

## M Crim JI 15.3 Operating While Visibly Impaired [OWVI]

- (1) [The defendant is charged with the crime of / You may also consider the less serious charge of] operating a motor vehicle while visibly impaired. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
- (2) First, that the defendant operated a motor vehicle.<sup>1</sup> 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].<sup>2</sup>
- (4) Third, that, due to the [drinking of alcohol / use or consumption of a controlled substance / use or consumption of an intoxicating substance / use or consumption of a combination of (alcohol / a controlled substance / an intoxicating substance)]<sup>3</sup>, the defendant drove with less ability than would an ordinary careful driver. The defendant's ability to drive must have been lessened to the point that it would have been noticed by another person. It is the defendant's ability to drive that must have been visibly lessened, not the defendant's manner of driving, though evidence of the defendant's manner of driving may be considered as evidence of the defendant's ability to drive.<sup>4</sup>

### 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).

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

4. See *People v Mikulen*, 324 Mich App 14; 919 NW2d 454 (2018).

### 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 15.4 (previously CJI2d 15.4), 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.

### Reference Guide

#### Statutes

MCL 257.625.

#### 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).