

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

- (1) The defendant is charged with the crime of operating a motor vehicle with any amount of a controlled substance in [his / her] body. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
- (2) First, that the defendant operated a motor vehicle.¹ To *operate* means to drive or have actual physical control of the vehicle.
- (3) Second, that the defendant operated the vehicle on a highway or other place open to the public or generally accessible to motor vehicles [including any designated parking area].²
- (4) Third, that while operating the vehicle, the defendant had any amount of [*state specific schedule 1 controlled substance or controlled substance in MCL 333.7214(a)(iv) alleged by the prosecutor*] in [his / her] body.

Use Note

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

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

History

This instruction was renumbered in February 2021 when Chapter 15 was re-written. Formerly, it was M Crim JI 15.3a (previously CJI2d 15.3a), which was added in September, 2010. It was amended March 2016 after the committee reviewed the unpublished per curiam decision in *People v Wilds*, No 311644, 2013 Mich App LEXIS 599 (Apr 2, 2013), and determined that a scienter element should be provided.

Reference Guide

Statutes

MCL 257.625.

Case law

People v Koon, 494 Mich 1; 832 NW2d 724 (2013).