706, 234 NW2d 761 (1975); *People v McCann*, 42 Mich App 47, 201 NW2d 345 (1972).

M Crim JI 22.4 Embezzlement (Larceny) in Installments

(1)There has been evidence in this case that there was more than one [larceny / embezzlement] of [money / property] from the same person. You must now determine whether there were several small [larcenies / embezzlements], or one large one.

(2)If the evidence shows that the defendant took [money / property] at different times from the same person under one intention, one general impulse, and one plan, and the [money / property] taken was worth a total of more than $100, then there was one large [larceny / embezzlement] of more than $100.

(3)But if the evidence shows that each time the defendant took [money / property] it was worth no more than $100 and each time the defendant had a separate intention, with no general impulse or plan, then there were several small larcenies of no more than $100 each.

Use Note

This can also be used in conjunction with M Crim JI 23.1, Larceny.

History

M Crim JI 22.4 (formerly CJI2d 22.4) was CJI 22:1:04.

Reference Guide

Case Law

People v Johnson, 81 Mich 573, 576, 45 NW 1119, 1120 (1890); *People v Adams*, 128 Mich App 25, 29, 339 NW2d 687 (1983).

M Crim JI 22.5 Definition of Agent

An agent is a person who has been given authority to represent another person or to act on the other person's behalf.

History

M Crim JI 22.5 (formerly CJI2d 22.5) was CJI 22:2:01.

M Crim JI 22.6 Definition of Alteration

(1)Any unauthorized change made to a [*name article*] is called an alteration. Alteration includes changing by erasing, crossing out, inserting new material, or doing anything else that changes the effect of a document in any way, including

(a)changing the number or relationship of the people mentioned in the document;

(b)completing an uncompleted document in an unauthorized way; or

(c)adding to or removing anything from a signed document.

[(2)If a document contains blanks or is incomplete in some other way, it can be filled out in an authorized way and is then valid and complete.]

Use Note

See M Crim JI 22.17, Definition of Material Alteration.

History

M Crim JI 22.6 (formerly CJI2d 22.6) was CJI 22:2:02.

M Crim JI 22.7 Definition of Bailee

A bailee is a person to whom goods are delivered for a specific purpose, to be returned when that purpose is ended.

History

M Crim JI 22.7 (formerly CJI2d 22.7) was CJI 22:2:03.

M Crim JI 22.8 Definition of Certificate (of Notary Public or Any Public Official)

A certificate by a public official is a signed statement that is evidence of the truth of the facts stated in the certificate. [A certificate does not have to be sworn to.]

History

M Crim JI 22.8 (formerly CJI2d 22.8) was CJI 22:2:04.

M Crim JI 22.9 Definition of Check

A check is a written order directing a bank to pay the amount written on it to the person named on it [or to another person specified by the person named on it] [or to any person presenting the check, if the check is made payable to cash].

History

M Crim JI 22.9 (formerly CJI2d 22.9) was CJI 22:2:05.

M Crim JI 22.10 Definition of Commingling

Commingling means failing to keep designated money separate from the money belonging to some other person or business.

History

M Crim JI 22.10 (formerly CJI2d 22.10) was CJI 22:2:06.

M Crim JI 22.11 Definition of Conversion

Conversion means using or keeping someone else's property without that person's permission.

History

M Crim JI 22.11 (formerly CJI2d 22.11) was CJI 22:2:07.

M Crim JI 22.12 Definition of Corruptly

An act is committed corruptly when it is done with the knowledge that it is wrong and with the intent to get money or to gain some other advantage.

History

M Crim JI 22.12 (formerly CJI2d 22.12) was CJI 22:2:08.

M Crim JI 22.13 Definition of Counterfeit

To counterfeit means to make an unauthorized copy, imitation, or forgery, of something with the intent to deceive or cheat someone by using the copy, imitation, or forgery as if it were real.

History

M Crim JI 22.13 (formerly CJI2d 22.13) was CJI 22:2:09.

M Crim JI 22.14 Definition of Delivery

To deliver something means to voluntarily transfer possession of it to someone else.

History

M Crim JI 22.14 (formerly CJI2d 22.14) was CJI 22:2:13.

M Crim JI 22.15 Definition of Deposit Account

A deposit account is an account, such as a savings or passbook account, kept at a bank, savings and loan association, credit union, or similar place.

History

M Crim JI 22.15 (formerly CJI2d 22.15) was CJI 22:2:14.

M Crim JI 22.16 Definition of Draft

A draft is a written document telling someone to pay an amount of money to the person named on the document.

History

M Crim JI 22.16(formerly CJI2d 22.16) was CJI 22:2:15.

M Crim JI 22.17 Definition of Material Alteration

An alteration of a document is called a material alteration if it changes the meaning of the document in any way, including

(a) changing the number or relationship of the people mentioned in the document;

(b) completing an uncompleted document in an unauthorized way; or

(c) adding to or removing anything from a signed document.

History

M Crim JI 22.17 (formerly CJI2d 22.17) was CJI 22:2:19.

Reference Guide

Statutes

MCL 440.3407.

M Crim JI 22.18 Definition of Order (for Money or Property)

An order is a written document telling someone to pay a specified amount of money to the person named on the document.

Use Note

See MCL 440.3102(1)(b).

History

M Crim JI 22.18 (formerly CJI2d 22.18) was CJI 22:2:21.

Reference Guide

Statutes

MCL 440.3102(1)(b).

M Crim JI 22.19 Definition of Public Official (Officer)

A public official or officer means a person who holds public office in this state [or who was holding public office at the time of the alleged crime]. It does not matter whether the person is elected or appointed.

History

M Crim JI 22.19 (formerly CJI2d 22.19) was CJI 22:2:23.

M Crim JI 22.20 Definition of Security Interest

A security interest means an interest in property that makes sure that a person will pay something or perform some service. For instance, collateral for a loan is a type of security interest.

History

M Crim JI 22.20 (formerly CJI2d 22.20) was CJI 22:2:24.

M Crim JI 22.21 Definition of Trustee

A trustee is a person who holds money or property for someone else under an agreement to administer it for the other person's benefit.

History

M Crim JI 22.21 (formerly CJI2d 22.21) was CJI 22:2:26.

Reference Guide

Case Law

Black's Law Dictionary 1357 (5th ed 1979).

M Crim JI 22.22 Definition of Utter

To utter means to put something into circulation. To utter and publish means to offer something as if it is real, whether or not anyone accepts it as real. Uttering and publishing a check means presenting it to get payment, whether or not any money is actually obtained.

History

M Crim JI 22.22 (formerly CJI2d 22.22) was CJI 22:2:27.

Reference Guide

Case Law

Black's Law Dictionary 1387 (5th ed 1979).

CHAPTER 23 *Larceny*

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M Crim JI 23.1 Larceny

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

(2)First, that the defendant took someone else's property.

(3)Second, that the property was taken without consent.

(4)Third, that there was some movement of the property. [It does not matter whether the defendant actually kept the property or whether the property was taken off the premises].[1]

(5)Fourth, that at the time the property was taken, the defendant intended to permanently deprive the owner of the property.[2]

(6)Fifth, that the property had a fair market value at the time it was taken of:[3]

[*Choose only one of the following unless instructing on lesser offenses:*]

(a)$20,000 or more.

(b)$1,000 or more, but less than $20,000.

(c)$200 or more, but less than $1,000.

(d)some amount less than $200.

[*Use the following paragraph only if applicable.*]

(7)[You may add together the values of property stolen in separate incidents if part of a scheme or course of conduct within a 12-month period when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

[1] Use bracketed material when appropriate.

[2] This is a specific intent crime.

When permanent deprivation of the victim's property is in dispute, note the ruling in People v Harverson, 291 Mich App 171, 178, 804 NW2d 757 (2010), in which the court stated that "the intent to permanently deprive includes the retention of property without the purpose to return it within a reasonable time or the retention of property with the intent to return the property on the condition that the owner pay some compensation for its return." When the issue is contested, the court may find it useful to expand on the definition of "permanently deprive" by giving examples such as the following:

(a) withhold property or cause it to be withheld from a person permanently, or for such a period of time that the person loses a significant part of its value, use, or benefit, or

(b) dispose of the property in such a way that it is unlikely that the owner will get it back, or

(c) keep the property with the intent to give it back only if the owner buys or leases it back, or pays a reward for it, or

(d) sell, give, promise, or transfer any interest in the property, or

(e) make the property subject to the claim of a person other than the owner.

[3] The Fair Market Value Test, M Crim JI 22.1, should be given when applicable.

History

M Crim JI 23.1 (formerly CJI2d 23.1) was CJI 23:1:01; amended September, 1999, to reflect changes made by 1998 PA 311, eff. January 1, 1999.

Reference Guide

Statutes

MCL 750.356.

Case Law

People v Kyllonen, 402 Mich 135, 262 NW2d 2 (1978*); People v Harverson*, 291 Mich App 171, 178, 804 NW2d 757 (2010); *People v Hatch*, 156 Mich App 265, 401 NW2d 344 (1986); *People v Long*, 93 Mich App 579, 286 NW2d 909 (1979); *People v Lerma*, 66 Mich App 566, 239 NW2d 424 (1976); *People v Wilbourne*, 44 Mich App 376, 205 NW2d 250 (1973); *People v Fisher,* 32 Mich App 28, 188 NW2d 75 (1971); *People v Alexander*, 17 Mich App 30, 169 NW2d 190 (1969); *People v Anderson*, 7 Mich App 513, 152 NW2d 40 (1967).

M Crim JI 23.2 Inference of Larceny from Possession of Recently Stolen Property

(1) If you determine that the defendant had possession of the property in question here and that this property was recently stolen, you may infer that the defendant committed the theft charged. However, you do not have to make this inference.

(2) The term "recently stolen property" has no fixed meaning. You should think about what kind of property it was, how hard it was to transfer, and all of the other circumstances in deciding whether the time between the alleged theft and the defendant's alleged possession of the property was so short that no one else had time to possess it.

Use Note

This instruction is for use when it is alleged that the defendant was in possession of recently stolen property and some evidence showing such possession has been introduced at trial.

History

M Crim JI 23.2 (formerly CJI2d 23.2) was CJI 23:1:02.

Reference Guide

Case Law

People v Hogan, 123 Mich 233, 81 NW 1096 (1900); *People v Miller*, 141 Mich App 637, 641, 367 NW2d 892 (1985); *People v Thompson*, 114 Mich App 302, 307, 319 NW2d 568 (1982); *People v Strawther*, 47 Mich App 504, 209 NW2d 737 (1973); *People v Helcher*, 14 Mich App 386, 388, 165 NW2d 669 (1968); *People v Cybulski*, 11 Mich App 244, 160 NW2d 764 (1968).

M Crim JI 23.3 Larceny from the Person

(1)The defendant is charged with the crime of larceny from the person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant took someone else's property.

(3)Second, that the defendant took the property without consent.[1]

(4)Third, that the defendant moved the property, but it does not matter whether the defendant actually kept the property.

(5)Fourth, that the defendant took the property from [*name complainant*]'s person or from [his / her] immediate presence. Immediate presence means that the property was physically connected to [*name complainant*] or was right next to [him / her].

(6)Fifth, that at the time it was taken, the defendant intended to permanently deprive the owner of the property.[2]

Use Note

[1] This instruction may need to be modified where a codefendant is charged with the taking or the defendant is charged with aiding and abetting the taking.

[2] This is a specific intent crime. When the issue is contested, the court may find it useful to expand on the definition of "permanently deprive." See the examples listed in the *Use Note* under M Crim JI 23.1, Larceny.

Staff Comment

Consistent with *People v Smith-Anthony,* 494 Mich 669, 682; 837 NW2d 415 (2013), the instruction is modified to delete "immediate area of control" from paragraph (5), and to add a plain-English version of the definition supplied by the Supreme Court—Immediate presence means having no object or space intervening, nearest or next—to that same paragraph. Changes were also made to eliminate the use of the passive voice, and another provision was added to the Use Note that the instruction may need to be modified where the prosecutor's theory involves aiding and abetting or a codefendant is charged.

History

M Crim JI 23.3 (formerly CJI2d 23.3) was CJI 23:2:01. Amended December 2014.

Reference Guide

Statutes

MCL 750.357.

Case Law

People v Smith-Anthony, 494 Mich 669, 682; 837 NW2d 415 (2013), *People v Chamblis*, 395 Mich 408; 236 NW2d 473 (1975); *People v Gould*, 384 Mich 71; 179 NW2d 617 (1970); *People v Gadson*, 348 Mich 307; 83 NW2d 227 (1957); *People v Wallace*, 173 Mich App 420, 426; 434 NW2d 422 (1988).

M Crim JI 23.4 Larceny in a Building

(1) The defendant is charged with the crime of larceny in a building. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant, took someone else's property.

(3) Second, that the property was taken without consent.

(4) Third, that the property was taken in a [*state type of building*].[1]

(5) Fourth, that there was some movement of the property. [It does not matter whether the defendant actually kept the property or whether the property was taken off the premises].

(6) Fifth, that the property was worth something at the time it was taken.

(7) Sixth, that at the time the property was taken, the defendant intended to permanently deprive the owner of the property.[2]

Use Note

[1] The statute lists the following types of building: "dwelling house, house trailer, office, store, gasoline service station, shop, warehouse, mill, factory, hotel, school, barn, granary, ship, boat, vessel, church, house of worship, locker room or any building used by the public." MCL 750.360.

[2] This is a specific intent crime.

When the issue is contested, the court may find it useful to expand on the definition of "permanently deprive." See the examples listed in the *Use Note* under M Crim JI 23.1, Larceny.

History

M Crim JI 23.4 (formerly CJI2d 23.4) was CJI 23:3:01.

Reference Guide

Statutes

MCL 750.360.

Case Law

People v Mumford, 171 Mich App 514, 517-518, 430 NW2d 770 (1988); *People v McFarland*, 165 Mich App 779, 419 NW2d 68 (1988); *People v Cavanaugh*, 127 Mich App 632, 339 NW2d 509 (1983); *Freeman v Meijer, Inc*, 95 Mich App 475, 291 NW2d 87 (1980); *People v Bullock*, 48 Mich App 700, 211 NW2d 108 (1973).

M Crim JI 23.5 Larceny from a Vehicle

(1) The defendant is charged with the crime of larceny from a vehicle. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant took a [wheel / tire / air bag / catalytic converter / radio / stereo / clock / telephone / computer / electronic device].

(3) Second, that the property was taken without consent.

(4) Third, that when it was taken, the property was in or on a [motor vehicle / house trailer / trailer / semitrailer].

(5) Fourth, that there was some movement of the property. [It does not matter whether the defendant actually kept the property.]

(6) Fifth, that at the time the property was taken, the defendant intended to permanently deprive the owner of the property.

Use Note

When the issue is contested, the court may find it useful to expand on the definition of "permanently deprive." See the examples listed in the *Use Note* under M Crim JI 23.1, Larceny.

History

M Crim JI 23.5 (formerly CJI2d 23.5) was CJI 23:4:01; amended September, 1999, to reflect changes made by 1998 PA 311, eff. January 1, 1999; amended May, 2009, to reflect changes made by 2008 PA 476, eff. April 1, 2009.

Reference Guide

Statutes

MCL 750.356a.

Case Law

People v Miller, 288 Mich App 207, 795 NW2d 156 (2010); *People v James*, 142 Mich App 225, 228, 369 NW2d 216 (1985); *People v Price*, 21 Mich App 694, 176 NW2d 426 (1970).

M Crim JI 23.6 Breaking or Entering a Vehicle with Intent to Steal

(1) The defendant is charged with the crime of breaking or entering a vehicle with the intent to steal property worth [$20,000 or more / $1,000 or more, but less than $20,000 / $200 or more, but less than $1,000 / less than $200]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that there was either a breaking or an entering of the [motor vehicle / house trailer / trailer / semitrailer]. For a breaking, it does not matter whether anything was actually broken; however, some force must have been used. The opening of a closed door or the pushing open of a vent window, for example, is enough force to count as a breaking. For an entry, it does not matter whether the defendant got [his / her] entire body inside. If the defendant put any part of [his / her] body into the [motor vehicle / house trailer / trailer / semitrailer], that is enough to count as an entry.

(3) Second, that at the time of the breaking or entering, the defendant intended to take some property and permanently deprive the owner of it. [It does not matter whether the defendant actually took the property.] [1]

(4) Third, that the fair market value of the property was:[2]

[*Choose only one of the following unless instructing on lesser offenses.*]

(a)$20,000 or more.

(b)$1,000 or more, but less than $20,000.

(c)$200 or more, but less than $1,000.

(d)some amount less than $200.

[*Use the following paragraph only if applicable.*]

(5) [You may add together the values of property stolen in separate incidents if part of a scheme or course of conduct within a 12-month period when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

[1] This is a specific intent crime.

When the issue is contested, the court may find it useful to expand on the definition of "permanently deprive." See the examples listed in the *Use Note* under M Crim JI 23.1, Larceny.

[2] The Fair Market Value Test, M Crim JI 22.1, should be given when applicable.

History

M Crim JI 23.6 (formerly CJI2d 23.6) was CJI 23:4:02; amended September, 1999, to reflect changes made by 1998 PA 311, eff. January 1, 1999.

Reference Guide

Statutes

MCL 750.110, .412.

Case Law

People v Nichols, 69 Mich App 357, 244 NW2d 335 (1976); *People v Matusik*, 63 Mich App 347, 234 NW2d 517 (1975); *People v Chronister*, 44 Mich App 478, 205 NW2d 238 (1973).

M Crim JI 23.6a Breaking or Entering a Vehicle with Intent to Steal Causing Damage

(1) The defendant is charged with the crime of breaking or entering a vehicle with the intent to steal property worth [$200 or more, but less than $1,000 / less than $200] causing damage to the vehicle. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that there was either a breaking or an entering of the [motor vehicle / house trailer / trailer / semitrailer]. For a breaking, it does not matter whether anything was actually broken; however, some force must have been used. The opening of a closed door or the pushing open of a vent window, for example, is enough force to count as a breaking. For an entry, it does not matter whether the defendant got [his / her] entire body inside. If the defendant put any part of [his / her] body into the [motor vehicle / house trailer / trailer / semitrailer], that is enough to count as an entry.

(3) Second, that at the time of the breaking or entering, the defendant intended to take some property and permanently deprive the owner of it. [It does not matter whether the defendant actually took the property.][1]

(4) Third, that the fair market value of the property was:[2]

[*Choose only one of the following unless instructing on lesser offenses.*]

(a) $200 or more, but less than $1,000.

(b) less than $200.

(5) Fourth, that in doing so the defendant broke, tore, cut, or otherwise damaged any part of the [motor vehicle / house trailer / trailer / semitrailer].

Use Note

[1] This is a specific intent crime.

When the issue is contested, the court may find it useful to expand on the definition of "permanently deprive." See the examples listed in the *Use Note* under M Crim JI 23.1, Larceny.

[2] The Fair Market Value Test, M Crim JI 22.1, should be given when applicable.

History

M Crim JI 23.6 (formerly CJI2d 23.6a (formerly CJI2d 23.7)) was CJI 23:4:02; added September, 1999, to reflect changes made by 1998 PA 311, eff. January 1, 1999.

Reference Guide

Statutes

MCL 750.110, .412.

Case Law

People v Kloosterman, 295 Mich App 68, 810 NW2d 917 (2011); *People v Nichols*, 69 Mich App 357, 244 NW2d 335 (1976); *People v Matusik*, 63 Mich App 347, 234 NW2d 517 (1975); *People v Chronister*, 44 Mich App 478, 205 NW2d 238 (1973).

M Crim JI 23.7 Breaking or Entering a Vehicle with Intent to Steal Property, Damaging the Vehicle

(1) The defendant is charged with the crime of breaking or entering a vehicle with the intent to steal property and damaging the vehicle. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that there was either a breaking or an entering of the [motor vehicle / house trailer / trailer / semitrailer]. For a breaking, it does not matter whether anything was actually broken; however, some force must have been used. The opening of a closed door or the pushing open of a vent window, for example, is enough force to count as a breaking. For an entry, it does not matter whether the defendant got [his / her] entire body inside. If the defendant put any part of [his / her] body into the [motor vehicle / house trailer / trailer / semitrailer], that is enough to count as an entry.

(3) Second, that in breaking or entering, the defendant damaged the [motor vehicle / house trailer / trailer / semitrailer].

(4) Third, that at the time of the breaking or entering, the defendant intended to permanently deprive the owner of some property. [It does not matter whether the defendant actually took the property.]*

Use Note

*This is a specific intent crime.

When the issue is contested, the court may find it useful to expand on the definition of "permanently deprive." See the examples listed in the *Use Note* under M Crim JI 23.1, Larceny.

History

M Crim JI 23.7 (formerly CJI2d 23.7) was CJI 23:4:03.

Reference Guide

Statutes

MCL 750.356a.

M Crim JI 23.8 Larceny (by Trick)

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

(2) First, that the defendant took someone else's property.

(3) Second, that the property was taken without consent.

(4) Third, that there was some movement of the property. [It does not matter whether the defendant actually kept the property.]

(5) Fourth, that at the time the property was taken, the defendant intended to permanently deprive the owner of the property.[1]

[(6) Or, if the property was given to the defendant for some limited, special, or temporary purpose but the owner[2] had no intention of actually giving the defendant ownership of it, and the defendant then took the property in a way that the defendant knew was not included in that purpose, that may be considered as taking the property without the owner's consent.][3]

[(7) Or, if you find that the defendant got the property by using some trick or pretense, you may consider whether the owner would have consented to the defendant taking the property if the owner had known the true nature of the act or transaction involved.][3]

[*Use (8) for felonies:*]

(8) Fifth, that the property had a fair market value of more than $100 at the time it was taken.[4]

[*Use (9) for misdemeanors:*]

(9) Fifth, that the property was worth something at the time it was taken.

Use Note

[1] This is a specific intent crime.

When the issue is contested, the court may find it useful to expand on the definition of "permanently deprive." See the examples listed in the *Use Note* under M Crim JI 23.1, Larceny.

[2] The complainant usually is, but need not be, the owner. Substitute other language as appropriate.

[3] Larceny by trick is not a crime separate from larceny. Give either (6) or (7), or both, as appropriate. See M Crim JI 23.9, Definition of Pretense.

[4] The Fair Market Value Test, M Crim JI 22.1, should be given when applicable.

History

M Crim JI 23.8 (formerly CJI2d 23.8) was CJI 23:5:01.

Reference Guide

Statutes

MCL 750.356.

Case Law

People v Martin, 116 Mich 446, 74 NW 653 (1898); *People v Shaw*, 57 Mich 403, 24 NW 121 (1885); *People v Styles*, 61 Mich App 532, 233 NW2d 70 (1975).

M Crim JI 23.9 Definition of Pretense

(1) A pretense is the use of a statement, writing, or any other device that is false [and / or] that could mislead the person it is presented to.

(2) A pretense is to knowingly:

[*Choose one or more of the following:*]

(a) make someone else believe something that is false;

(b) keep someone else from finding out important information about the property involved;

(c) [sell / transfer / mortgage] property while hiding a claim [or other legal obstacle] against it; [or]

[(d) promise to do something or have something done knowing that it is not really going to be done.]*

Use Note

*Use (d) only for larceny by trick offenses.

History

M Crim JI 23.9 was CJI 23:5:02, 23:7:02.

Reference Guide

Statutes

MCL 750.218.

Case Law

People v Larco, 331 Mich 420, 49 NW2d 358 (1951); *People v Bird*, 126 Mich 631, 86 NW 127 (1901); *People v Jacobs*, 35 Mich 36 (1876); *People v Clark*, 10 Mich 310 (1862); *People v Jones*, 126 Mich App 191, 197, 336 NW2d 889 (1983); *People v Wilson*, 122 Mich App 270, 332 NW2d 465 (1982); *People v Marks*, 12 Mich App 690, 163 NW2d 506 (1968).

M Crim JI 23.10 Larceny by Conversion [For Offenses Committed On or After January 1, 1999]

(1) The defendant is charged with the crime of larceny by conversion. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the property was voluntarily transferred to the defendant. [It does not matter whether the property was transferred legally.]

(3) Second, that the property had a fair market value[1] at the time it was transferred of:

[*Choose only one of the following unless instructing on lesser offenses:*]

(a) $20,000 or more.

(b) $1,000 or more, but less than $20,000.

(c) $200 or more, but less than $1,000.

(d) some amount less than $200.

(4) Third, that the defendant either hid the property or wrongfully deprived the owner[2] of the possession of it. Wrongfully depriving means using or keeping someone else's property without that person's permission.

(5) Fourth, that the defendant intended to defraud or cheat the owner out of the property permanently.[3]

(6) Fifth, that the act was done without the owner's consent.

[*Choose one or more of the following:*]

(7) If the property was given to the defendant for some limited, special, or temporary purpose but the owner had no intention of actually giving the defendant ownership of it, and the defendant then took the property in a way that the defendant knew was not included in that purpose, that may be considered taking the property without the owner's consent.

(8) If the property was given to the defendant because the owner had a relationship of trust with the defendant and the owner had no intention of actually giving the defendant ownership of the property, and the defendant then took the property in a way that the owner did not intend, that may be considered as taking the property without the owner's consent. A relationship of trust means any relationship that exists because of the defendant's position as a [*state position*].[4]

(9) If you find that the defendant got the property by using some trick or pretense, you may consider whether the owner would have consented to the defendant taking the property if the owner had known the true nature of the act or transaction involved.

Use Note

[1] The Fair Market Value Test, M Crim JI 22.1, should be given when applicable.

[2] The complainant usually is, but need not be, the owner. Substitute other language as appropriate.

[3] This is a specific intent crime.

When the issue is contested, the court may find it useful to expand on the definition of "permanently deprive." See the examples listed in the *Use Note* under M Crim JI 23.1, Larceny.

[4] Choose one of the following: [agent / servant / employee / trustee / bailee / custodian]. Define terms used where necessary. See chapter 22.

History

M Crim JI 23.10 (formerly CJI2d 23.10) was CJI 23:6:01; amended September, 1999.

Reference Guide

Statutes

MCL 750.362.

Case Law

Nelson & Witt v Texas Co, 256 Mich 65, 70, 239 NW 289 (1931); *People v Taugher*, 102 Mich 598, 61 NW 66 (1894); *People v Mason*, 247 Mich App 64, 634 NW2d 382 (2001); *People v O'Shea*, 149 Mich App 268, 275-276, 385 NW2d 768 (1986); *People v McIntosh*, 103 Mich App 11, 17, 302 NW2d 321 (1981); *People v Scott*, 72 Mich App 16, 248 NW2d 693 (1976); *People v Moore*, 43 Mich App 693, 696, 204 NW2d 737 (1972).

M Crim JI 23.11 False Pretenses

(1) The defendant is charged with the crime of obtaining [property / money] by false pretenses. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant used a pretense.[1]

(3) Second, that the defendant knew that the pretense was false at the time [he / she] used it.

(4) Third, that at the time [he / she] used the pretense, the defendant intended to defraud or cheat someone.

(5) Fourth, that another person relied on the defendant's pretense.[2]

(6) Fifth, that by relying on this pretense, this person suffered the loss of something of value.

(7) Sixth, that the amount lost had a fair market value[3] at the time it was taken of:

[*Choose only one of the following unless instructing on lesser offenses:*]

(a) $20,000 or more.

(b) $1,000 or more, but less than $20,000.

(c) $200 or more, but less than $1,000.

(d) some amount less than $200.

[*Use the following paragraph if applicable, MCL 750.218(6):*]

[(8)You may add together the values of the property taken in separate incidents if part of a scheme or course of conduct within a 12-month period when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

[1] Give M Crim JI 23.9, Definition of Pretense.

[2] See M Crim JI 23.12, Reliance on Representation.

[3] The Fair Market Value Test, M Crim JI 22.1, should be given when applicable.

History

M Crim JI 23.11 (formerly CJI2d 23.11) was CJI 23:7:01. Amended April, 2006.

Reference Guide

Statutes

MCL 750.218.

Case Law

In re People v Jory, 443 Mich 403, 413, 505 NW2d 228 (1993); *People v Christenson*, 412 Mich 81, 312 NW2d 618 (1981); *People v Lueth*, 253 Mich App 670, 680-681, 660 NW2d 322 (2002); *People v Reigle*, 223 Mich App 34, 37-38, 566 NW2d 21 (1997); *People v Peach*, 174 Mich App 419, 422-423, 437 NW2d 9 (1989); *People v Harajli*, 161 Mich App 399, 411 NW2d 765 (1987); *People v Jones*, 143 Mich App 775, 372 NW2d 657 (1985); *People v Wilson*, 107 Mich App 470, 473 n1, 309 NW2d 584 (1981); *People v McCoy*, 75 Mich App 164, 254 NW2d 829 (1977).

M Crim JI 23.12 Reliance on Representation

If [*name complainant*] made and relied more on [his / her] own investigation or an independent source than on what the defendant said, then [*name complainant*] cannot claim that the defendant misled [him / her] and you must find the defendant not guilty.

Use Note

Individual fact situations may call for separate instructions on reliance that are beyond the scope of this book.

History

M Crim JI 23.12 (formerly CJI2d 23.12) was CJI 23:7:03.

Reference Guide

Case Law

People v Gould, 156 Mich App 413, 402 NW2d 27 (1986); *People v Jones*, 143 Mich App 775, 372 NW2d 657 (1985); *People v Chappelle*, 114 Mich App 364, 319 NW2d 584 (1982); *People v Wilde*, 42 Mich App 514, 202 NW2d 542 (1972).

M Crim JI 23.13 Retail Fraud—Theft

(1) The defendant is charged with retail fraud in the [first / second / third] degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant took some property that the store offered for sale.

(3) Second, that the defendant moved the property. Any movement is enough. It does not matter whether the defendant actually got the property past the cashier or out of the store.

(4) Third, that the defendant intended to steal the property.[1] By "intended to steal," I mean that the defendant intended to permanently take the property from the store without the store's consent.[2]

(5) Fourth, that this happened either inside the store or in the immediate area around the store, while the store was open to the public.

(6) Fifth, that the price of the property was:

[*Choose only one of the following unless instructing on lesser offenses:*]

(a) $1,000 or more.

(b) $200 or more, but less than $1,000.

(c) some amount less than $200.

[*Use the following paragraph only if applicable:*]

(7) [You may add together the prices of property taken in separate incidents if part of a scheme or course of conduct within a 12-month period when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

This instruction is designed for use for first-, second-, and third-degree retail fraud cases involving alleged theft of property.

[1] The statutory language makes this a specific intent crime.

[2] When the issue is contested, the court may find it useful to expand on the definition of *permanently deprive*. See the definitions listed in the Use Note under M Crim JI 23.1, Larceny.

History

M Crim JI 23.13 (formerly CJI2d 23.14) was CJI 23:8:01; amended September, 1999, to reflect changes made by 1998 PA 311, eff. January 1, 1999.

Reference Guide

Statutes

MCL 750.356c, .356d.

Case Law

People v Munn, 198 Mich App 726, 499 NW2d 459 (1993).

M Crim JI 23.14 Retail Fraud—Price Switching

(1) The defendant is charged with retail fraud in the [first / second / third] degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant altered or switched a price tag [or in some other way misrepresented the price of property].

(3) Second, that the defendant did this intending either to pay less than the actual price for the property or not to pay for the property at all.*

(4) Third, that this happened either inside the store or in the immediate area around the store, while the store was open to the public.

(5) Fourth, that the difference between the sale price and the price the defendant intended to pay was:

[*Choose only one of the following unless instructing on lesser offenses.*]

(a) $1,000 or more.

(b) $200 or more, but less than $1,000.

(c) some amount less than $200.

[*Use the following paragraph only if applicable:*]

(6) [You may add together the amounts unlawfully taken in separate incidents if part of a scheme or course of conduct within a 12-month period when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

This instruction is designed for use for first-, second-, and third-degree retail fraud cases involving alleged price switching.

*The statutory language makes this a specific intent crime.

History

M Crim JI 23.14 (formerly CJI2d 23.14) was CJI 23:8:02; amended September, 1999, to reflect changes made by 1998 PA 311, eff. January 1, 1999.

Reference Guide

Statutes

MCL 750.356c, .356d.

M Crim JI 23.15 Retail Fraud—False Exchange

(1) The defendant is charged with retail fraud in the [first / second / third] degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant exchanged or tried to exchange property that had not been paid for and that belonged to the store. It does not matter whether the defendant tried to exchange it for money or other property.

(3) Second, that the defendant did this with the intent to defraud or cheat the store.*

(4) Third, that this happened during store hours, either inside the store or in the immediate area around the store.

(5) Fourth, that the [amount of money / value of the property] that the defendant obtained or attempted to obtain was:

[*Choose only one of the following unless instructing on lesser offenses:*]

(a) $1,000 or more.

(b) $200 or more, but less than $1,000.

(c) some amount less than $200.

[*Use the following paragraph only if applicable:*]

(6) [You may add together amounts obtained or attempted to be obtained in separate incidents if part of a scheme or course of conduct within a 12-month period when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

This instruction is designed for use for first-, second-, and third-degree retail fraud cases involving alleged false exchange.

*The statutory language makes this a specific intent crime.

History

M Crim JI 23.15 (formerly CJI2d 23.15) was CJI 23:8:03; amended September, 1999, to reflect changes made by 1998 PA 311, eff. January 1, 1999.

Reference Guide

Statutes

MCL 750.356c, .356d.

M Crim JI 23.16 Retail Fraud—Prior Convictions [*deleted*]

Instruction deleted. The factual question of whether the defendant has previously been convicted of similar offenses so as to aggravate the level of retail fraud charges is now *for the court* as part of sentencing pursuant to MCL 750.356c(4), .356d(7).

M Crim JI 23.17 Defrauding a Vulnerable Adult

(1) The defendant is charged with obtaining or using the money or property of a vulnerable adult through fraud or deceit. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [obtained or used / attempted to obtain or use] the [money / property] of [*name complainant*].

(3) Second, that the defendant used [fraud / deceit / misrepresentation / coercion / unjust enrichment] to [obtain or use / attempt to obtain or use] the [money / property].

(4) Third, that, at the time, [*name complainant*] was a vulnerable adult.[1] This means that [*name complainant*] was:

[*Choose appropriate designation and applicable provisions:*]

(a) 18 years old or older and was [aged / developmentally disabled / mentally ill / physically disabled][2] such that [he / she] required supervision or personal care or [he / she] lacked personal and social skills required to live independently.

(b) a person placed in an adult foster care home by a state licensed agency.

(c) a person 18 years old or older who is suspected of being abused, neglected, or exploited.

[*Use the following where appropriate if (a) applies:*]

A person is developmentally disabled if [he /she] has a severe, long-lasting condition that includes all of the following:

(i) The condition is a result of a mental impairment or a physical impairment, or a combination of mental and physical impairments; and

(ii) Symptoms of the impairment[s] appeared before [he / she] was 22 years old; and

(iii) The impairment[s] [is / are] likely to continue indefinitely; and

(iv) the impairment[s] result[s] in substantial limitations in 3 or more of the following abilities: [self-care / understanding and expressing language / learning / mobility / self-direction / capacity for independent living / economic self-sufficiency]; and

(v) The impairment[s] reflect[s] [his / her] need for any form of special care, treatment or other services for life or for an extended period of time, and are individually planned and coordinated.

A person is mentally ill if [he / she] has a substantial disorder of thought or mood that significantly impairs [his / her] judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

(4) Fourth, that the defendant knew or should have known that [*name complainant*] was a vulnerable adult.

(5) Fifth, that the [amount of money (taken / attempted to be taken was / the fair market value of the property (taken / attempted to be taken was].

[*Choose only one of the following unless instructing on lesser offenses:*]

(a)$100,000 or more.

(b)$50,000 or more but less than $100,000.

(c)$20,000 or more but less than $50,000.

(d)$1,000 or more but less than $20,000.

(e)$200 or more but less than $1,000.

(f)some amount less than $200.

[*Use the following paragraph only if applicable:*]

(7) [You may add together all money or property obtained or used or attempted to be obtained or used [in a twelve-month period[3]] when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

(8) Sixth, that the property was taken for the direct benefit of the defendant, or to indirectly benefit [him / her]. An indirect benefit means that the defendant gained some advantage or value other than possession or use of the money or property, itself.

Use Note

[1] The definition of *vulnerable adult* is found in MCL 750.145m(u), whether or not a court has determined that the person is incapacitated. *See* MCL 750.174a(15)(c).

[2] The terms "developmental disability" and "mental illness" are referenced in MCL 750.145m(d) and (*i*), respectively. *Developmental disability* is defined in MCL 330.1100a(25); *mental illness* is defined in MCL 330.1400(g).

[3] This time limitation only applies if the defendant's scheme or conduct was directed against more than one person. MCL 750.174a(8).

Staff Comment

The statute does not define the terms *fraud, deceit, misrepresentation, coercion,* or *unjust enrichment*. Where the jury has a question about the meaning of terms, a party requests a definition, or the court decides that providing a definition is appropriate, the Committee suggests the following (but the court may opt to use other definitions). *Fraud* means using falsehoods, trickery or concealment to mislead someone in order to cause or induce that person to perform an act or not to

act. *Deceit* means doing something to give a false impression in order to cause or induce someone to perform an act or not to act. *Misrepresentation* means a false or misleading statement. *Coercion* means inducing another person to act against his or her will by the use of physical force, intimidation, threats or some other form of pressure. *Unjust enrichment* requires the receipt of a benefit by the defendant from the victim and an inequity resulting to the victim because of the retention of the benefit by the defendant. *Karaus v Bank of New York Mellon*, 300 Mich App 9 (2012).

History

M Crim JI 23.17 was adopted August, 2016.

Reference Guide

Statutes

MCL 750.174a

MCL 750.145m

MCL 330.1100a

MCL 330.1400(g)

CHAPTER 24 *Automobile Theft*

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M Crim JI 24.2 Use of an Automobile Without Authority and Without Intent to Steal..... 24-3

M Crim JI 24.3 Employee's Use of an Automobile Without Authority 24-4

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M Crim JI 24.5 Tampering with a Motor Vehicle 24-6

M Crim JI 24.6 Possession of a Stolen Automobile with Intent to Pass Title..... 24-7

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M Crim JI 24.8 Altering Identification of a Motor Vehicle with Intent to Mislead 24-9

M Crim JI 24.9 Lesser Included Offense—Altering Identification of a Motor Vehicle Without Intent to Mislead 24-10

M Crim JI 24.1 Unlawfully Driving Away an Automobile

(1) The defendant is charged with the crime of unlawfully driving away a motor vehicle. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the vehicle belonged to someone else.

(3) Second, that the defendant took possession of the vehicle and [drove / took] it away.

(4) Third, that these acts were both done [without authority / without the owner's permission].

(5) Fourth, that the defendant intended to take possession of the vehicle and [drive / take] it away. It does not matter whether the defendant intended to keep the vehicle.*

[(6) Anyone who assists in taking possession of a vehicle or assists in driving or taking away a vehicle knowing that the vehicle was unlawfully possessed is also guilty of this crime if the assistance was given with the intention of helping another commit this crime.]

Use Note

To distinguish unlawfully taking and using from UDAA, see M Crim JI 24.4.

*This is a specific intent crime.

History

M Crim JI 24.1 (formerly CJI2d 24.1) was CJI 24:1:01, 24:1:02.

Reference Guide

Statutes

MCL 750.412, .413.

Case Law

People v Hendricks, 446 Mich 435, 521 NW2d 546 (1994); *People v Dutra*, 155 Mich App 681, 400 NW2d 619 (1986); *People v Harris*, 82 Mich App 135, 266 NW2d 477 (1978); *People v Shipp*, 68 Mich App 452, 243 NW2d 18 (1976); *People v Lerma*, 66 Mich App 566, 239 NW2d 424 (1976); *People v Andrews*, 45 Mich App 354, 357, 206 NW2d 517 (1973); *People v Davis*, 36 Mich App 164, 193 NW2d 393 (1971); *People v Snake*, 22 Mich App 79, 82, 176 NW2d 726 (1970).

M Crim JI 24.2 Use of an Automobile Without Authority and Without Intent to Steal

(1) [The defendant is charged with the crime of / You may also consider the lesser charge of] using a motor vehicle without authority. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the vehicle belonged to someone else.

(3) Second, that the defendant used the vehicle.

(4) Third, that the defendant did this without authority.

(5) Fourth, that the defendant intended to use the vehicle, knowing that [he / she] did not have the authority to do so.

[(6) Anyone who assists in using a vehicle is also guilty of this crime if (he / she) gave the assistance knowing that the person who was taking or using it did not have the authority to do so.]

Use Note

To distinguish unlawfully taking and using from UDAA, see M Crim JI 24.4.

History

M Crim JI 24.2 (formerly CJI2d 24.2) was CJI 24:2:01, 24:2:02.

Reference Guide

Statutes

MCL 750.414.

Case Law

People v Laur, 128 Mich App 453, 340 NW2d 655 (1983); *People v Hayward*, 127 Mich App 50, 60-61, 338 NW2d 549 (1983).

M Crim JI 24.3 Employee's Use of an Automobile Without Authority

Any employee who has authority to drive someone else's vehicle is guilty of this crime only if [he / she] drives or uses the vehicle without the owner's permission and in a way the employee knew was unauthorized.

History

M Crim JI 24.3 (formerly CJI2d 24.3) was CJI 24:2:03.

Reference Guide

Statutes

MCL 750.414.

M Crim JI 24.4 Distinction Between UDAA and Use of an Automobile Without Authority

The difference between these two offenses is this: to be guilty of unlawfully driving away a vehicle, the defendant must have taken possession of the vehicle unlawfully in the first place. Unlawful use of a vehicle, on the other hand, is a lesser offense that applies if the defendant got possession of the vehicle lawfully in the first place but then used it in a way [he / she] knew was unauthorized.

History

M Crim JI 24.4 (formerly CJI2d 24.4) was CJI 24:2:04.

Reference Guide

Case Law

People v Hayward, 127 Mich App 50, 61, 338 NW2d 549 (1983).

M Crim JI 24.5 Tampering with a Motor Vehicle

(1) [The defendant is charged with the crime of / You may also consider the lesser charge of] tampering with a motor vehicle. To prove this charge, the prosecutor must prove beyond a reasonable doubt that without the owner's permission, the defendant:

[*Choose one or more of the following:*]

(2) intentionally damaged a part of the vehicle.

(3) started the vehicle [or caused it to be started] or maliciously shifted the gears or the position of the ignition.

(4) released the brake of the vehicle while it was stopped, making it move, or released the brake, intending to damage the vehicle.

History

CJI2d 24.5 (formerly CJI2d 24.5) was CJI 24:3:01-24:3:03.

Reference Guide

Statutes

MCL 750.416.

M Crim JI 24.6 Possession of a Stolen Automobile with Intent to Pass Title

(1) The defendant is charged with the crime of knowingly possessing a stolen motor vehicle with intent to transfer title. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the vehicle was stolen.

(3) Second, that the defendant [received / transferred] possession of the vehicle.

(4) Third, that at the time the defendant [received / transferred] possession of the vehicle, [he / she] knew or had reason to believe that the vehicle was stolen.

(5) Fourth, that this was done with the intent to [receive / transfer] title to the stolen vehicle.*

Use Note

Depending on the circumstances, either M Crim JI 24.6 or 24.7, or both, may be given.

*This is a specific intent crime.

History

M Crim JI 24.6 (formerly CJI2d 24.6) was CJI 24:4:01.

Reference Guide

Statutes

MCL 257.33, .254.

Case Law

People v Morton, 384 Mich 38, 40-41, 179 NW2d 379 (1970); *People v Ross*, 204 Mich App 310, 514 NW2d 253 (1994); *People v Harbour*, 76 Mich App 552, 257 NW2d 165 (1977).

M Crim JI 24.7 False Statement About Title to a Motor Vehicle

(1) The defendant is charged with the crime of making a false statement about the title to a motor vehicle. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant applied for a [certificate / assignment] of title to a motor vehicle.

(3) Second, that in doing this, the defendant made a false statement of a material fact. A material fact is an essential matter required for a valid transfer.

(4) Third, that the defendant knew the statement was false when [he / she] made it.

Use Note

Depending on the circumstances, either M Crim JI 24.6 or 24.7, or both, may be given.

History

M Crim JI 24.7 (formerly CJI2d 24.7) was CJI 24:4:02 and was amended by the committee in September, 1995 to add the requirement of materiality as an element to be decided by the jury. See *United States v Gaudin*, 515 US 506 (1995), holding that the federal trial court's refusal to submit the issue of materiality of false statements made to HUD abridged the defendant's right to trial by jury on each element of the offense charged.

Reference Guide

Statutes

MCL 257.254.

Case Law

United States v Gaudin, 515 US 506 (1995); *People v Jensen*, 162 Mich App 171, 181, 412 NW2d 681 (1987); *People v Noble*, 152 Mich App 319, 326, 393 NW2d 619 (1986); *People v Ciatti*, 17 Mich App 4, 168 NW2d 902 (1969).

M Crim JI 24.8 Altering Identification of a Motor Vehicle with Intent to Mislead

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

(2) First, that the defendant hid or misrepresented the identity of a motor vehicle [or of a mechanical device].

[*Choose (3) or (4):*]

(3) Second, that the defendant did this by removing or damaging the [manufacturer's serial number / engine or motor number] on the motor vehicle.

(4) Second, that the defendant did this by replacing the part of the vehicle [or mechanical device] that had the [manufacturer's serial number / engine or motor number] on it with a new part that did not have the correct number on it.

(5) Third, that [he / she] did this with the intent of misleading someone else about the identity of the vehicle.*

Use Note

*This is a specific intent crime.

History

M Crim JI 24.8 (formerly CJI2d 24.8) was CJI 24:5:01.

Reference Guide

Statutes

MCL 750.415.

M Crim JI 24.9 Lesser Included Offense—Altering Identification of a Motor Vehicle Without Intent to Mislead

If you find that the defendant did the acts I have mentioned, but that [he / she] did them without intending to mislead anyone, you may find [him / her] guilty of the lesser offense of altering the identification of a motor vehicle without intent to mislead.

History

M Crim JI 24.9 (formerly CJI2d 24.9) was CJI 24:5:02.

Reference Guide

Statutes

MCL 750.415(1).

CHAPTER 25 *Breaking and Entering*

M Crim JI 25.1 Breaking and Entering 25-2
M Crim JI 25.2 Breaking and Entering Occupied Dwelling 25-4
M Crim JI 25.2a Home Invasion, First Degree—Breaking and Entering 25-5
M Crim JI 25.2b Home Invasion, Second Degree—Breaking and Entering 25-7
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M Crim JI 25.2f Home Invasion, Third Degree—Violation of Order to Protect Person 25-11
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M Crim JI 25.5 Possession of Burglar's Tools 25-14
M Crim JI 25.6 Occupying a Dwelling Without Consent (Squatting) 25-15

M Crim JI 25.1 Breaking and Entering

(1) The defendant is charged with the crime of breaking and entering. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant broke into a building.[1] It does not matter whether anything was actually broken; however, some force must have been used. Opening a door, raising a window, and taking off a screen are all examples of enough force to count as a breaking.[2] Entering a building through an already open door or window without using any force does not count as a breaking.

(3) Second, that the defendant entered the building. It does not matter whether the defendant got [his / her] entire body inside. If the defendant put any part of [his / her] body into the building after the breaking, that is enough to count as an entry.

(4) Third, that when the defendant broke and entered the building, [he / she] intended[3] to commit [*state offense*].[4]

Use Note

[1] Alternatively, specify type of building as found in MCL 750.110: structure / boat / ship / shipping container / railroad car / tent / hotel / office / store / shop / warehouse / barn / granary / factory.

[2] Opening further a partly open door or window is enough to establish a breaking. *People v Finney*, 113 Mich App 638, 318 NW2d 519 (1982).

[3] This is a specific intent crime.

[4] The elements of the offense intended should be given.

History

M Crim JI 25.1 (formerly CJI2d 25.1) was CJI 25:1:01.

Reference Guide

Statutes

MCL 750.110, .111.

Case Law

People v Jacques, 456 Mich 352, 572 NW2d 195 (1998); *People v Westerberg*, 274 Mich 647, 265 NW 489 (1936); *People v Toole*, 227 Mich App 656, 576 NW2d 441 (1998); *People v Uhl*, 169 Mich App 217, 425 NW2d 519 (1988); *People v Cannoy*, 136 Mich App 451, 357 NW2d 67 (1984); *People v Wise*, 134 Mich App 82, 351 NW2d 255 (1984); *People v*

Cook, 131 Mich App 796, 347 NW2d 720 (1984); *People v Noel*, 123 Mich App 478, 332 NW2d 578 (1983); *People v Finney*, 113 Mich App 638, 318 NW2d 519 (1982); *People v Gillman*, 66 Mich App 419, 239 NW2d 396 (1976); *People v Erskin*, 16 Mich App 645, 168 NW2d 440 (1969).

M Crim JI 25.2 Breaking and Entering Occupied Dwelling

(1) The defendant is charged with the crime of breaking and entering an occupied dwelling. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant broke into a building. It does not matter whether anything was actually broken; however, some force must have been used. Opening a door, raising a window, and taking off a screen are all examples of enough force to count as a breaking.[1] Entering a building through an already open door or window without using any force does not count as a breaking.

(3) Second, that the defendant entered the building. It does not matter whether the defendant got [his / her] entire body inside. If the defendant put any part of [his / her] body into the building after the breaking, that is enough to count as an entry.

(4) Third, that when the defendant broke and entered the building, [he / she] intended[2] to commit [*state offense*].[3]

(5) Fourth, the building involved must have been occupied as a place to live at the time of the breaking and entering. It does not matter whether the people who lived there were at home at the time.

Use Note

[1] Opening further a partly open door or window is enough to establish a breaking. *People v Finney,* 113 Mich App 638, 318 NW2d 519 (1982).

[2] This is a specific intent crime.

[3] The elements of the offense intended should be given.

History

M Crim JI 25.2 (formerly CJI2d 25.2) was CJI 25:2:01.

Reference Guide

Statutes

MCL 710.110a.

Case Law

People v Hider, 135 Mich App 147, 351 NW2d 905 (1984); *People v Noel*, 123 Mich App 478, 332 NW2d 578 (1983); *People v Finney*, 113 Mich App 638, 318 NW2d 519 (1982); *People v Winhoven*, 65 Mich App 522, 237 NW2d 540 (1975).

M Crim JI 25.2a Home Invasion, First Degree—Breaking and Entering

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

(2) First, that the defendant broke into a dwelling. It does not matter whether anything was actually broken; however, some force must have been used. Opening a door, raising a window, and taking off a screen are all examples of enough force to count as a breaking. Entering a dwelling through an already open door or window without using any force does not count as a breaking.

(3) Second, that the defendant entered the dwelling. It does not matter whether the defendant got [his / her] entire body inside. If the defendant put any part of [his / her] body into the dwelling after the breaking, that is enough to count as an entry.

[*Choose (4)(a) or (4)(b) as appropriate.*]

(4) Third,

(a) that when the defendant broke and entered the dwelling, [his / her] intended[2] to commit [*state offense*][3]

(b) that when the defendant entered, was present in, or was leaving the dwelling, [he/she] committed the offense of [*state offense*][3]

(5) Fourth, that when the defendant entered, was present in, or was leaving the dwelling, either of the following circumstances existed:

(a) [he/she] was armed with a dangerous weapon, and/or

(b) another person was lawfully present in the dwelling.

Use Notes

[1] This instruction is intended to specify the elements of home invasion in the first degree committed by means of breaking and entering, MCL 750.110a. M Crim JI 25.2c is a separate instruction intended to apply when first-degree home invasion is committed by means of entering without permission. Home invasion in the first degree is a 20-year felony. The jury may return guilty verdicts based on multiple theories, but the trial court may impose only one judgment of sentence for home invasion in the first degree. *People v Baker*, *288 Mich App 378*, 792 NW2d 420 (2010). Home invasion in the third degree is a lesser included offense of home invasion in the first degree only if it is supported by the evidence. *People v Wilder*, 485 Mich 35, 780 NW2d 265 (2010).

[2] This is a specific intent crime.

[3] The elements of the offense intended should be given.

History

M Crim JI 25.2a (formerly CJI2d 25.2a) was adopted by the committee in March, 1995 to reflect the elements of the new offense of home invasion created by 1994 PA 270, MCL 750.110a, effective October 1, 1994. This instruction was last amended by the committee in October, 2002.

Reference Guide

Statutes

MCL 750.110a.

Case Law

People v Wilder, 485 Mich 35, 780 NW2d 265 (2010); *People v Baker*, 288 Mich App 378, 792 NW2d 420 (2010); *People v Sands*, 261 Mich App 158, 680 NW2d 500 (2004).

M Crim JI 25.2b Home Invasion, Second Degree—Breaking and Entering

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

(2) First, that the defendant broke into a dwelling. It does not matter whether anything was actually broken; however, some force must have been used. Opening a door, raising a window, and taking off a screen are all examples of enough force to count as a breaking.

(3) Second, that the defendant entered the dwelling. It does not matter whether the defendant got [his / her] entire body inside. If the defendant put any part of [his / her] body into the dwelling after the breaking, that is enough to count as an entry.

[*Choose (4)(a) or (4)(b) as appropriate.*]

(4) Third,

(a) that when the defendant broke and entered the dwelling, [he / she] intended[2] to commit [*state offense*][3]

(b) that when the defendant entered, was present in, or was leaving the dwelling, [he / she] committed the offense of [*state offense*][3]

Use Notes

[1] This instruction is intended to specify the elements of home invasion in the second degree committed by means of breaking and entering, MCL 750.110a. M Crim JI 25.2d is a separate instruction intended to apply when second-degree home invasion is committed by means of entering without permission. Home invasion in the second degree is a 15-year felony.

[2] This is a specific intent crime.

[3] The elements of the offense intended should be given.

History

M Crim JI 25.2b (formerly CJI2d 25.2b) was adopted by the committee in March, 1995 to reflect the elements of the new offense of home invasion created by 1994 PA 270, MCL 750.110a, effective October 1, 1994. This instruction was last amended by the committee in October, 2002.

Reference Guide

Statutes

MCL 750.110a.

M Crim JI 25.2c Home Invasion, First Degree—Entering Without Permission

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

(2) First, that the defendant entered a dwelling without permission. It does not matter whether the defendant got [his / her] entire body inside. If the defendant put any part of [his / her] body into the dwelling without permission, that is enough to count as an entry.

[*Choose (3)(a) or (3)(b) as appropriate.*]

(3) Second,

(a) that when the defendant entered the dwelling, [he / she] intended[2] to commit [*state offense*][3]

(b) that when the defendant entered, was present in, or was leaving the dwelling, [he / she] committed the offense of [*state offense*][3]

(4) Third, that when the defendant entered, was present in, or was leaving the dwelling, either of the following circumstances existed:

(a) [he / she] was armed with a dangerous weapon, and / or

(b) another person was lawfully present in the dwelling.

Use Notes

[1] This instruction is intended to specify the elements of home invasion in the first degree committed by means of entering without permission, MCL 750.110a. M Crim JI 25.2a is a separate instruction intended to apply when first-degree home invasion is committed by means of breaking and entering. Home invasion in the first degree is a 20-year felony.

[2] This is a specific intent crime.

[3] The elements of the offense intended should be given.

History

M Crim JI 25.2c (formerly CJI2d 25.2c) was adopted by the committee in March, 1995 to reflect the elements of the new offense of home invasion created by 1994 PA 270, MCL 750.110a, effective October 1, 1994. This instruction was last amended by the committee in October, 2002.

Reference Guide

Statutes

MCL 750.110a.

M Crim JI 25.2d Home Invasion, Second Degree—Entering Without Permission

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

(2) First, that the defendant entered a dwelling without permission. It does not matter whether the defendant got [his / her] entire body inside. If the defendant put any part of [his / her] body into the dwelling without permission, that is enough to count as an entry.

[*Choose (3)(a) or (3)(b) as appropriate.*]

(3) Second,

(a) that when the defendant entered the dwelling, [he / she] intended[2] to commit [*state offense*][3]

(b) that when the defendant entered, was present in, or was leaving the dwelling, [he / she] committed the offense of [*state offense*][3]

Use Notes

[1] This instruction is intended to specify the elements of home invasion in the second degree committed by means of entering without permission, MCL 750.110a. M Crim JI 25.2b is a separate instruction intended to apply when second-degree home invasion is committed by means of breaking and entering. Home invasion in the second degree is a 15-year felony.

[2] This is a specific intent crime.

[3] The elements of the offense intended should be given.

History

M Crim JI 25.2d (formerly CJI2d 25.2d) was adopted by the committee in March, 1995 to reflect the elements of the new offense of home invasion created by 1994 PA 270, MCL 750.110a, effective October 1, 1994. This instruction was last amended by the committee in October, 2002.

Reference Guide

Statutes

MCL 750.110a.

M Crim JI 25.2e Home Invasion, Third Degree—Committing or Intending to Commit Misdemeanor

(1) [The defendant is charged with / You may also consider the lesser offense of] home invasion in the third degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [broke and entered / entered without permission] a dwelling. [It does not matter whether anything was actually broken; however, some force must have been used. Opening a door, raising a window, and taking off a screen are all examples of enough force to count as a breaking.] [For an entry, it does not matter whether the defendant got (his / her) entire body inside. If the defendant put any part of (his / her) body into the dwelling, that is enough to count as an entry.]

[*Choose (3)(a) or (3)(b) as appropriate:*]

(3) Second,

(a) that at the time of the [breaking and entering / entering without permission] the defendant intended to commit a misdemeanor.[1]

(b) that when the defendant entered, was present in, or was leaving the dwelling, [he / she] committed a misdemeanor.[2]

Use Notes

[1] This theory is a specific intent crime.

[2] The elements of the misdemeanor intended or committed should be given.

History

M Crim JI 25.2e (formerly CJI2d 25.2e) was adopted by the committee in September, 1999, to specify the elements of the offense created by 1999 PA 44, MCL 750.110a, effective October 1, 1999.

Reference Guide

Statutes

MCL 750.110a.

M Crim JI 25.2f Home Invasion, Third Degree—Violation of Order to Protect Person

(1) [The defendant is charged with / You may also consider the lesser offense of] home invasion in the third degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [broke and entered / entered without permission] a dwelling. [It does not matter whether anything was actually broken; however, some force must have been used. Opening a door, raising a window, and taking off a screen are all examples of enough force to count as a breaking.] [For an entry, it does not matter whether the defendant got (his / her) entire body inside. If the defendant put any part of (his / her) body into the dwelling, that is enough to count as an entry.]

(3) Second, that when the defendant entered, was present in, or was leaving the dwelling, [he / she] violated a term or condition of [probation / parole / a personal protection order / a bond or pretrial release].

(4) Third, that the term or condition the defendant violated was ordered to protect a named person or persons.

History

M Crim JI 25.2f (formerly CJI2d 25.2f) was adopted by the committee in September, 1999, to specify the elements of the offense created by 1999 PA 44, MCL 750.110a, effective October 1, 1999.

Reference Guide

Statutes

MCL 750.110a.

M Crim JI 25.3 Entering Without Breaking

(1) [The defendant is charged with the crime of / You may also consider the lesser charge of][1] entering without breaking. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant entered a building[2] [without breaking]. It does not matter whether the defendant got [his / her] entire body inside. If the defendant put any part of [his / her] body into the building, that is enough to count as an entry.

(3) Second, that when the defendant entered the building, [he / she] intended[3] to commit [*state offense*].[4]

Use Note

[1] Use when instructing on the crime as a lesser included offense.

[2] Alternatively, specify type of building. See MCL 750.111.

[3] This is a specific intent crime.

[4] The elements of the offense intended should be given.

History

M Crim JI 25.3 (formerly CJI2d 25.3) was CJI 25:3:01.

Reference Guide

Statutes

MCL 750.111.

Case Law

People v Jacques, 456 Mich 352, 572 NW2d 195 (1998); *People v Williams*, 368 Mich 494, 497-498, 118 NW2d 391 (1962); *People v Heft*, 299 Mich App 69, 829 NW2d 266 (2012); *People v Matusik*, 63 Mich App 347, 350 n2, 234 NW2d 517 (1975).

M Crim JI 25.4 Entering Without Owner's Permission

(1) [The defendant is charged with the crime of / You may also consider the lesser charge of] entering a building without the owner's permission. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant entered a building.* It does not matter whether the defendant got [his / her] entire body inside. If the defendant put any part of [his / her] body into the building, that is enough to count as an entry.

(3) Second, that the defendant did this without first getting permission to enter from someone who had authority to give permission.

Use Note

*Alternatively, specify type of building. See MCL 750.115.

History

M Crim JI 25.4 (formerly CJI2d 25.4) was CJI 25:4:01.

Reference Guide

Statutes

MCL 750.115.

Case Law

People v Hardiman, 132 Mich App 382, 347 NW2d 460 (1984); *People v Coffey*, 61 Mich App 110, 119, 232 NW2d 320 (1975).

M Crim JI 25.5 Possession of Burglar's Tools

(1) The defendant is charged with the crime of possession of burglary tools. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the instruments involved were burglary tools. A burglary tool is any tool or instrument [or chemical, explosive, or other substance][1] adapted and designed for breaking and entering. "Adapted and designed" means that the tools are not only capable of being used for a breaking and entering but are also designed or expressly planned to be used for this purpose.

(3) Second, that the defendant knowingly possessed burglary tools.

(4) Third, that when [he / she] possessed the tools, [he / she] intended[2] to use them to break and enter a _____.[3]

Use Note

[1] Use bracketed material if the tools alleged include an explosive or chemical.

[2] This is a specific intent crime.

[3] The statute lists "building, room, vault, safe or other depository." See MCL 750.116.

In *People v Smith*, 36 Mich App 180, 193 NW2d 397 (1971), the court interpreted the phrase *other depository* to include a car trunk, even though the phrase predated cars. In *People v Osby*, 291 Mich App 412, 804 NW2d 903 (2011), the court of appeals expanded the concept and held that the term *depository* is a catch-all term that includes motor vehicles.

History

M Crim JI 25.5 (formerly CJI2d 25.5) was CJI 25:5:01.

Reference Guide

Statutes

MCL 750.116.

Case Law

People v Dorrington, 221 Mich 571, 191 NW 831 (1923); *People v Osby*, 291 Mich App 412, 804 NW2d 903 (2011); *People v Gross*, 118 Mich App 161, 324 NW2d 557 (1982); *People v Rigsby*, 92 Mich App 95, 284 NW2d 499 (1979); *People v Ross*, 39 Mich App 697, 198 NW2d 439 (1972); *People v Smith*, 36 Mich App 180, 193 NW2d 397 (1971).

M Crim JI 25.6 Occupying a Dwelling Without Consent (Squatting)

(1) The defendant is charged with occupying a dwelling without consent. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant occupied a one-family dwelling, or at least one unit of a two-family dwelling. A dwelling is a building designed as a place for people to live.

(3) Second, that the dwelling was owned by [*name complainant*].

(4) Third, that the defendant did not have [*name complainant*]'s consent to occupy the dwelling.

(5) Fourth, that the defendant occupied the dwelling without an agreement for payment of money to [*name complainant*] or for an exchange of something else of value with [*name complainant*] during the time that the defendant occupied the dwelling.

[*Use the following paragraph where there is evidence that the defendant was a guest or family member under MCL 750.553(2):*]

(6) [The defendant is not guilty if [he / she] is a guest or family member of [*name complainant*] or of a tenant.]

Use Note

"'[O]wner' means the owner, lessor, or licensor or an agent thereof." MCL 600.2918(9), which was tie-barred to passage of the statute that applies here, MCL 750.553.

History

Adopted January 2016.

Reference Guide

Statutes

MCL 750.553; 600.2918(9).

CHAPTER 26

Receiving or Concealing Stolen Property

M Crim JI 26.1 Receiving and Concealing Stolen Property 26-2

M Crim JI 26.2 Definitions of Buy, Receive, Possess, and Conceal 26-4

M Crim JI 26.3 Knowledge by Defendant That Property Was Stolen 26-5

M Crim JI 26.4 No Obligation of State to Prove Conviction for Theft 26-6

M Crim JI 26.5 Honest Buying or Receiving [deleted] 26-7

M Crim JI 26.6 Dealer or Collector 26-8

M Crim JI 26.1 Receiving and Concealing Stolen Property

(1) [The defendant is charged with the crime of / You may also consider the lesser charge of] knowingly [buying / receiving / possessing / concealing / aiding in the concealment of] stolen[1] property. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that some property was stolen [or explicitly represented to the defendant as being stolen / embezzled / converted property].[1]

(3) Second, that the defendant [bought / received / possessed / concealed / aided in the concealment of] that property.[2]

(4) Third, that the defendant knew or had reason to know or reason to believe that the property was stolen when [he / she] [bought / received / possessed / concealed / aided in the concealment of] it.[3]

[*Choose (5) or (6) as applicable:*]

(5) Fourth, that the property was a motor vehicle.

(6) Fourth, that the property had a fair market value when it was [bought / received / possessed / concealed] of:[4]

[*Choose only one of the following unless instructing on lesser offenses:*]

(a) $20,000 or more.

(b) $1,000 or more, but less than $20,000.

(c) $200 or more, but less than $1,000.

(d) some amount less than $200.

[*Use the following paragraph only if applicable:*]

(7) [You may add together the value of property [bought / received / possessed / concealed] in separate incidents if part of a scheme or course of conduct within a 12-month period when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

[1] Where appropriate, substitute “embezzled” or “converted” for “stolen.”

[2] The definition of buy, receive, possess, or conceal (whichever is alleged), CJI2d 26.2, should be given where appropriate.

[3] If the crime is receiving or concealing a stolen firearm, MCL 750.535b, Michigan law requires actual notice rather

than constructive notice that the firearm was stolen. *People v Granderson*, No 297838, 2011 Mich App LEXIS 1527 (Aug 25, 2011) (unpublished).

[4] The Fair Market Value Test, CJI2d 22.1, should be given where applicable.

History

M Crim JI 26.1 (formerly CJI2d 26.1) was CJI 26:1:01; amended September, 1999, to reflect changes made by 1998 PA 311, eff. January 1, 1999; amended May, 2007, to reflect changes made to MCL 750.535 by 2006 PA 374, eff. October 1, 2006; amended May, 2008.

Reference Guide

Statutes

MCL 750.535, .535b.

Case Law

People v Kamin, 405 Mich 482, 275 NW2d 777 (1979); *People v Allay*, 171 Mich App 602, 608, 430 NW2d 794 (1988); *People v Toodle*, 155 Mich App 539, 400 NW2d 670 (1986); *People v Fortuin*, 143 Mich App 279, 372 NW2d 530 (1985).

M Crim JI 26.2 Definitions of Buy, Receive, Possess, and Conceal

(1) To buy means to purchase property, either with money or in exchange for something else of value.

(2) To receive means to accept possession of property.

(3) To possess means to knowingly have or hold property under your control.

(4) To conceal means to intentionally hide, disguise, get rid of, or do any other act to keep the property from being discovered.

Use Note

If the crime is receiving or concealing a stolen firearm, MCL 750.535b, Michigan law requires actual notice rather than constructive notice that the firearm was stolen. *People v Granderson,* No 297838, 2011 Mich App LEXIS 1527 (Aug 25, 2011) (unpublished).

History

M Crim JI 26.2 (formerly CJI2d 26.2) was CJI 26:1:03.

Reference Guide

Statutes

MCL 750.535, .535b.

Case Law

People v Reynolds, 2 Mich 422 (1852); *People v Botzen*, 151 Mich App 561, 563, 391 NW2d 410 (1986); *People v Holguin*, 141 Mich App 268, 273, 367 NW2d 846 (1985); *People v Randall*, 42 Mich App 187, 201 NW2d 292 (1972); *People v Granderson*, No 297838, 2011 Mich App LEXIS 1527 (Aug 25, 2011) (unpublished).

M Crim JI 26.3 Knowledge by Defendant That Property Was Stolen

(1) It is up to you to determine whether, at the time [he / she] [bought / received / possessed / concealed] the property, the defendant knew, or had reason to know or reason to believe, that the property was stolen.

(2) In making this determination, you may consider the following evidence:

(a) the circumstances surrounding the taking of the property

(b) the way the defendant acted

[(c) what the defendant said about the property]*

[(d) the price that was paid for the property]*

(e) how much time there was between when the property was taken and when it was found in the defendant's possession

(f) any other facts from which you can determine whether the defendant knew, or had reason to know or reason to believe, that the property was stolen.

(3) You may not infer that the defendant knew, or had reason to know or reason to believe, that the property was stolen just from the fact that [he / she] possessed it. There must be other facts and circumstances shown by the evidence in this case that would justify an inference beyond a reasonable doubt that the defendant knew, or had reason to know or reason to believe, that the property was stolen when [he / she] [bought / received / possessed / concealed] it.

Use Note

*Use bracketed material when some evidence as to those matters has been introduced at trial.

History

M Crim JI 26.3 (formerly CJI2d 26.3) was CJI 26:1:04; amended May, 2007, to reflect changes made to MCL 750.535 by 2006 PA 374, eff. October 1, 2006.

Reference Guide

Statutes

MCL 750.535.

Case Law

People v Pratt, 254 Mich App 425, 428, 656 NW2d 866 (2002); *People v Watts*, 133 Mich App 80, 348 NW2d 39 (1984); *People v Salata*, 79 Mich App 415, 421-422, 262 NW2d 844 (1977).

M Crim JI 26.4 No Obligation of State to Prove Conviction for Theft

The property in question in this case must be shown to have been stolen. However, it is not necessary to show that anyone was convicted of stealing that property.

History

M Crim JI 26.4 (formerly CJI2d 26.4) was CJI 26:1:05.

Reference Guide

Case Law

People v Green, 246 Mich 65, 224 NW 383 (1929); *People v Gross*, 123 Mich App 467, 332 NW2d 576 (1983).

M Crim JI 26.5 Honest Buying or Receiving [*deleted*]

Note. This instruction was deleted by the committee in September, 2008, because, as to the defendant's state of mind, the earlier subjective good faith test has been replaced by the objective test explained in M Crim JI 26.3.

M Crim JI 26.6 Dealer or Collector

(1) The defendant is charged with the crime of [buying / receiving] stolen* property as [the agent, employee, or representative of] a dealer or collector of merchandise. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was [the agent, employee, or representative of] a dealer or collector of merchandise.

(3) Second, that the defendant [bought / received] stolen property and that [he / she] knew, or had reason to know or reason to believe, that the property was stolen.

[*Choose (4) or (5):*]

(4) Third, that the defendant did not make a reasonable inquiry into whether the person who was selling or delivering the property to the dealer or collector had a legal right to do so. If the defendant failed to inquire into this, that is a circumstance from which you may infer that the defendant [bought / received] the property knowing, or having reason to know or reason to believe, that it was stolen. However, you do not have to make this inference.

(5) Third, that the property had on its outside surface a clearly visible identifying number that had been altered or erased. If there was an altered or erased number, that is a circumstance from which you may infer that the defendant [bought / received] the property knowing, or having reason to know or reason to believe, that it was stolen. However, you do not have to make this inference.

Use Note

*Where appropriate, substitute “embezzled” or “converted” for “stolen.”

This instruction supplements the basic receiving or concealing instructions in cases involving dealers or collectors.

History

M Crim JI 26.6 (formerly CJI2d 26.6) was CJI 26:1:07; amended May, 2007, to reflect changes made to MCL 750.535 by 2006 PA 374, eff. October 1, 2006.

Reference Guide

Statutes

MCL 750.535.

Case Law

People v Gallagher, 404 Mich 429, 273 NW2d 440 (1979); *People v Barnes*, 146 Mich App 37, 379 NW2d 464 (1985).

CHAPTER 27 *Embezzlement*

M Crim JI 27.1 Embezzlement by Agent or Servant 27-2
M Crim JI 27.2 Prima Facie Proof of Intent (Embezzlement by Agent or Servant) 27-4
M Crim JI 27.3 Embezzlement by a Public Official 27-5
M Crim JI 27.4 Prima Facie Proof of Intent (Embezzlement by a Public Official) 27-6
M Crim JI 27.5 Embezzlement of Mortgaged Property 27-7
M Crim JI 27.6 Definition of Mortgage and Mortgagee 27-8
M Crim JI 27.7 Safekeeping of Public Moneys 27-9

M Crim JI 27.1 Embezzlement by Agent or Servant

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

(2) First, that the [money / property] belongs to [*name principal*].[1]

(3) Second, that the defendant had a relationship of trust with [*name principal*] because the defendant was [*define relationship*].[2]

(4) Third, that the defendant obtained possession or control of the [money / property] because of this relationship.

(5) Fourth, that the defendant

[*Choose (a), (b), or (c):*]

(a) dishonestly disposed of the [money / property].

(b) converted the [money / property] to [his / her] own use.

(c) took or hid the [money / property] with the intent to convert it to [his / her] own use without consent of [*name principal*].

(6) Fifth, that at the time the defendant did this, [he / she] intended to defraud or cheat [*name principal*] of some property.[3]

(7) Sixth, that the fair market value of the property or amount of money embezzled was:[4]

[*Choose only one of the following unless instructing on lesser offenses:*]

(a) $20,000 or more.

(b) $1,000 or more, but less than $20,000.

(c) $200 or more, but less than $1,000.

(d) some amount less than $200.

[*Use the following paragraph only if applicable:*]

(8) [You may add together the value of property or money embezzled in separate incidents if part of a scheme or course of conduct (within a 12-month period)[5] when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

[1] The principal must be someone other than the defendant.

[2] The statute lists agent, servant, employee, trustee, bailee, or custodian. See the table of contents to chapter 22 for a list of definitions that may be used.

[3] This is a specific intent crime. The defendant's intent to return or replace the money at a later time does not provide a defense. *People v Butts*, 128 Mich 208, 87 NW 224 (1901).

[4] The Fair Market Value Test, M Crim JI 22.1, should be given when applicable.

[5] The 12-month time limit does not apply if the embezzlement scheme or course of conduct was directed against only one legal entity. In those cases, with one victim, do not include the parenthetical phrase referring to the 12-month period.

History

M Crim JI 27.1 (formerly CJI2d 27.1) was CJI 27:1:01; amended September, 1999, to reflect changes made by 1998 PA 312, eff. January 1, 1999.

Reference Guide

Statutes

MCL 750.174, .181.

Case Law

People v Kurrle, 335 Mich 180, 55 NW2d 787 (1952); *People v Bergman*, 246 Mich 68, 71, 224 NW 375 (1929); *People v Burns*, 242 Mich 345, 348, 218 NW 704 (1928); *People v Butts*, 128 Mich 208, 87 NW 224 (1901); *People v Collins*, 239 Mich App 125, 130-131, 607 NW2d 760 (1999); *People v Gadient*, 185 Mich App 280, 286, 460 NW2d 896 (1990); *People v Wood*, 182 Mich App 50, 53, 451 NW2d 563 (1990).

M Crim JI 27.2 Prima Facie Proof of Intent (Embezzlement by Agent or Servant)

If you determine beyond a reasonable doubt that the defendant was a[n] [agent / servant / trustee / bailee / custodian] of [*name principal*]; that the defendant had [money / property] entrusted to [his / her] care because of this relationship; that the defendant was asked to [pay / refund / deliver] the [money / property] to [*name principal*] and did not do so; then these facts, if not explained, are circumstances from which you may infer that the defendant intended to embezzle the [money / property]. However, you do not have to make this inference.

History

M Crim JI 27.2 (formerly CJI2d 27.2) was CJI 27:1:02.

Reference Guide

Statutes

MCL 750.174.

Case Law

People v Zunno, 384 Mich 151, 180 NW2d 17 (1970); *People v Butts*, 128 Mich 208, 87 NW 224 (1901); *People v Phillips*, 170 Mich App 675, 428 NW2d 739 (1988).

M Crim JI 27.3 Embezzlement by a Public Official

(1) The defendant is charged with the crime of embezzlement by a public official. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant either held public office or was the agent or employee[1] of a public official.[2]

(3) Second, that the defendant received [money / property] in [his / her] official capacity or employment.

(4) Third, that the defendant knew that the [money / property] was received by [him / her] in [his / her] official capacity or employment, and was not received for [his / her] personal use.

(5) Fourth, that the defendant used the [money / property] for [himself / herself] or provided it to any other person for [his / her] use.

(6) Fifth, that [the property was worth $50 or more / more than $50 was involved].

Use Note

[1] The statute makes reference to a "servant" of a public official. That term is no longer commonly used, so the word "employee" has been substituted.

[2] The terms "agent" and "public official" are defined in M Crim JI 22.5 and 22.19, respectively.

History

M Crim JI 27.3 (formerly CJI2d 27.3) was CJI 27:2:01.; M Crim JI 27.3 amended July 2017.

Reference Guide

Statutes

MCL 750.175.

Case Law

People v Hopper, 274 Mich 418, 264 NW 849 (1936); *People v Glazier*, 159 Mich 528, 546, 124 NW 582 (1910); *People v Warren*, 122 Mich 504, 521-522, 81 NW 360 (1899); *People v Jones*, 182 Mich App 668, 453 NW2d 293 (1990); *People v Kalbfleisch*, 46 Mich App 25, 26-27, 207 NW2d 428 (1973).

M Crim JI 27.4 Prima Facie Proof of Intent (Embezzlement by a Public Official)

If you determine beyond a reasonable doubt that the defendant was [the agent or servant of] a public official; that the defendant received [property worth] $50 or more in [his / her] official position; and that the defendant did not deliver all of the [money / property] the defendant received as a public official to [his / her] successor; then these facts, if not explained, are circumstances from which you may infer that the defendant intended to embezzle the [money / property]. However, you do not have to make this inference.

History

M Crim JI 27.4 (formerly CJI2d 27.4) was CJI 27:2:02.

Reference Guide

Statutes

MCL 750.175.

Case Law

People v Hopper, 274 Mich 418, 264 NW 849 (1936); *People v Warren*, 122 Mich 504, 521, 81 NW 360 (1899); *People v Seely*, 117 Mich 263, 265, 75 NW 609 (1898); *People v Bringard*, 39 Mich 22 (1878).

M Crim JI 27.5 Embezzlement of Mortgaged Property

(1) The defendant is charged with the crime of dishonestly [embezzling / removing / hiding / transferring] mortgaged property. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the property in question here, [*identify property*], had a [*identify encumbrance*] on it.

(3) Second, that [the defendant / someone else] held this property.

(4) Third, that the defendant [embezzled / removed / hid / transferred] the property.[1]

(5) Fourth, that when the defendant did this [he / she] knew that the property had a [*identify encumbrance*] on it.

(6) Fifth, that when the defendant did this, [he / she] intended to defraud or cheat [*name complainant*].[2]

[*Use (7) for felonies:*]

(7) Sixth, that the fair market value of the property involved is over $100.[3]

[*Use (8) for misdemeanors:*]

(8) Sixth, that the property involved is worth something.

Use Note

[1] Define terms used. See the table of contents to chapter 22 for a list of definitions.

[2] This is a specific intent crime.

[3] The Fair Market Value Test, M Crim JI 22.1, should be given when applicable.

History

M Crim JI 27.5 (formerly CJI2d 27.5) was CJI 27:3:01, 27:3:02.

Reference Guide

Statutes

MCL 750.177, .178.

Case Law

Bowen v Borland, 257 Mich 306, 241 NW 201 (1932); *People v Robinson*, 241 Mich 497, 217 NW 902 (1928); *People v Blanchard*, 239 Mich 283, 214 NW 98 (1927); *People v Schultz*, 85 Mich 114, 48 NW 293 (1891).

M Crim JI 27.6 Definition of Mortgage and Mortgagee

(1) A mortgage guarantees payment of a debt by transferring an interest in property, called a security interest, to the person to whom the debt is owed. That person holds the security interest until the debt is paid. For instance, collateral for a loan is a type of security interest.

(2) A mortgagee is the person to whom the debt is owed and who takes the security interest.

History

M Crim JI 27.6 (formerly CJI2d 27.6) was CJI 27:3:04, 27:3:05, 27:3:09.

Reference Guide

Statutes

MCL 750.177, .178.

M Crim JI 27.7 Safekeeping of Public Moneys

(1) The defendant is charged with the crime of failing to keep public money safe. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was either an officer of the [*identify public entity*] or was the agent or servant of an officer.

(3) Second, that this [*identify public entity*] is in the state of Michigan.

(4) Third, that this public officer was authorized by law to receive public money.

(5) Fourth, that the defendant did the following:

[*Choose one or more of the following:*]

(a) failed to keep the public money separate from [his / her] own money or from the money of another.

(b) used the money, or allowed it to be used, for a purpose not authorized by law.

(c) used the money for [his / her] own private use.

(d) loaned the money to another person or business without having the legal authority to do so.

(e) received money or something valuable from someone in return for depositing the public money with a particular bank, person, or business.

(f) made out a [warrant / order / certificate] for a payment of the money that was either more than the amount authorized by law or for a purpose not authorized by law, and that the defendant made this [warrant / order / certificate] intentionally, knowing that it was wrong, and with the intent to get money or some other advantage.

History

M Crim JI 27.7 (formerly CJI2d 27.7) was CJI 27:4:01, 27:4:02, 27:4:03.

Reference Guide

Statutes

MCL 750.490.

Case Law

Pokorny v Wayne County, 322 Mich 10, 13-15, 33 NW2d 641 (1948); *Board of Fire & Water Comm'rs of Marquette v Wilkinson*, 119 Mich 655, 78 NW 893 (1899).

CHAPTER 28

Forgery, Uttering and Publishing

M Crim JI 28.1 Forgery 28-2

M Crim JI 28.2 Uttering and Publishing 28-3

M Crim JI 28.3 Acceptance or Loss Not Necessary 28-4

M Crim JI 28.4 Forger Need Not Be Identified 28-5

M Crim JI 28.1 Forgery

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

(2) First, that the document in question in this case, [*identify document*], was [falsely made / altered / forged / counterfeited], in that [*state prosecution's claim*].[1]

(3) Second, that the defendant [falsely made / altered / forged / counterfeited] this document. [Forgery includes any act which falsely makes an instrument appear what it is not.]

(4) Third, that when the defendant did this, [he / she] intended to defraud or cheat someone.[2]

Use Note

[1] See the table of contents to chapter 22 for a list of definitions. See MCL 750.248.

[2] This is a specific intent crime.

History

M Crim JI 28.1 (formerly CJI2d 28.1) was CJI 28:1:01, 28:1:02; amended October, 1993.

Reference Guide

Statutes

MCL 750.248.

Case Law

People v Susalla, 392 Mich 387, 220 NW2d 405 (1974); *In re Stout*, 371 Mich 438, 124 NW2d 277 (1963); *People v Larson*, 225 Mich 355, 196 NW 412 (1923); *Watrous v Allen*, 57 Mich 362, 24 NW 104 (1885); *People v Van Horn*, 127 Mich App 489, 339 NW2d 475 (1983); *People v Grable*, 95 Mich App 20, 24, 289 NW2d 871 (1980); *People v Worden*, 91 Mich App 666, 284 NW2d 159 (1979); *People v Gill*, 8 Mich App 89, 153 NW2d 678 (1967).

M Crim JI 28.2 Uttering and Publishing

(1) The defendant is charged with the crime of uttering and publishing. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the document in question in this case, [*identify document*],[1] was [false / altered / forged / counterfeited],[2] in that [*state prosecution's claim*].

(3) Second, that the defendant represented, either by words or actions or both, that the document was genuine or true and [exhibited / offered / presented] it.[3]

(4) Third, that when the defendant did this, [he / she] knew that the document was [false / altered / forged / counterfeit].

(5) Fourth, that when the defendant did this, [he / she] intended to defraud or cheat someone.[4]

Use Note

[1] *Caution*: The instrument must be one of the instruments in the statute. See MCL 750.249.

[2] See the table of contents to chapter 22 for a list of definitions.

[3] Give M Crim JI 28.3, Acceptance or Loss Not Necessary, if needed.

[4] This is a specific intent crime.

History

M Crim JI 28.2 (formerly CJI2d 28.2) was CJI 28:2:01.

Reference Guide

Statutes

MCL 750.249.

Case Law

People v Rogers, 411 Mich 202, 305 NW2d 857 (1981); *People v Cassadime*, 258 Mich App 395, 399, 671 NW2d 559 (2003); *People v Aguwa*, 245 Mich App 1, 626 NW2d 176 (2001); *People v Hogan*, 225 Mich App 431, 571 NW2d 737 (1997); *People v Hammond*, 161 Mich App 719, 411 NW2d 837 (1987); *People v Buchanan*, 107 Mich App 648, 309 NW2d 691 (1981); *People v Berry*, 84 Mich App 604, 269 NW2d 694 (1978); *People v Fudge*, 66 Mich App 625, 239 NW2d 686 (1976).

M Crim JI 28.3 Acceptance or Loss Not Necessary

It does not matter whether the document was actually accepted as genuine by the person the defendant allegedly tried to cheat. It also does not matter whether the person actually suffered a loss [or whether the defendant actually gave anyone the document]. It is enough if the defendant offered the document, directly or indirectly, by words or actions, as genuine.

History

M Crim JI 28.3 (formerly CJI2d 28.3) was CJI 28:2:02.

Reference Guide

Case Law

People v Brandon, 46 Mich App 484, 208 NW2d 214 (1973); *People v Hester*, 24 Mich App 475, 180 NW2d 360 (1970).

M Crim JI 28.4 Forger Need Not Be Identified

It does not matter whether the defendant knew who made the [falsification / alteration / forgery / counterfeiting] of the document.

History

M Crim JI 28.4 (formerly CJI2d 28.4) was CJI 28:2:03.

Reference Guide

Case Law

People v Marion, 29 Mich 31 (1874); *People v McDaniel*, 47 Mich App 661, 668, 209 NW2d 836 (1973).

CHAPTER 29 *Checks*

M Crim JI 29.1 Definition of Credit 29-2
M Crim JI 29.2 Reasonable Expectation of Payment Negates Fraud 29-3
M Crim JI 29.3 Mistake 29-4
M Crim JI 29.4 Not Necessary to Show Loss 29-5
M Crim JI 29.5 Prima Facie Proof of Intent to Defraud 29-6
M Crim JI 29.6 Prima Facie Proof of Intent—Notice 29-7
M Crim JI 29.7 Drawing Check on Bank Without Account 29-8
M Crim JI 29.8 Three Insufficient Fund Checks Within Ten Days 29-9
M Crim JI 29.9 Checks Without Sufficient Funds 29-10

M Crim JI 29.1 Definition of Credit

Credit means an arrangement or understanding with a bank that the bank will pay a check, draft, or money order when it is presented for payment.

Use Note

The statute includes "depository."

History

M Crim JI 29.1 (formerly CJI2d 29.1) was CJI 29:1:01.

Reference Guide

Statutes

MCL 750.134.

M Crim JI 29.2 Reasonable Expectation of Payment Negates Fraud

If the defendant knew when [he / she] wrote the [check / draft / money order] that [he / she] did not have enough money in the bank to cover it at the time, but had good reason to believe that the [check / draft / money order] would be paid when it was presented for payment, then the defendant did not have the intent to defraud or cheat anyone and you must find [him / her] not guilty.

History

M Crim JI 29.2 (formerly CJI2d 29.2) was CJI 29:1:02.

Reference Guide

Case Law

People v Cimini, 33 Mich App 461, 190 NW2d 323 (1971).

M Crim JI 29.3 Mistake

If the defendant wrote the [check / draft / money order] when [he / she] did not have enough money in the bank to cover it because [he / she] had made an honest mistake about how much money [he / she] had in [his / her] account, then the defendant did not have the intent to defraud or cheat anyone and you must find [him / her] not guilty.

History

M Crim JI 29.3 (formerly CJI2d 29.3) was CJI 29:1:03.

Reference Guide

Case Law

People v Reynolds, 122 Mich App 238, 332 NW2d 451 (1982).

M Crim JI 29.4 Not Necessary to Show Loss

The prosecutor must prove that the [check / draft / money order] was presented for payment, but it does not matter whether anyone actually suffered a loss.

History

M Crim JI 29.4 (formerly CJI2d 29.4) was CJI 29:1:04.

Reference Guide

Case Law

People v Henson, 18 Mich App 259, 171 NW2d 26 (1969).

M Crim JI 29.5 Prima Facie Proof of Intent to Defraud

If you determine beyond a reasonable doubt that the defendant wrote or caused the [check / draft / money order] to be written and that [he / she] signed it; that this [check / draft / money order] was presented in the usual course of business and that the bank refused to cash it because the defendant had insufficient funds in [his / her] account; that the defendant received notice of nonpayment; and that the defendant did not pay the amount due on the [check / draft / money order] and all costs and fees within five days after [he / she] received notice of nonpayment; then these facts, if not explained, are circumstances from which you may infer that the defendant intended to defraud or cheat someone. However, you do not have to make this inference.

History

M Crim JI 29.5 (formerly CJI2d 29.5) was CJI 29:1:05.

Reference Guide

Statutes

MCL 750.132.

M Crim JI 29.6 Prima Facie Proof of Intent—Notice

If you determine beyond a reasonable doubt that the defendant wrote or caused the [check / draft / money order] to be written and that [he / she] signed it; that the bank refused to cash this [check / draft / money order] because the defendant had insufficient funds in [his / her] account, then these facts, if not explained, are circumstances from which you may infer that the defendant knew that [he / she] had insufficient funds and that [he / she] intended to defraud or cheat someone. However, you do not have to make this inference.

History

M Crim JI 29.6 (formerly CJI2d 29.6) was CJI 29:1:06.

Reference Guide

Statutes

MCL 750.133.

M Crim JI 29.7 Drawing Check on Bank Without Account

(1) The defendant is charged with the crime of writing or delivering a [check / draft / money order] on a bank without having an account or credit with that bank. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that on [*date*], the defendant wrote or delivered a [check / draft / money order] in the amount of $_____, payable to _____.

(3) Second, that this [check / draft / money order] was drawn on [*identify bank*].

(4) Third, that when [he / she] did this, the defendant did not have an account or credit with that bank.

(5) Fourth, that when [he / she] wrote or delivered this [check / draft / money order], the defendant intended to defraud or cheat someone.*

(6) Fifth, that this [check / draft / money order] was presented for payment.

Use Note

*This is a specific intent crime. See M Crim JI 29.5, Prima Facie Proof of Intent to Defraud, and M Crim JI 29.6, Prima Facie Proof of Intent—Notice.

History

M Crim JI 29.7 (formerly CJI2d 29.7) was CJI 29:2:01, 29:2:02.

Reference Guide

Statutes

MCL 750.131a.

Case Law

People v Susalla, 392 Mich 387, 393, 220 NW2d 405, 408 (1974); *People v Peach*, 174 Mich App 419, 423, 437 NW2d 9 (1989); *People v Reynolds*, 122 Mich App 238, 332 NW2d 451 (1982); *People v Finley*, 54 Mich App 259, 220 NW2d 741 (1974); *People v Henson*, 18 Mich App 259, 171 NW2d 26 (1969).

M Crim JI 29.8 Three Insufficient Fund Checks Within Ten Days

(1)The defendant is charged with the crime of writing or delivering three or more [checks / drafts / money orders] within ten days, knowing that [he / she] did not have enough money or credit with the bank to pay any of them in full. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that on [*dates*], the defendant wrote or delivered three [checks / drafts / money orders], in the amounts of $_____, $_____, and $_____.

(3)Second, that when [he / she] did this, the defendant did not have enough money or credit with the bank to pay any of the [checks / drafts / money orders] in full.

(4)Third, that when [he / she] did this, the defendant knew that [he / she] did not have enough money or credit to pay any of them in full.

(5)Fourth, that when [he / she] wrote or delivered each of these three [checks / drafts / money orders], the defendant intended to defraud or cheat someone.*

Use Note

*This is a specific intent crime.

See M Crim JI 29.5, Prima Facie Proof of Intent to Defraud, and M Crim JI 29.6, Prima Facie Proof of Intent—Notice.

History

M Crim JI 29.8 (formerly CJI2d 29.8) was CJI 29:2:03, 29:2:04.

Reference Guide

Statutes

MCL 750.131a.

M Crim JI 29.9 Checks Without Sufficient Funds

(1)The defendant is charged with the crime of writing or delivering a [check / draft / money order] without having sufficient funds to pay it. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant wrote or delivered a [check / draft / money order] in the amount of $_____, payable to _____.[1]

(3)Second, that this check was drawn on [identify bank or depository].

(4)Third, that the [check / draft / money order] was [signed / endorsed] by _____.

[*Choose (5) or (6):*]

(5)Fourth, that the defendant knew when [he / she] wrote or delivered the [check / draft / money order] that [he / she] did not have enough money or credit with [*identify bank or depository*] to pay it in full.

(6)Fourth, that when the [check / draft / money order] was presented for payment, there were not sufficient funds at [*identify bank or depository*] to pay it in full and the defendant knew when [he / she] wrote the [check / draft / money order] that there would not be enough money or credit to pay it in full when it was presented.

(7)Fifth, that when [he / she] wrote or delivered this [check / draft / money order], the defendant intended to defraud or cheat someone.[2] [If the defendant reasonably expected that the (check / draft / money order) would be paid by the bank, then there was no intent to defraud or cheat.]

(8)Sixth, that the amount was:

[*Choose only one of the following unless instructing on lesser offenses:*]

(a)$500 or more.

(b)$100 or more, but less than $500.

(c)some amount less than $100.

Use Note

[1] See the table of contents to chapter 22 for a list of definitions.

[2] This is a specific intent crime.

See M Crim JI 29.5, Prima Facie Proof of Interest to Defraud, and M Crim JI 29.6, Prima Facie Proof of Intent—Notice.

History

M Crim JI 29.9 (formerly CJI2d 29.9) was CJI 29:3:01, 29:3:02; amended September, 1999, to reflect changes made by 1998 PA 312, eff. January 1, 1999.

Reference Guide

Statutes

MCL 750.131-.133.

Case Law

People v Jacobson, 248 Mich 639, 642, 227 NW 781 (1929); *People v Chappelle*, 114 Mich App 364, 370, 319 NW2d 584 (1982); *People v Cimini*, 33 Mich App 461, 190 NW2d 323 (1971); *People v Henson*, 18 Mich App 259, 171 NW2d 26 (1969); OAG 1949-1950, No 930, pp 226-227 (May 31, 1949).

CHAPTER 30 *Financial Transaction Devices*

M Crim JI 30.1 Definition of Device holder 30-2

M Crim JI 30.2 Definition of Financial Transaction Device 30-3

M Crim JI 30.3 Stealing, Removing, or Hiding Another's Financial Transaction Device Without Consent 30-4

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M Crim JI 30.6 Financial Transaction Device Fraud, Forgery, Material Alteration, Counterfeiting 30-7

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M Crim JI 30.12 Uttering and Publishing a Financial Transaction Device 30-15

M Crim JI 30.13 Possession, Use, etc. of Instrument for Making False Financial Transaction Device 30-16

M Crim JI 30.14 Use of the Victim's Information to Obtain Credit, Goods, Services, Money, Property, Information, or Employment with the Intent to Defraud 30-17

M Crim JI 30.15 Use of the Victim's Information to Commit an Illegal Act 30-18

M Crim JI 30.16 Misrepresenting/Withholding/Concealing Identity to Use the Victim's Information to Obtain Credit, Goods, Services, Money, Property, Information, or Employment 30-19

M Crim JI 30.17 Misrepresenting/Withholding/Concealing Identity to Use the Victim's Information to Commit an Illegal Act 30-20

M Crim JI 30.18 Misrepresenting/Withholding/Concealing Identity to Use Victim's Information to Obtain Credit, Goods, Services, Money, Property, Information, or Employment—Defense That Defendant Acted Lawfully 30-21

M Crim JI 30.19 Definitions of Person and Personal Identifying Information 30-22

M Crim JI 30.1 Definition of Device holder

"Deviceholder" means a person [or organization] who asks for and is issued a [*name financial transaction device*]. ["Deviceholder" also means a person (or organization) who uses or accepts a (*name device*), whether or not the (*name device*) was asked for.]

Use Note

The definitions are taken from the statute, MCL 750.157m(d). See "Statutes" at the end of this chapter. The committee recommends that this instruction be given only on request where there is an issue as to whether the complainant is a deviceholder under the statute.

History

M Crim JI 30.1 (formerly CJI2d 30.1) was CJI 30:1:01.

Reference Guide

Statutes

MCL 750.157m(d), .157q.

Case Law

People v Hilliard, 160 Mich App 484, 408 NW2d 482 (1987); *People v Collins*, 158 Mich App 508, 405 NW2d 182 (1987). M Crim JI 30.2Definition of Financial Transaction Device MCL 750.157m(f); *People v Kotesky*, 190 Mich App 330, 475 NW2d 473 (1991).

M Crim JI 30.2 Definition of Financial Transaction Device

(1) A financial transaction device means any of the following:

(2) An electronic funds transfer card, such as an automatic teller machine card.

(3) A credit card.*

(4) A debit card.

(5) A point-of-sale card.

(6) Any instrument, code number, personal identification number, means of access to a credit or deposit account, or a driver's license or identification card [other than a piece of paper] that can be used, either alone or with another device, to

(a)obtain money, cash, credit, goods, services, or anything else of value;

(b)certify or guarantee that the deviceholder has available funds on deposit to honor a draft or check; or

(c)provide the deviceholder with access to an account in order to deposit, withdraw, or transfer funds or obtain information about a deposit account.

Use Note

The definitions are taken from the statute, MCL 750.157m. See "Statutes" at the end of this chapter. The committee recommends that this instruction be given only on request where there is a dispute as to whether the item in question is a financial transaction device; only those portions of the definition germane to the dispute should be given.

*Under the statute, health insurance cards are included in the definition of credit cards.

History

M Crim JI 30.2 (formerly CJI2d 30.2) was CJI 30:1:02.

Reference Guide

Statutes

MCL 750.157m(f).

Case Law

People v Kotesky, 190 Mich App 330, 475 NW2d 473 (1991).

M Crim JI 30.3 Stealing, Removing, or Hiding Another's Financial Transaction Device Without Consent

(1) The defendant is charged with the crime of [taking / stealing / removing / retaining / hiding / possessing / using] someone else's [*name financial transaction device*] without that person's consent. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [obtained possession of / retained / hid / used] [*name device*].

(3) Second, that the defendant did this knowingly.

(4) Third, that the defendant did this without [*name deviceholder*]'s consent.

(5) Fourth, that the defendant intended to defraud or cheat someone.

Use Note

Use appropriate bracketed sections as per the facts of the case. The committee recommends that the court name the financial transaction device in question, unless there is a bona fide dispute as to whether the device is indeed a financial transaction device under the statute.

History

M Crim JI 30.3 (formerly CJI2d 30.3) was CJI 30:2:01.

Reference Guide

Statutes

MCL 750.157n.

Case Law

People v Ainsworth, 197 Mich App 321, 325, 495 NW2d 177 (1992).

M Crim JI 30.4 Possession of Fraudulent or Altered Financial Transaction Device

(1) The defendant is charged with the crime of possessing a fraudulent or altered [*name financial transaction device*]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant possessed the [*name device*], which was either fraudulently issued or was altered in some way so that it was different than when it was originally issued.

(3) Second, that the defendant did this knowingly.

(4) Third, that the defendant intended to defraud or cheat someone.

Use Note

The committee recommends that the court name the financial transaction device in question, unless there is a bona fide dispute as to whether the device is indeed a financial transaction device under the statute.

History

M Crim JI 30.4 (formerly CJI2d 30.4) was CJI 30:2:01A.

Reference Guide

Statutes

MCL 750.157m(f), .157r.

M Crim JI 30.5 Possession of Another's Financial Transaction Device with Intent to Use, Deliver, Circulate, or Sell

(1) The defendant is charged with the crime of possessing someone else's [*name financial transaction device*] with the intent to use, deliver, circulate, or sell it. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant had the [*name device*] in [his / her] possession or under [his / her] control [or that the defendant received this (*name device*) from another person].

(3) Second, that at the time, the defendant knew that [he / she] was [possessing / controlling / receiving] the [*name device*] without [*name deviceholder*]'s consent.

(4) Third, that the defendant intended to [(permit / cause) someone to] use, deliver, circulate, or sell this device.

(5) Fourth, that when [he / she] did this, the defendant intended to defraud or cheat someone.

Use Note

Use appropriate bracketed sections as per the facts of the case. The committee recommends that the court name the financial transaction device in question, unless there is a bona fide dispute as to whether the device is indeed a financial transaction device under the statute.

History

M Crim JI 30.5 (formerly CJI2d 30.5) was CJI 30:3:01.

Reference Guide

Statutes

MCL 750.157m(f), .157p.

M Crim JI 30.6 Financial Transaction Device Fraud, Forgery, Material Alteration, Counterfeiting

(1) The defendant is charged with the crime of [forging / materially altering / counterfeiting / duplicating] a [*name financial transaction device*]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the [*name device*] was [falsely made / materially altered / forged / counterfeited / duplicated], in that [*state prosecution's claim*].[1]

(3) Second, that it was the defendant who [falsely made / materially altered / forged / counterfeited / duplicated] the [*name device*].

(4) Third, that when [he / she] did this, the defendant intended to defraud or cheat someone.[2]

Use Note

[1] Use the definitions in chapter 22 (see the table of contents on page 22-1) to define the instrument and the method of forgery used.

[2] This is a specific intent crime.

History

M Crim JI 30.6 (formerly CJI2d 30.6) was CJI 30:5:01.

Reference Guide

Statutes

MCL 750.157m(f), .157r.

M Crim JI 30.7 Use of Revoked or Canceled Financial Transaction Device with Intent to Defraud

(1) The defendant is charged with the crime of using a revoked or canceled [*name financial transaction device*] for the purpose of obtaining goods, services, or anything else of value. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the [*name device*] had been revoked or canceled.[1]

(3) Second, that the [*name device*] had been issued by [*identify issuer*] to [*identify issuee*] and had been revoked or canceled by [*identify issuer*].

(4) Third, that on [*date*], the defendant received notice of the revocation or cancellation through [*list means of notice*].[2]

(5) Fourth, that on [*date*], after receiving the notice, the defendant used the [*name device*] at [*name business*] for the purpose of obtaining [*state goods, property, services, or other things of value*].

(6) Fifth, that the defendant knew when [he / she] used [*name device*] that it had been revoked or canceled.

(7) Sixth, that when the defendant used the [*name device*], [he / she] intended to defraud or cheat someone.[3]

(8) Seventh, that the fair market value of the property involved is:[4]

[*Choose only one of the following unless instructing on lesser offenses:*]

(a)$500 or more.

(b)$100 or more, but less than $500.

(c)some amount less than $100.

[*Use the following paragraph only if applicable:*]

(9)[You may add together the fair market value of property obtained in separate incidents if part of a scheme or course of conduct within a 12-month period when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

[1] Use M Crim JI 30.2, Definition of Financial Transaction Device, where this issue is in dispute.

An expired card is not a revoked or canceled card.

[2] Notice must be given by personal service or by registered or certified mail with return receipt.

[3] This is a specific intent crime.

[4] The Fair Market Value Test, M Crim JI 22.1, should be given when applicable.

History

M Crim JI 30.7 (formerly CJI2d 30.7) was CJI 30:6:01, 30:6:02; amended September, 1999, to reflect changes made by 1998 PA 312, eff. January 1, 1999.

Reference Guide

Statutes

MCL 750.157m(f), .157s.

M Crim JI 30.8 Sales to or Services Performed for Violators

(1) The defendant is charged with the crime of selling or delivering goods or services to a person the defendant knew was violating the financial transaction device laws. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant sold or delivered goods or services to [*name violator*].

(3) Second, that these goods or services had some value.

(4) Third, that in doing this, the defendant used or aided someone else in using a [*name financial transaction device*].[1]

(5) Fourth, that the [*name device*] had been [*state violation alleged*].

(6) Fifth, that the defendant knew at the time that the [*name device*] had been [*state violation alleged*].

(7) Sixth, that when the defendant did this, [he / she] intended to defraud or cheat someone or aid in defrauding or cheating someone.[2]

Use Note

[1] See M Crim JI 30.2, Definition of Financial Transaction Device, and M Crim JI 30.1, Definition of Deviceholder, if these instructions are requested.

[2] This is a specific intent crime.

History

M Crim JI 30.8 (formerly CJI2d 30.8) was CJI 30:7:01.

Reference Guide

Statutes

MCL 750.157m(f), .157t.

M Crim JI 30.9 Causing Deviceholder to Be Overcharged

(1) The defendant is charged with the crime of causing a deviceholder to be wrongly charged with an unauthorized purchase or transaction, or to be overcharged, or to suffer some other financial loss. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name financial transaction device*] had been issued to [*name deviceholder*] by [*identify issuer*].

(3) Second, that [*name deviceholder*] had requested or used the [*name device*].

(4) Third, that on [*date*], [*name deviceholder*] presented the [*name device*] to obtain goods, services, or anything of value [or for anything the (*name device*) may be used for].

(5) Fourth, that the defendant forged [*name deviceholder*]'s signature or aided someone in forging the signature by [*state prosecution's claim*] [or filled out an application or form supplied by (*name issuer*)].

(6) Fifth, that by doing this, the defendant caused [*name deviceholder*] [to be overcharged / to be charged for an unauthorized purchase / to suffer a financial loss].

(7) Sixth, that when [he / she] did this, the defendant intended to defraud or cheat someone.

Use Note

Use appropriate bracketed sections as per the facts of the case. The committee recommends that the court name the financial transaction device in question, unless there is a bona fide dispute as to whether the device is indeed a financial transaction device under the statute.

History

M Crim JI 30.9 (formerly CJI2d 30.9) was CJI 30:8:01.

Reference Guide

Statutes

MCL 750.157m, .157u.

M Crim JI 30.10 False Statement for Purpose of Obtaining Financial Transaction Device

(1) The defendant is charged with the crime of making a false statement to obtain a [*name financial transaction device*]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant made, or had someone else make, a false statement in writing about [his / her] or someone else's identity.

(3) Second, that this false statement was made to obtain a [*name device*].

(4) Third, that the defendant knew that this statement was false.

(5) Fourth, that the defendant intended to defraud or cheat someone.*

Use Note

The committee recommends that the court name the financial transaction device in question, unless there is a bona fide dispute as to whether the device is indeed a financial transaction device under the statute.

*This is a specific intent crime.

History

M Crim JI 30.10 (formerly CJI2d 30.10) was CJI 30:9:01.

Reference Guide

Statutes

MCL 750.157m(f), .157v.

M Crim JI 30.11 Use of Financial Transaction Device to Defraud

(1) The defendant is charged with the crime of fraudulently using a [*name financial transaction device*] to withdraw [more money than the defendant had on deposit / more money than the defendant was allowed to / money more often than the defendant was allowed to]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant used a [*name device*] to withdraw or transfer money.

(3) Second, that the defendant withdrew [more money than the defendant had on deposit / more money than the defendant was allowed to / money more often than the defendant was allowed to].

(4) Third, that the defendant did this knowingly.

(5) Fourth, that the defendant intended to defraud or cheat someone.*

(6) Fifth, that the defendant obtained:

[*Choose only one of the following unless instructing on lesser offenses:*]

(a) $20,000 or more.

(b) $1,000 or more, but less than $20,000.

(c) $200 or more, but less than $1,000.

(d) some amount less than $200.

[*Use the following paragraph only if applicable:*]

(7) [You may add together the amounts of money obtained in separate incidents if part of a scheme or course of conduct within a 12-month period when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

The committee recommends that the court name the financial transaction device in question, unless there is a bona fide dispute as to whether the device is indeed a financial transaction device under the statute.

*This is a specific intent crime.

History

M Crim JI 30.11 (formerly CJI2d 30.11) was CJI 30:10:01; amended September, 1999, to reflect changes made by

1998 PA 312, eff. January 1, 1999.

Reference Guide

Statutes

MCL 750.157m(f), .157w.

M Crim JI 30.12 Uttering and Publishing a Financial Transaction Device

(1) The defendant is charged with the crime of uttering and publishing a [false / forged / altered / counterfeit] [*name financial transaction device*]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the [*name device*] was [false / forged / altered / counterfeit].[1]

(3) Second, that the defendant [exhibited / offered / presented] the [*name device*].

(4) Third, that the defendant, by [his / her] words, acts, or both, represented the [*name device*] as valid.

(5) Fourth, that the defendant knew when [he / she] did this that the [*name device*] was [false / forged / altered / counterfeit].

(6) Fifth, that when [he / she] did this, the defendant intended to defraud or cheat someone.[2]

Use Note

See Use Notes after M Crim JI 28.2, Uttering and Publishing.

[1] Use appropriate bracketed sections as per the facts of the case. The committee recommends that the court name the financial transaction device in question, unless there is a bona fide dispute as to whether the device is indeed a financial transaction device under the statute.

[2] This is a specific intent crime.

History

M Crim JI 30.12 (formerly CJI2d 30.12) was CJI 30:11:01.

Reference Guide

Statutes

MCL 750.157m(f), .248a.

M Crim JI 30.13 Possession, Use, etc. of Instrument for Making False Financial Transaction Device

(1) The defendant is charged with the crime of making or knowingly possessing a [*name instrument*], which was designed or adapted to make, alter, or counterfeit a [*name financial transaction device*]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant made or knowingly possessed a [*name instrument*].

(3) Second, that the [*name instrument*] was designed or adapted to make, alter, or counterfeit a [*name device*].

(4) Third, that the defendant intended to use or have someone else use the [*name instrument*] to make, alter, or counterfeit a [*name device*].*

Use Note

See *Use Note*s after M Crim JI 28.2, Uttering and Publishing.

The committee recommends that the court name the financial transaction device in question, unless there is a bona fide dispute as to whether the device is indeed a financial transaction device under the statute. The committee also recommends naming the instrument that the defendant is charged with making or possessing. This instruction does not name each and every possibility under this broadly worded statute.

*This is a specific intent crime.

History

M Crim JI 30.13 (formerly CJI2d 30.13) was CJI 30:11:02.

Reference Guide

Statutes

MCL 750.157m(f), .249a.

M Crim JI 30.14 Use of the Victim's Information to Obtain Credit, Goods, Services, Money, Property, Information, or Employment with the Intent to Defraud

(1) The defendant is charged with the crime of [using / attempting to use] the personal identifying information of another person to obtain [credit / goods / services / money / property / a vital record / a confidential telephone record / medical records or information / employment]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [used / attempted to use] the personal identifying information of [*name complainant*].

(3) Second, that the defendant did this with the intent to obtain [credit / goods / services / money / property / a vital record / a confidential telephone record / medical records or information / employment].

(4) Third, that the defendant did this with the intent to defraud.

Use Note

This instruction is based on MCL 445.65(1)(a)(i).

History

M Crim JI 30.14 (formerly CJI2d 30.14) was adopted in September, 2013. The previous version of this instruction was adopted in September, 1997, and renumbered as M Crim JI 35.7 in September, 2010.

Reference Guide

Statutes

MCL 445.65(1)(a)(i).

M Crim JI 30.15 Use of the Victim's Information to Commit an Illegal Act

(1) The defendant is charged with the crime of [using / attempting to use] the personal identifying information of another person to commit an illegal act. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [used / attempted to use] the personal identifying information of [*name complainant*].

(3) Second, that the defendant did this with the intent to commit the illegal act of [*state illegal act*].

Use Note

This instruction is based on MCL 445.65(1)(a)(ii).

History

M Crim JI 30.15 (formerly CJI2d 30.15) was adopted in September, 2013. The previous version of this instruction was adopted in September, 1997, and renumbered as M Crim JI 35.8 in September, 2010.

Reference Guide

Statutes

MCL 445.65(1)(a)(ii).

M Crim JI 30.16 Misrepresenting/Withholding/Concealing Identity to Use the Victim's Information to Obtain Credit, Goods, Services, Money, Property, Information, or Employment

(1) The defendant is charged with the crime of [concealing / withholding / misrepresenting] [his / her] identity to [use / attempt to use] the personal identifying information of [*name complainant*] to obtain [credit / goods / services / money / property / a vital record / a confidential telephone record / medical records or information / employment]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [concealed / withheld / misrepresented] [his / her] identity.

(3) Second, that the defendant [used / attempted to use] the personal identifying information of [*name complainant*].

(4) Third, that the defendant did this with the intent to obtain [credit / goods / services / money / property / a vital record / a confidential telephone record / medical records or information / employment].

Use Note

This instruction is based on MCL 445.65(1)(b)(i).

History

M Crim JI 30.16 was adopted in September, 2013. The previous version of this instruction was adopted in September, 1997, and renumbered as M Crim JI 35.9 in September, 2010.

Reference Guide

Statutes

MCL 445.65(1)(b)(i).

M Crim JI 30.17 Misrepresenting/Withholding/Concealing Identity to Use the Victim's Information to Commit an Illegal Act

(1) The defendant is charged with the crime of [concealing / withholding / misrepresenting] [his / her] identity to [use / attempt to use] the personal identifying information of [*name complainant*] to commit an illegal act. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [concealed / withheld / misrepresented] [his / her] identity.

(3) Second, that the defendant [used / attempted to use] the personal identifying information of [*name complainant*].

(4) Third, that the defendant did this with the intent to commit the illegal act of [*state illegal act*].

Use Note

This instruction is based on MCL 445.65(1)(b)(ii).

History

M Crim JI 30.17 was adopted in September, 2013. The previous version of this instruction was adopted in September, 1997, and renumbered as M Crim JI 35.2 in September, 2010.

Reference Guide

Statutes

MCL 445.65(1)(b)(ii).

M Crim JI 30.18 Misrepresenting/Withholding/Concealing Identity to Use Victim's Information to Obtain Credit, Goods, Services, Money, Property, Information, or Employment—Defense That Defendant Acted Lawfully

One of the defenses that will be raised in this case is that the defendant acted lawfully when [he / she] [concealed / withheld / misrepresented] [his / her] identity when [using / attempting to use] [*name complainant*]'s personal identifying information to obtain [credit / goods / services / money / property / a vital record / a confidential telephone record / medical records or information / employment]. The law allows a person to [conceal / withhold / misrepresent] [his / her] identity when [using / attempting to use] another person's personal identifying information to obtain [credit / goods / services / money / property / a vital record / a confidential telephone record / medical records or information / employment] if defendant's use of the [*name complainant*]'s personal identifying information was [used in the lawful pursuit or enforcement of the (*name complainant*)'s rights / authorized by state or federal law / used with the (*name complainant*)'s consent, unless the (*name complainant*) knew that the information was used to commit an unlawful act].

This is an affirmative defense that the defendant has the burden of proving by a preponderance of the evidence. That means the defendant must satisfy you with evidence that outweighs the evidence against the defendant that [his / her] use of the [*name complainant*]'s personal identifying information to obtain [credit / goods / services / money / property / a vital record / a confidential telephone record / medical records or information / employment] was [in the lawful pursuit or enforcement of the (*name complainant*)'s rights/authorized by state or federal law / used with the (*name complainant*)'s consent, unless the (*name complainant*) knew that the information was used to commit an unlawful act].

Use Note

This instruction is based on MCL 445.65(1)(b)(i), (2).

History

M Crim JI 30.18 was adopted in September, 2013. The previous version of this instruction was adopted in September, 1997, and renumbered as M Crim JI 35.3 in September, 2010.

Reference Guide

Statutes

MCL 445.65(1)(b)(i), (2).

M Crim JI 30.19 Definitions of Person and Personal Identifying Information

(1) The term person means an individual or a legal entity, such as a partnership, a corporation, a limited liability company, or an association.

(2) The term *personal identifying information* means a name, number, or other information that is used for the purpose of identifying a specific person or providing access to a person's financial accounts, including, but not limited to, a person's [*choose appropriate term(s):*] [name / address / telephone number / driver license or state personal identification card number / social security number / place of employment / employee identification number / employer or taxpayer identification number / government passport number / health insurance identification number / mother's maiden name / demand deposit account number / savings account number / financial transaction device account number, account password, or any other account password in combination with sufficient information to identify and access the account / automated or electronic signature / biometrics / stock or other security certificate or account number / credit card number / vital record / medical records or information].

Use Note

This instruction is based on MCL 445.63(p), (q).

History

M Crim JI 30.19 was adopted in September, 2013. The previous version of this instruction was adopted in September, 1997, and renumbered as M Crim JI 35.4 in September, 2010.

Note

CJI2d 30.14 through CJI2d 30.21 were moved to chapter 35, Telecommunications and Computer Offenses, when that chapter was added in September, 2010, and were renumbered as follows:

CJI2d Number Title	Title	New M Crim JI Number
CJI2d 30.14	Accessing Computer with Intent to Defraud	M Crim JI 35.7
CJI2d 30.15	Unlawful Use of a Computer System	M Crim JI 35.8
CJI2d 30.16	Unlawfully Inserting Instructions into Computer	M Crim JI 35.9
CJI2d 30.17	Unlawful Use of Telecommunications Services by Agent or Employee	M Crim JI 35.2
CJI2d 30.18	Unlawful Possession, Delivery, or Manufacturing of Telecommunications Device	M Crim JI 35.3

CJI2d 30.19	Unlawfully Delivering or Advertising Plans for Telecommunications Device	M Crim JI 35.4
CJI2d 30.20	Unlawfully Obtaining Telecommunications Service	M Crim JI 35.5
CJI2d 30.21	Unlawfully Publishing a Telecommunications Access Device	M Crim JI 35.6

Reference Guide

Statutes

MCL 445.63(p), (q).

CHAPTER 31 *Arson*

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M Crim JI 31.1 Arson—Implication That Fire Had Natural Causes

When there is a fire, the law assumes that it had natural or accidental causes. The prosecutor must overcome this assumption and prove beyond a reasonable doubt that the fire was intentionally set.

Use Note

This is a general instruction for use in any arson case. It is adapted from Iowa, 2 Uniform Jury Instructions Annot §502.4 (1970), whose law on this matter is the same as that of Michigan.

History

M Crim JI 31.1 (formerly CJI2d 31.1) was CJI 31:0:01.

Reference Guide

Case Law

People v Lee, 231 Mich 607, 611-612, 204 NW 742, 744 (1925); *People v Barr*, 156 Mich App 450, 402 NW2d 489 (1986); *People v Williams*, 114 Mich App 186, 318 NW2d 671 (1982).

M Crim JI 31.2 Arson in the First Degree—Multiunit Building

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

(2) First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*]. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3) Second, that the property that was burned, damaged, or destroyed was a multiunit building or structure in which one or more units of the building were dwellings. It does not matter whether any of the units were occupied, unoccupied, or vacant at the time of the fire or explosion.*

[*Building* includes any structure regardless of class or character and any building or structure that is within the curtilage of that building or structure or that is appurtenant to or connected to that building or structure.]

[*Dwelling* includes, but is not limited to, any building, structure, vehicle, watercraft, or trailer adapted for human habitation that was actually lived in or reasonably could have been lived in at the time of the fire or explosion and any building or structure that is within the curtilage of that dwelling or that is appurtenant to or connected to that dwelling.]

[It does not matter whether the defendant owned the property or its contents.]

(4) Third, that when the defendant burned, damaged, or destroyed the property or any of its contents, [he / she] intended to burn, damage, or destroy the property or its contents or intentionally committed an act that created a very high risk of burning the property or its contents and that, while committing the act, the defendant knew of that risk and disregarded it.

Use Note

*If the alleged arson occurs at a mine, substitute "a mine" for "a multiunit building or structure in which one or more units of the building were dwellings."

Use bracketed material when applicable. Provide a "curtilage" or "appurtenance" instruction if necessary.

History

M Crim JI 31.2 was adopted in May, 2013. The previous version of M Crim JI 31.2, Burning Dwelling House [Use for Act(s) Occurring Before April 3, 2013], was renumbered as M Crim JI 31.15 in May, 2013.

Reference Guide

Statutes

MCL 750.71, .72(1)(a).

Case Law

People v Losinger, 331 Mich 490, 503, 50 NW2d 137 (1951).

M Crim JI 31.3 Arson in the First Degree—Building and Physical Injury

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

(2) First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*]. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3) Second, that the property that was burned, damaged, or destroyed was a building, structure, or other real property or any of its contents. [It does not matter whether the defendant owned or used the property.] [Building includes any structure regardless of class or character and any building or structure that is within the curtilage of that building or structure or that is appurtenant to or connected to that building or structure.]

(4) Third, that when the defendant burned, damaged, or destroyed the property or any of its contents, [he / she] intended to burn, damage, or destroy the property or its contents or intentionally committed an act that created a very high risk of burning the property or its contents and that, while committing the act, the defendant knew of that risk and disregarded it.

(5) Fourth, that as a result of the fire or explosion, an individual was physically injured.

[*Physical injury* means an injury that includes, but is not limited to, the loss of a limb or use of a limb; loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb; loss of an eye or ear or loss of use of an eye or ear; loss or substantial impairment of a bodily function; serious, visible disfigurement; a comatose state that lasts for more than three days; measurable brain or mental impairment; a skull fracture or other serious bone fracture; subdural hemorrhage or subdural hematoma; loss of an organ; heart attack; heat stroke; heat exhaustion; smoke inhalation; a burn including a chemical burn; or poisoning.]

[*Individual* means any person and includes, but is not limited to, a firefighter, a law enforcement officer, or other emergency responder, whether paid or volunteer, performing his or her duties in relation to a violation of this chapter or performing an investigation.]

Use Note

Use bracketed material when applicable. Provide a “curtilage” or “appurtenance” instruction if necessary.

History

M Crim JI 31.3 was adopted in May, 2013. The previous version of M Crim JI 31.3, Burning Other Real Property [Use for Act(s) Occurring Before April 3, 2013], was renumbered as M Crim JI 31.16 in May, 2013.

Reference Guide

Statutes

MCL 750.71, .72(1)(b)

Case Law

People v Nowack, 462 Mich 392, 614 NW2d 78 (2000); *People v Losinger*, 331 Mich 490, 503, 50 NW2d 137 (1951).

M Crim JI 31.4 Arson in the Second Degree

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

(2)First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*]. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3)Second, that at the time of the burning, damaging, or destroying, the property that was burned, damaged, or destroyed was a dwelling or any of its contents.

[*Dwelling* includes, but is not limited to, any building, structure, vehicle, watercraft, or trailer adapted for human habitation that was actually lived in or reasonably could have been lived in at the time of the fire or explosion and any building or structure that is on the grounds around that dwelling or that is connected to that dwelling.]

[A business that is located very close to and used in connection with a dwelling may be considered to be a dwelling.] [It does not matter whether the defendant owned or used the dwelling.]

(4)Third, that when the defendant burned, damaged, or destroyed the dwelling or any of its contents, [he / she] intended to burn, damage, or destroy the dwelling or its contents or intentionally committed an act that created a very high risk of burning, damaging, or destroying the dwelling or its contents and that, while committing the act, the defendant knew of that risk and disregarded it.

Use Note

Use bracketed material when applicable. Provide a “curtilage” or “appurtenance” instruction if necessary.

History

M Crim JI 31.4 was adopted in May, 2013. The previous version of M Crim JI 31.4, Burning Personal Property [Use for Act(s) Occurring Before April 3, 2013], was renumbered as M Crim JI 31.17 in May, 2013, amended March 2018.

Reference Guide

Statutes

MCL 750.71, .73.

Case Law

People v Mendoza, 468 Mich 527, 664 NW2d 685 (2003); *People v Cornell*, 466 Mich 335, 646 NW2d 127 (2002); *People v Nowack*, 462 Mich 392, 614 NW2d 78 (2000); *People v Losinger*, 331 Mich 490, 503, 50 NW2d 137 (1951).

M Crim JI 31.5 Arson in the Third Degree—Building/Structure/Real Property

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

(2)First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*]. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3)Second, that at the time of the burning, damaging, or destroying, the property was a building, structure, or other real property or its contents.

[*Building* includes any structure, regardless of class or character, and any building or structure that is on the grounds around that building or structure or that is connected to that building or structure.] [It does not matter whether the building was occupied, unoccupied, or vacant at the time of the fire or explosion.] [It does not matter whether the defendant owned or used the building.]

(4)Third, that when the defendant burned, damaged, or destroyed the building or any of its contents, [he / she] intended to burn, damage, or destroy the building or contents or intentionally committed an act that created a very high risk of burning, damaging, or destroying the building or contents and that, while committing the act, the defendant knew of that risk and disregarded it.

Use Note

Use bracketed material when applicable. Provide a definition of real property if appropriate. Provide a "curtilage" or "appurtenance" instruction if necessary.

History

M Crim JI 31.5 was adopted in May, 2013. The previous version of M Crim JI 31.5, Burning Insured Property [Use for Act(s) Occurring Before April 3, 2013], was renumbered as M Crim JI 31.18 in May, 2013, amended March 2018.

Reference Guide

Statutes

MCL 750.71, .74(1)(a).

Case Law

People v Mendoza, 468 Mich 527, 664 NW2d 685 (2003); *People v Cornell*, 466 Mich 335, 646 NW2d 127 (2002); *People v Nowack*, 462 Mich 392, 614 NW2d 78 (2000); *People v Losinger*, 331 Mich 490, 503, 50 NW2d 137 (1951).

M Crim JI 31.6 Arson in the Third Degree—Personal Property

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

(2)First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*]. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3)Second, that at the time of the burning, damaging, or destroying, the property that was burned, damaged, or destroyed was any personal property. [Personal property in this case means any personally owned property regardless of class or character.] [It does not matter whether the defendant owned the property.]

(4)Third, that when the defendant burned, damaged, or destroyed it, the property had a fair market value of:

[*Choose one:*]

(a)$20,000 or more.

(b)$1,000 or more.

(5)Fourth, that when the defendant burned, damaged, or destroyed the property, [he / she] intended to burn, damage, or destroy or intentionally committed an act that created a very high risk of burning, damaging, or destroying the building or contents and that, while committing the act, the defendant knew of that risk and disregarded it.

Use Note

Use bracketed material when applicable.

*Choose (b) if the defendant has one or more prior convictions.

History

M Crim JI 31.6 was adopted in May, 2013. The previous version of M Crim JI 31.6, Preparation to Burn [Use for Act(s) Occurring Before April 3, 2013], was renumbered as M Crim JI 31.19 in May, 2013, amended March 2018.

Reference Guide

Statutes

MCL 750.71, .74(1)(b)(i), (ii).

Case Law

People v Mendoza, 468 Mich 527, 664 NW2d 685 (2003); *People v Cornell*, 466 Mich 335, 646 NW2d 127 (2002); *People v Nowack*, 462 Mich 392, 614 NW2d 78 (2000); *People v Losinger*, 331 Mich 490, 503, 50 NW2d 137 (1951).

M Crim JI 31.7 Arson in the Fourth Degree—Personal Property

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

(2)First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*]. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3)Second, that at the time of the burning, damaging, or destroying, the property was personal property.

[*Personal property* means any personally owned property, regardless of class or character.] [It does not matter whether the defendant owned the property.]

(4)Third, that when the defendant burned, damaged, or destroyed the property, it had a fair market value of:

[*Choose one:*]

(a)$1,000 or more but less than $20,000.

(b)$200 or more.

(5)Fourth, that when the defendant burned, damaged, or destroyed the property, [he / she] intended to burn, damage, or destroy the property, or intentionally committed an act that created a very high risk of burning, damaging, or destroying the property and that, while committing the act, the defendant knew of that risk and disregarded it.

Use Note

Use bracketed material when applicable.

*Choose (b) if the defendant has one or more prior convictions.

History

M Crim JI 31.7 was adopted in May, 2013, amended 2018.

Reference Guide

Statutes

MCL 750.71, .75(1)(a)(i), (ii).

Case Law

People v Mendoza, 468 Mich 527, 664 NW2d 685 (2003); *People v Cornell*, 466 Mich 335, 646 NW2d 127 (2002); *People v Nowack*, 462 Mich 392, 614 NW2d 78 (2000); *People v Losinger*, 331 Mich 490, 503, 50 NW2d 137 (1951).

M Crim JI 31.8 Arson of Insured Property—Dwelling

(1)The defendant is charged with the crime of arson of insured property. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*]. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3)Second, that the property burned, damaged, or destroyed by fire or explosive was a dwelling or any of its contents.

[*Dwelling* includes, but is not limited to, any building, structure, vehicle, watercraft, or trailer adapted for human habitation that was actually lived in or reasonably could have been lived in at the time of the fire or explosion and any building or structure that is on the grounds around that dwelling or connected to that dwelling.]

[A business that is located very close to and used in connection with a dwelling may be considered to be a dwelling.] [It does not matter whether the defendant owned or used the dwelling.]

(4)Third, that at the time of the burning, damaging, or destroying, the property was insured against loss or damage by fire or explosion. [It does not matter whether this was the defendant's property or someone else's.]

(5)Fourth, that at the time of the burning, damaging, or destroying, the defendant knew that the property was insured against loss or damage by fire or explosion.

(6)Fifth, that when the defendant burned, damaged, or destroyed the property, [he / she] intended to set a fire or explosion, knowing that this would cause injury or damage to another person or to property, and that the defendant did it without just cause or excuse.

(7)Sixth, that when the defendant burned, damaged, or destroyed the property, [he / she] intended to defraud or cheat the insurer.

Use Note

Use bracketed material when applicable. Provide an instruction on "curtilage" or "appurtenance" if appropriate.

History

M Crim JI 31.8 was adopted in May, 2013, amended 2018.

Reference Guide

Statutes

MCL 750.76.

Case Law

People v Dorrikas, 354 Mich 303, 92 NW2d 305 (1958); *People v Potter*, 213 Mich 301, 307, 182 NW 144 (1921); *People v Biossat*, 206 Mich 334, 172 NW 933 (1919); *People v Stewart*, 163 Mich 1, 127 NW 816 (1910); *People v Mix*, 149 Mich 260, 262, 112 NW 907 (1907); *People v Gotshall*, 123 Mich 474, 82 NW 274 (1900); *Meister v People*, 31 Mich 99, 108 (1875).

M Crim JI 31.9 Arson of Insured Property—Building/Real Property

(1)The defendant is charged with the crime of arson of insured property. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*]. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3)Second, that the property burned, damaged, or destroyed by fire or explosive was a structure, building, or other real property or its contents. [It does not matter whether the defendant owned or used the property.]

(4)Third, that at the time of the burning, damaging, or destroying, the property was insured against loss or damage by fire or explosion. [It does not matter whether this was the defendant's property or someone else's.]

(5)Fourth, that at the time of the burning, damaging, or destroying, the defendant knew that the property was insured against loss or damage by fire or explosion.

(6)Fifth, that when the defendant burned, damaged, or destroyed the property, [he / she] intended to set a fire or explosion, knowing that this would cause injury or damage to another person or to property, and that the defendant did it without just cause or excuse.

(7)Sixth, that when the defendant burned the property, [he / she] intended to defraud or cheat the insurer.

History

M Crim JI 31.9 was adopted in May, 2013, amended March 2018.

Reference Guide

Statutes

MCL 750.76.

Case Law

People v Dorrikas, 354 Mich 303, 92 NW2d 305 (1958); *People v Potter*, 213 Mich 301, 307, 182 NW 144 (1921); *People v Biossat*, 206 Mich 334, 172 NW 933 (1919); *People v Stewart*, 163 Mich 1, 127 NW 816 (1910); *People v Mix*,

149 Mich 260, 262, 112 NW 907 (1907); *People v Gotshall*, 123 Mich 474, 82 NW 274 (1900); *Meister v People*, 31 Mich 99, 108 (1875).

M Crim JI 31.10 Arson of Insured Property—Personal Property

(1)The defendant is charged with the crime of arson of insured property. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2)First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*]. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3)Second, that the property burned, damaged, or destroyed by fire or explosive was personal property.

[*Personal property* means any personally owned property, regardless of class, character, or value.] [It does not matter whether the defendant owned or used the property.]

(4)Third, that at the time of the burning, damaging, or destroying, the property was insured against loss or damage by fire or explosion.

(5)Fourth, that at the time of the burning, damaging, or destroying, the defendant knew that the property was insured against loss or damage by fire or explosion.

(6)Fifth, that when the defendant burned, damaged, or destroyed the property, [he / she] intended to set a fire or explosion, knowing that this would cause injury or damage to another person or to property, and that the defendant did it without just cause or excuse.

(7)Sixth, that when the defendant burned, damaged, or destroyed the property, [he / she] intended to defraud or cheat the insurer.

Use Note

Use bracketed material when applicable.

History

M Crim JI 31.10 was adopted in May, 2013, amended March 2018.

Reference Guide

Statutes

MCL 750.76.

Case Law

People v Dorrikas, 354 Mich 303, 92 NW2d 305 (1958); *People v Potter*, 213 Mich 301, 307, 182 NW 144 (1921); *People v Biossat*, 206 Mich 334, 172 NW 933 (1919); *People v Stewart*, 163 Mich 1, 127 NW 816 (1910); *People v Mix*, 149 Mich 260, 262, 112 NW 907 (1907); *People v Gotshall*, 123 Mich 474, 82 NW 274 (1900); *Meister v People*, 31 Mich 99, 108 (1875).

M Crim JI 31.11 Preparation to Burn Personal Property

(1) The defendant is charged with the crime of placing a flammable or explosive substance near property with intent to commit arson. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant put some kind of flammable, combustible, or explosive material, liquid, substance, or device in or near [*describe property alleged*] [or aided, counseled, induced, persuaded, or procured another person to do so].

(3) Second, that when the defendant did this, [he / she] intended to burn, damage, or destroy by fire or explosive [*describe property alleged*].

(4) Third, that the property had a fair market value when the defendant [intended to burn / burned] it of:*

[*Choose only one of the following unless instructing on lesser offenses:*]

(a) The property had some value.

(b) The property had a combined value of $200 or more [but less than $1,000].

(c) The property had a combined value of $1,000 or more [but less than $20,000].

(d) The property had a combined value of $20,000 or more.

[*Use the following paragraph only if applicable:*]

(5) [If part of a scheme or course of conduct within a 12-month period, you may add together the values of property intended to be burned in separate incidents when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

*The Fair Market Value Test, M Crim JI 22.1, should be given when applicable.

Use bracketed material when applicable. The bracketed material in (4)(b) and (c) should be used if the instruction is for a lesser included offense.

History

M Crim JI 31.11 was adopted in May, 2013.

Reference Guide

Statutes

MCL 750.79.

M Crim JI 31.12 Preparation to Burn Personal Property with Fraudulent Intent

(1) The defendant is charged with the crime of placing a flammable or explosive substance near property with intent to commit arson. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant put some kind of flammable, combustible, or explosive material, liquid, substance, or device in or near [*describe property alleged*] [or aided, counseled, induced, persuaded, or procured another person to do so].

(3) Second, that when the defendant did this, [he / she] intended to burn, damage, or destroy by fire or explosive [*describe property alleged*].

(4) Third, the property had a fair market value of $2,000 or more.

(5) Fourth, that at the time the defendant did this, the property was insured against loss or damage by fire or explosion. [It does not matter whether this was the defendant's property or someone else's.]

(6) Fifth, that at the time the defendant did this, [he / she] knew that the property was insured against loss or damage by fire or explosion.

(7) Sixth, that when the defendant did this, [he / she] intended to set a fire or explosion, knowing that this could cause injury or damage to another person or to property, and that the defendant did it without just cause or excuse.

(8) Seventh, that the defendant intended to defraud or cheat the insurer.

Use Note

Use bracketed material when applicable. It is not required that any fire or damage actually occurred.

History

M Crim JI 31.12 was adopted in May, 2013.

Reference Guide

Statutes

MCL 750.79.

M Crim JI 31.13 Preparation to Burn Dwelling—No Aggravating Circumstances

(1) The defendant is charged with the crime of placing a flammable or explosive substance near property with intent to commit arson. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant put some kind of flammable, combustible, or explosive material, liquid, substance, or device in or near [*describe property alleged*] [or aided, counseled, induced, persuaded, or procured another person to do so].

(3) Second, that when the defendant did this, [he / she] intended to burn, damage, or destroy by fire or explosive [*describe property alleged*].

(4) Third, the property was a dwelling.

[*Dwelling* includes, but is not limited to, any building, structure, vehicle, watercraft, or trailer adapted for human habitation that was actually lived in or reasonably could have been lived in at the time of the fire or explosion and any building or structure that is within the curtilage of that dwelling or that is appurtenant to or connected to that dwelling.]

Use Note

Use bracketed material when applicable. It is not required that any fire or damage actually occurred. Provide a "curtilage" or "appurtenance" instruction if necessary.

History

M Crim JI 31.13 was adopted in May, 2013.

Reference Guide

Statutes

MCL 750.79.

M Crim JI 31.14 Preparation to Burn Building—No Aggravating Circumstances

(1) The defendant is charged with the crime of placing a flammable or explosive substance near property with intent to commit arson. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant put some kind of flammable, combustible, or explosive material, liquid, substance, or device in or near [*describe property alleged*] [or aided, counseled, induced, persuaded, or procured another person to do so].

(3) Second, that when the defendant did this, [he / she] intended to burn, damage, or destroy by fire or explosive [*describe property alleged*].

(4) Third, that the property was a building, structure, or other real property.

[*Building* includes any structure regardless of class or character and any building or structure that is within the curtilage of that building or structure or that is appurtenant to or connected to that building or structure.]

[It doesn't matter whether the defendant owned the building, structure, or other real property.]

Use Note

Use bracketed material when applicable. It is not required that any fire or damage actually occurred.

History

M Crim JI 31.14 was adopted in May, 2013.

Reference Guide

Statutes

MCL 750.79.

M Crim JI 31.15 Burning Dwelling House [Use for Act(s) Occurring Before April 3, 2013]

(1) The defendant is charged with the crime of burning a dwelling house or any of its contents. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant burned [*describe property alleged*]. The term "burn" in this case means setting fire to or doing anything that results in the starting of a fire, or helping or persuading someone else to set a fire. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

(3) Second, that at the time of the burning the building was a dwelling house. A dwelling house is a structure that was actually being lived in or that reasonably could have been lived in at the time of the fire. [A business that is located very close to and used in connection with a dwelling may be considered to be a dwelling.] [It does not matter whether the defendant owned or used the building.]

(4) Third, that when the defendant burned the dwelling or any of its contents, [he / she] intended to burn the dwelling or contents or intentionally committed an act that created a very high risk of burning the dwelling or contents and that, while committing the act, the defendant knew of that risk and disregarded it.

Use Note

Use bracketed material when applicable.

History

M Crim JI 31.15 (formerly CJI2d 31.15) was CJI 31:1:01; amended in September, 2000; renumbered from M Crim JI 31.2 in May, 2013.

Reference Guide

Statutes

MCL 750.71, .72.

Case Law

People v Nowack, 462 Mich 392, 614 NW2d 78 (2000); *People v Reeves*, 448 Mich 1, 528 NW2d 160 (1995); *People v Losinger*, 331 Mich 490, 503, 50 NW2d 137 (1951); *People v Lee*, 231 Mich 607, 204 NW 742 (1925); *People v Handley*, 93 Mich 46, 48, 52 NW 1032 (1892); *People v Williams*, 114 Mich App 186, 318 NW2d 671 (1982); *People v Foster*, 103 Mich App 311, 302 NW2d 862 (1981); *People v Reed*, 13 Mich App 75, 163 NW2d 704 (1968).

M Crim JI 31.16 Burning Other Real Property [Use for Act(s) Occurring Before April 3, 2013]

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

(2) First, that the defendant burned [*describe property alleged*]. The term "burn" in this case means setting fire to or doing anything that results in the starting of a fire, or helping or persuading someone else to set a fire. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

(3) Second, that the property that was burned was a building or any of its contents. [It does not matter whether the defendant owned or used the building.]

(4) Third, that when the defendant burned the building or its contents, [he / she] intended to burn the building or contents or intentionally committed an act that created a very high risk of burning the building or contents and that, while committing the act, the defendant knew of that risk and disregarded it.

Use Note

Use bracketed material when applicable.

History

M Crim JI 31.16 (formerly CJI2d 31.16) was CJI 31:2:01; amended September, 2006; September, 2009; renumbered from M Crim JI 31.3 in May, 2013.

Reference Guide

Statutes

MCL 750.71, .73.

Case Law

People v Antonelli, 64 Mich App 620, 238 NW2d 363, rev'd on other grounds, 66 Mich App 138, 238 NW2d 551 (1975).

M Crim JI 31.17 Burning Personal Property [Use for Act(s) Occurring Before April 3, 2013]

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

(2) First, that the defendant burned [*describe property alleged*]. The term "burn" in this case means setting fire to or doing anything that results in the starting of a fire, or helping or persuading someone else to set a fire. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

(3) Second, that the property that was burned was personal property. Personal property in this case means any property that is not a building or permanently attached to a building. [It does not matter whether the defendant owned or used the property.]

(4) Third, that when the defendant burned the property, [he / she] intended to burn the property or intentionally committed an act that created a very high risk of burning the property and that, while committing the act, the defendant knew of that risk and disregarded it.

(5) Fourth, that the property had a fair market value when the defendant burned it of:*

[*Choose only one of the following unless instructing on lesser offenses:*]

(a) $20,000 or more.

(b) $1,000 or more, but less than $20,000.

(c) $200 or more, but less than $1,000.

(d) some amount less than $200.

[*Use the following paragraph only if applicable:*]

[(6) You may add together the values of personal property burned in separate incidents if part of a scheme or course of conduct within a 12-month period when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

*The Fair Market Value Test, M Crim JI 22.1, should be given when applicable.

Use bracketed material when applicable.

History

M Crim JI 31.17 (formerly CJI2d 31.17) was CJI 31:3:01; amended September, 1999; September, 2006; renumbered from M Crim JI 31.4 in May, 2013.

Reference Guide

Statutes

MCL 750.74.

M Crim JI 31.18 Burning Insured Property [Use for Act(s) Occurring Before April 3, 2013]

(1) The defendant is charged with the crime of burning insured property. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant burned [*describe property alleged*]. The term "burn" in this case means setting fire to or doing anything that results in the starting of a fire, or helping or persuading someone else to set a fire. If any part of the [*describe property*] is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) is not burned if it is merely blackened by smoke, but it is burned if it is charred so that any part of it is destroyed.]

(3) Second, that at the time of the burning, this property was insured against loss or damage by fire. [It does not matter whether this was the defendant's property or someone else's.]

(4) Third, that at the time of the burning, the defendant knew that the property was insured.

(5) Fourth, that when the defendant burned the property, [he / she] intended to set a fire, knowing that this would cause injury or damage to another person or to property, and that the defendant did it without just cause or excuse.*

(6) Fifth, that when the defendant burned the property, [he / she] intended to defraud or cheat the insurer.*

Use Note

*This is a specific intent crime.

History

M Crim JI 31.18 (formerly CJI2d 31.18) was CJI 31:4:01; renumbered from M Crim JI 31.5 in May, 2013.

Reference Guide

Statutes

MCL 750.71, .75.

Case Law

People v Dorrikas, 354 Mich 303, 92 NW2d 305 (1958); *People v Rabin*, 317 Mich 654, 27 NW2d 126, cert den, 332 US 759 (1947); *People v Potter*, 213 Mich 301, 307, 182 NW 144 (1921); *People v Biossat*, 206 Mich 334, 172 NW 933 (1919); *People v Stewart*, 163 Mich 1, 127 NW 816 (1910); *People v Mix*, 149 Mich 260, 262, 112 NW 907 (1907); *People v Gotshall*, 123 Mich 474, 82 NW 274 (1900*); Meister v People*, 31 Mich 99, 108 (1875).

M Crim JI 31.19 Preparation to Burn [Use for Act(s) Occurring Before April 3, 2013]

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

(2) First, that the defendant put in or around [*describe property alleged*] some kind of flammable or explosive material or device.

(3) Second, that when the defendant did this, [he / she] intended to set a fire, knowing that this would cause injury or damage to another person or to property, and that the defendant did it without just cause or excuse.[1]

(4) Third, that the property had a fair market value when the defendant [intended to burn / burned] it of:[2]

[*Choose only one of the following unless instructing on lesser offenses:*]

(a) $20,000 or more.

(b) $1,000 or more, but less than $20,000.

(c) $200 or more, but less than $1,000.

(d) some amount less than $200.

[*Use the following paragraph only if applicable:*]

(5) [You may add together the values of property intended to be burned in separate incidents if part of a scheme or course of conduct within a 12-month period when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

[1] This is a specific intent crime.

[2] The Fair Market Value Test, M Crim JI 22.1, should be given when applicable.

History

M Crim JI 31.19 (formerly CJI2d 31.19) was CJI 31:5:01; amended September, 1999, to reflect changes made by 1998 PA 312, eff. January 1, 1999; renumbered from M Crim JI 31.6 in May, 2013.

Reference Guide

Statutes

MCL 750.77.

Case Law

People v Frank Davis, 24 Mich App 304, 305, 180 NW2d 285 (1970).

CHAPTER 32

Malicious Destruction of Property

M Crim JI 32.1 Fair Market Value Test—Malicious Destruction of Property 32-2
M Crim JI 32.2 Malicious Destruction of Personal Property 32-3
M Crim JI 32.3 Malicious Destruction of a Building or Appurtenance 32-5

M Crim JI 32.1 Fair Market Value Test—Malicious Destruction of Property

(1) The test for the extent of damage is the reasonable and fair market value of repairing the damage or of replacing the property destroyed.

(2) Fair market value is defined as the value at the time and in the place where the damage occurred.

History

M Crim JI 32.1 (formerly CJI2d 32.1) was CJI 32:1:04.

Reference Guide

Case Law

People v Hamblin, 224 Mich App 87, 568 NW2d 339 (1997).

M Crim JI 32.2 Malicious Destruction of Personal Property

(1) The defendant is charged with the crime of malicious destruction of personal property. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the property belonged to someone else.

(3) Second, that the defendant destroyed or damaged that property.

(4) Third, that the defendant did this knowing that it was wrong, [without just cause or excuse,][1] and with the intent to damage or destroy the property.[2]

(5) Fourth, that the extent of the damage was:[3]

[*Choose only one of the following unless instructing on lesser offenses:*]

(a) $20,000 or more.

(b) $1,000 or more, but less than $20,000.

(c) $200 or more, but less than $1,000.

(d) some amount less than $200.

[*Use the following paragraph only if applicable:*]

(6) [You may add together damages caused in separate incidents if part of a scheme or course of conduct within a 12-month period when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

Caveat: The statute expressly excludes acts under MCL 750.377 with the words, "by any means not particularly mentioned or described in the preceding section."?The subject matter of MCL 750.377 is killing, maiming, disfiguring, or poisoning animals.

[1] Use only where evidence supports a legally recognized defense that the destruction was done with just cause or is legally excused.

[2] This is a specific intent crime.

[3] The Fair Market Value Test, M Crim JI 32.1, should be given when applicable.

History

M Crim JI 32.2 (formerly CJI2d 32.2) was CJI 32:2:01; amended September, 1999, to reflect changes made by 1998 PA 311, eff. January 1, 1999.

Reference Guide

Statutes

MCL 750.377a, .377b.

Case Law

People v Jones, 120 Mich 283, 79 NW 177 (1899); *People v Fox (After Remand)*, 232 Mich App 541, 591 NW2d 384 (1998); *People v Ewing*, 127 Mich App 582, 339 NW2d 228 (1983); *People v Richardson*, 118 Mich App 492, 496-497, 325 NW2d 419 (1982); *People v Beaudin*, 110 Mich App 147, 312 NW2d 187 (1981), rev'd on other grounds, 417 Mich 570, 339 NW2d 461 (1983); *People v Culp*, 108 Mich App 452, 310 NW2d 421 (1981); *People v McKnight*, 102 Mich App 581, 585, 302 NW2d 241 (1980); *People v Iehl*, 100 Mich App 277, 280-281, 299 NW2d 46 (1980).

M Crim JI 32.3 Malicious Destruction of a Building or Appurtenance

(1) The defendant is charged with the crime of malicious destruction of a building [or anything permanently attached to it]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the building [or anything permanently attached to it] belonged to someone else.

(3) Second, that the defendant destroyed or damaged that building [or anything permanently attached to it].

(4) Third, that the defendant did this knowing that it was wrong, [without just cause or excuse,][1] and with the intent to damage or destroy the property.[2]

(5) Fourth, that the extent of the damage was:[3]

[*Choose only one of the following unless instructing on lesser offenses:*]

(a) $20,000 or more.

(b) $1,000 or more, but less than $20,000.

(c) $200 or more, but less than $1,000.

(d) some amount less than $200.

[*Use the following paragraph only if applicable:*]

(6) [You may add together damages caused in separate incidents if part of a scheme or course of conduct within a 12-month period when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Note

[1] Use only where evidence supports a legally recognized defense that the destruction was done with just cause or is legally excused.

[2] This is a specific intent crime.

[3] The Fair Market Value Test, M Crim JI 32.1, should be given when applicable.

History

M Crim JI 32.3 (formerly CJI2d 32.3) was CJI 32:3:01; amended September, 1999, to reflect changes made by 1998 PA 311, eff. January 1, 1999.

Reference Guide

Statutes

MCL 750.380.

Case Law

People v Burkhardt, 72 Mich 172, 40 NW 240 (1888); *People v LaBelle*, 231 Mich App 37, 38, 585 NW2d 756 (1998).

CHAPTER 34

Welfare Fraud and Felony Nonsupport

M Crim JI 34.1 Fraudulent Receipt of Public Assistance Benefits 34-2

M Crim JI 34.2 Authorization or Recommendation of Benefits to Ineligible Person 34-4

M Crim JI 34.3 Refusal or Neglect to Provide Information to Welfare Department 34-5

M Crim JI 34.4 Criminal Nonsupport 34-7

M Crim JI 34.5 Impossibility As a Defense to Felony Nonsupport 34-8

M Crim JI 34.1 Fraudulent Receipt of Public Assistance Benefits

(1) The defendant is charged with the crime of public assistance fraud. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant made a false statement or representation to the [*identify appropriate agency*].

(3) Second, that the defendant knew when [he / she] made the statement or representation that it was false.

(4) Third, that when [he / she] made the false statement or representation, the defendant intended to defraud or cheat the [*identify agency*].*

(5) Fourth, that the [*identify agency*] employee relied on the defendant's false statement or representation.

(6) Fifth, that as a result of the false statement or representation, the defendant [would have] received [public assistance benefits (he / she) was not entitled to / a larger amount of benefits than (he / she) was entitled to].

[*Use (7) for felonies:*]

(7) Sixth, that because of this, the defendant fraudulently received [or attempted to receive] more than $500 in public assistance benefits.

[*Use (8) for misdemeanors:*]

(8) Sixth, that because of this, the defendant fraudulently received [or attempted to receive] $500 or less in public assistance benefits.

(9) To determine how much [was / would have been] fraudulently received, you must subtract the amount the defendant was entitled to receive from the amount [he / she] [actually / would have] received.

Use Note

*This is a specific intent crime.

When factually appropriate or requested, include attempt language in paragraphs (6), (7), and (8), as well as the basic attempt definition in chapter 9.

History

M Crim JI 34.1 (formerly CJI2d 34.1) was CJI 34:1:01.

Reference Guide

Statutes

MCL 400.60.

Case Law

People v Vargo, 139 Mich App 573, 362 NW2d 840 (1984); *People v Evans*, 128 Mich App 311, 340 NW2d 291 (1983); *People v De Groot*, 116 Mich App 516, 323 NW2d 465 (1982); *People v Robinson*, 97 Mich App 542, 296 NW2d 99 (1980); *People v Raymond Smith*, 84 Mich App 376, 379, 269 NW2d 469 (1978).

M Crim JI 34.2 Authorization or Recommendation of Benefits to Ineligible Person

(1) The defendant is charged with the crime of public assistance fraud. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was an employee of the [*identify appropriate agency*].

(3) Second, that the defendant [authorized / recommended] payment of public assistance benefits to another person.

(4) Third, that when [he / she] made the [authorization / recommendation], the defendant knew that the person was ineligible for those benefits.*

[*Use (5) for felonies:*]

(5) Fourth, that the amount of public assistance benefits the defendant fraudulently [authorized / recommended] was more than $500.

[*Use (6) for misdemeanors:*]

(6) Fourth, that the amount of public assistance benefits the defendant fraudulently [authorized / recommended] was $500 or less.

(7) To determine how much was fraudulently [authorized / recommended], you must subtract the amount the person was entitled to receive from the amount that person actually received.

Use Note

*This is a specific intent crime.

History

M Crim JI 34.2 (formerly CJI2d 34.2) was CJI 34:1:02.

Reference Guide

Statutes

MCL 400.60.

Case Law

People v De Groot, 116 Mich App 516, 519, 323 NW2d 465 (1982).

M Crim JI 34.3 Refusal or Neglect to Provide Information to Welfare Department

(1) The defendant is charged with the crime of [refusing / neglecting] to provide certain information to the [*identify appropriate agency*]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was receiving public assistance benefits.

(3) Second, that the defendant [personally applied for those benefits / knew that (he / she) was included in another person's application].

(4) Third, that the defendant [refused / neglected] to provide certain information to the [*identify agency*]. [To refuse means to intentionally not do an act. To neglect means to carelessly fail to do an act.]*

(5) Fourth, that the unreported information was information that the defendant had a duty to continue to provide to the welfare department. In this case, it is charged that the defendant [refused / neglected] to report

[*Choose appropriate subsections:*]

(a) the complete circumstances of income from employment or any other source;

(b) the existence of income, if the defendant knew about it, of other people who were receiving benefits through the same application;

(c) information about every job offer the defendant received;

(d) information about every job offer other people who were receiving benefits through the same application received;

(e) information about changes in the defendant's circumstances;

(f) information about changes in the circumstances of other people who were receiving benefits through the same application;

(g) the circumstances or whereabouts, if the defendant knew them, of relatives who were legally responsible for [his / her] support or the support of other people who were receiving benefits through the same application, if changes in the circumstances could affect the amount of assistance available from those relatives or their legal ability to pay support.

(6) Fifth, that the defendant knew that [he / she] had a duty to provide the information.

[*Use (7) for felonies:*]

(7) Sixth, that the amount of public assistance benefits received as a result of the [refusal / neglect] to provide information was more than $500.

[*Use (8) for misdemeanors:*]

(8) Sixth, that the amount of public assistance benefits received as a result of the [refusal / neglect] to provide information was $500 or less.

(9) To determine how much was received as a result of the [refusal / neglect] to provide information, you must subtract the amount the defendant was entitled to receive from the amount [he / she] actually received.

Use Note

*Bracketed language is optional. The definitions are taken from *People v Akerley*, 73 Mich App 321, 325, 251 NW2d 309 (1977).

History

M Crim JI 34.3 (formerly CJI2d 34.3) was CJI 34:1:03.

Reference Guide

Statutes

MCL 400.60.

Case Law

People v Foley, 59 Mich 553, 26 NW 699 (1886); *People v Raymond Smith*, 84 Mich App 376, 378, 269 NW2d 469 (1978); *People v Killingsworth*, 80 Mich App 45, 263 NW2d 278 (1977); *People v Akerley*, 73 Mich App 321, 325, 251 NW2d 309 (1977); *People v Sharon Brown*, 35 Mich App 330, 192 NW2d 671 (1971).

M Crim JI 34.4 Criminal Nonsupport

(1) The defendant is charged with the crime of failing to pay support for [his / her] [former spouse / current spouse / child(ren)]. Defendant pleads not guilty to this charge. To establish this charge, the prosecution must prove each of the following elements beyond a reasonable doubt:

(2) First, that there is a court order that requires the defendant to pay support for [his / her] [former spouse / current spouse / child(ren)] [*insert name(s) of spouse or child(ren*)].

(3) Second, that the defendant [appeared in / was personally served with notice of] the action in which the support order was issued.

(4) Third, that the defendant failed to pay support in the amount or at the time stated in the order.

Use Note

This instruction is based on MCL 750.165.

History

M Crim JI 34.4 was adopted in September, 2008.

Reference Guide

Case Law

People v Herrick, 277 Mich App 255, 257, 744 NW2d 370 (2007); *People v Monaco*, 262 Mich App 596, 606, 686 NW2d 790 (2004) (Monaco I), aff'd in part and rev'd in part on other grounds, 474 Mich 48, 710 NW2d 46 (2006).

M Crim JI 34.5 Impossibility As a Defense to Felony Nonsupport

(1) The defense of impossibility has been raised by the defendant. This is an affirmative defense, and the defendant has the burden of proving this defense by a preponderance of the evidence. This means that the defendant must satisfy you that it was more likely than not that it was truly impossible to comply with the family court order.

(2) In order to prove this defense, the defendant must establish that [he / she] did everything reasonably possible to provide for [his / her] child/children and to have arranged [his / her] finances in such a way that prioritized [his / her] parental responsibility and that, despite those efforts, it was truly impossible for the defendant to comply with the family court order. The defendant must explore and eliminate all the reasonably possible and lawful avenues of obtaining the revenue to comply with the support order.

(3) In determining whether the defendant has established the defense of impossibility, you should consider whether the defendant has diligently sought employment; whether [he / she] could have secured additional employment; whether [he / she] had investments that could have been liquidated; whether [he / she] received gifts or an inheritance; whether [he / she] had a home that could have been sold or refinanced; whether [he / she] had assets that could have been sold or used as loan collateral; whether [he / she] prioritized the payment of child support over the purchase of nonessential items; and whether [he / she] took reasonable precautions to guard against financial misfortune and arranged [his / her] financial affairs with future contingencies in mind, in accordance with one's parental responsibility to one's child.

(4) You may consider the defendant's conduct and responses in the family court in determining the possibility of compliance with the support order and to evaluate the defendant's good-faith efforts.

(5) If you find that the defendant has proved the defense of impossibility by a preponderance of the evidence, then you must find the defendant not guilty. If, however, [he / she] has failed to prove impossibility, then [his / her] impossibility defense fails.

History

M Crim JI 34.5 was adopted in February, 2013.

Reference Guide

Case Law

People v Likine, 492 Mich 367, 404, 823 NW2d 50 (2012).

CHAPTER 35

Telecommunications and Computer Offenses

M Crim JI 35.1 Telephone Interference 35-2

M Crim JI 35.2 Unlawful Use of Telecommunications Services by Agent or Employee 35-3

M Crim JI 35.3 Unlawful Possession, Delivery, or Manufacturing of Telecommunications Device 35-5

M Crim JI 35.4 Unlawfully Delivering or Advertising Plans for Telecommunications Device 35-6

M Crim JI 35.5 Unlawfully Obtaining Telecommunications Service 35-7

M Crim JI 35.6 Unlawfully Publishing a Telecommunications Access Device 35-9

M Crim JI 35.7 Accessing Computer with Intent to Defraud 35-10

M Crim JI 35.8 Unlawfully Accessing a Computer System 35-12

M Crim JI 35.9 Unlawfully Inserting Instructions into Computer 35-14

M Crim JI 35.10 Use of a Computer to Commit Specified Crimes 35-16

M Crim JI 35.1 Telephone Interference

The defendant is charged with the crime of interfering with an electronic communication. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(1) First, that the defendant prevented, obstructed, or delayed, by any means, the sending of an authorized communication through [a telephone line or any electronic medium of communication / the Internet / a computer, a computer program, a computer system, or a computer network / any electronic medium of communication]. [It does not matter whether the communication was actually sent or received.]

(2) Second, that the defendant did this willfully and maliciously. This means that the defendant did the act on purpose and with the intent to prevent, obstruct, or delay the communication.

[*Use the following paragraph only if applicable.*]

(3) Third, that the incident to be communicated by [*name complainant*] results in [injury / death] to any person.

History

M Crim JI 35.1 was added by the committee in September, 2010.

Reference Guide

Statutes

MCL 750.540(4).

M Crim JI 35.2 Unlawful Use of Telecommunications Services by Agent or Employee

(1) The defendant is charged with the crime of [using / diverting] telecommunications services for [(his / her) own / another's] benefit. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was an [agent / employee / officer / shareholder / partner / independent contractor] of a telecommunications provider.

(3) Second, that the defendant [used / diverted] telecommunications services of [his / her] [employer / principal] for [(his / her) own / another's] benefit.

(4) Third, that the defendant did so knowingly and without authority.

(5) Fourth, that the defendant's acts directly or indirectly caused an aggregate loss of

[*Choose one of the following:*]

(a) $20,000 or more.

or

(b) $1,000 or more, but less than $20,000.

or

(c) $200 or more, but less than $1,000.

or

(d) some amount less than $200.

Use Note

If the aggregate amount of loss is disputed and lesser offenses are requested, the court may instruct the jury to consider the appropriate statutory amounts and use a special verdict form to specify the finding.

Pertinent statutory definitions can be found as follows:

"Counterfeit telecommunications device"—MCL 750.540c(6)(a);
"Deliver"—MCL 750.540c(6)(b);
"Telecommunications"—MCL 750.540c(6)(c);
"Telecommunications device"—MCL 750.540c(6)(d);
"Telecommunications service"—MCL 750.540c(6)(e);
"Unauthorized receipt of a telecommunications service"—MCL 750.540c(6)(f)

History

M Crim JI 35.2 (formerly CJI2d 35.2) was adopted by the committee in September, 1997, to reflect the elements of the offense created by 1996 PA 328, MCL 750.540g. Renumbered from CJI2d 30.17 to CJI2d 35.2 in September, 2010.

Reference Guide

Statutes

MCL 750.540c, .540g.

M Crim JI 35.3 Unlawful Possession, Delivery, or Manufacturing of Telecommunications Device

(1) The defendant is charged with unlawfully [possessing / delivering / offering to deliver / advertising / manufacturing] a telecommunications device. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [possessed / delivered / offered to deliver / advertised / manufactured] a telecommunications device.

[*Choose (3) or (4) below:*]

(3) Second, that the device was a counterfeit telecommunications device.

or

(4) Second, that the defendant intended to use or allow another to use the device or knew or had reason to know that another intended to use the device to

(a) obtain or attempt to obtain telecommunications services without paying for them or

(b) conceal the existence, origin, or destination of telecommunications service.

Use Note

For references to pertinent statutory definitions, see the *Use Note* for M Crim JI 35.2.

History

M Crim JI 35.3 (formerly CJI2d 35.3) was adopted by the committee in September, 1997, to reflect the elements of the offense created by subsection (3)(1) of 1996 PA 329, MCL 750.540c(1). Renumbered from CJI2d 30.18 to CJI2d 35.3 in September, 2010.

Reference Guide

Statutes

MCL 750.540c(1).

M Crim JI 35.4 Unlawfully Delivering or Advertising Plans for Telecommunications Device

(1) The defendant is charged with unlawfully [delivering / offering to deliver / advertising] the [plans / instructions / materials] for a telecommunications device. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [delivered / offered to deliver / advertised] the [plans / instructions / materials] for a telecommunications device.

[*Choose either (3) or (4) below:*]

(3) Second, that the device was a counterfeit telecommunications device.

or

(4) Second, that the defendant intended to use or to allow another to use the device or knew or had reason to know that another would use the device to

(a) obtain or attempt to obtain telecommunications services without paying for them or

(b) conceal the existence, origin, or destination of telecommunications service.

Use Note

For references to pertinent statutory definitions, see the *Use Note* for M Crim JI 35.2.

History

M Crim JI 35.4 (formerly CJI2d 35.4) was adopted by the committee in September, 1997, to reflect the elements of the offense created by subsection (3)(2) of 1996 PA 329, MCL 750.540c(2). Renumbered from CJI2d 30.19 to CJI2d 35.4 in September, 2010.

Reference Guide

Statutes

MCL 750.540c(2).

M Crim JI 35.5 Unlawfully Obtaining Telecommunications Service

(1) The defendant is charged with the crime of unlawfully [obtaining / attempting to obtain] telecommunications service. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [obtained / attempted to obtain] telecommunications services.

(3) Second, that the defendant did so with the intent to avoid or cause another person to avoid paying for the service.

(4) Third, that the defendant did so by using

[*Choose one or more of the following:*]

(a) a telecommunications access device without the authority of the lawful holder, [or]

(b) a counterfeit telecommunications access device, [or]

(c) a fraudulent or deceptive scheme or pretense, [or]

(d) a telecommunications device or counterfeit telecommunications device.

(5) Fourth, that the total value of the telecommunications service the defendant [obtained / attempted to obtain] was

[*Choose one of the following:*]

(a) $20,000 or more.

or

(b) $1,000 or more, but less than $20,000.

or

(c) $200 or more, but less than $1,000.

or

(d) some amount less than $200.

Use Note

If the total amount of loss is disputed and lesser offenses are requested, the court may instruct the jury to consider the appropriate statutory amounts and use a special verdict form to specify the finding.

Pertinent statutory definitions can be found as follows:

"Counterfeit telecommunications access device"—MCL 750.219a(5)(a);
"Counterfeit telecommunications device"—MCL 750.219a(5)(b);
"Telecommunications"—MCL 750.219a(5)(c);
"Telecommunications access device"—MCL 750.219a(5)(d);
"Telecommunications device"—MCL 750.219a(5)(e);
"Telecommunications service"—MCL 750.219a(5)(f);
"Value of the telecommunications service obtained or attempted to be obtained"—MCL 750.219a(5)(g)

History

M Crim JI 35.5 (formerly CJI2d 35.5) was adopted by the committee in September, 1997, to reflect the elements of the offense created by section 219a(1) of 1996 PA 330, MCL 750.219a(1). Renumbered from CJI2d 30.20 to CJI2d 35.5 in September, 2010.

Reference Guide

Statutes

MCL 750.219a(1), (5).

M Crim JI 35.6 Unlawfully Publishing a Telecommunications Access Device

(1) The defendant is charged with unlawfully publishing a [counterfeit] telecommunications access device. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant knowingly or intentionally published a [counterfeit] telecommunications access device.

(3) Second, that the defendant intended or knew or had reason to know that it was likely the device would be used to acquire telecommunications service without payment by the user of such device.

Use Note

For references to pertinent statutory definitions, see the Use Note for M Crim JI 35.2.

History

M Crim JI 35.6 (formerly CJI2d 35.6) was adopted by the committee in September, 1997, to reflect the elements of the offense created by section 540f(1) of 1996 PA 333, MCL 750.540f(1). Renumbered from CJI2d 30.21 to CJI2d 35.6 in September, 2010.

Reference Guide

Statutes

MCL 750.540f(1).

M Crim JI 35.7 Accessing Computer with Intent to Defraud

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

(2) First, that the defendant accessed a [computer / computer program / computer system / computer network].

(3) Second, that the defendant did so intentionally.

(4) Third, that the defendant did so for the purpose of devising or executing a scheme or plan to obtain [money / property / service] by a false or fraudulent [pretense / representation / promise].

(5) Fourth, that the defendant's acts directly or indirectly caused an aggregate loss of

[*Choose one of the following:*]

(a) $20,000 or more.

or

(b) $1,000 or more, but less than $20,000.

or

(c) $200 or more, but less than $1,000.

or

(d) some amount less than $200.

Use Note

If the aggregate amount of loss is disputed and lesser offenses are requested, the court may instruct the jury to consider the appropriate statutory amounts and use a special verdict form to specify the finding.

Pertinent statutory definitions can be found as follows:

"Access"—MCL 752.792(1);
"Aggregate amount"—MCL 752.792(2);
"Computer"—MCL 752.792(3);
"Computer network"—MCL 752.792(4);
"Computer program"—MCL 752.792(5);
"Computer system"—MCL 752.792(6);
"Device"—MCL 752.792(7);
"Property"—MCL 752.793(1);

"Services"—MCL 752.793(2)

History

M Crim JI 35.7 (formerly CJI2d 35.7) was adopted by the committee in September, 1997, to reflect the elements of the offense created by section (4) of 1996 PA 326, MCL 752.794. Renumbered from CJI2d 30.14 to CJI2d 35.7 in September, 2010.

Reference Guide

Statutes

MCL 752.792, .794.

M Crim JI 35.8 Unlawfully Accessing a Computer System

(1) The defendant is charged with the crime of unlawfully accessing a computer system. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [accessed /caused access to be made to] a [computer / computer program / computer system / computer network].

(3) Second, that the defendant did so intentionally.

(4) Third, that the defendant did so [without / by exceeding] valid authorization.

(5) Fourth, that the defendant did so to [acquire / alter / damage / delete / destroy property / use the services of] the [computer / computer program / computer system / computer network].

(6) When deciding whether the defendant acted [without / by exceeding] valid authorization to access the [computer / computer program / computer system / computer network], you may, but you do not have to, infer that [he / she] [did not have / exceeded] authorization if the defendant accessed the computer intentionally unless:

(a) written or verbal authorization was given by the owner, the system operator, or someone acting on his or her behalf; or

(b) the computer, the computer program or the [computer / computer program / computer system / computer network] the defendant accessed had password protections that included notice that would lead a reasonable person to believe that anyone was permitted access; or

(c) the defendant got access without using a set of instructions, a code, or a computer program that was designed to bypass or get around password protections.

The prosecutor still bears the burden of proving all of the elements beyond a reasonable doubt.

Use Note

If the aggregate amount of loss is disputed and lesser offenses are requested, the court may instruct the jury to consider the appropriate statutory amounts and use a special verdict form to specify the finding.

For references to pertinent statutory definitions, see the *Use Note* for M Crim JI 35.7.

History

M Crim JI 35.8 (formerly CJI2d 35.8) is intended to reflect the elements of the offense created by section (5)(a) of 1996 PA 326, MCL 752.795(a). Renumbered from CJI2d 30.15 to CJI2d 35.8 in September, 2010. Amended February 2016.

Reference Guide

Statutes

MCL 752.795(a).

M Crim JI 35.9 Unlawfully Inserting Instructions into Computer

(1) The defendant is charged with unlawfully inserting unwanted commands in a computer. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, the defendant [inserted / attached / knowingly created the opportunity for an unknowing and unwanted insertion or attachment of] a set of instructions or a computer program into a [computer / computer program / computer system / computer network].

(3) Second, that the defendant did so intentionally.

(4) Third, that the defendant did so [without / by exceeding] valid authorization.

(5) Fourth, the instructions or program was intended to:

[*Choose (a) and/or (b)*:]

(a) [acquire / alter / damage / delete / disrupt / destroy] property. It does not matter whether the defendant actually did [acquire / alter / damage / delete / disrupt / destroy] any property, only whether he intended to do so.

(b) use the services of a [computer / computer program / computer system / computer network]. It does not matter whether the defendant actually did use the services of a [computer / computer program / computer system / computer network], only whether he intended to do so.

(6) When deciding whether the defendant acted [without / by exceeding] valid authorization, you may, but you do not have to, infer that [he / she] [did not have / exceeded] authorization if the defendant inserted the instructions or program intentionally unless:

(a) written or verbal authorization was given by the owner, the system operator, or someone acting on his or her behalf; or

(b) the computer, the computer program or the computer system into which the defendant inserted instructions or a program had password protections that included notice that would lead a reasonable person to believe that anyone was permitted to insert or attach instructions or programs; or

(c) the defendant inserted or attached instructions or programs without using a set of instructions, a code, or a computer program that was designed to bypass or get around password protections.

The prosecutor still bears the burden of proving all of the elements beyond a reasonable doubt.

Use Note

If the aggregate amount of loss is disputed and lesser offenses are requested, the court may instruct the jury to consider the appropriate statutory amounts and use a special verdict form to specify the finding.

For references to pertinent statutory definitions, see the *Use Note* for M Crim JI 35.7.

History

M Crim JI 35.9 (formerly CJI2d 35.9) was adopted by the committee in September, 1997, to reflect the elements of the offense created by section (5)(b) of 1996 PA 326, MCL 752.795(b). Renumbered from CJI2d 30.16 to CJI2d 35.9 in September, 2010. Amended February 2016.

Reference Guide

Statutes

MCL 752.795(b).

M Crim JI 35.10 Use of a Computer to Commit Specified Crimes

(1) The defendant is charged with using a computer to [commit / attempt to commit / conspire to commit / solicit another to commit] the offense of [*state underlying offense*][1] [against a minor].[2] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant used [the Internet / a computer / a computer program / a computer network / a computer system][3] to communicate with any person.

(3) Second, that the communication was done for the purpose of [committing / attempting to commit / conspiring to commit / soliciting another to commit] the offense of [*state underlying offense*].

[*Use the following paragraph only if the underlying offense appears in Part A of the underlying offense list in Use Note 1.*]

(4) Third, that the [*state name of victim or intended victim of the underlying offense, if available*] was a minor or the defendant believed [he / she] was a minor.

(5) The elements of [*state underlying offense*] are [*state elements of underlying offense*]. It does not matter whether the defendant or anyone else has been convicted of [*state underlying offense*].

Use Note

[1] The statute lists the following underlying offenses:

Part A

MCL 750.145—accosting a child for immoral purposes
MCL 750.145c—child sexually abusive activity
MCL 750.349—kidnapping
MCL 750.350—enticing away child under 14
MCL 750.520b—criminal sexual conduct in the first degree
MCL 750.520c—criminal sexual conduct in the second degree
MCL 750.520d—criminal sexual conduct in the third degree
MCL 750.520e—criminal sexual conduct in the fourth degree
MCL 750.520g—assault with intent to commit criminal sexual conduct
MCL 722.675(5)—disseminating sexually explicit material to a minor
MCL 750.327a—sale of explosives to minors
MCL 750.157c—inducing minor to commit felony

Part B

MCL 750.411h—stalking
MCL 750.411i—aggravated stalking
MCL 750.327—causing death with explosives in vehicle
MCL 750.328—causing death with explosives placed to destroy building

MCL 750.411a(2)—false report of explosives crime or threatening to commit such a crime

[2] Underlying offenses in Part B of *Use Note* 1 need not involve a minor. Use the bracketed phrase only where the underlying offense is found in Part A of *Use Note* 1.

[3] "Computer" and the related terms "computer network," "computer program," and "computer system" are defined in subsection (9) of the statute. MCL 750.145d(9).

History

M Crim JI 20.37 (formerly CJI2d 20.37) was adopted by the committee in October, 2004, to set forth the elements of MCL 750.145d as last amended by 2000 PA 185, effective September 18, 2000.

Reference Guide

Statutes

MCL 750.145d.

CHAPTER 36 *Human Trafficking*

M Crim JI 36.1 Obtaining a Person for Forced Labor or Services 36-2

M Crim JI 36.2 Holding a Person in Debt Bondage 36-3

M Crim JI 36.3 Knowingly Subjecting a Person to Forced Labor or Debt Bondage 36-4

M Crim JI 36.4 Participating in a Forced Labor, Debt Bondage or Commercial Sex Enterprise for Financial Gain 36-6

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M Crim JI 36.5 Aggravating Factors 36-10

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M Crim JI 36.7 Testimony of Victim Not Required/Need Not Be Corroborated 36-13

M Crim JI 36.8 Victim's Resistance or Lack of Resistance Not Relevant 36-14

M Crim JI 36.1 Obtaining a Person for Forced Labor or Services

(1) The defendant is charged with the crime of obtaining a person for forced labor or services. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant recruited, enticed, harbored, transported, provided or obtained [*name complainant*] to perform forced labor or services.

(3) Second, that when the defendant recruited, enticed, harbored, transported, provided or obtained [*name complainant*], defendant knew that it was for the purpose of having [*name complainant*] perform forced labor or services, whether or not such labor or service was actually provided.

(4) "Forced labor or services" are labor or services obtained or maintained by force, fraud, or coercion.

[*Provide any or all of the following definitions, according to the evidence:*]

(a) Force includes physical violence, restraint or confinement, or threats of physical violence, restraint, or confinement.

(b) Fraud includes false or deceptive offers of employment or marriage.

(c) Coercion includes [*Select any that apply*]:

(i) threats of harm or restraint to any person.

(ii) using a [scheme / plan / pattern] intended to cause someone to think that [psychological harm / physical harm / harm to the person's reputation] would result from failing to perform an act.

(iii) abusing or threatening to abuse the legal system by threatening to have the person [arrested / deported], regardless of whether the person could be [arrested / deported].

(iv) [destroying / concealing / removing / confiscating] a [passport / immigration document / government identification document] from any person, even if the document was fraudulently obtained.

These are examples of [force / fraud / coercion] and not an exhaustive list.

[This crime is a 10-year offense that may be increased by aggravating factors. If the prosecution has charged one of those factors, the jury must be instructed under M Crim JI 36.5.]

History

This instruction was adopted December 2016.

Reference

MCL 750.462a, MCL 750.462b, MCL 750.462f(1).

M Crim JI 36.2 Holding a Person in Debt Bondage

(1) The defendant is charged with the crime of holding a person in debt bondage. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant recruited, enticed, harbored, transported, provided, or obtained [*name complainant*] to hold [him / her] in debt bondage.

(3) Second, that when the defendant recruited, enticed, harbored, transported, provided or obtained [*name complainant*], the defendant knew that it was for the purpose of holding [*name complainant*] in debt bondage.

(4) "Debt bondage" includes, but is not limited to, a promise by [*name complainant or person who had control over complainant*] that [*name complainant*] would perform services to pay back a debt where the value of the services, or the nature of the services and the time that they are to be performed, is not spelled out or defined, or the value of the services is not applied to reduction of the debt. This is not an exhaustive list of the types of debt bondage.[1]

[This crime is a 10-year offense that may be increased by aggravating factors. If the prosecution has charged one of those factors, the jury must be instructed under M Crim JI 36.5.]

Use Note

[1] Debt bondage is defined in MCL 750.462a(d).

History

This instruction was adopted December 2016.

Reference

MCL 750.462a, MCL 750.462c, MCL 750.462f(1).

M Crim JI 36.3 Knowingly Subjecting a Person to Forced Labor or Debt Bondage

(1) The defendant is charged with the crime of knowingly subjecting a person to [forced labor or services / debt bondage]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant purposefully recruited, enticed, harbored, transported, provided, or obtained [*name complainant*] by any means.

(3) Second, that when the defendant recruited, enticed, harbored, transported, provided, or obtained [*name complainant*], the defendant knew that [*name complainant*] would be subjected to [perform forced labor or services / debt bondage].

[*Provide appropriate definitions*]

(4) "Forced labor or services" are labor or services obtained or maintained by force, fraud, or coercion.

[*Provide any or all of the following definitions, according to the evidence:*]

(a) Force includes physical violence, restraint, or confinement, or threats of physical violence, restraint, or confinement.

(b) Fraud includes false or deceptive offers of employment or marriage.

(c) Coercion includes [*Select any that apply*]:

(i) threats of harm or restraint to any person.

(ii) using a [scheme / plan / pattern] intended to cause someone to think that [psychological harm / physical harm / harm to the person's reputation] would result from failing to perform an act.

(iii) abusing or threatening to abuse the legal system by threatening to have the person [arrested / deported], regardless of whether the person could be [arrested / deported].

(iv) [destroying / concealing / removing / confiscating] a [passport / immigration document / government identification document] from any person, even if the document was fraudulently obtained.

These are examples of [force / fraud / coercion] and not an exhaustive list.

(5) "Debt bondage" includes, but is not limited to, a promise by [*name complainant or person who had control over complainant*] that [*name complainant*] would perform services to pay back a debt where the value of the services, or the nature of the services and the time that they are to be performed, is not spelled out or defined, or the value of the services is not applied to reduction of the debt. This is not an exhaustive list of the types of debt bondage.[1]

[This crime is a 10-year offense that may be increased by aggravating factors. If the prosecution has charged one of those factors, the jury must be instructed under M Crim JI 36.5.]

Use Note

[1] *Debt bondage* is defined in MCL 750.462a(d).

History

This instruction was adopted December 2016.

Reference

MCL 750.462a, MCL 750.462d, MCL 750.462f(1).

M Crim JI 36.4 Participating in a Forced Labor, Debt Bondage or Commercial Sex Enterprise for Financial Gain

(1) The defendant is charged with the crime of participating in an enterprise involving forced labor, debt bondage, or commercial sex for financial gain. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant participated in an enterprise that engaged in forced labor or services, debt bondage, or commercial sexual activity.

(3) Second, that the defendant knew that the enterprise was engaged in forced labor or services, debt bondage, or commercial sexual activity.

(4) Third, that the defendant benefited financially or received anything of value from [his / her] participation in the enterprise.

(5) I will now define some of the legal terminology that was used in this instruction.

[*Provide appropriate definitions*]

(a) An enterprise[1] is an organization for conducting business and can be an individual person, a sole proprietorship, a partnership, a corporation, a limited liability company, a trust, a union, an association, a governmental unit, any other legal entity, or any legal or illegal association of persons.

(b) "Forced labor or services"[2] are labor or services obtained or maintained by force, fraud, or coercion.

[*Provide any or all of the following definitions, according to the evidence:*]

(i) Force includes physical violence, restraint, or confinement, or threats of physical violence, restraint, or confinement.

(ii) Fraud includes false or deceptive offers of employment or marriage.

(iii) Coercion includes [*Select any that apply*]:

(A) threats of harm or restraint to any person.

(B) using a [scheme / plan / pattern] intended to cause someone to think that [psychological harm / physical harm / harm to the person's reputation] would result from failing to perform an act.

(C) abusing or threatening to abuse the legal system by threatening to have the person [arrested / deported], regardless of whether the person could be [arrested / deported].

(D) [destroying / concealing / removing / confiscating] a [passport / immigration document / government identification document] from any person, even if the document was fraudulently obtained.

These are examples of [force / fraud / coercion] and not an exhaustive list.

(c) "Debt bondage" includes, but is not limited to, a promise by [*name complainant or person who had control over complainant*] that [*name complainant*] would perform services to pay back a debt where the value of the services, or the nature of the services and the time that they are to be performed, is not spelled out or defined, or the value of the services is not applied to reduction of the debt. This is not an exhaustive list of the types of debt bondage.[2]

(d) "Commercial sexual activity"[3] means performing acts of sexual penetration or contact,[4] child sexually abusive activity,[5] or a sexually explicit performance.[6]

[This crime is a 10-year offense that may be increased by aggravating factors. If the prosecution has charged one of those factors, the jury must be instructed under M Crim JI 36.5.]

Use Note

[1] *Enterprise* is defined in MCL 750.159f(a).

[2] *Debt bondage* is defined in MCL 750.462a(d).

[3] Definitions of *commercial sexual activity* are found in MCL 750.462a.

[4] Definitions of *sexual penetration* and *sexual contact* are found in MCL 750.520a.

[5] *Child sexually abusive activity* is defined in MCL 750.145c(1)(n) as a child engaging in a "listed sexual act." *Listed sexual act* is defined in MCL 750.145c(1)(i) as "sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity." Those terms, in turn, are each defined in MCL 750.145c(1), and the court may provide definitions where appropriate.

[6] *Sexually explicit performance* is defined in MCL 722.673(g) as "a motion picture, video game, exhibition, show, representation, or other presentation that, in whole or in part, depicts nudity, sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse."

History

This instruction was adopted December 2016.

Reference

MCL 750.462a, MCL 750.462d, MCL 750.462f(1).

M Crim JI 36.4a Participating in a Forced Labor or Commercial Sex Enterprise for Financial Gain or for Anything of Value with a Minor

(1) The defendant is charged with the crime of participating in an enterprise involving forced labor or services or commercial sexual activity with a minor for financial gain or for anything of value. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant participated in an enterprise that engaged in forced labor or services or commercial sexual activity involving a person or persons less than 18 years old. It does not matter whether defendant knew the age of the person or persons.

(3) Second, that the defendant knew that the enterprise was engaged in forced labor or services or commercial sexual activity with this person or persons.

(4) Third, that the defendant benefited financially or received anything of value from [his / her] participation in the enterprise.

(5) I will now define some of the legal terminology that was used in this instruction.

[*Provide appropriate definitions*]

(a) An enterprise[1] is an organization for conducting business and can be an individual person, a sole proprietorship, a partnership, a corporation, a limited liability company, a trust, a union, an association, a governmental unit, any other legal entity, or any legal or illegal association of persons.

(b) "Forced labor or services"[2] are labor or services obtained or maintained by force, fraud, or coercion.

[*Provide any or all of the following definitions, according to the evidence:*]

(i) Force includes physical violence, restraint, or confinement, or threats of physical violence, restraint, or confinement.

(ii) Fraud includes false or deceptive offers of employment or marriage.

(iii) Coercion includes [*Select any that apply*]:

(A) threats of harm or restraint to any person.

(B) using a [scheme / plan / pattern] intended to cause someone to think that [psychological harm / physical harm / harm to the person's reputation] would result from failing to perform an act.

(C) abusing or threatening to abuse the legal system by threatening to have the person [arrested / deported], regardless of whether the person could be [arrested / deported].

(D) [destroying / concealing / removing / confiscating] a [passport / immigration document / government identification document] from any person, even if the document was fraudulently obtained.

These are examples of [force / fraud / coercion] and not an exhaustive list.

(c) "Commercial sexual activity"[3] means performing acts of sexual penetration or contact,[4] child sexually abusive activity,[5] or a sexually explicit performance.[6]

Use Note

This crime is a 20-year offense, and is not increased by other aggravating factors.

[1] *Enterprise* is defined in MCL 750.159f(a).

[2] *Debt bondage* is defined in MCL 750.462a(d).

[3] Definitions of *commercial sexual activity* are found in MCL 750.462a.

[4] Definitions of *sexual penetration* and *sexual contact* are found in MCL 750.520a.

[5] *Child sexually abusive activity* is defined in MCL 750.145c(1)(n) as a child engaging in a "listed sexual act." *Listed sexual act* is defined in MCL 750.145c(1)(i) as "sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity." Those terms, in turn, are each defined in MCL 750.145c(1), and the court may provide definitions where appropriate.

[6] *Sexually explicit performance* is defined in MCL 722.673(g) as "a motion picture, video game, exhibition, show, representation, or other presentation that, in whole or in part, depicts nudity, sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse."

History

This instruction was adopted December 2016.

Reference

MCL 750.462a, MCL 750.462d(b), MCL 750.462e, MCL 750.462f(2).

M Crim JI 36.5 Aggravating Factors

(1) If you find that the defendant is guilty of [obtaining a person for forced labor or services / holding a person in debt bondage / knowingly subjecting a person to forced labor or services or debt bondage / participating in an enterprise involving forced labor, debt bondage or commercial sex for financial gain], then you must decide whether the prosecutor has proved the following aggravating element[s] beyond a reasonable doubt:

[*Select from the following. Proving a bodily injury under (4) below may be a lesser offense where serious bodily injury has been charged under (3).*]

(2) That the violation involved

[*Select one or more as warranted by the evidence:*]

(a) kidnapping or attempted kidnapping of [*name complainant*]. Kidnapping means restraining someone for ransom, to use as a shield, to engage in criminal sexual conduct, to take out of the state, or to hold in involuntary servitude.

(b) first-degree criminal sexual conduct or attempted first-degree criminal sexual conduct of [*name complainant*]. First-degree criminal sexual conduct is sexual penetration of a person [provide particular elements that may apply from M Crim JI 20.3 through 20.11].

(c) an attempt to kill [*name complainant*].

(d) the death of [*name complainant*].

(3) That the violation resulted in serious bodily injury to [*name complainant*]. A serious bodily injury is any physical injury that requires medical treatment. It does not matter whether [*name complainant*] tried to get medical treatment.

(4) [That the violation / You may also consider the less serious offense that the violation] resulted in bodily injury to [*name complainant*]. Bodily injury is any physical injury.

History

This instruction was adopted December 2016.

Reference

MCL 750.462b, MCL 750.462c, MCL 750.462d, MCL 750.462f(1)(a), (b), (c), (d).

M Crim JI 36.6 Using Minors for Commercial Sexual Activity or for Forced Labor or Services

(1) The defendant is charged with the crime of engaging a minor for [commercial sexual activity / forced labor or services]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

[*Select (2) according to the charged conduct:*]

(2) First, that the defendant recruited, enticed, harbored, transported, provided, or obtained [*name complainant*] for commercial sexual activity. Commercial sexual activity[1] means performing acts of sexual penetration or contact,[2] child sexually abusive activity,[3] or a sexually explicit performance.[4]

(2) First, that the defendant recruited, enticed, harbored, transported, provided, or obtained [*name complainant*] to perform forced labor or services. "Forced labor or services" are labor or services obtained or maintained by force, fraud, or coercion.

[*Provide any or all of the following definitions, as applicable:*]

(a) Force includes physical violence, restraint, or confinement, or threats of physical violence, restraint, or confinement.

(b) Fraud includes false or deceptive offers of employment or marriage.

(c) Coercion includes [*Select any that apply*]:

(i) threats of harm or restraint to any person.

(ii) using a [scheme / plan / pattern] intended to cause someone to think that [psychological harm / physical harm / harm to the person's reputation] would result from failing to perform an act.

(iii) abusing or threatening to abuse the legal system by threatening to have the person [arrested / deported], regardless of whether the person could be [arrested / deported].

(iv) [destroying / concealing / removing / confiscating] a [passport / immigration document / government identification document] from any person, even if the document was fraudulently obtained.

These are examples of [force / fraud / coercion], and not an exclusive list.

(3) Second, that when the defendant recruited, enticed, harbored, transported, provided, or obtained [*name complainant*], [for commercial sexual purposes / to perform forced labor or services], [*name complainant*] was less than 18 years old, regardless of whether the defendant knew [he / she] was less than 18 years old.

(4) Third, that when the defendant recruited, enticed, harbored, transported, provided or obtained [*name complainant*], the defendant intended that [name complainant] would perform [commercial sexual activity / forced labor or services], whether or not [commercial sexual activity / forced labor or service] was actually provided.

Use Note

[1] *Commercial sexual activity* is defined in MCL 750.462a.

[2] *Sexual penetration* and *sexual contact* are found in MCL 750.520a.

[3] *Child sexually abusive activity* is defined in MCL 750.145c(1)(n) as a child engaging in a "listed sexual act." *Listed sexual act* is defined in MCL 750.145c(1)(i) as "sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity." Those terms, in turn, are each defined in MCL 750.145c(1), and the court may provide definitions where appropriate.

[4] *Sexually explicit performance* is defined in MCL 722.673(g) as "a motion picture, video game, exhibition, show, representation, or other presentation that, in whole or in part, depicts nudity, sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse."

History

This instruction was adopted December 2016.

Reference

MCL 750.462a, MCL 750.462e, MCL 750.462f(2).

M Crim JI 36.7 Testimony of Victim Not Required/Need Not Be Corroborated

[*Select (1) or (2) where applicable.*]

(1) To prove this charge, testimony from [*name complainant*] is not required, as long as the evidence presented proves guilt beyond a reasonable doubt.

(2) To prove this charge, it is not necessary that there be evidence other than the testimony of [*name complainant*], if that testimony proves guilt beyond a reasonable doubt.

History

M Crim JI 36.7 was adopted August 2017.

M Crim JI 36.8 Victim's Resistance or Lack of Resistance Not Relevant

When deciding whether the prosecutor has proved this charge, you should not consider whether [*name complainant*] resisted the defendant.

History

M Crim JI 36.7 was adopted August 2017.

CHAPTER 37 *Witness Intimidation/Bribery*

M Crim JI 37.3 Bribing Witnesses 37-2
M Crim JI 37.3a Bribing Witnesses/Criminal Case, Penalty More Than Ten Years 37-3
M Crim JI 37.3b Bribing Witnesses – Crime/Threat to Kill 37-4
M Crim JI 37.4 Intimidating Witnesses 37-5
M Crim JI 37.4a Intimidating Witnesses – Criminal Case, Penalty More Than Ten Years 37-6
M Crim JI 37.4b Intimidating Witnesses – Crime/Threat to Kill 37-7
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M Crim JI 37.6 Retaliating Against Witnesses 37-11
M Crim JI 37.7 Bribing or Intimidating Witnesses – Defenses 37-12

M Crim JI 37.3 Bribing Witnesses

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

(2) First, that [*name complainant*] was an individual who was testifying, or going to testify, or going to provide information at an ongoing or future official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath.[1]

(3) Second, that the defendant [gave / offered to give / promised to give] anything of value to [*name complainant*].[2]

(4) Third, that, when the defendant [gave / offered to give / promised to give] something of value to [*name complainant*], [he / she] intended to [discourage (*name complainant*) from attending the proceeding, testifying at the proceeding, or giving information at the proceeding / influence (*name complainant*)'s testimony at the proceeding / encourage (*name complainant*) to avoid legal process, withhold testimony, or testify falsely]. It does not matter whether the official proceeding took place, as long as the defendant knew or had reason to know that [*name complainant*] could be a witness or was going to provide information at the ongoing or future proceeding.

Use Note

[1] *Official proceeding* is further defined in MCL 750.122(12)(a) as "a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding."

[2] See MCL 750.122(5) for an attorney exemption to this statute.

History

M Crim JI 37.3 was adopted June 2017.

Reference

Statutes: MCL 750.122

M Crim JI 37.3a Bribing Witnesses/Criminal Case, Penalty More Than Ten Years

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

(2) First, that [*name complainant*] was an individual who was testifying, or going to testify, or going to provide information at an ongoing or future official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath.[1]

(3) Second, that the defendant [gave / offered to give / promised to give] anything of value to [*name complainant*].[2]

(4) Third, that, when the defendant [gave / offered to give / promised to give] something of value to [*name complainant*], [he / she] intended to [discourage (*name complainant*) from attending the proceeding, testifying at the proceeding, or giving information at the proceeding / influence (*name complainant*)'s testimony at the proceeding / encourage (*name complainant*) to avoid legal process, withhold testimony, or testify falsely]. It does not matter whether the official proceeding took place, as long as the defendant knew or had reason to know that [*name complainant*] could be a witness or was going to provide information at the ongoing or future proceeding.

(5) Fourth, that the official proceeding was a criminal case charging a crime with a maximum punishment of more than ten years or life in prison.

Use Note

[1] *Official proceeding* is further defined in MCL 750.122(12)(a) as "a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding."

[2] See MCL 750.122(5) for an attorney exemption to this statute.

History

M Crim JI 37.3a was adopted June 2017.

Reference

Statutes: MCL 750.122

M Crim JI 37.3b Bribing Witnesses – Crime/Threat to Kill

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

(2) First, that [*name complainant*] was an individual who was testifying, or going to testify, or going to provide information at an ongoing or future official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath.[1]

(3) Second, that the defendant [gave / offered to give / promised to give] anything of value to [*name complainant*].[2]

(4) Third, that, when the defendant [gave / offered to give / promised to give] something of value to [*name complainant*], [he / she] intended to [discourage (*name complainant*) from attending the proceeding, testifying at the proceeding, or giving information at the proceeding / influence (*name complainant*)'s testimony at the proceeding / encourage (*name complainant*) to avoid legal process, withhold testimony, or testify falsely]. It does not matter whether the official proceeding took place, as long as the defendant knew or had reason to know that [*name complainant*] could be a witness or was going to provide information at the ongoing or future proceeding.

(5) Fourth, that the defendant's actions involved [committing or attempting to commit a crime / a threat to kill or injure a person / a threat to cause property damage].

Use Note

[1] *Official proceeding* is further defined in MCL 750.122(12)(a) as "a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding."

[2] See MCL 750.122(5) for an attorney exemption to this statute.

History

M Crim JI 37.3b was adopted June 2017.

Reference

Statutes: MCL 750.122.

M Crim JI 37.4 Intimidating Witnesses

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

(2) First, that [*name complainant*] was an individual who was testifying, or going to testify, or going to provide information at an ongoing or future official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath.[1]

(3) Second, that the defendant [threatened / tried to intimidate] [*name complainant*]. A threat is a written or spoken statement that shows an intent to injure another person, or that person's property or family. No particular words are necessary, and it can be said or written in vague terms that do not state exactly what injury will occur. But it must be definite enough so that a person of ordinary intelligence would understand it as a threat.

(4) Third, that, when the defendant [threatened / tried to intimidate] [*name complainant*], [he / she] intended to [discourage (*name complainant*) from attending the proceeding, testifying at the proceeding, or giving information at the proceeding / influence (*name complainant*)'s testimony at the proceeding / encourage (*name complainant*) to avoid legal process, withhold testimony, or testify falsely]. It does not matter whether the official proceeding took place, as long as the defendant knew or had reason to know that [*name complainant*] could be a witness or was going to provide information at the ongoing or future proceeding.

Use Note

[1] *Official proceeding* is further defined in MCL 750.122(12)(a) as "a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding."

History

M Crim JI 37.4 was adopted June 2017.

Reference

Statutes: MCL 750.122

M Crim JI 37.4a Intimidating Witnesses – Criminal Case, Penalty More Than Ten Years

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

(2) First, that [*name complainant*] was an individual who was testifying, or going to testify, or going to provide information at an ongoing or future official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath.[1]

(3) Second, that the defendant [threatened / tried to intimidate] [*name complainant*]. A threat is a written or spoken statement that shows an intent to injure another person, or that person's property or family. No particular words are necessary, and it can be said or written in vague terms that do not state exactly what injury will occur. But it must be definite enough so that a person of ordinary intelligence would understand it as a threat.

(4) Third, that, when the defendant [threatened / tried to intimidate] [*name complainant*], [he / she] intended to [discourage (*name complainant*) from attending the proceeding, testifying at the proceeding, or giving information at the proceeding / influence (*name complainant*)'s testimony at the proceeding / encourage (*name complainant*) to avoid legal process, withhold testimony, or testify falsely]. It does not matter whether the official proceeding took place, as long as the defendant knew or had reason to know that [*name complainant*] could be a witness or was going to provide information at the ongoing or future proceeding.

(5) Fourth, that the official proceeding was a criminal case charging a crime with a maximum punishment of more than ten years or life in prison.

Use Note

[1] Official proceeding is further defined in MCL 750.122(12)(a) as "a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding."

History

M Crim JI 37.4a was adopted June 2017.

Reference

Statutes: MCL 750.122.

M Crim JI 37.4b Intimidating Witnesses – Crime/Threat to Kill

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

(2) First, that [*name complainant*] was an individual who was testifying, or going to testify, or going to provide information at an ongoing or future official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath.[1]

(3) Second, that the defendant [threatened / tried to intimidate] [*name complainant*]. A threat is a written or spoken statement ~~of~~ that shows an intent to injure another person, or that person's property or family. No particular words are necessary, and it can be said or written in vague terms that do not state exactly what injury will occur. But it must be definite enough so that a person of ordinary intelligence would understand it as a threat.

(4) Third, that, when the defendant [threatened / tried to intimidate] [*name complainant*], [he / she] intended to [discourage (*name complainant*) from attending the proceeding, testifying at the proceeding, or giving information at the proceeding / influence (*name complainant*)'s testimony at the proceeding / encourage (*name complainant*) to avoid legal process, withhold testimony, or testify falsely]. It does not matter whether the official proceeding took place, as long as the defendant knew or had reason to know that [*name complainant*] could be a witness or was going to provide information at the ongoing or future proceeding.

(5) Fourth, that the defendant's actions involved [committing or attempting to commit a crime / a threat to kill or injure a person / a threat to cause property damage].

Use Note

[1] Official proceeding is further defined in MCL 750.122(12)(a) as "a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding."

History

M Crim JI 37.4b was adopted June 2017.

Reference

Statutes: MCL 750.122

M Crim JI 37.5 Interfering with Witnesses

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

(2) First, that [*name complainant*] was an individual who was testifying, or going to testify, or going to provide information at an ongoing or future official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath.[1]

(3) Second, that the defendant impeded, interfered with, prevented, or obstructed [*name complainant*] from attending, testifying, or providing information, or tried to impede, interfere with, prevent, or obstruct [*name complainant*]. It does not matter whether the official proceeding took place, as long as the defendant knew or had reason to know that [*name complainant*] could be a witness at the proceeding.

(4) Third, that the defendant intended to impede, interfere with, prevent or obstruct [*name complainant*] from attending, testifying at, or providing information at the official proceeding.

Use Note

[1] Official proceeding is further defined in MCL 750.122(12)(a) as "a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding."

History

M Crim JI 37.5 was adopted June 2017.

Reference

Statutes: MCL 750.122

M Crim JI 37.5a Interfering with Witnesses – Criminal Case

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

(2) First, that [*name complainant*] was an individual who was testifying, or going to testify, or going to provide information at an ongoing or future official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath.[1]

(3) Second, that the defendant impeded, interfered with, prevented, or obstructed [name complainant] from attending, testifying, or providing information, or tried to impede, interfere with, prevent, or obstruct [*name complainant*]. It does not matter whether the official proceeding took place, as long as the defendant knew or had reason to know that [*name complainant*] could be a witness at the proceeding.

(4) Third, that the defendant intended to impede, interfere with, prevent or obstruct [*name complainant*] from attending, testifying at, or providing information at the official proceeding.

(5) Fourth, that the official proceeding was a criminal case charging a crime with a maximum punishment of more than 10 years or life.

Use Note

[1] Official proceeding is further defined in MCL 750.122(12)(a) as "a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding."

History

M Crim JI 37.5a was adopted June 2017.

Reference

Statutes: MCL 750.122

M Crim JI 37.5b Interfering with Witnesses – Crime/Threat to Kill

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

(2) First, that [*name complainant*] was an individual who was testifying, or going to testify, or going to provide information at an ongoing or future official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath.[1]

(3) Second, that the defendant impeded, interfered with, prevented, or obstructed [*name complainant*] from attending, testifying, or providing information, or tried to impede, interfere with, prevent, or obstruct [*name complainant*]. It does not matter whether the official proceeding took place, as long as the defendant knew or had reason to know that [*name complainant*] could be a witness at the proceeding.

(4) Third, that the defendant intended to impede, interfere with, prevent, or obstruct [*name complainant*] from attending, testifying at or providing information at the official proceeding.

(5) Fourth, that the defendant's actions involved [committing or attempting to commit a crime / a threat to kill or injure a person / a threat to cause property damage].

Use Note

[1] Official proceeding is further defined in MCL 750.122(12)(a) as "a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding."

History

M Crim JI 37.5b was adopted June 2017.

Reference

Statutes: MCL 750.122

M Crim JI 37.6 Retaliating Against Witnesses

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

(2) First, that [*name complainant*] was a witness at an official proceeding. An official proceeding is a proceeding heard by a legislative, judicial, administrative, or other governmental agency or official that is authorized to hear evidence under oath.[1]

(3) Second, that the defendant retaliated, attempted to retaliate, or threatened to retaliate against [*name complainant*] for having been a witness. Retaliate means to commit or attempt to commit a crime against the witness, or to threaten to kill or injure any person, or to threaten to cause property damage to the witness.

Use Note

[1] Official proceeding is further defined in MCL 750.122(12)(a) as "a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding."

History

M Crim JI 37.6 was adopted June 2017.

Reference

Statutes: MCL 750.122

M Crim JI 37.7 Bribing or Intimidating Witnesses – Defenses

(1) The defendant says that [he / she] is not guilty because [his / her] conduct was lawful, and [he / she] only intended to encourage or cause [*name complainant*] to provide truthful testimony or evidence.

(2) In order to establish this defense, the defendant must prove two elements by a preponderance of the evidence. A preponderance of the evidence means that the defendant must prove that it is more likely than not that each of the elements is true.

(3) First, the defendant must prove that [his / her] conduct was otherwise lawful.

(4) Second, the defendant must prove that [his / her] intent was to encourage or cause [*name complainant*] to give truthful testimony.

(5) You should consider these elements separately. If you find that defendant has proved both of these elements, then you must find [him / her] not guilty. If the defendant has failed to prove either or both elements, the defense fails and you may find the defendant guilty if the prosecutor has proved the elements of the charge beyond a reasonable doubt.

History

M Crim JI 37.7 was adopted June 2017.

References

Statutes: MCL 750.122

John Sinclair

People v. Sinclair

387 Mich. 91 (1972)

194 N.W.2d 878

PEOPLE v. SINCLAIR

No. 19 October Term 1971, Docket No. 53,550.

Supreme Court of Michigan.

Decided March 9, 1972.

Frank J. Kelley, Attorney General, Robert A. Derengoski, Solicitor General, William L. Cahalan, Prosecuting Attorney, Dominick R. Carnovale, Chief, Appellate Department, and Angelo A. Pentolino, Assistant Prosecuting Attorney, for the people.

Philo, Maki, Ravitz, Jobes, Cockrel & Robb and Robert Bartels, Hugh M. Davis, and Shellow & Shellow, for defendant.

Amici Curiae:

Sol Plafkin, for State Senators Coleman Young, Basil Brown, and Jack Faxon, and State Representatives Jackie Vaughn III, William Broadhead, James Bradley, Edward Suski, and Daisey Elliott.

Wallace H. Glendening, for American Civil Liberties Union of Michigan.

*98 R. Keith Stroup, for the National Organization for the Reform of Marijuana Laws.

Michael Schuman and Gary Roth, for YPC-Center House of Ferndale.

Bernard D. Fischman, for the American Orthopsychiatric Association, Inc.

Philip J. Hirschkop, for Penal Reform Institute.

David Hood, for New Detroit Subcommittee on Drug Treatment.

Ernest Winsor, for the Committee for a Sane Drug Policy.

Thomas Meyer, M. Gerald Schwartzbach; Glotta, Audelman & Dingus; Gage, Burgess & Knox; Neal Bush; Lafferty, Reosti, Jabara, Papakhian, James & Strickgold; Mark Weiss; and Colista, Moore & Braun, for the Detroit Chapter of the National Lawyers Guild.

Goodman, Eden, Robb, Millender, Goodman & Bedrosian, for Medical Committee for Human Rights.

PER CURIAM:

For the reasons set forth in our several opinions, the judgment of conviction of defendant Sinclair is reversed and set aside and the defendant discharged.

T.M. KAVANAGH, C.J., and T.G. KAVANAGH, SWAINSON and WILLIAMS, JJ., concurred.

*99 SWAINSON, J.

Defendant, John A. Sinclair, was arrested on January 24, 1967, and charged with the unlawful sale[1] and unlawful possession[2] of two marijuana cigarettes. Defendant was convicted by a jury in the Recorder's Court for the City of Detroit of unlawful possession of

the two marijuana cigarettes, on July 25, 1969, and on July 28, 1969, he was sentenced to 9-1/2 to 10 years imprisonment. During the 2-1/2 years between his arrest and trial, defendant was free on bond in the amount of $1,000, and never failed to appear when required to do so.

Prior to the trial, a special three-judge panel of Recorder's Court was convened to consider the constitutionality of the Michigan statutes prohibiting sale or possession of marijuana. On April 17, 1968, the panel upheld the statutes against the contentions that they violated the equal protection of the laws;[3] denied defendant due process of law;[4] violated rights of privacy retained by the people;[5] and that the penalty provisions imposed cruel and unusual punishment.[6] Judge Robert J. Colombo, a member of the three-judge panel, in a concurring opinion stated that he personally believed that there was a question of whether defendant had been entrapped.[7] The trial judge (Hon. Robert J. Colombo), on June *100 23, upon motion of defense counsel, dismissed the count for unlawful sale on the ground that the sale was entrapped by the police officers.[8] Defendant was thereafter convicted of the unlawful possession of marijuana based on the two cigarettes introduced into evidence. The Court of Appeals affirmed the conviction. 30 Mich App 473. We granted leave to appeal. 385 Mich 786.

The Detroit Police Department Narcotics Bureau had instructed Patrolman Vahan Kapagian and Policewoman Jane Mumford Lovelace to assist in an investigation of illegal activities involving narcotic violations in an area surrounding Wayne State University and, in particular, an establishment known as the Artists' Workshop which was located at 4863 John Lodge, in the City of

Detroit. Defendant Sinclair made his residence above the Artists' Workshop, at 4867 John Lodge.

In pursuance of this assignment, Patrolman Kapagian grew a beard and began to let his hair grow long, in late August 1966. On October 18, 1966, using the aliases of Louis Cory and Pat Green, the officers commenced their assignment. They continued working until January 24, 1967, on this particular assignment. The officers assisted in doing typing and other odd chores at the Artists' Workshop, including sweeping floors and collating literature. They sat in at communal dinners and provided the food for one of these dinners. They joined a group called LEMAR, which advocated that marijuana be legalized. They listened to poetry and helped in the preparation of certain literature. Patrolman Kapagian visited the shop and saw defendant approximately two or three times a week until the defendant's *101 arrest. As part of the assignment, Patrolman Kapagian took a job at the Candle Shop. Patrolman Kapagian was equipped with a porta-talk radio transmitter which allowed him to keep in contact with other police officers stationed outside and nearby.

Patrolman Kapagian testified at the preliminary examination that on two occasions prior to December 22, 1966, during the investigation, the police officers asked defendant for marijuana. He denied this at the trial, despite the fact that his testimony to that effect at the preliminary examination was read to him from the transcript. Policewoman Lovelace stated that she had asked defendant on previous occasions to obtain marijuana for them.

Officer Kapagian testified that on December 22nd, at about 7 p.m., defendant appeared at the Workshop and following an exchange of greetings, defendant asked whether they had received any

marijuana the previous night. The officers responded affirmatively and stated that they were looking for some more. At approximately 8:55 that evening, Kapagian told the defendant that they had to leave and defendant asked them to accompany him upstairs to his residence. Once inside the residence, the officers were seated at the kitchen table. Defendant went to a shelf and removed a brown porcelain bowl which he set down on the table before him. Defendant took some cigarette paper and from the contents of the bowl rolled a cigarette, which he gave to Kapagian. Kapagian handed this cigarette to Lovelace, who inserted it into a partially filled Kool pack. Defendant then rolled a second cigarette, lit it, and handed it to Kapagian. The officer said he did not want to smoke it then because he had to drive and the cigarette would make him dizzy. Kapagian gave the cigarette to Lovelace after defendant Sinclair *102 had butted it. She placed the cigarette in the same Kool pack. At that time they said they had to leave, and departed. Sinclair was not arrested for committing a felony in the officers' presence because, as Kapagian stated, he did not want to tip his hand since numerous arrests were to be made as the result of this investigation.

At the trial, the only witnesses were the two police officers.[9] No corroborating evidence was introduced. Although officer Kapagian was equipped in a manner to enable the transmission of his conversation to other officers, no arrangements were made to tape the conversations, which allegedly occurred between defendant and the police officers. In addition, officer Kapagian testified that he did not preserve his log book for the year 1966 because he decided that it was not worth saving. He did admit that if the log book had been preserved, the presence or absence of entries relating to the transactions of December 22nd and all

previous transactions during the investigation, would either confirm or disprove his testimony.

Prior to trial, the defendant made several motions to quash the information and to exclude the marijuana cigarettes from evidence. These were denied by the trial court.

Defendant raises ten issues on appeal, and the prosecutor lists five. We will deal with two of these:

1) Whether the classification of marijuana as a narcotic under MCLA 335.151 violates the equal protection of the laws under the US Const, Am XIV, and

*103 2) Whether the two marijuana cigarettes should have been excluded from evidence on the ground that they constituted evidence obtained as the result of an illegal police entrapment?

I.

It is not denied that the State of Michigan has the power to pass laws against the sale and use of marijuana. Rather, the issue is whether marijuana may be constitutionally classified as a narcotic drug if, in fact, it is not a narcotic. A threshold question is raised and that is whether this Court has the power to determine the actual state of facts concerning marijuana and other drugs. It cannot be doubted that the judiciary has the power to determine the true state of facts upon which a law is based. Brown v Board of Education, 347 US 483; 74 S Ct 686; 98 L Ed 873 (1954).

A trial court may take judicial notice of any records of the court where it sits. Knowlton v Port Huron, 355 Mich 448, 452 (1959). Moreover, it is clear that "an appellate court can properly take

judicial notice of any matter which the court of original jurisdiction may take notice". Pennington v Gibson, 57 US (16 How) 65, 14 L Ed 847 (1853).

Const 1963, art 6, § 1, provides:

"The judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house." (Emphasis added.)

As such, the records of all courts of this State may be examined by the Supreme Court since they *104 are all part of the record of the "one court of justice" of the State of Michigan. Hence, in addition to the record made by the court below, we may properly look at the evidence introduced and the findings of fact made by the trial court in People v Lorentzen, 387 Mich 167 (1972).

We now turn to a comparison of the properties of marijuana and the other drugs classified as narcotics under MCLA 335.151 et seq.; MSA 18.1121 et seq.

II.

Comparison of the effects of marijuana use on both the individual and society with the effects of other drug use demonstrates not only that there is no rational basis for classifying marijuana with the "hard narcotics", but, also, that there is not even a rational basis for treating marijuana as a more dangerous drug than alcohol. This is not to say that our scientific knowledge concerning any of the mind-altering drugs is at all complete. It is not.[10] Even

our society's vast experience with the mind-altering effects of alcohol has not led to complete scientific knowledge of that drug, as the Canadian Government Commission of Inquiry pointed out:[11]

"Little is known as to the specific mechanism by which alcohol produces its psycho-pharmacological action. As with most drugs, alcohol effects, especially those resulting from low or moderate amounts, depend to a large extent on the individual and the situation in which the drinking occurs. A drink or two may produce drowsiness and lethargy in some instances, while the same quantity might *105 lead to increased activity and psychological stimulation in another individual, or in the same person in different circumstances. Furthermore, a dose which is initially stimulating may later produce sedation."

Despite our lack of complete knowledge though, we do have sufficient scientific knowledge to categorize drugs according to their relative level of danger to both the individual and society. Proceeding to a comparison of marijuana with other mind-altering drugs, we find marijuana is a euphoria producing, mind-altering drug, whose effects are generally obtained by smoking, but can also be obtained by oral ingestion of the drug, usually mixed with other food or drinks.[12] Coming from the hemp plant, cannabis sativa, the psychoactive strength of the drug varies greatly with the part of the plant used, quality of the seed stock, and the growing conditions.[13]

The psychoactive ingredient of cannabis sativa has been isolated as two isomers of tetrahydrocannabinol (THC, although additional active ingredients of cannabis sativa may be discovered and isolated in the future).[14] Thus the strength of any *106 given

amount of marijuana depends primarily on the amount of THC it contains. The ordinary street form of marijuana, commonly available and used in the United States, is composed of the leaves and flower clusters of the female plant, which are dried and crushed to make up the variable strength mixture. The resin from the flowering tops of the mature female plants is known as hashish (charas in India) and is apparently the strongest form of the naturally occurring drug because it contains the highest concentration of THC. Hashish is as much as eight times as strong as ordinary marijuana.[15]

Consideration of the scientifically observed physical and psycho-motor effects of marijuana indicates that it is overall, the least dangerous mind-altering drug. Observed physical effects of marijuana use include dryness of mouth and throat, slight increase in pulse rate, and slight conjunctival reddening of the eyeball.[16] No known tolerance develops to marijuana in fact negative tolerance has been observed, that is, a decreased amount of the drug taken on subsequent occasions produces the same level of physical and euphoric effect.[17] No physical dependency is produced by use of the drug and, hence, there are no withdrawal symptoms or "abstinence *107 syndrome" when the drug is unavailable to the user.[18]

No lethal dose for marijuana has been established.[19] The lack of harmful physical effects from marijuana use has been well summarized by Dr. Grinspoon in Marijuana Reconsidered (Bantam ed 1971), p 60:

"What is so striking about the pharmacology of cannabis is that it has such limited and mild effects on human nonpsychic function. This is consistent with the equally striking observation that there

has never in its long history been reported an adequately documented case of lethal overdosage. Nor is there any evidence of cellular damage to any organ."

Both the opiates and alcohol provide a dramatic contrast to the lack of physical harmfulness of marijuana. With the opiates[20] high levels of tolerance develop,[21] severe physical addiction results from repeated use,[22] and deaths resulting from overdosage also occur.[23] Occasional social use of alcohol *108 in moderate dosage as a mind-altering drug has few deleterious physical consequences. However, tolerance does develop in alcohol use and the drug is subject to a great, acute and chronic abuse.[24] Acute alcohol abuse can lead to death from overdosage.[25] In addition, chronic alcohol abuse leads to alcoholism where a clear withdrawal syndrome is observable (an easily discernible physical shaking and later delirium tremens), and death of brain cells, mental deterioration, and cirrohsis of the liver may occur.[26]

Damaging effects of alcohol on psychomotor coordination are so well known as to need no documentation. The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Drunkenness, commenting on alcohol, observed that (p 39):

"There is probably no other area in the field of drug research and related dangerous behavior where the role of a drug as a precipitating factor in dangerous behavior is so clear."

On the other hand, the evidence available concerning marijuana's effect on psychomotor functions seems to show very little impairment, at least in experienced users.[27]

*109 Psychological Effects:

Marijuana is a mild hallucinogen, which in view of its lack of any other harmful effects, leads us to conclude that there is no rational basis for penalizing it more severely than the other hallucinogens (MCLA 335.106; MSA 18.1106). Indeed, mild hallucinogenic effects are reported almost exclusively from use of more potent hashish type preparations and rarely, if ever, from the use of ordinary street variety marijuana. The Canadian Commission Report states (pp 116-117):

"Cannabis is one of the least potent of the psychedelic drugs, and some might object to its being classified with LSD and similar substances. It is often suggested that marijuana is a mild intoxicant, more like alcohol. * * * It would be incorrect to say that cannabis in moderate dose actually produces a mild LSD experience; the effects of these two drugs are physiologically, behaviourally and subjectively quite distinct. Furthermore, since no cross-tolerance occurs between LSD and THC the mechanism of action of these two drugs is thought to be different."

The Canadian Commission Report comprehensively summarized the various possible psychological effects of marijuana use as follows (pp 117-118):

"A cannabis `high' typically involves several phases. The initial effects are often somewhat stimulating and, in some individuals, may elicit mild tension or anxiety which usually is replaced by a pleasant feeling of well-being. The later effects usually tend to make the user introspective and *110 tranquil. Rapid mood changes often occur. A period of enormous hilarity may be followed by a contemplative silence.

"Psychological effects which are typically reported by users include: happiness, increased conviviality, a feeling of enhanced interpersonal rapport and communication, heightened sensitivity to humour, free play of the imagination, unusual cognitive and ideational associations, a sense of extra-ordinary reality, a tendency to notice aspects of the environment of which one is normally unaware, enhanced visual imagery, an altered sense of time in which minutes may seem like hours, changes in visually perceived spatial relations, enrichment of sensory experiences (subjective aspects of sound and taste perception are often particularly enhanced), increased personal understanding and religious insight, mild excitement and energy (or just the opposite), increased or decreased behavioural activity, increased or decreased verbal fluency and talkativeness, lessening of inhibitions, and at higher doses, a tendency to lose or digress from one's train of thought. Feelings of enhanced spontaneity and creativity are often described, although an actual increase in creativity is difficult to establish scientifically. While most experts agree that cannabis has little specific aphrodisiac (sex stimulating) effect, many users report increased enjoyment of sex and other intimate human contact while under the influence of the drug.

"Less pleasant experiences may occur in different individuals, or possibly in the same individuals at different times. Some of these reactions may include: fear and anxiety, depression, irritability, nausea, headache, backache, dizziness, a dulling of attention, confusion, lethargy, and a sensation of heaviness, weakness and drowsiness. Disorientation, delusions, suspiciousness and paranoia, and in some cases, panic, loss of control, and acute psychotic states have been reported."

*111 There is no reliable scientific evidence demonstrating that chronic psychosis can be caused by marijuana use[28] in dramatic contrast to the American experience with alcohol.[29] The argument that marijuana use causes or contributes to assaultive crime is now largely discredited.[30] Again by contrast, considerable evidence points to a substantial connection between alcohol use and commission of violent crimes.[31]

Finally, the "stepping stone argument" that marijuana use leads to use of "hard narcotics" has no scientific basis. The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Narcotics and Drug Abuse, found at pp 13-14:

"The charge that marihuana `leads' to the use of addicting drugs needs to be critically examined. There is evidence that a majority of the heroin users who come to the attention of public authorities have, in fact, had some prior experience with marihuana. But this does not mean that one leads to the other in the sense that marihuana has an intrinsic quality that creates a heroin liability. There are too many marihuana users who do not graduate to heroin, and too many heroin addicts with no known prior marihuana *112 use, to support such a theory. Moreover there is no scientific basis for such a theory. The basic text on pharmacology, Goodman and Gilman, The Pharmacological Basis of Therapeutics (Macmillan 1960) states quite explicitly that marihuana habituation does not lead to the use of heroin." (Emphasis added.)[32]

All of the preceding factual findings with respect to the effects of marijuana use, are substantiated by the trial court's findings of fact made after five days of expert testimony in People v Lorentzen, supra.

Virtually every major commission which has studied the effects of marijuana use agrees that it is improperly classified with the "hard narcotics". The British Report found (pp 6-7):

"Having reviewed all of the material available to us we find ourselves in agreement with the conclusion reached by the Indian Hemp Drugs Commission appointed by the Government of India (1893-1894) and the New York Mayor's Committee on Marihuana (1944), that the long-term consumption of cannabis in moderate doses has no harmful effects."[33]

Further, counsel for the people admitted in oral argument that the differences between marijuana and the opiates call for different classifications:

"ADAMS, J.

If we have two extremes here, and not a gray area in the middle, doesn't that call for different classifications?

*113 "Assistant Prosecutor: I think it does, I think it does, and I think every state in the country is graduating to that particular state where they are now recognizing and they are classifying marijuana in a separate statute. The government has done so in its control and abuse act."

Finally, Governor William Milliken, in his Special Message to the Legislature on Alcohol and Drug Abuse (Mar 4, 1971), recognized that the present classification of marijuana with the opiates is irrational and provided an illuminating comment on the relative danger of alcohol:

"As public officials, we must face squarely the need for a major revision of our laws dealing with marijuana. The hypocrisy of our present law, which falsely classifies marijuana as a narcotic, affects the credibility of our entire drug abuse program. Recent federal legislation and the passage of local marijuana ordinances give new urgency to the need for state action in this controversial area. * * *

"Alcohol continues to be a larger problem than drugs. It accounts for more broken homes, wasted lives, accidental deaths, and greater expense for society than any drug. It is an established fact that alcohol can destroy brain tissues and cause cirrhosis of the liver which ultimately produces death. A significant portion of crime is committed by people under the influence of alcohol and alcohol-related problems are estimated to account for 15% to 25% of our welfare costs." (Emphasis added.)

The murky atmosphere of ignorance and misinformation which casts its pall over the state and Federal legislatures' original classification of marijuana with the hard narcotics has been well documented in the 250-page article by R. Bonnie and C. Whitebread, II, The Forbidden Fruit and the Tree *114 of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition, 56 Va L Rev 971 (1970).[34]

We can no longer allow the residuals of that early misinformation to continue choking off a rational evaluation of marijuana dangers. That a large and increasing number of Americans recognize the truth about marijuana's relative harmlessness can scarcely be doubted.[35]

The truth compels us to conclude at the minimum that marijuana has been erroneously classified with *115 the opiates, and thus it

is clear that based on current scientific knowledge, marijuana is not a narcotic drug.

Indeed, the Michigan legislature has recognized the erroneous classification of marijuana as a narcotic by its passage of the "Controlled Substances Act of 1971" (1971 PA 196; MCLA 335.301 to 335.367; MSA 18.1070[1] to 18.1070[67]), effective April 1, 1972, which classifies marijuana as a distinct type of substance and provides drastically reduced penalties for its sale and possession.

We agree with the Illinois Supreme Court in People v McCabe, supra, that marijuana is improperly classified as a narcotic and hold that MCLA 335.151; MSA 18.1121, in its classification of marijuana violates the equal protection clauses of the US Const, Am XIV and Const 1963, art 1, § 2.[36]

III.

Defendant contends that the two marijuana cigarettes should not have been admitted into evidence because they were the result of an illegal police entrapment. The prosecution asserts that the two cigarettes were admissible because the defendant *116 possessed them independently of the undercover officers' request for them.

The trial court ruled that the sale count should be dismissed because the defendant had been entrapped into committing this offense. Our Court has long recognized the defense of entrapment and the public policy behind this rule. In Saunders v People, 38 Mich 218 (1878), the Court reversed Saunders' conviction for breaking and entering by night a court room not connected with a dwelling and "taking therefrom certain recognizances described as contracts in force and public records." The Court held:

"Decoying, or conniving with persons suspected of criminal designs, for the purpose of arresting them in the commission of the offense, is denounced by the Supreme Court." (Syl 1.)

Justice COOLEY, writing for the Court, reversed on the grounds that the testimony of a witness named Dunnebacke, should not have been excluded. Two of the Justices held that the conviction should be reversed because of impermissible police conduct. Justice MARSTON stated (pp 221-222):

"I cannot, however, silently permit the extraordinary course adopted by the police officers in this case to pass unnoticed and uncondemned. * * *

"The course pursued by the officers in this case was utterly indefensible. Where a person contemplating the commission of an offense approaches an officer of the law, and asks his assistance, it would seem to be the duty of the latter, according to the plainest principles of duty and justice, to decline to render such assistance, and to take such steps as would be likely to prevent the commission of the offense, and tend to the elevation and improvement of the would-be criminal, rather than to his farther debasement. Some courts have gone a great way in giving encouragement to detectives, in some very *117 questionable methods adopted by them to discover the guilt of criminals; but they have not yet gone so far, and I trust never will, as to lend aid or encouragement to officers who may, under a mistaken sense of duty, encourage and assist parties to commit crime, in order that they may arrest and have them punished for so doing. The mere fact that the person contemplating the commission of a crime is supposed to be an old offender can be no excuse, much less a justification for the course adopted and pursued in this case. If

such were the fact, then the greater reason would seem to exist why he should not be actively assisted and encouraged in the commission of a new offense which could in no way tend to throw light upon his past iniquities, or aid in punishing him therefor, as the law does not contemplate or allow the conviction and punishment of parties on account of their general bad or criminal conduct, irrespective of their guilt or innocence of the particular offense charged and for which they are being tried. Human nature is frail enough at best, and requires no encouragement in wrong-doing. If we cannot assist another and prevent him from violating the laws of the land, we at least should abstain from any active efforts in the way of leading him into temptation. Desire to commit crime and opportunities for the commission thereof would seem sufficiently general and numerous, and no special efforts would seem necessary in the way of encouragement or assistance in that direction."

Chief Justice CAMPBELL stated (p 223):

"[T]he encouragement of criminals to induce them to commit crimes in order to get up a prosecution against them, is scandalous and reprehensible."

Two theories have been advanced concerning the issue of entrapment. The first view was articulated *118 by Chief Justice Hughes in Sorrells v United States, 287 US 435, 451; 53 S Ct 210; 77 L Ed 413 (1932), when he stated:

"[T]he defense of entrapment is not simply that the particular act was committed at the instance of government officials. That is often the case where the proper action of these officials leads to the revelation of criminal enterprises. * * * The predisposition and

criminal design of the defendant are relevant. But the issues raised and the evidence adduced must be pertinent to the controlling question whether the defendant is a person otherwise innocent whom the Government is seeking to punish for an alleged offense which is the product of the creative activity of its own officials. If that is the fact, common justice requires that the accused be permitted to prove it. The Government in such a case is in no position to object to evidence of the activities of its representatives in relation to the accused, and if the defendant seeks acquittal by reason of entrapment he cannot complain of an appropriate and searching inquiry into his own conduct and predisposition as bearing upon that issue."

In Sherman v United States, 356 US 369; 78 S Ct 819; 2 L Ed 2d 848 (1958), the majority of the Court adopted the position of Chief Justice Hughes in Sorrells, supra. Thus, according to the majority view, whenever the defense of entrapment is raised, the court must look at 1) the conduct of the police, and 2) the predisposition of the defendant. The second view was stated by Justice Roberts in Sorrells (pp 458-459):

"It has been generally held, where the defendant has proved an entrapment, it is permissible for the government to show in rebuttal that the officer guilty of incitement of the crime had reasonable cause to believe the defendant was a person disposed to commit *119 the offense. This procedure is approved by the opinion of the court. The proof received in rebuttal usually amounts to no more than that the defendant had a bad reputation, or that he had been previously convicted. Is the statute upon which the indictment is based to be further construed as removing the defense of entrapment from such a defendant?

"Whatever may be the demerits of the defendant or his previous infractions of law these will not justify the instigation and creation of a new crime, as a means to reach him and punish him for his past misdemeanors. He has committed the crime in question, but, by supposition, only because of instigation and inducement by a government officer. To say that such conduct by an official of government is condoned and rendered innocuous by the fact that the defendant had a bad reputation or had previously transgressed is wholly to disregard the reason for refusing the processes of the court to consummate an abhorrent transaction. It is to discard the basis of the doctrine and in effect to weigh the equities as between the government and the defendant when there are in truth no equities belonging to the latter, and when the rule of action cannot rest on any estimate of the good which may come of the conviction of the offender by foul means. The accepted procedure, in effect, pivots conviction in such cases, not on the commission of the crime charged, but on the prior reputation or some former act or acts of the defendant not mentioned in the indictment."

In Sherman, supra, Justice Frankfurter, writing for four justice of the Court, adopted the views advanced by Justice Roberts in Sorrells, supra.

The factual situation confronting us here demonstrates the practical problems that arise when the majority test is employed. The basis of the entrapment defense is that the methods used by the police *120 are repugnant to fair play and justice. As the court stated in United States v Chisum, 312 F Supp 1307, 1312 (CD Cal, 1970):

"Entrapment is indistinguishable from other law enforcement practices which the courts have held to violate due process. Entrapment is an affront to the basic concepts of justice. Where it exists, law enforcement techniques become contrary to the established law of the land as an impairment to due process."

In an attempt to discourage these practices and uphold "public confidence in the fair and honorable administration of justice" (Sherman v United States, supra, p 380 [Frankfurter, J.]), courts refuse to allow convictions based on entrapment. Thus, when the trial court ruled as a matter of law that the defendant was entrapped into giving the two cigarettes to the police officers, count one, sale, was dismissed and the police were prevented from obtaining a conviction based on their reprehensible methods.

However, the defendant was still prosecuted for possession. The two marijuana cigarettes obtained purely as a result of illegal police conduct were the sole basis of defendant's conviction. To allow the conviction to stand, based on this evidence, is to subvert the public policy rule behind the entrapment defense. If the conviction stands, the police can ignore with impunity the doctrine of entrapment in narcotic cases. Citizens could be enticed and entrapped to give marijuana to police undercover agents, using methods condemned by the Courts of this state and our sister states.[37] While a court *121 might dismiss the information based on sale, it would still allow the evidence obtained by repugnant methods to be used as the basis of a conviction for possession.

In other areas of the law, the Courts have fashioned exclusionary rules against the use of evidence obtained by means of illegal police conduct. Mapp v Ohio, 367 US 643; 81 S Ct 1684; 6 L Ed 2d

1081; 84 ALR2d 933 (1961); Miranda v Arizona, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694; 10 ALR3d 974 (1966).

The people contend that the exclusionary rules set out in Mapp and Miranda are not applicable to this case because they involve specific constitutional rights.[38] However, there are examples of both state and Federal cases where exclusionary rules have been fashioned under the general supervisory powers of the court.

To illustrate, in McNabb v United States, 318 US 332; 63 S Ct 608; 87 L Ed 819 (1943), the United States Supreme Court excluded from evidence a confession obtained from defendant. Although the Court held that the confession was not involuntary in the sense that it was factually incorrect, nevertheless the Court felt that it should not be allowed into evidence because to do so would be to countenance reprehensible methods of interrogation. The court based this on its specific supervisory powers over procedure in Federal courts.

Likewise in a situation analagous to McNabb, our Court applied the same rule depending on its supervisory powers over the courts in People v Hamilton, *122 359 Mich 410, 411 (1960). In Hamilton, Justice BLACK, speaking for a unanimous Court, relied on United States Supreme Court cases which stated:

"`The aim of the requirement of due process is not to exclude presumptively false evidence, but to prevent fundamental unfairness in the use of evidence whether true or false.' Lisenba v California, 314 US 219, 236 (62 S Ct 280, 86 L ed 166 [1941]), quoted in Blackburn v Alabama, 361 US 199 (80 S Ct 274, 280, 4 L ed 2d 242, 248 [1960])."

Const 1963, art 6, § 5, grants to this Court general supervisory powers over the practice and procedure in this case.[39] The excesses of police conduct which the Court in Hamilton, supra, held justified exclusion of evidence, were also present in this case. The trial court found as a matter of law that defendant was entrapped into the sale. This case is distinguishable from other entrapment cases where the courts did not exclude the evidence.[40] We are dealing with a limited factual situation. This occurs when a trial court has ruled as a matter of law that a defendant was entrapped into the sale of marijuana or narcotics. In such circumstances, we hold that the evidence thus obtained through the illegal entrapment cannot be used to prosecute a defendant for possession of marijuana or narcotics.

In the case at bar, the trial court determined that defendant was entrapped into the sale of marijuana. *123 The same police misconduct (ante pp 100-102) that occurred in the sale of the marijuana was also involved in the possession. Defendant did not volunteer the two cigarettes to the undercover agents; he only gave the cigarettes to them after repeated requests by the officers, who had deceived him over a lengthy period of time.

We hold that on the facts of this case the two marijuana cigarettes should not have been admitted into evidence. The judgment is reversed and the defendant is discharged.

WILLIAMS, J. (for reversal).

This is an opinion concerning a problem whose time has come. The name in the entitling is happenstance as the defendant could have been any mother's son or daughter.

The specific issue this opinion will consider is whether the categorization of marihuana in 1929 PA 310[1] along with the "hard drug" narcotics such as heroin, cocaine, and opium with the same penalty is denial of equal protection of the law because of unreasonable classification.

The defendant raised other issues such as entrapment and cruel and unusual punishment but inasmuch as the issue of equal protection is dispositive of the case neither those issues nor the factual details supporting them will be here considered. My Brother T.E. BRENNAN'S opinion concerning the issue of cruel and unusual punishment is well-reasoned, and I am in agreement with it as far as it goes, but it goes only to the length of defendant's sentence, not to his conviction.

*124 For the purposes of this opinion the facts of the case are that the defendant prepared two marihuana cigarettes from a jar in his private quarters and handed them to two undercover police personnel. The defendant was subsequently charged on separate counts with sale and with possession of marihuana, the charge of sale being dismissed by the trial court because of entrapment. Defendant was tried, convicted, and sentenced to 9-1/2 to 10 years in prison.

The Court of Appeals affirmed the defendant's conviction in People v Sinclair, 30 Mich App 473 (1971). This Court granted the defendant's application for leave to appeal on September 1, 1971.

The Michigan statute penalizing the possession of marihuana is MCLA 335.153; MSA 18.1123. It was one of a number of state acts of similar type passed around the time of the passage of the Marihuana Tax Act in 1937.[2]

At the time of passage of the Marihuana Tax Act of 1937, marihuana was linked with heroin and other so-called "hard drugs" based on testimony indicating that marihuana was similarly dangerous. For example, in his testimony before the House Ways and Means Committee, Narcotics Commissioner Harry J. Anslinger relied on a number of authorities including a paper by Dr. Frank R. Gomila, at that time Commissioner of Public Safety of the City of New Orleans, and Miss Madeleine Gomila, Assistant City Chemist. That paper among other things said "we find that in comparison with other important habit-forming drugs, heroin, morphine, opium, and cocaine, marihuana has an established place". *125 Taxation Of Marihuana-Hearings Before The Committee On Ways And Means, House of Representatives, 75th Cong. 1st Session on H.R. 6385, 1937, p 35.

The Commissioner made further points which are summarized by the Congressional Research Service (LRS, 13) as follows:

"1. A person under the influence of marihuana is dangerous behind the wheel of an automobile or while performing other functions which require coordination and judgment.

2. A habitual marihuana user is liable to commit a violent crime while under the influence of the drug.

3. Prolonged use of marihuana may produce `mental deterioration' or even lead to insanity.

4. The drug may `operate to destroy the will' and `gradually weaken physical powers.'"

Based on such data it may not have been unreasonable for the Congress and the state legislatures at that time to have passed

legislation coupling marihuana with opium and similar "hard drugs" in penal offenses. However, the situation today is quite the opposite. While experts cited in the briefs and appendices for plaintiff, defendant and amici curiae are not in complete agreement as to the exact properties of marihuana, it is quite clear that today few, if any, responsible experts would classify marihuana in the same category with opium and similar "hard drugs."[3]

*126 The United States Congress, particularly the House of Representatives, has been especially concerned with the properties and effects of marihuana, apparently in connection with H.R. 14012, a bill to provide for the establishment of a commission on marihuana. Stanley F. Yolles, M.D., Director of the National Institute of Mental Health appeared before the Sub-Committee on Public Health and Welfare of the Interstate and Foreign Commerce Committee on September 17, 1969, more than two years ago to testify on this general subject. His testimony establishes quite clearly that "in the past, dangerous drugs were grouped arbitrarily, sometimes by historical accident rather than with regard for their differing characteristics and their specific and distinct effects". He then went on to outline as well the *127 present significant knowledge concerning the characteristics of marihuana. This Court can certainly take judicial notice that the characteristics of marihuana are quite different from narcotic drugs like heroin.

Dr. Yolles discusses this in his statement in brief form. The pertinent part of Dr. Yolles' statement is as follows:

"In the past, dangerous drugs were grouped arbitrarily, sometimes by historical accident rather than with regard for their differing characteristics and their specific and distinct effects. The bill before

you today, Mr. Chairman, if read in conjunction with H.R. 13742, now before the House Ways and Means Committee, would provide for the first time a more logical grouping of substances according to the degree of danger in the abuse of each. It also wisely requires all decisions to add, delete, or reclassify a substance to be made by the Attorney General only after obtaining the advice of the Secretary of Health, Education, and Welfare, and of the Attorney General's own scientific Committee.

"There is one comment which I must make with regard to the content of the schedules. One substance which I know is being considered by another House Committee because through historical accident it has been traditionally regulated as a narcotic is marihuana.

"There is total agreement among competent scientists and physicians that marihuana is not a narcotic drug like heroin or morphine but rather a mild hallucinogen. To equate its risks either to the individual or to society with the risks inherent in the use of hard narcotics is neither medically nor legally defensible. I am certainly not advocating the removal of all restrictions on marihuana. It can be a dangerous drug. We need to know much more about the long-term effects of marijuana and other *128 forms of Cannabis, particularly the more potent hashish. Based on what we already do know about the substance, however, it should not be dealt with, legally or medically, as a narcotic." (Emphasis supplied.)

* * *

"Mr. Chairman, the patterns of marihuana use, as well as the properties of the drug, are very different from other substances

under consideration here. No one really knows how many people smoke marihuana in the United States today. From collegiate studies and other sources, it can be estimated that the number of people who have smoked marihuana at least once is something between 8 and 12 million; and it may be closer to 20 million.[4]

"The marihuana debate continues but the differences between the facts about marihuana and the fables surrounding its use are now much more widely recognized than was the case even six months ago."

The above data indicates that factually the categorization of marihuana with narcotics and other "hard drugs" is not a reasonable classification.

The United States Constitution[5] and the Michigan Constitution[6] each guarantee every citizen of the State of Michigan the equal protection of the law. Both the United States Supreme Court and this Court have held that a classification which does not rest upon a reasonable basis and which is essentially arbitrary in nature constitutes a violation of the Equal Protection Clause. Lindsley v Natural Carbonic Gas Co, 220 US 61; 55 L Ed 369; 31 S Ct 337 (1911); Naudzius v Lahr, 253 Mich 216 (1931).

Recent cases have outlined a stricter test in certain cases involving an interpretation of the Equal *129 Protection Clause. These cases have held that when a fundamental constitutional right is in question, any classification which penalizes the exercise of that right is unconstitutional unless it is necessary "to promote a compelling governmental interest". Shapiro v Thompson, 394 US 618, 634; 89 S Ct 1322; 22 L Ed 2d 600 (1969); Traverse City School District v Attorney General, 384 Mich 390 (1971).

Under either of the above standards the classification of marihuana as a "hard drug" in MCLA 335.151; MSA 18.1121, constitutes a violation of the Equal Protection Clause of the United States Constitution. Such a classification is irrational in view of the present evidence which exists concerning marihuana. This is particularly true since other hallucinogenic drugs such as d-lysergic acid diethylamide, peyote, and mescaline are grouped together. (MCLA 335.106; MSA 18.1106). The penalties for the use of these drugs are less severe than those for the possession of the narcotic drugs with which marihuana is included. This classification promotes no "compelling governmental interest". Therefore such classification of marihuana deprived the defendant of his constitutional right to equal protection of the law.

The Supreme Court of the State of Illinois recently considered this same issue in its review of a case involving an Illinois statute classifying marihuana with narcotic drugs. In People v McCabe, 49 Ill 2d 338; 275 NE2d 407 (1971), that Court stated, "Marijuana, in terms of abuse characteristics, shares much more in common with the barbiturates, amphetamines and, particularly, the hallucinogens than it does with the `hard drugs' classified in the Narcotic Drug Act". 49 Ill 2d 338. The Court concluded that the grouping of marihuana *130 with narcotic drugs was irrational and violated the Equal Protection Clause.

It is of interest to note that the Michigan legislature itself has decided that the classification of marihuana with narcotics and other so-called "hard drugs" is not rational in the light of present scientific knowledge. The legislature has removed marihuana from the category containing "hard drugs", and has lowered the penalties for the marihuana crimes.[7]

The legislature also has recognized the problem arising from the fact that the Controlled Substances Act of 1971 may only be applied prospectively. Aware of its inability to pass a retrospective law, the legislature has wisely called for a committee to review the sentences of those individuals presently incarcerated for drug offenses. Such a committee can make recommendations concerning the commutation of sentences to the Governor. Unlike the legislature, however, this Court does have the authority to apply its decisions retrospectively. Justice demands that we so apply this decision.

The legislature's action is in line with the following conclusion reached by the United States House of Representatives Select Committee On Crime which in their April 6, 1970 report (91st Congress, 2nd Session H.R. 91-978), concluded as follows:

"Certainly, savagely repressive and punitive laws cannot be defended as a solution to the marihuana problem. It destroys our criminal justice system to have penal statutes that are not uniformly enforced and perhaps in some instances are unenforceable. Our committee heard many general statements of harsh and oppressive prison sentences that had been meted out to young marihuana users or possessors. *131 Many lament that we are `making criminals of our young people.' The facts, however, do not support these statements. We have observed that the penalties for marihuana possession or even for selling are generally not imposed and that jail sentences are the rare exception rather than the rule.

"This situation is not desirable. Our criminal statutes must be uniformly enforced or they make a mockery of the effective administration of criminal justice. Nothing brings about a

disrespect for the law more effectively than penal statutes which are selectively enforced. Those who receive the penalty which the law provides rightfully feel discriminated against if most violators go free. A major and perhaps the most serious need in relation to marihuana is to make the penalties relating to violations rational and then to bring about uniform and even enforcement of the laws. No society can exist if disrespect for its laws is widespread."

Reversed, defendant discharged.

T.M. KAVANAGH, C.J., concurred with WILLIAMS, J.

T.G. KAVANAGH, J.

John Sinclair was convicted of the crime of possession of marijuana contrary to the provisions of MCLA 335.153; MSA 18.1123, and was sentenced to serve 9-1/2 to 10 years in prison therefor.

I agree with my Brother BRENNAN that a minimum sentence of 9-1/2 years for the possession of marijuana is cruel and/or unusual punishment prohibited by the US Const, Am VIII and the Const 1963, art 1, § 16, for the reasons he states.

I also agree for the reasons he states, that in the discharge of our duty we have the power to review sentences.

*132 I do not agree that the other issues urged on appeal here were adequately treated by the Court of Appeals or that on the basis of their reasoning or any other that the conviction can stand.

My Brother SWAINSON has written that the police procedure followed in this case was tantamount to entrapment and does not meet a standard of practice which we can countenance. I agree

with him in this for his stated reasons. His quotations from Justice MARSTON and CAMPBELL in Saunders v People, 38 Mich 218 (1878), and Justice Roberts in Sorrells v United States, 287 US 435; 53 S Ct 210; 77 L Ed 413 (1932) strike me as most apt.

Here because of the way it was obtained, the evidence should have been suppressed for all purposes, so defendant's conviction based upon it was improper.

My Brothers WILLIAMS and SWAINSON, however, both write to the effect that our statute denied the defendant equal protection and due process of the law on account of its classification of marijuana with heroin and other "hard narcotics", prescribing the same penalty for their possession and use. They demonstrate that the overwhelming weight of scientific opinion today is that marijuana is not a narcotic at all, but rather a mild hallucinogens which should, with propriety, be treated with other hallucinogens. They hold that classification of marijuana with the "hard" drugs is wholly unreasonable and unconstitutional.

Although I am persuaded that our statute is unconstitutional, I cannot agree that my Brothers have ascribed the correct or even permissible reasons for this conclusion.

The testimony and data upon which this legislation was based may indeed be out of date and of exceedingly doubtful validity today, but I do not perceive *133 it the prerogative of a court to substitute its assessment of such testimony and data for that of a legislature. Rather I believe our duty is to determine whether what the legislature did conformed to constitutional limits.

I find that our statute violates the Federal and State Constitutions in that it is an impermissible intrusion on the fundamental rights

to liberty and the pursuit of happiness, and is an unwarranted interference with the right to possess and use private property.

As I understand our constitutional concept of government, an individual is free to do whatever he pleases, so long as he does not interfere with the rights of his neighbor or of society, and no government state or Federal has been ceded the authority to interfere with that freedom. As has been said:

"[T]he sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of these number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral is not a sufficient warrant." J.S. Mill, On Liberty, Chapter 1.

Whatever the validity of the concept that traffic in marijuana is freighted with a proper public interest, it is extending the concept entirely too far to sanction proscription of possession and private use of it. Although it is conceivable that some legitimate public interest might warrant state interference with what an individual consumes, "Big Brother" cannot, in the name of Public health, dictate to anyone what he can eat or drink or smoke in the privacy of his own home.

*134 In my view when the legislature proscribed the possession and private use of marijuana as a Public health measure it did so unconstitutionally.

John Sinclair's conviction should be set aside and the prosecution dismissed.

T.E. BRENNAN, J. (Separate Opinion).

Defendant was convicted of possession of two marijuana cigarettes in violation of MCLA 335.153; MSA 18.1123.

The offense occurred in the defendant's home, and in the presence of two police officers whose identity as such was unknown to the defendant.

Defendant did not testify at his trial.

On July 28, 1969, defendant, in the company of his attorney, appeared before the trial judge for sentencing.

The following is a transcript of that hearing:

"The Clerk: File No. A-134588, People vs. John A. Sinclair. You were found guilty by a jury July 25th of Possession of Marijuana. You are here today for sentence. Do you have anything to say to the Court?

"The Defendant: I do.

"The Clerk: Speak up.

"The Court: You want the microphone, Mr. Sinclair?

"The Defendant: Not particularly.

"The Court: All right.

"The Defendant: I haven't had a chance to say anything and so far I'd like to say a few things for the record. The Court is aware these charges have been fabricated against me by the Detroit Narcotic Squad. He came to me one day and said a month and three days ago, you did this, you gave so and so this, you did that. I had no

opportunity, I didn't do that and I had no opportunity to construct a defense. But I know what was going on all along and *135 it was a conspiracy by these people, Warner Stringfellow, Vahan Kapagian and Joseph Brown and the rest of them, to frame me on this case and to bring me right here and to manufacture two marijuana cigarettes and say I gave them to them and then let the rest of you who are in it with them manufacture this cold case and bring me here. The punishment I have received already in the two and a half years since this case started is cruel and unusual, if I had committed the crime of possessing two marijuana cigarettes. And everyone who is taking a part of this is guilty of violating the United States Constitution and violating my rights and everyone else's that's concerned. And to take me and put me in a pigsty like the Wayne County Jail for the weekend is a cruel and unusual punishment, to sleep on the floor, to have no sheets, no blankets, pig swill to eat. You see, but you can get away with this and you can continue I don't know what sentence you are going to give me, it's going to be ridiculous, whatever it is. And I am going to continue to fight it. The people are going to continue to fight it because this isn't justice. There is nothing just about their, there is nothing just about these courts, nothing just about these vultures over here.

"The Court: One more word out of the crowd and I will clear the courtroom.

"The Defendant: Right. And that will continue in the tradition that's been established here. I am not done, but no sense talking any more.

"Mr. Ravitz [attorney for defendant]: If your Honor please, Mr. Sinclair is twenty-seven years of age, he is married, he has one

child in the audience today, two years of age. A beautiful child, she is there. His wife is pregnant. He's lived in the State of Michigan all his life. He has three prior convictions, two are for marijuana. In each instance, he pled guilty. In the second instance, he never, ever should have pled guilty. It was the subject of illegal entrapment by Vahan Kapagian. He *136 was induced, he was seduced, he was led by Kapagian to be an intermediary. To be an intermediary to a transaction which he never would have been a party to. To be an intermediary to a transaction which the major person on both sides of the transaction were, of course, not charged with an offense.

"John Sinclair stands convicted in Oakland County of assaulting a police officer who wasn't even a police officer. Of assaulting a person who assaulted him. He's been given a sentence of thirty days in that case, which is on appeal. The Court knows something about the history of cases involving alleged assaults upon police officers where the alleged assailants were persons of the nature of John Sinclair.

"If there are two crimes in this country which are political prosecutions, they are in one instance, those of claimed assaults against police officers and in another instance, those cases which can be proved easily by fabricated stories and not easily disproved by citizens. Namely, offenses such as the one before this Court.

"John Sinclair has another pending case. That pending case is an oddity in the annals of jurisprudence in this country or anywhere else. That case is for violation of the Federal law, which is on its face, palpably unconstitutional. It stated as many as twelve years ago in the case of Lamberg versus California, by the Supreme Court, I wonder who it was who came up with the clever notion of

saying that John Sinclair is a criminal because he kept a business engagement in another state, in Canada, and went across the line not registering as a person convicted of a narcotic offense? Who else has been charged with that case and when and who is behind that case? I wonder? But one need not wonder, one need only look. The community's attitude and the establishment's attitude and the narcotics officer's attitude and the unmitigated power which they have to exercise. The only way that power can be *137 checked is by having an independent judiciary. The only way that power can be checked is by having jurors who aren't going to be servants to police state power that are going to stand as a bullwark against the improper exercise of that power. And we don't have that in America today. We didn't have that in this court this past week and that's regrettable.

"In America, which has never known anything but the history of racism, and in America which practices those imperialistic and those brutalistic and inhumane wars in Asia and elsewhere around the globe, and in America which sends a man to the moon while millions of its citizens starve, John Sinclair is brought before this Court and he is said to be a criminal. He isn't a criminal. He isn't a criminal at all. The criminals with respect to this law, are the doctors, the legislators, the attorneys who know, who know, because they have knowledge that these laws are unconstitutional. That these laws defy all knowledge of science. That this sumptuary legislation, like its predecessors and like other forms of sumptuary legislation, are on the books to go after and to impress politically unpopular people and groups and minorities. That's the only reason they are on the books.

"This very day, 25% of the future doctors of America who are studying medicine at Wayne State University Medical School, have

possessed marijuana. Twenty-five percent of the future lawyers, indeed future judges who will be sitting on that bench some day, have possessed and have smoked marijuana.

"The Court: That's your opinion.

"Mr. Ravitz: That's my opinion.

"The Defendant: That's a fact.

"Mr. Ravitz: My opinion and based on studies.

"Persons brought before the bar of the Court aren't the middle-class, aren't the popular, they are the oppressed. They are the unpopular. It's a *138 terrible law, it's a criminal law. I know that the Court might not agree with my evaluation of it. I know and ask and hope for only this, your Honor. I think the Court has been involved in enough of these cases to know that the law itself, whether it's unconstitutional per se, is a cruel law and isn't a law that is properly and fairly dispensed. I know that the Court, and I hope that the Court recognizes that the two cigarettes in this case were really the officers in this case really had utter disregard for John Sinclair. They never treated him as a human being to whom the Constitution extended itself. What I really hope the Court recognizes is that other judges and other persons of this society charged with responsibilities, come to recognize is that America cannot single out unpopular leaders and go into their arsenal of over-kill, be it through stone or rifles or highly punitive sentences and think that the problems in this country can ever be solved in that fashion. Yet all around this country, we see political prosecutions. We see the Tom Haydens, we see the Huey Newtons, the John Sinclairs singled out. And somewhere in the warped minds of those so-called leaders, they think that they are going to

cure the generation gap. They think that they are going to stem the tide of revolution by picking out leaders. Well, they are simply not going to do so because leaders are no longer indispensable in this country. Because there are a great many people who are awake to the crimes and the atrocities committed by governments and because it simply cannot work. The only way to deal with it is to deal with it rationally, to deal with it constitutionally and to follow those laws written by those legislators. And I will ask that the Court do just that. And I would ask that the Court insulate itself from public pressures which I recognize to be very weighty. But to be equally irrational. Those are the same public pressures that lead to all those acts that called for the conclusions brought forward in the Kerner Commission *139 Report. And yet those conclusions haven't been acted on in any way by government. I hope that this Court in particular begins to act upon them by exercising some degree of rational thought process and by recognizing the realities of the situation.

"Thank you.

"The Court: Well, in this matter here, Mr. Sinclair was arrested in January of 1967 in connection with an offense that took place on December 22nd, 1966. It's interesting to me that he, and you, assert that he has been violated of his constitutional rights because all of the rights that he's entitled to as any citizen is under the Constitution, have been asserted in his defense. In addition to that, there have been appeals to the Court of Appeals, to the Michigan Supreme Court on his behalf, which have held up the trial of this case for a long and lengthy period of time.

"Now, Mr. Sinclair is not on trial and never was on trial in this courtroom because of his beliefs. He represents a person who has

deliberately flaunted and scoffed at the law. He may think that there is nothing wrong with the use of narcotics, as many people think that there is nothing wrong with the use of narcotics. Although enlightened and intelligent people think to the contrary and otherwise. And medical studies back them up far more completely than they do the people on his side of the particular question.

"The public has recognized that the use of narcotics is dangerous to the people that use it. The public, through its legislature has set penalties for those who violate and traffic in narcotics.

"Now, this man started in 1964, in which he first came to the attention of this Court and upon the offense of Possession of Narcotics, on a plea of guilty, was placed upon probation. We have tried to understand John Sinclair, we have tried to reform and rehabilitate John Sinclair.

*140 "In 1966, while still on probation for that offense, he committed another offense for which he pleaded guilty. And this Court again showed supreme leniency to John Sinclair, placing him on probation again while ordering him to serve the first six months thereof in the Detroit House of Correction.

"This placed him in violation of his other probation, which resulted in that Judge extending that probation on again, so that for you or for John Sinclair to assert that the law has been out to get him, is sheer nonsense. John Sinclair has been out to show that the law means nothing to him and to his ilk. And that they can violate the law with impunity and the law can't do anything about it.

"Well, the time has come. The day has come. And you may laugh, Mr. Sinclair, but you will have a long time to laugh about it.

Because it is the judgment of this Court that you, John Sinclair, stand committed to the State Prison at Southern Michigan at Jackson or such other institution as the Michigan Corrections Commission may designate for a minimum term of not less than nine and a half nor more than ten years. The Court makes no recommendation upon the sentence other than the fact that you will be credited for the two days you spent in the County Jail.

"Now, as to bond, in view of the fact that Mr. Sinclair shows a propensity and a willingness to further commit the same type of offenses while on bond, and I am citing you to the case of People versus Vita [sic] Giacalone just cited by the Michigan Court of Appeals, this is one instance where there is a likelihood of that type of danger and which the Court of Appeals said that refusal to set bond is a good grounds. And based on that, and my belief that he will continue to violate the law and flaunt the law in relation to narcotics, I deny bond pending appeal.

"The Defendant: You just exposed yourself even *141 more. And people know that. You give somebody nine and a half to ten years (noise in courtroom)."

Statistics of the Michigan Department of Corrections show that since 1964, 1,663 persons have been convicted in Michigan for violation of MCLA 335.153; MSA 18.1123.[*] Of these, 214 were given short jail terms, fined or given suspended sentences. Nine hundred and eighty-two were placed on probation. Four hundred and sixty-seven were committed to prison.

Of the 467 sent to prison, only 46 received minimum terms exceeding five years. Only 5 persons have been committed to

prison for minimum terms of 9-1/2 years, or more, for possession of any amount or species of narcotics since 1964.

Defendant appeals his conviction and sentence on many grounds. All of these have been dealt with adequately by the Court of Appeals, with one exception.

That issue is this: Whether under the circumstances of this case, the imposition of a minimum term of imprisonment of 9-1/2 years is prohibited by the US Const, Am VIII, or Const 1963, art 1, § 16.

The US Const, Am VIII, provides:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Const 1963, art 1, § 16, provides:

"Excessive bail shall not be required; excessive fines shall not be imposed; cruel or unusual punishment shall not be inflicted; nor shall witnesses be unreasonably detained."

Cummins v People, 42 Mich 142 (1879), was submitted *142 to the Supreme Court on October 29, 1879, and decided the next day. It involved:

"BURGLARY. Criminal information charging George Linden, Michael Moore, William Cummins and John Seipher with breaking into the dwelling house of Anne McFarlin, in the township of Hamtramck, and feloniously taking therefrom a bottle of sherry and a lot of cigars. Cummins was convicted and sentenced to imprisonment in the State Prison for seven years."

The Court, held, without citation of precedents:

"It is also alleged as error that the sentence was unusually severe, and that in the light of all the facts it was in violation of the constitutional provision which declares that `cruel or unusual punishment shall not be inflicted.' The sentence was not in excess of that permitted by statute, and when within the statute, this court has no supervisory control over the punishment that shall be inflicted. The statute gives a wide discretionary power to the trial court upon the supposition that it will be judicially exercised in view of all the facts and circumstances appearing on the trial. Unless the case presented differed materially from what it would appear to have been, as shown by the bill of exceptions, we think the punishment inflicted was unusually severe, and have no doubt but that on a full presentation of the facts to the chief Executive, relief would be promptly and cheerfully granted."

In Robison v Miner, 68 Mich 549 (1888), a provision of the liquor law of 1887 calling for forfeiture of business in addition to fine and imprisonment was struck down as cruel or unusual punishment.

People v Murray, 72 Mich 10 (1888), was a case in which:

"The respondent in this case was convicted in the Kalamazoo circuit on February 28, 1888, of the *143 crime of carnally knowing and abusing a young girl under the age of 14 years, and was sentenced to imprisonment at Jackson for the term of 50 years."

The reported decision contains a detailed description of the events which led to the arrest and conviction of the defendant Murray, concluding with these words (p 13):

"The case does not show the aggravating circumstances which so frequently accompany criminal conduct of the character charged, and especially is this true when we consider the intoxicated

condition of the respondent. While this cannot furnish any legal excuse for what he did, it has an important bearing upon the turpitude of the respondent, and the quality of his crime, and should have had an important influence in determining the extent of the punishment to be inflicted after conviction had. Such considerations, however, seem to have been entirely without weight with the court below, as is very clearly manifest from the extent of the punishment meted out to the respondent."

In Murray, the Court found errors in the trial, and directed remand for new trial.

But the Court also directed its attention to the punishment issue, in these words (pp 16-17):

"There is another feature of this case to which we wish to call special attention, and that relates to the sentence imposed. It is for 50 years, and will very likely reach beyond the natural life of the respondent, unrestrained of his liberty, and overreach by 10 or 15 years his natural life if so restrained. We see nothing in this record warranting any such sentence, and it must be regarded as excessive. It will not do to say the executive may apply the remedy in such a case. We do not know what the executive may do, and it is but a poor commentary upon the judiciary when it becomes necessary for the executive to regulate the humanity of the bench.

*144 "But the Constitution has not left the liberty of the citizen of any state entirely to the indiscretion or caprice of its judiciary, but enjoins upon all that unusual punishments shall not be inflicted. Where the punishment for an offense is for a term of years, to be fixed by the judge, it should never be made to extend beyond the

average period of persons in prison life, which seldom exceeds 25 years.

"We are all of opinion that the present case shows an abuse of the discretion vested by the statute in the circuit judge in this respect."

The Murray decision makes no reference to Cummins, although it is clear that the Court took a very different view of the strictures of the cruel and unusual punishment prohibition in the two cases.

In People v Morris, 80 Mich 634 (1890), there is a rather extensive discussion of cruel or unusual punishment. There, two defendants pled guilty to larceny of a horse, and were sentenced to seven years and six years nine months, respectively. The statute on horse theft carried a minimum sentence of 3 and a maximum sentence of 15 years.

It was alleged in Morris that the statute was unconstitutional. No claim seems to have been made, as in Murray, that the sentence itself constituted the infliction of cruel or unusual punishment.

The historical discussion in Morris discloses that the precursor of our constitutional ban on cruel or unusual punishment was originally aimed at the infliction of punishments by judges, and was not a limitation upon the legislative branch of government in defining crimes and declaring punishments.

"`We first find the injunction against cruel and unusual punishment in the Declaration of Rights, presented by the convention to William and Mary before settling the crown upon them in 1688. That declaration recites the crimes and errors which had *145 made the revolution necessary. These recitals consist of the acts only of the former king and the judges appointed by him,

and one of them was that "illegal and cruel punishment had been inflicted." * * * The punishments complained of were the pillories, slittings, and mutilations which the corrupt judges of King James had inflicted without warrant of law, and the declaration was aimed at the acts of the executive; for the judges appointed by him, and removable at pleasure, were practically part of the executive. It clearly did not then refer to the degree of punishment, for the criminal law of England was at that time disgraced by the infliction of the very gravest punishment for slight offenses, even petit larceny then being punishable with death. But the declaration was intended to forbid the imposition of punishment of a kind not known to the law, or not warranted by the law.'" (p 638.)

While the Court in Morris was only asked to consider the constitutionality of the statute, nonetheless, the Court repeated the Cummins rule that any sentence within the statutory limits was beyond appellate consideration.

"But for the disposition of this case we may adopt the rule contended for, and then we must find (in order to declare the law unconstitutional) that the minimum punishment provided by the law is so disproportionate to the offense as to shook [sic] the moral sense of the people. Imprisonment for larceny is, and always has been, in this country and in all civilized countries, one of the methods of punishment. There may be circumstances surrounding the commission of larceny where fifteen years would not be considered too severe a punishment. When punishment is commensurate with the depravity of the criminal, as shown in the commission of the act, justice is done. Under most of our criminal laws, cases may arise where the punishment inflicted might be considered cruel, but that does not condemn *146 the law. The

judge in such case has acted within the jurisdiction of constitutional law, and other means must be resorted to to right the wrong. Appellate courts cannot interfere if the proceedings have been regular. The law itself must therefore be cruel or unusual to warrant the interposition of the courts." (p 639.)

The Morris Court also pointed out that the act of stealing a horse was malum in se. Details of the horse theft were not recounted.

The Cummins rule was followed again in People v Cook, 147 Mich 127 (1907). There a statute calling for indeterminate sentences was upheld. The Court said (p 133):

"The law does not provide for any unusual punishment. The legislature may fix one definite punishment for any crime, or it may fix a minimum and a maximum. When a constitutional law has fixed the punishment for an offense, a sentence under that law is not cruel or unusual within the meaning of the Constitution. One judge might sentence a man convicted of larceny for one year, and another might sentence the same man for the same offense for five years. When the judge imposes a sentence within the law, his sentence is not a cruel or unusual punishment. It is laws providing for cruel and unusual punishments that the Constitution refers to and prohibits, and not sentences by courts under constitutional laws."

People v Mire, 173 Mich 357 (1912), dealt with a conviction of burglary with explosives. The defendant there argued that the statute provided a cruel and unusual punishment. Affirming the sentence, the Court said (p 361):

"The punishment prescribed in the act in question is imprisonment, a most common and usual method of punishment

the world over. The claim that it is *147 cruel and unusual must of necessity be directed, not to its nature, but to its limits of time, `not less than 15 years nor more than 30.' That class of cruel and now unusual punishments at one time sanctioned and prevalent under the common law of England, such as burning at the stake, drawing and quartering, mutilation, starvation, and lesser forms of physical torture, to which the constitutional prohibitions were primarily directed, is not involved here. Approaching the dividing line, the inquiry as to what does in any particular case constitute cruel and unusual punishment under the constitutional provisions, turns, not only upon the facts, circumstances, and kind of punishment itself, but upon the nature of the act which is to be punished."

As in Morris, the Court agreed that the minimum term was the measure of the constitutionality of a punishment statute.

"We are not prepared to hold that the punishment prescribed in this act does not fit the crime, or that the minimum punishment, which is the test, should be regarded as so unusual and cruel, and so disproportionate to the offense as to shock the moral sense of the public." (p 362.)

Also following the lead of Morris, the Court in Mire discussed the legislative rationale, pointing out the peculiar dangers inherent in the use of explosives.

People v Smith, 94 Mich 644 (1893), and People v Whitney, 105 Mich 622 (1895), are both cases in which the constitutionality of legislatively determined punishments were considered and upheld. In both cases, the Court said "upon the Legislature alone is

conferred the power to fix the minimum and maximum of the punishment for all crimes."

In People v Baum, 251 Mich 187 (1930), defendant was convicted of violation of the liquor laws, sentenced *148 to pay a fine of $500 and $500 costs. In addition, defendant was placed on probation for five years, during which time it was ordered that he "must leave the State of Michigan within 30 days and not return for the period of probation". It was held that such a method of punishment was impliedly prohibited by public policy. The case was remanded with instructions to enter a legal sentence.

In People v Jagosz, 253 Mich 290 (1931), defendant was convicted of rape. There was no discussion of the basis for the claim that the sentence imposed was cruel or unusual. The Court said (p 292):

"It is claimed that the sentences to imprisonment from 12 to 30 years constitute cruel and unusual punishment. There is no merit in this. The statute (3 Comp Laws 1915, § 15211 [3 Comp Laws 1929, § 16727]) provides imprisonment for life or any such period as the court in its discretion shall direct."

In People v Harwood, 286 Mich 96 (1938), defendant was sentenced 5 to 15 years for placing a foul and offensive substance in a taxicab, rendering it unuseable for two weeks.

The Court cited United States Supreme Court cases to support its finding that the Eighth Amendment did not apply to the states, then, without discussing the similar provision of the Michigan Constitution, affirmed the conviction on the ground that the "length of imprisonment for felony is for legislative determination and not subject to judicial supervision." Citing Morris, Smith and Whitney.

Defendant appealed his conviction of rape in People v Commack, 317 Mich 410 (1947). This was a delayed appeal in which there appeared to have been some possibility of doubt as to the defendant's guilt, based upon certain after discovered evidence. *149 Defendant's appellate counsel asked to withdraw because he did not wish to be a party to a fraud on the Court. Thereafter, the Court made short shrift of the appeal, and disposed of the cruel and unusual argument with the simple statement that the sentence was within the statutory limits, and was not "cruel, inhuman and unjust punishment in view of the nature of the crime charged."

In re DeMeerleer, 323 Mich 287 (1948), imposed a sentence of 6 months to 15 years for manslaughter. The Court reiterated the holding of Harwood without discussion.

Defendant was sentenced to a minimum term of eight years in People v Connor, 348 Mich 456 (1957). He challenged the sentence as an abuse of discretion. The Court there held:

"The sentence imposed is within the penalty imposed by statute. In such cases the Supreme Court is without power to alter or change a sentence."

In People v Krum, 374 Mich 356 (1965), defendant was convicted of obstructing an officer. He claimed that his sentence of 30 days in jail, $1,000 fine and $346.20 in costs, was grossly excessive under all the circumstances and taking account of his past exemplary record. That claim was disposed of with one sentence:

"As to the claim that the sentence was excessive, it is found to be within the limits set by the statute, and that precludes our altering it."

It is apparent that our cases on the subject of cruel or unusual punishments have not considered the parameters of the constitutional prohibition in any great depth.

It is clear from Murray, Miner and Baum that the Court does have, and will occasionally exercise authority to vacate sentences which are illegal. But *150 it is also clear that our Court has consistently declined to consider punishments challenged as being cruel and unusual where the sentence is within the range permitted by statute.

The conclusion that the prohibitions of the Eighth Amendment and of Const 1963, art 1, § 16, are directed only to legislative acts and not judicial actions, does not seem warranted.

As pointed out in Morris, the history of the "cruel and unusual" punishment bar was otherwise. Moreover, the punishments prohibited by the Constitution are those "inflicted" and not those permitted or authorized by law. The prohibition against "excessive bail" would seem obviously directed against courts and judges who set bail, and not against legislatures which ordinarily leave the amount of bail to judicial discretion.

Further, the action of state courts has been held to constitute state action within the meaning of the Fourteenth Amendment. Shelley v Kraemer, 334 US 1; 68 S Ct 836; 92 L Ed 1161; 3 ALR2d 441 (1948).

Since the Eighth Amendment has now been held applicable to the states, via the Fourteenth Amendment (Robison v California, 370 US 660 [82 S Ct 1417; 8 L Ed 2d 758 (1966)]), it would follow that the sentence imposed by a state court, could be made the basis

for a Federal claim, even though state legislative action is not challenged.

Where the legislature provides an indeterminate sentence, which contains no minimum term, the constitutionality of the legislation would have to be determined on the basis of the maximum penalty established. In such a case, a showing would have to be made that no set of facts could be posited under which the commission of the crime defined in *151 the law would warrant the imposition of the maximum penalty.

In such a case, the legislature leaves the setting of the minimum sentence to the court for the very purpose of creating latitude so as to relieve from the maximum penalty those defendants whose conduct contained some circumstances of mitigation, or at least no circumstances of aggravation.

But it does not follow that because the legislature has left the setting of the minimum term to the courts, no minimum term can ever be excessive.

We reject the proposition that punishments can be "cruel and unusual" in the popular sense, but not in the constitutional sense. The Constitution is a popular document. It must be construed by the courts to have that meaning which the people intended it to have.

It is ludicrous to suppose that the people who prohibited excessive fines and bail and cruel or unusual punishment intended thereby to vest unbridled power in judges to require bail, impose fines and inflict punishments.

It is equally unrealistic to conclude that the people intended to permit the legislature to give such unbridled power to the trial courts in the name of indeterminate sentencing.

Many examples could be given in which maximum statutory punishments are at variance with the realities of the administration of justice.

Traffic violations, for instance, are punishable under the motor vehicle code as misdemeanors, carrying a maximum of 90 days in jail and $100 fine.

While certain aggravated circumstances might be supposed justifying such penalties in some cases, it would be shocking indeed if the maximum penalty should be meted out for a commonplace left turn violation!

*152 Surely this Court would not consider itself powerless to interpose in such a case.

Our constant reiteration that an appellate court is without authority to review a sentence has no basis in law or logic. MCLA 769.1; MSA 28.1072 provides that Justices of the Supreme Court have sentencing power, as fully as circuit judges. There is no reason to suppose that such authority is idly given or has no relation to the appellate function.

The authority, indeed the duty, of this Court to vacate sentences which exceed the permissible limits of statutory provisions is clear. Such sentences are illegal. They violate the law. As such, they are null and void.

The Constitution is the fundamental law. It is as explicit and as binding on courts as the pronouncements of the legislature. A sentence of a court which violates the Constitution is illegal. This Court is not without the power to support and observe the Constitution and to apply it to the actions of judges, even when such actions are literally within the discretion vested by statute.

The legislature has no power to invest a court with discretion to violate the Constitution.

This case of Sinclair has been given much notoriety. Defendant and his supporters have used his conviction and sentence as a vehicle to attack the wisdom and efficacy of the marijuana laws.

We have declined to enter into that controversy. The judicial fact-finding process is not adaptable to finding mixed questions of fact and policy.

But we do note that the possession of narcotic drugs is a crime malum prohibitum only. This is particularly apparent in the case of marijuana. The statute prohibits possession of any part of the cannibus sativa plant. Possession of a natural growing plant can hardly be malum in se.

*153 As officers sworn to uphold the Constitution we recognize with understanding, the action of the learned trial judge.

The attitude of hostility and remorselessness displayed by the defendant and the disruption of orderly proceedings by his supporters surely combined to tax the patience of the court. And certainly if rehabilitation were the sole purpose of sentencing, the measure of the imprisonment would be more the posture of the defendant than the gravity of the offense.

But rehabilitation is not the only function of punishment. It is not even always possible. Where the defendant is recalcitrant, whether from principle or out of sheer meanness, the law cannot, in a free society, disregard the nature of the offense and address itself only to the character of the offender.

Where a minimum sentence is imposed which is demonstrably and grossly excessive, in the light of the depravity of the criminal as shown in the commission of the act and in light of the usual and customary disposition of those convicted of like conduct, such minimum sentence violates the constitutional prohibition against the inflicting of cruel or unusual punishment, and is illegal and void.

The sentence is vacated, and the cause is remanded for re-sentencing. In the meantime defendant will be admitted to bail with bond in the amount of $1,000.

ADAMS, J., concurred with T.E. BRENNAN, J.

BLACK, J., did not sit in this case.

NOTES

[1] MCLA 335.152; MSA 18.1122.

[2] MCLA 335.153; MSA 18.1123.

[3] US Const, Am XIV; Const 1963, art 1, § 2.

[4] US Const, Am XIV; Const 1963, art 1, § 17.

[5] US Const, Am IX.

[6] US Const, Am VIII; Const 1963, art 1, § 16.

[7] "My concurrence in the decision of the court on the issues raised here are limited solely to the issues raised here, as there appears to this writer to be another important legal issue not raised in this opinion which may well apply to count one in the people's information, namely, sale and possession of narcotics, and that is the issue of unlawful and illegal entrapment, an issue which suggests itself to this writer and which suggested itself to the learned assistant prosecuting attorney who presented this case on behalf of the people at the preliminary examination of the defendant Sinclair in this matter."

[8] "We've talked a lot about it. It's up to me to come to grips with the problem. I hold that count one, Sale and/or Dispensing of marijuana should be dismissed on the grounds of entrapment."

[9] Defendant did not take the stand because the trial court ruled on July 22nd that if he did testify he could be cross-examined on his prior convictions.

[10] People v McCabe, 49 Ill 2d 338; 275 NE2d 407, 409 (1971).

[11] Interim Report of the Canadian Government Commission of Inquiry, The Non-Medical Use of Drugs (Penguin ed 1970), pp 65-66 (hereinafter referred to as "Canadian Commission Report").

[12] The Illinois Supreme Court in People v McCabe, supra p 410, point out that knowledge concerning marijuana has been developing rapidly in the last decade. For an example of a case where the United States Supreme Court relied on the current writing of authorities in a then rapidly developing field, see Brown v Board of Education, 347 US 483, 494, fn 11; 74 S Ct 686; 98 L Ed 873 (1954).

L. Grinspoon, M.D., Marijuana Reconsidered (Bantam ed 1971), p 46.

[13] L. Grinspoon, M.D., Marijuana Reconsidered (Bantam ed 1971), pp 39-40.

[14] Stipulated Findings of Fact (No 19) in People v Lorentzen, supra, reads: "There is no proven relationship between the use of marijuana and the use of heroin. As marijuana use has increased greatly in American society, heroin addiction in proportion to the population has remained essentially the same, or only slightly increased."

See, also, L. Grinspoon, M.D., Marijuana Reconsidered (Bantam ed 1971), pp 47-61.

[15] President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Narcotics and Drug Abuse (1967), p 3: "Other derivatives of the hemp plant, such as hashish, which are more potent than marijuana, are rarely found in the United States."

See, also, L. Grinspoon, M.D., Marijuana Reconsidered (Bantam ed 1971), pp 41-43.

[16] People v Lorentzen, supra, Stipulated Findings of Fact (No 8): "The major physical effect of THC that can be detected is a marked increase in pulse rate."

See, also, Canadian Commission Report, p 122.

[17] People v McCabe, supra, p 411; People v Lorentzen, Stipulated Findings of Fact (No 4): "There is no currently known tolerance to

marijuana but the question is still under investigation." Canadian Commission Report, p 122.

[18] People v Lorentzen, Stipulated Findings of Fact (No 5): "Marijuana does not produce physical dependency."

Canadian Commission Report, p 123.

[19] People v McCabe, supra, p 411; People v Lorentzen, Stipulated Findings of Fact (No 7): "Marijuana does not produce death, even with a single large overdose, which is characteristic of depressant drugs including alcohol."

[20] "These drugs are obtained from the juice of the unripened seed pod of the opium poppy plant [papaver somniferum] soon after the flower petals begin to fall no other part of the plant produces psychoactive substances." Canadian Commission Report, p 147. Heroin, codeine and morphine are all processed derivatives of opium. Isonipecaine and anileridine are synthetic "opiates" whose physical effects and addictive liability are equivalent to morphine. Stedman's Medical Dictionary (1966), p 95.

[21] Canadian Commission Report, p 43; Report by the Advisory Committee on Drug Dependence, Cannabis, (Her Majesty's Stationery Office, London, 1968) p 14 (hereinafter referred to as "British Report").

[22] Canadian Commission Report, pp 153-154; British Report, p 15.

[23] Canadian Commission Report, p 151; British Report, p 14; President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Narcotics and Drug Abuse, p 54: "One

of the special features of the opiates (and certain other mind-altering drugs such as barbiturates and some tranquilizers) is that death may also be produced by not giving the drug. That is the classical withdrawal or abstinence syndrome associated with opiate deprivation in an organism which has been receiving heavy doses of the opiate."

[24] Canadian Commission Report, pp 43, 70-72.

[25] President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Drunkenness (1967), p 35.

[26] President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Drunkenness, p 35; J. Kaplan, Marijuana: The New Prohibition (Pocket Book ed 1971), pp 275-320, specifically p 318.

[27] People v Lorentzen, supra, Stipulated Findings of Fact (No 30): "It is a debatable and equivocal question as to whether or not one under the influence of marijuana and driving on the highway is a better or worse driver. The experienced marijuana smoker performs as well under the influence of the drug he does when he is not using it. The inexperienced user performs less well."

See, also, R. Bonnie and C. Whitebread, II, The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition, 56 Va L Rev 971, 1107 (1970).

[28] British Report, p 16.

[29] Canadian Commission Report, p 69; President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Drunkenness (1967), p 35.

[30] President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Narcotics and Drug Abuse (1967), p 25; British Report, p 16; Report of the Indian Hemp Drugs Commission (1893-94), p 264; J. Kaplan, Marijuana: The New Prohibition, pp 139-141; Bonnie and Whitebread, The Forbidden Fruit and The Tree of Knowledge, p 1105.

[31] President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Drunkenness (1967), p 41: "On the basis of the present data one can say that there is a strong link between alcohol and homicide and that the presumption is that alcohol plays a causal role as one of the necessary and precipitating elements for violence."

[32] People v McCabe, supra, pp 412, 413. See, also, British Report, pp 12-13.

[33] People v McCabe, supra, p 411. Also, the British Report concluded on the classification question (pp 20-21): "We believe that the association of cannabis in legislation with heroin and the other opiates is entirely inappropriate and that new and quite separate legislation to deal specially and separately with cannabis and its synthetic derivatives should be introduced as soon as possible. We are also convinced that the present penalties for possession and supply are altogether too high." (Emphasis added.)

[34] The unavailability of the Indian Hemp Drugs Commission Report and the general lack of information upon which most legislatures criminalized marijuana is pointed out by J. Kaplan's

introduction to the 1969 reprint of the Report of the Indian Hemp Drugs Commission 1893-1894, vii-xiii (Jefferson ed 1969).

[35] People v Lorentzen, supra, Stipulated Findings of Fact Nos 37-42: "From the general public standpoint, the general marijuana user would require no treatment at all. Most marijuana users do not have problems that would require any treatment from a medical or psychiatric point of view. Those that seek help because they have had an adverse reaction to marijuana or because they think they are using too much of the drug ordinarily need some guidance and some support and not much else. The majority of current marijuana users are using but not abusing the drug in the sense that one would normally think of dangerous drug abuse. To say that marijuana is an absolutely harmless drug is untrue, on the other hand to say it is a horrendous drug is equally untrue. Marijuana is a drug with potential dangers for some people when taken in conventional doses. Marijuana is safe for most people in conventional doses. Occasional, recreational use of marijuana for most individuals will be a pleasurable experience, involving no adverse reactions. The vast majority of recreational marijuana users will emerge from their drug experience without any apparent harm, either to themselves or to society."

J. Kaplan, in "Marijuana: The New Prohibition," p 338, stated: "Another attempt to measure the deterrent effect of the marijuana laws was a careful study by two law students, Ellen Green and Bruce Blumberg, who sampled the student body at the University of California Law School at Berkeley. They found that seventy-three percent of this student body had used marijuana, a figure that is quite striking when one considers that law students would be expected to be among the most deferrable members of our society. Being involved in the law, they are more likely to know of

its consequences; studying for a profession that regards moral character as one of its prerequisites, they would be risking more than arrest or imprisonment if detected using marijuana; and, finally, at least most observers have considered lawyers and law students to be among the more conservative and cautious groups of our student population."

[36] The decision today does not mean that persons arrested for sale or possession or marijuana cannot be prosecuted under the laws of the State of Michigan. Until April 1, 1972, the effective date of 1971 PA 196, prosecutions must be commenced under MCLA 335.106; MSA 18.1106, which reads:

"Any person who violates any of the provisions of this act is guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than $500.00, or imprisonment in the county jail not more than 1 year, or both such fine and imprisonment in the discretion of the court. Any person, firm, partnership, association or corporation who sells, offers for sale, barters or otherwise disposes of or is in possession of d-lysergic acid diethylamide, peyote, mescaline and its salts, dimethyltryptamine, silocyn, or psilocybin or any salt or derivative of any of the aforementioned substances or any other drug possessing similar hallucinogenic properties is guilty of a felony unless in accordance with the federal food, drug and cosmetics act."

[37] For examples of cases where the Courts have condemned the use of entrapment, see People v McCord, 76 Mich 200, 205-206 (1889); People v Pinkerton, 79 Mich 110 (1889); United States v Adams, 59 F 674 (D Ore, 1894); Woo Wai v United States, 223 F 412, 415 (CA 9, 1915); Butts v United States, 273 F 35, 37-38 (CA 8, 1921);

State v Neely, 90 Mont 199; 300 P 561 (1931), and Evanston v Meyers, 70 Ill App 205, 207 (1897).

[38] Mapp involved the Fourth Amendment right to be free from unreasonable search and seizure. Miranda involved the Fifth Amendment right of freedom from self-incrimination and the right to counsel in criminal proceedings guaranteed by the Sixth Amendment.

[39] "The supreme court shall by general rules establish, modify, amend and simplify the practice and procedure in all courts of this state. The distinctions between law and equity proceedings shall, as far as practicable, be abolished. The office of master in chancery is prohibited."

[40] In none of the cases cited by the people did the police engage in their efforts of entrapment over a prolonged period of time. See People v McIntyre, 218 Mich 540 (1922); People v Murn, 220 Mich 555 (1922); People v Christiansen, 220 Mich 506 (1922); People v England, 221 Mich 607 (1923), and People v Smith, 296 Mich 176 (1941).

[1] 1923 PA 92, as amended by 1925 PA 9 was the forerunner of this act, but did not include marihuana as a narcotic drug. Marihuana was first grouped with the "hard drugs" in 1929. The act of 1929 has subsequently been amended in 1931 (PA No 172), in 1937 (PA No 343), in 1952 (PA No 266), in 1957 (PA No 63), and in 1961 (PA No 206).

[2] The passage of the Marihuana Tax Act of 1937 and numerous similar state statutes took place in a climate of ignorance and misconception. See The Forbidden Fruit And The Tree of

Knowledge: An Inquiry Into The Legal History of American Marijuana Prohibition, 56 Va L Rev 971 (1970).

[3] We are well aware of the great wealth of written material which exists concerning marihuana. The vast majority of these works are in agreement that marihuana is not a narcotic drug. We have relied upon the National Institute of Mental Health as the most authoritative spokesman for establishing this fact.

We have quoted the 1969 statement of Dr. Yolles, Director, National Institute of Mental Health, because it is the most pertinent comparison of marihuana with the hard drugs. However, since the original filing of this opinion, new authority has become available. The NIMH produced Second Annual Report to Congress from HEW (released February 11, 1972) continues to classify marihuana separate from hard drugs and states " * * * there seems to be agreement that physical dependence comparable to that produced by the opiates, alcohol and barbiturates does not exist with Cannabis" (p 190). This report incidentally notes the recent British report of cerebral atrophy in ten young cannabis smokers as serious but requiring further research as eight out of the ten youths were multiple drug users (pp 22-23).

We note also the findings of the National Commission on Marihuana and Drug Abuse. In its first report released on March 22, 1972, the Commission recommended as follows:

"I. Reclassification of Cannibis

"RECOMMENDATION: THE COMMISSION RECOGNIZES THAT SEVERAL STATE LEGISLATURES HAVE IMPROPERLY CLASSIFIED MARIHUANA AS A NARCOTIC, AND RECOMMENDS THAT THEY NOW REDEFINE MARIHUANA ACCORDING TO THE STANDARDS OF

THE RECENTLY ADOPTED UNIFORM CONTROLLED SUBSTANCES LAW.

"Scientific evidence has clearly demonstrated that marihuana is not a narcotic drug, and the law should properly reflect this fact. Congress so recognized in the Comprehensive Drug Abuse Prevention and Control Act of 1970, as did The Conference of Commissioners on Uniform State Laws in the Uniform Controlled Substances Law.

"In those states where the Uniform Controlled Substances Law has not yet been adopted, twelve of which continue to classify marihuana as a `narcotic', the Commission recommends that the legislatures distinguish marihuana from the opiates and list it in a separate category. The consequence of inappropriate definition is that the public continues to associate marihuana with the narcotics, such as heroin. The confusion resulting from this improper classification helps to perpetuate prejudices and misinformation about marihuana." Marihuana, A Signal of Misunderstanding, p. 177.

[4] A recent nationwide survey revealed that 61.7% of the country's college students have used marihuana at least once. Over one-third of the students, 38.6%, stated they had used marihuana 10 or more times. "Playboy's Student Survey: 1971."

[5] US Const, Am XIV.

[6] Const 1963, art 1, § 2.

[7] See the Controlled Substances Act of 1971, effective April 1, 1972.

[*] State of Michigan, Department of Corrections, Criminal Statistics (1964-1970).

STATE OF MICHIGAN

COURT OF CLAIMS

JOHN SINCLAIR, JOSEY SCOGGIN, CHRISTIAN BOGNER, PAUL LITTLER, NORML OF MICHIGAN, INC., and MICHIGAN MEDICAL MARIJUANA ASSOCIATION

Plaintiffs,

v

MICHIGAN BOARD OF PHARMACY, and NICHOLE COVER,

Defendants.
_____/

OPINION AND ORDER

Case No. 19-000010-MM

Hon. Colleen A. O'Brien

Pending before the Court are the parties' competing motions for summary disposition. For the reasons that follow, defendants' motion is GRANTED and plaintiffs' motion is DENIED. The Court will dispense with oral argument in accordance with LCR 2.119(A)(5).

I. BACKGROUND

Plaintiffs ask this Court to declare that marijuana,[1] which is a schedule 2 controlled substance under the Public Health Code if used for qualifying medicinal purposes, see MCL 333.7214 (e), and a schedule 1 controlled substance under Mich Admin Code, R 338.3113(ff), should not be listed on the state's controlled substance schedules. Plaintiffs seek a declaration,

[1] Although the Legislature utilizes the spelling "marihuana," this Court utilizes the more common spelling of "marijuana," unless quoting other sources that utilize the alternate spelling.

in light of recent legislative enactments—see, e.g., the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq.*, the Medical Marihuana Facilities Licensing Act (MMFLA), MCL 333.27101 *et seq.*, and the Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27951 *et seq.*—that the listing of marijuana as a controlled substance or related regulation thereof is entirely inconsistent with this state's marijuana laws. Plaintiffs contend that these statutes, in conjunction with a 1972 Supreme Court decision involving lead plaintiff John Sinclair, *People v Sinclair*, 387 Mich 91; 194 NW2d 878 (1972), demonstrate that it is illegal and unconstitutional to treat marijuana in the same manner as other drugs.

Plaintiffs' complaint asserts eight counts that all essentially seek the same relief: removing marijuana from the controlled substances list. Count I alleges a violation of the equal protection clause of this state's Constitution, asserting that defendant Pharmacy Board's listing of marijuana as a controlled substance is arbitrary. Count II of the complaint alleges that defendant Pharmacy Board's decision to list marijuana as a controlled substance violates the state constitutional prohibition against cruel or unusual punishment because the listing decision is contrary to the MMFLA's recognition of marijuana's medicinal properties.

Count III of plaintiffs' complaint alleges that defendant Pharmacy Board's continued listing of marijuana as a controlled substance offends due process because it is arbitrary and irrational. Count IV contends that the listing of marijuana as a controlled substance violates the protections in Const 1963, art 1, § 17's prohibition against compelled self-incrimination. According to plaintiffs, listing marijuana as a controlled substance while at the same time allowing registered users to acquire the drug legally forces medical marijuana users to give incriminating information about themselves.

Count V of the complaint is labeled "Declaratory judgment" and asks the Court to declare that the continued listing of marijuana as a controlled substance is unconstitutional. Counts VI and VII are requests for relief (permanent injunctive relief and mandamus relief, respectively). Finally, Count VIII asks the Court to find a violation of MCL 24.306, which is a section of the Administrative Procedures Act that sets a scope of review pursuant to which a court can conclude that an agency's decision is unlawful.

II. SUMMARY DISPOSITION

The parties have filed competing motions for summary disposition. The Court finds meritorious defendants' assertion that this matter must be dismissed for plaintiffs' failure to plead the existence of an actual controversy. Again, the crux of the allegations in plaintiffs' complaint involves plaintiffs' request for declaratory relief under MCR 2.605.

If a litigant meets the requirements of MCR 2.605, the litigant has standing to seek a declaratory judgment. *Lansing Schs Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010). "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted." MCR 2.605(A)(1). See also *PT Today, Inc v Comm'r of Office of Fin & Ins Servs*, 270 Mich App 110, 140; 715 NW2d 398 (2006) ("The existence of an actual controversy is a condition precedent to invocation of declaratory relief."). An actual controversy exists:

> where a declaratory judgment is necessary to guide a plaintiff's future conduct in order to preserve the plaintiffs' legal rights. [W]hat is essential to an 'actual controversy' under the declaratory judgment rule is that plaintiff plead and prove facts which indicate an adverse interest necessitating a sharpening of the issues raised. Generally, where the injury sought to be prevented is merely hypothetical,

> a case of actual controversy does not exist. [*PT Today, Inc*, 270 Mich App at 140 (citation and quotation marks omitted).]

"The actual controversy requirement of MCR 2.605 requires that the Court not decide moot questions in the guise of giving declaratory relief, because moot cases present only abstract questions of law that do not rest upon existing facts or rights[.]" *Leemreis v Sherman Twp*, 273 Mich App 691, 703; 731 NW2d 787 (2007) (citations and quotation marks omitted). If there is no actual controversy, a court lacks subject-matter jurisdiction to enter declaratory relief. *Id.*

Based on the pleadings and on the arguments presented, the Court agrees that plaintiffs failed to plead the existence of an actual controversy. At several junctures, plaintiffs' complaint invokes the now-repealed Controlled Substances Act and appears to allege harm based on that repealed act. Any harm based on a repealed statute presents a mere abstract question of law that does not rest upon existing rights. See *Leemreis*, 273 Mich App at 703. Furthermore, as defendants point out, the rest of the harms alleged by plaintiffs are merely hypothetical. For instance, plaintiff Josey Scoggin alleges in ¶ 31 that she fears Child Protective Services *might* interfere with her parental rights because of her medical marijuana use. This hypothetical fear does not give rise to an actual controversy. See *PT Today, Inc*, 270 Mich App at 140. In addition, the MRTMA protects against this very thing. See MCL 333.27955(3). Plaintiffs also repeatedly allege that they fear the use of medical marijuana will subject them to forfeitures, searches, and seizures by law enforcement. However, the MMMA provides protections and defenses from forfeiture actions, see MCL 333.26424(i); 333.26428(3)(c)(2), and the MRTMA provides protections from seizures and forfeitures as well, MCL 333.27955(1). Accordingly, the current state of the law already protects plaintiffs from the harms they allege, and the harms alleged are moot. Furthermore, there have been no facts pled to suggest that the harms are more than merely hypothetical ones. Plaintiffs have not satisfied the requirements of MCR 2.605, and

they lack standing to seek declaratory relief. See *Lansing Schs Ed Ass'n*, 487 Mich at 372; *Leemreis*, 273 Mich App at 703.

Plaintiffs also appear to suggest that any regulation, including listing marijuana on this state's controlled substance schedules, violates the law. First, they cite the Supreme Court's decision in *Sinclair* to assert that marijuana cannot be classified with narcotics such as cocaine, heroin, or opium. In that case, a separate opinion signed by two justices reasoned that, under the former statutes that pre-dated even the now-repealed Controlled Substances Act, the Legislature's treatment of marijuana in the same manner as "hard drugs" such as heroin, cocaine, and opium and imposition of similar criminal sentences for the possession of the drugs was unconstitutional. *Sinclair*, 387 Mich at 123-131 (OPINION by Williams, J). However, plaintiffs fail to note that art 7, part 74 of the Public Health Code *does not* penalize marijuana offenses to the same extent and with the same severity as it punishes offenses for other drugs. See, e.g., MCL 333.7401(2)(1)(d) (creating separate, and less severe, punishments for offenses involving marijuana). Hence, the unconstitutional treatment of marijuana alleged does not exist. Nor are the constitutional ills that were at issue in the *Sinclair* decision invoked by defendant Pharmacy Board's scheduling of marijuana. Second, plaintiffs appear to argue that there can be no classification of marijuana as a controlled substance or any regulations placed on the use and possession of the drug in light of the enactment of the MMMA and the MRTMA, for the reason that those enactments amount to a legislative determination that marihuana is not a harmful drug and that classifying it with other drugs cannot stand. This assertion plainly lacks legal merit. The pertinent laws authorizing medicinal and recreational marijuana use do not prevent any regulation of the drug. Rather, they expressly recognize that the use of the drug is to be regulated, and that only authorized uses of the drug are protected under state law. See, e.g.,

MCL 333.26424; MCL 333.27952; MCL 333.27954. Plaintiffs' assertion that marijuana should be removed from the controlled substance schedules altogether in light of *Sinclair*, the MMMA, and the MRTMA fall flat.

Furthermore, to the extent plaintiffs assert a conflict between the current state of marijuana law and defendant Pharmacy Board's continued listing of marijuana as a schedule 1 controlled substance, such a claim suffers a similar fate. Plaintiffs have failed to plead any non-speculative harm occasioned by this listing. Indeed, the MMMA and MRTMA provide protections for marijuana use and possession in conformance with those respective laws; hence, any consequences attendant with marijuana being a schedule 1 controlled substance do not affect individuals who comply with those respective acts. In essence, one of plaintiffs' chief complaints is that defendant Pharmacy Board, by listing marijuana as a schedule 1 controlled substance, has decided that marijuana has no acceptable medical use when, at least according to plaintiffs, the drug does have acceptable medical uses. See MCL 333.7211 (declaring that schedule 1 controlled substances are those which the Pharmacy Board finds that have "high potential for abuse" and that have "no accepted medical use in treatment in the United States . . ."). However, plaintiffs have failed to show, in light of the MMMA and the MRTMA, how this classification harms them or how the classification otherwise gives rise to an actual controversy. As a result, their claim must fail.

III. SUMMARY DISPOSITION IS ALSO WARRANTED UNDER MCR 2.116(C)(8)

Even overlooking the above, plaintiffs' complaint fails to state a claim on which relief can be granted and it is subject to dismissal under MCR 2.116(C)(8). For instance, Count II of plaintiffs' complaint alleges that defendant Pharmacy Board's classification of marijuana as a schedule 1 controlled substance amounts to cruel or unusual punishment. The threshold question

in analyzing this count involves asking whether punishment is inflicted at all. *People v Tucker*, 312 Mich App 645, 654; 879 NW2d 906 (2015). Plaintiffs have failed to plead any punishment that is inflicted by way of the Pharmacy Board's decision. Similarly, Count IV, which alleges a violation of art 1, § 17 and the prohibition against self-incrimination, fails to state a claim. There is no merit to the notion that statutes authorizing the medical use of marijuana in compliance with pertinent regulatory standards require anyone to give incriminating information that would create a "real and appreciable risk" of self-incrimination or punishment under state law. Cf. *Leary v United States*, 395 US 6, 16; 89 S Ct 1532; 23 L Ed 2d 57 (1969) (discussing the risk of self-incrimination imposed by the Marijuana Tax Act, which would have essentially required the petitioner in that case to admit to violating the law). There can be no valid contention that compliance with the MMMA subjects one to criminal prosecution under state law when, as noted above, the MMMA expressly states that individuals who comply with the act will not face criminal prosecution. The mere listing of marijuana on this state's controlled substance schedules does not negate the express protections from criminal liability contained in the MMMA. Indeed, the MMMA is the more specific and the more recent enactment, and it would prevail over the more general controlled substance schedules. See *Parise v Detroit Entertainment, LLC*, 295 Mich App 25, 28; 811 NW2d 98 (2011).

In addition, Counts V (declaratory judgment); VI (injunctive relief); and VIII ("MCL 24.306") fail to state a claim because they are not causes of action. With respect to Counts V and VI, declaratory relief and injunctive relief are remedies, not causes of action, and plaintiffs cannot "put the cart before the horse"; instead, they must plead a cause of action that supports those remedies, rather than a remedy supporting a cause of action. *Henry v Dow Chem Co*, 473 Mich 63, 96-97; 701 NW2d 684 (2005) (citation and quotation marks omitted). In addition,

Count VIII, which is simply labeled "MCL 24.306" does not state a valid cause of action. MCL 24.306 is a section of the Administrative Procedures Act establishing an appellate standard of review when a litigant seeks to "set aside a decision or order of an agency if substantial rights of the petitioner have been prejudiced[.]" The statute is not an independent cause of action.

Plaintiffs' request for mandamus relief, Count VII, similarly fails to state a claim on which relief can be granted. Mandamus is an extraordinary remedy that should only issue upon the plaintiff establishing:

> (1) a clear legal right to the act sought to be compelled; (2) a clear legal duty by the defendant to perform the act; (3) that the act is ministerial, leaving nothing to the judgment or discretion of the defendant; and (4) that no other adequate remedy exists. [*Citizens Protecting Michigan's Const v Secretary of State*, 324 Mich App 561, 584; 922 NW2d 404 (2018) (citation and quotation mark omitted).]

Here, plaintiffs cannot demonstrate the existence of a clear legal right to the removal of marijuana from any of this state's controlled substance schedules. Nor can they establish the existence of a clear legal duty on the part of defendant Pharmacy Board to take any of the actions plaintiffs request. Furthermore, the removal of a controlled substance from the schedules is not a ministerial task. Indeed, the Public Health Code leaves such a decision to the discretion of defendant Pharmacy Board, but only upon consideration of a number of factors and assessments involving current scientific knowledge of the substance, patterns of abuse of the substance, risks to the public health, and more. MCL 333.7202(1)(a)-(h).

Plaintiffs' equal protection claim suffers a similar fate. "The equal protection clauses of the Michigan and United States constitutions provide that no person shall be denied the equal protection of the law." *Shepherd Montessori Ctr Milan v Ann Arbor Charter Twp*, 486 Mich 311, 318; 783 NW2d 695 (2010). A "threshold inquiry" for this type of claim involves asking

whether plaintiffs were treated differently from a similarly situated entity. *Id.* at 318-319. Here, plaintiffs' complaint failed to identify any similarly situated groups subject to disparate treatment, and the claim fails.

The final count of plaintiffs' complaint, Count III, asserts a violation of the due process clause of the Michigan Constitution. The allegations under Count III are contained in a single paragraph. To that end, paragraph 97 of the complaint notes that agency action cannot be arbitrary or capricious. Paragraph 97 goes on to conclusorily state that defendant Pharmacy Board's "continued listing of marihuana as a controlled substance violates Due Process, harming plaintiffs, and must be enjoined." Agency action has been found to violate the substantive component of due process if it is arbitrary and capricious. *Mich Farm Bureau v Dep't of Environmental Quality*, 292 Mich App 106, 141; 807 NW2d 866 (2011). "In general, an agency's rules will be found to be arbitrary only if the agency had no reasonable ground for the exercise of judgment." *Id.* at 141-142. Here, plaintiffs cannot demonstrate that defendant Pharmacy Board's exercise of judgment in the continued listing of marijuana as a controlled substance was an action having no reasonable ground for the exercise. As discussed above, the decriminalization of certain uses for certain purposes does not negate that the drug is still a controlled substance that can be regulated. Plaintiffs' due process claim fails.

IV. CONCLUSION

IT IS HEREBY ORDERED that defendants' motion for summary disposition is GRANTED because plaintiffs failed to plead an actual controversy and because plaintiffs failed to state a claim on which relief can be granted.[2]

IT IS HEREBY FURTHER ORDERED that plaintiff's cross-motion for summary disposition is DENIED.

This order resolves the last pending claim and closes the case.

Dated: May 21, 2019

Colleen A. O'Brien, Judge
Court of Claims

[2] Because summary disposition is warranted for the reasons articulated in this opinion, the Court declines to address defendants' remaining arguments in favor of summary disposition.

STATE OF MICHIGAN

COURT OF APPEALS

JOHN SINCLAIR, JOSEY SCOGGIN, CHRISTIAN BOGNER, PAUL LITTLER, NORML OF MICHIGAN INC, and MICHIGAN MEDICAL MARIJUANA ASSOCIATION, Plaintiffs-Appellants,	UNPUBLISHED July 23, 2020
v	No. 349288 Court of Claims
BOARD OF PHARMACY and NICHOLE COVER, Defendants-Appellees.	LC No. 19-000010-MM

Before: FORT HOOT, P.J., and JANSEN and TUKEL, JJ.

PER CURIAM.

Plaintiffs, John Sinclair, Josey Scoggin, Christian Bogner, Paul Littler, the NORML of Michigan Inc., and the Michigan Medical Marijuana Association, appeal as of right the Court of Claims' opinion and order granting defendants', Board of Pharmacy and Nichole Cover, motion for summary disposition, thereby dismissing all eight of plaintiffs' claims. We affirm.

I. MICHIGAN'S RECENT MARIJUANA LEGISLATION

To fully understand plaintiffs' position, we find it helpful to underscore the recently enacted marijuana-related laws in Michigan. The Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq.*, "was proposed in a citizen's initiative petition, was elector-approved in November 2008, and became effective December 4, 2008." *People v Kolanek*, 491 Mich 382, 393; 817 NW2d 528 (2012). Its purpose was "to allow a limited class of individuals the medical use of marijuana, and the act declares this purpose to be an effort for the health and welfare of [Michigan] citizens." *Id*. at 393-394 (citation and internal quotation marks omitted). To achieve this purpose, "the MMMA defines the parameters of legal medical-marijuana use, promulgates a scheme for regulating registered patient use and administering the act, and provides for an affirmative defense, as well as penalties for violating the MMMA." *Id*. at 394. The MMMA did not, however, "create a general right for individuals to use and possess marijuana in Michigan." *Id*. Consequently, the

"[p]ossession, manufacture, and delivery of marijuana remain[ed] punishable offenses under Michigan law" when it was enacted. *Id.*

The second act at issue is the Medical Marihuana Facilities Licensing Act (MMFLA), MCL 27101 *et seq*., which was enacted by the Michigan Legislature in 2016 "to license and regulate medical marihuana [facilities]." *Hoover v Mich Dep't of Licensing & Reg Affairs*, ___ F Supp ___, ___ (ED Mich, 2020); 2020 WL 230136, p 2 (citation and internal quotation marks omitted). "The MMFLA provides protections for those granted a license and engaging with activities within the scope of the MMFLA." *Id*., citing MCL 333.27201. Under the act, "licensed provisioning centers are authorized to purchase safety-tested marihuana only from licensed growers and processors and are authorized to sell it in limited quantities to patients and caregivers who are registered under the MMMA." *Id*., citing MCL 333.27504.

Finally, the third and most recent act at issue is the Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27951 *et seq*., which generally decriminalizes the possession and use of marijuana. The MRTMA expresses its purpose as follows:

> The purpose of this act is to make marihuana legal under state and local law for adults 21 years of age or older, to make industrial hemp legal under state and local law, and to control the commercial production and distribution of marihuana under a system that licenses, regulates, and taxes the businesses involved. The intent is to prevent arrest and penalty for personal possession and cultivation of marihuana by adults 21 years of age or older; remove the commercial production and distribution of marihuana from the illicit market; prevent revenue generated from commerce in marihuana from going to criminal enterprises or gangs; prevent the distribution of marihuana to persons under 21 years of age; prevent the diversion of marihuana to illicit markets; ensure the safety of marihuana and marihuana-infused products; and ensure security of marihuana establishments. . . . [MCL 333.27952.]

To that end, the act goes on to identify a list of acts with respect to marijuana, e.g., possessing, consuming, purchasing, transporting, processing, storing, manufacturing, and so on, that are now permissible in Michigan under certain circumstances. See MCL 333.27955.

II. PROCEDURAL HISTORY

Plaintiffs, who described themselves as "Michigan citizens and organizations affected by the Michigan Board of Pharmacy's continued and persistent placement of marihuana on Schedule 1 of the list of controlled substances that it promulgates as administrator of the Michigan Controlled Substances Act," filed the instant lawsuit, "seek[ing] a declaration that marijuana's listing on Schedule 1 violates plaintiffs' state constitutional due process and equal protection rights and their rights under Art. I, Sec. 11, to be free from unreasonable searches and seizures as there is no rational basis to treat marijuana as contraband." According to plaintiffs, "the listing of marihuana on Schedule 1 of the controlled substances act [was] repealed by implication" by the MMFLA. Additionally, plaintiffs alleged that "marihuana must be de-scheduled" because "there is no rational basis to classify marihuana with hard narcotics . . . ." Ultimately, plaintiffs claimed

that the Board of Pharmacy "must be mandated or ordered to permanently remove marihuana from the Michigan List of Controlled Substances."

In their complaint, plaintiffs alleged eight separate causes of action: (1) an alleged violation of the Michigan Constitution's equal-protection clause, (2) an alleged violation of the Michigan Constitution's prohibition against excessive bail, excessive fines, cruel or unusual punishment, and unreasonable detention, (3) an alleged violation of the Michigan Constitution's due-process clause, (4) an alleged violation of the Michigan Constitution's prohibition against self-incrimination, (5) a declaratory-judgment claim under MCR 2.605, (6) an injunctive relief claim, (7) a claim seeking a writ of mandamus, and (8) an alleged violation of MCL 24.306. Plaintiffs asked the Court of Claims to "[d]eclare the inclusion of marihuana by the Michigan Board of Pharmacy on the List of Controlled Substances void," "[e]njoin the Michigan Board of Pharmacy from placing marihuana on the list of controlled substances on an emergency basis or otherwise," "[i]ssue a Writ of Mandamus ordering the Board of Pharmacy to de-schedule marihuana," and "[a]ward plaintiff[]s costs and reasonable attorney's fees."

In lieu of an answer, defendants filed a motion for summary disposition under MCR 2.116(C)(4), (C)(7), (C)(8), and (C)(10). Defendants first argued that plaintiffs had failed to establish the existence of an actual controversy, and therefore none of their claims were viable. Second, defendants argued that the Court of Claims lacked subject-matter jurisdiction over plaintiffs' claims because plaintiffs had failed to state the time and place from which their claims arose, and moreover had failed to detail the nature of their alleged claims and damages. Third, defendants argued that plaintiffs' claims were time-barred because they hinged on the passage of the MMFLA, which took place on December 20, 2016, more than two years before they filed this lawsuit. Finally, defendants argued that each of plaintiffs' claims failed to state a claim upon which relief could be granted.

In response, plaintiffs filed a countermotion for summary disposition and outlined how "Michigan has redefined Marihuana," how "Michigan has legalized marihuana for adult use," and how marijuana cannot reasonably be considered a Schedule 1 or 2 substance. Plaintiffs argued that they had standing, that they had timely pleaded a constitutional tort, and that the Court of Claims had jurisdiction because "[t]he organizational plaintiffs have standing to advocate for the interests of their members where, as here, the members themselves have a sufficient interest" because they have a "sufficient connection to – and harm from – the unconstitutional laws, regulations, and actions challenged herein . . . ."

Regarding the timeliness of their claims, plaintiffs pointed to "the fact that on January 9th, 2019, [the Department of Licensing and Regulation] LARA and the Board of Pharmacy modified and re-published its Rules to include Gabapentin as a Schedule 5 controlled substance," leaving marijuana as a Schedule 1 substance. Plaintiffs maintained that the classification of marijuana as a Schedule 1 controlled substance violated Michigan's due-process and equal-protection clauses, was arbitrary and capricious, would lead to cruel and unusual punishments if ever prosecuted, gave the impression that marijuana is a harmful drug, was unsupported and violated various legal rules, and was in violation of defendants' "clear legal duty" to de-schedule marijuana. Finally, plaintiffs asserted that they were entitled to a declaration that marijuana as a controlled substance was unconstitutional and, therefore, void as a matter of law.

In a written opinion and order, the Court of Claims granted defendants' motion and denied plaintiffs' countermotion, thereby dismissing plaintiffs' claims in full. First, recognizing that "the crux of the allegations in plaintiffs' complaint involves plaintiffs' request for declaratory relief under MCR 2.605," the Court of Claims concluded "that plaintiffs failed to plead the existence of an actual controversy[.]" The Court of Claims determined that plaintiffs' allegations consisted of alleged harm from since-repealed statutes, hypothetical or speculative harm, and a legal theory based on a Supreme Court opinion that has no application in this case. According to the court, "[t]he pertinent laws authorizing medicinal and recreational marijuana use do not prevent any regulation of the drug," but they instead "expressly recognize that the use of the drug is to be regulated . . .."

The Court of Claims further concluded that plaintiffs failed to state a claim on which relief could be granted, noting that plaintiffs' cruel and unusual punishment claim and alleged violation of the prohibition against self-incrimination claim failed to allege any punishment inflicted by the Board's decision. Moreover, the court concluded, plaintiffs' requests for declaratory-judgment and injunctive relief, as well as their claim rooted in MCL 24.306, failed to allege valid causes of action. Plaintiffs' mandamus count also failed to "demonstrate the existence of a clear legal right to the removal of marijuana from any of this state's controlled substance schedules[.]" Finally, the court concluded that plaintiffs' equal-protection claim "failed to identify any similarly situated groups subject to disparate treatment" and that plaintiffs' due-process claim failed where "the decriminalization of certain uses for certain purposes does not negate that the drug is still a controlled substance that can be regulated." This appeal followed.

III. STANDARDS OF REVIEW

This Court reviews a trial court's decision to grant or deny summary disposition de novo. *Weishuhn v Catholic Diocese of Lansing*, 279 Mich App 150, 155; 756 NW2d 483 (2008); *Maiden v Rozwood*, 461 Mich 109, 119-121; 597 NW2d 817 (1999). Below, the Court of Claims principally relied on MCR 2.116(C)(4) and (8) in granting defendants' motion. Summary disposition under subrule (C)(4) is appropriate when "[t]he court lacks jurisdiction of the subject matter." MCR 2.116(C)(4). "When viewing a motion under MCR 2.116(C)(4), this Court must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law, or whether the affidavits and other proofs show that there was no genuine issue of material fact." *Weishuhn*, 279 Mich App at 155 (citations and internal quotation marks omitted). Summary disposition under subrule (C)(8) is appropriate when "[t]he opposing party has failed to state a claim on which relief can be granted." MCR 2.116(C)(8). "A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint" and "may be granted only where the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Maiden*, 461 Mich at 119. "When deciding a motion brought under this section, a court considers only the pleadings, and "[a]ll well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Id*. at 119-120.

The crux of plaintiffs' claims boils down to a request for declaratory relief under MCR 2.605. A trial court's decision to grant or deny declaratory relief under that court rule is reviewed for an abuse of discretion. *Allstate Ins Co v Hayes*, 442 Mich 56, 74; 499 NW2d 743 (1993). "An abuse of discretion occurs when the trial court chooses an outcome falling outside the range of principled outcomes." *Edry v Adelman*, 486 Mich 634, 639; 786 NW2d 567 (2010). Questions

regarding the interpretation and application of court rules, like questions regarding summary disposition, are reviewed de novo. *AFP Specialties, Inc v Vereyken*, 303 Mich App 497, 504; 844 NW2d 470 (2014).

To the extent plaintiffs' arguments implicate the interpretation of constitutional and statutory provisions, those questions of law are also reviewed de novo. *Mayor of Cadillac v Blackburn*, 306 Mich 512, 516; 857 NW2d 529 (2014). Court rules, constitutional provisions, and statutes are all subject to the same rules of interpretation and application. *AFP Specialties, Inc*, 303 Mich App at 504. When interpreting them, a court's goal is to give effect to the intent of their drafters. *Mayor of Cadillac*, 306 Mich at 516. If the language is unambiguous, courts presume that the drafters intended the meaning clearly expressed therein. *Id*.

IV. ANALYSIS

Plaintiffs have made it clear that their goal in this lawsuit is to obtain an order compelling the Board of Pharmacy to "de-schedule" marijuana as a Schedule 1 (or any other schedule) controlled substance. Even if that effort has merit in a policy sense, we are nevertheless compelled to affirm the order granting defendants summary disposition. On appeal, plaintiffs fail to address the basis of the Court of Claims' decision. The Court of Claims' decision in this matter was based on two separate grounds. First, recognizing that "the crux of the allegations in plaintiffs' complaint involves plaintiffs' request for declaratory relief under MCR 2.605," the Court of Claims found that "plaintiffs failed to plead the existence of an actual controversy." In doing so, the Court of Claims determined that plaintiffs' allegations were limited to alleged harm based on since-repealed statutes, hypothetical or speculative harm, and a legal theory based on a nonbinding, separate Supreme Court opinion that had no application in this case. According to the Court of Claims, "[t]he pertinent laws authorizing medicinal and recreational marijuana use do not prevent any regulation of the drug," but they instead "expressly recognize that the use of the drug is to be regulated. . . ."

Second, "[e]ven overlooking the above," the Court of claims held that "plaintiffs' complaint fail[ed] to state a claim on which relief can be granted and it is subject to dismissal under MCR 2.116(C)(8)." Specifically, the Court of Claims found that plaintiffs' cruel and unusual punishment claim, and their claim alleging a violation of the prohibition against self-incrimination failed to allege any punishment inflicted by the Board's decision. Additionally, the Court of Claims found that plaintiffs' request for a declaratory judgment, injunctive relief, and relief under MCL 24.306 failed to allege valid causes of action. Moreover, plaintiffs' mandamus claim failed to "demonstrate the existence of a clear legal right to the removal of marijuana from any of this state's controlled substance schedules." Additionally, the Court of Claims went on to find that plaintiffs' equal protection claim "failed to identify any similarly situated groups subject to disparate treatment," and plaintiffs' due process claim failed because "the decriminalization of certain uses for certain purposes does not negate that the drug is still a controlled substance that can be regulated."

On appeal, plaintiffs do not challenge any of the very specific and detailed aforementioned findings. Thus, we conclude that plaintiffs' have abandoned any argument relating to the Court of Claim's findings or ultimate decision to grant summary disposition in favor of defendants by failing to address or brief these findings, or even identify any purported error made by the Court

of Claims in their Statement of Questions Presented. See *Seifeddine v Jaber*, 327 Mich App 514, 522; 934 NW2d 64 (2019), where this Court reiterated that "[w]hen an appellant fails to address the basis of a trial court's decision, this Court need not even consider granting relief."

Indeed, the questions raised by plaintiffs on appeal, whether the MMFLA impliedly repealed marijuana's listing on the Michigan Board of Pharmacy's list of controlled substances, and whether there was a rational basis for marijuana's continued listing on the list of controlled substances, are copied from their complaint, and were not addressed on the merits by the Court of Claims when granting summary disposition in favor of defendants. Moreover, even now on appeal plaintiffs have failed to allege that any illegal arrests occurred, that any groups of people or businesses received disparate treatment, or that any individual has been denied any type of license as a result of the alleged legislative "errors." Accordingly, the issues identified by plaintiffs are not preserved for appellate review, *Henderson v Dep't of Treasury*, 307 Mich App 1, 7-8; 858 NW2d 733 (2014), and we decline to address them. See *People v Frazier*, 478 Mich 231, 241; 733 NW2d 713 (2007) (citation omitted), where our Supreme Court explained that "[t]his Court disfavors consideration of unpreserved claims of error."

Affirmed.

/s/ Karen M. Fort Hood
/s/ Kathleen Jansen
/s/ Jonathan Tukel


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