

M Crim JI 15.2 Operating While Intoxicated [OWI]

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

[Choose from the following:]

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

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

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

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

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

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

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

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

defendant's mental or physical condition was significantly affected and the defendant was no longer able to operate a vehicle in a normal manner.

[Where the charge is "under the influence" of a substance other than alcohol choose (i), (ii), or (iii) as appropriate:]

- (i) [Name substance] is a controlled substance.
- (ii) [Name substance] is an intoxicating substance.
- (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.

Use Note

The lesser offense of OWVI may be given.

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 amended and renumbered in February 2021 when Chapter 15 was re-written. Formerly, it was M Crim JI 15.1 (previously CJI2d 15.1) and 15.3 (previously CJI2d 15.3), which 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 257.625.

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).