

Agenda
Public Policy Committee
September 18, 2023 – 12:00 p.m. to 1:30 p.m.
Via Zoom Meetings

Public Policy Committee.....Daniel D. Quick, Chairperson

A. Reports

1. Approval of July 20, 2023 minutes
2. Public Policy Report

B. Court Rule Amendments

1. ADM File No. 2017-28: Proposed Amendments of MCR 1.109, 5.302, and 8.108

The proposed amendments of MCR 1.109, 5.302, and 8.108 would provide clear direction on the process for protecting personal identifying information in transcripts, wills, and death certificates.

Status: 10/01/23 Comment Period Expires.

Referrals: 06/08/23 Civil Procedure & Courts Committee; All Sections.

Comments: Civil Procedure & Courts Committee.

Comment provided to the Court is included in the materials.

Liaison: Aaron V. Burrell

2. ADM File No. 2022-34: Proposed Amendments of MCR 3.993 and 6.428

The proposed amendment of MCR 3.993 would provide for the restoration of appellate rights in juvenile cases, similarly to that of criminal cases under MCR 6.428, and the proposed amendments would further ask parties to provide the Court of Appeals with a copy of the order when filing the appeal.

Status: 10/01/23 Comment Period Expires.

Referrals: 06/29/23 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Appellate Practice Section; Children’s Law Section; Criminal Law Section; Family Law Section.

Comments: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Children’s Law Section.

Liaison: Judge Cynthia D. Stephens (Ret.)

C. Consent Agenda

M Crim JI 7.25a

The Committee proposes a model criminal jury instruction, M Crim JI 7.25a (Self-Defense as Defense to Brandishing a Firearm), for the defense found in the brandishing a firearm in public statute found at MCL 750.234e(2)(b). The instruction is entirely new.

M Crim JI 12.10 12.10a 12.10b 12.10c 12.10d 12.10e

The Committee proposes the following new model criminal jury instructions to cover the various provisions of Section 8 of the Tobacco Products Tax Act found at MCL 205.428, including M Crim JI 12.10 (Illegal Sale or Disposition of Untaxed Cigarettes), M Crim JI 12.10a (Illegal Possession or Transportation of Untaxed Cigarettes), M Crim JI 12.10b (Making, Possessing or Using an Unauthorized Department of Treasury Tobacco Tax Stamp), M Crim JI 12.10c (Illegally Purchasing or Obtaining a Department of Treasury Tobacco Tax Stamp), M Crim JI 12.10d (Falsifying a Tobacco Manufacturer’s Label), and M Crim JI 12.10e (Making or Possessing a False License to Purchase or Sell Tobacco Products as a Retailer or Wholesaler) . These instructions are entirely new.

M Crim JI 13.15

The Committee proposes the following amended model criminal jury instruction, M Crim JI 13.15 (Assaulting a prison employee) under MCL 750.197c to match the statutory language as observed by the Court of Appeals panel in *People v Nixon*, unpublished opinion (COA #353438) issued 4/21/22. The statute forbids an assault “through the use of violence, threats of violence or dangerous weapons,” while the instruction as currently written only requires proof of an assault, not mentioning violence, threats of violence or dangerous weapons. Deletions are in strike-through, and new language is underlined.

M Crim JI 13.17

The Committee proposes the following amended model criminal jury instruction, M Crim JI 13.17 (Absconding on a Bond) under MCL 750.199a to add an element involving notice to the defendant concerning conditions of bond consistent with *People v Rorke*, 80 Mich App 476; 264 NW2d 30 (1978). Deletions are in strike-through, and new language is underlined.

M Crim JI 27. 6

The Committee proposes the following new model criminal jury instruction, M Crim JI 27.6, for dumping refuse on the property of another to cover criminal activity under MCL 750.552a. This instruction is entirely new.

M Crim JI 27. 7

The Committee proposes the following new model criminal jury instruction, M Crim JI 27.7, for trespassing on state correctional facility property to cover criminal activity under MCL 750.552b. This instruction is entirely new.

M Crim JI 35.13b

The Committee proposes the following new model criminal jury instruction, M Crim JI 35.13b (Using a Computer to Commit a Crime), for offenses found in MCL 752.796 of the “Fraudulent Access to Computers” chapter of the penal code.

M Crim JI 40.6

The Committee proposes the following new model criminal jury instruction, M Crim JI 40.6 (Indecent or Obscene Conduct) for offenses found in MCL 750.167(f), a subsection of the “disorderly persons” statute.

MINUTES
Public Policy Committee
July 20, 2023 – 12:00 p.m. to 1:30 p.m.

Committee Members: David C. Anderson, Aaron V. Burrell, Suzanne C. Larsen, Daniel D. Quick, Nicholas M. Ohanesian, Judge Cynthia D. Stephens, Danielle Walton
SBM Staff: Nathan A. Triplett, Carrie Sharlow
GCSI Staff:

A. Reports

1. Approval of June 7, 2023 minutes – The minutes were adopted by the members on the call (7).
2. Public Policy Report

B. Court Rule Amendments

1. ADM File No. 2022-14: Proposed Amendment of MCR 2.311

The proposed amendment of MCR 2.311 would allow a mental examination to be recorded by video or audio under certain circumstances.

The committee reviewed the following recommendations: Civil Procedure & Courts Committee.

The committee voted unanimously (7) to support ADM File No. 2022-14.

2. ADM File No. 2022-11: Proposed Amendments of MCR 2.511 and 6.412

The proposed amendments of MCR 2.511(C) and 6.412(C) align with Fed Crim P 24 and Fed Civ R 47 and would require the court to allow the attorneys or parties to conduct voir dire in civil and criminal proceedings if the court examines the prospective jurors. The proposed requirement is subject to the court's determination that the parties' or attorneys' questions are proper.

The committee reviewed the following recommendations: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Children's Law Section; Criminal Law Section; Negligence Law Section.

The committee voted 6 to 1 to support ADM File No. 2022-11 with an amendment removing proposed MCR 2.511(C)(2) and MCR 6.412(C)(2)(b).

3. ADM File No. 2023-05: Proposed Amendment of MCR 3.613

To avoid confusion, the proposed amendment of MCR 3.613 incorporates the amendment of MCR 3.613 (ADM File No. 2021-21), which takes effect July 1, 2023.

The proposed amendment of MCR 3.613 in this ADM file would add a new subrule (H) that is similar to MCR 2.002(I) and would require a court to pay the costs of publication in a name change proceeding if fees are waived under MCR 2.002, publication is required by law, and publication has not been waived under MCR 3.613.

The committee reviewed the following recommendations: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Children's Law Section.

The committee voted unanimously (7) to support ADM File No. 2023-05.

4. ADM File No. 2022-26: Proposed Amendment of MCR 6.425

The proposed amendment of MCR 6.425(D)(1)(c) would require a trial court, on the record before sentencing, to personally address the defendant regarding his or her allocution rights and to address any victim who is present and allow the victim to be reasonably heard, similar to FR Crim P 32(i)(4).

The committee reviewed the following recommendations: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.

The committee voted to support ADM File No. 2022-26 and express some concern as to the ambiguity in the amendment of (D)(1)(c)(iv).

5. ADM File No. 2023-08: Amendment of MCR 7.202

The amendment of MCR 7.202 includes in the definition of “final judgment” or “final order” postjudgment orders deciding a claim for remaining proceeds under MCL 211.78t.

The committee reviewed the following recommendations: Civil Procedure & Courts Committee.

The committee voted unanimously to support ADM File No. 2023-08.¹

C. Legislation

1. Tax Tribunal

HB 4563 (Hoadley) Property tax: tax tribunal; electronic hearings of the tax tribunal; provide for. Amends sec. 3a of 1976 PA 267 (MCL 15.263a).

HB 4564 (Outman) Property tax: tax tribunal; methods for tax tribunal to hold hearings; expand to include electronically. Amends secs. 26 & 34 of 1973 PA 186 (MCL 205.726 & 205.734).

The committee reviewed the following recommendations: Access to Justice Policy Committee; Civil Procedure & Courts Committee.

The committee agreed this legislation is *Keller* permissible in affecting the functioning of the courts.

The committee voted unanimously to support HB 4563 and HB 4564 as written.

2. HB 4657 (Pohutsky) Courts: state court administration; state pretrial services division; create. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding secs. 11 & 11a to ch. V.

The committee reviewed the following recommendations: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee.

The committee agreed this legislation is *Keller* permissible in affecting the functioning of the courts.

The committee voted unanimously to support HB 4657 with the additional comments offered by the Access to Justice Policy Committee.

The Committee recommends that the legislation include a definition of qualitative and quantitative evidence-based practices to ensure that such practices reflect the communities served. The Committee believes that specific consideration should be given to tribal sovereignty. The Committee further recommends that data on violations of pretrial release orders be included in the data collection.

The Committee believes that the creation of a Pretrial Services Division as a centralized system to certify and support pretrial services agencies will provide greater consistency in pretrial services across the state and will streamline this work. The proposed data collection will be critical to the task of identifying and mitigating racial and other disparities and its publication will provide necessary transparency. Such a centralized system will be essential to implementing the other pieces of legislation in the pending pretrial reform package, which are supported by SBM.

3. HB 4738 (Breen) Criminal procedure: witnesses; confidentiality of certain information of a witness; require prosecuting attorney to maintain, and provide for disclosure in certain circumstances. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 40b to ch. VII.

HB 4739 (Mentzer) Crime victims: rights; practice of redacting victim’s contact information; codify. Amends 1985 PA 87 (MCL 780.751 - 780.834) by adding sec. 8a.

¹ Judge Stephens departed after this vote.

The committee reviewed the following recommendations: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee.

The committee agreed this legislation is *Keller* permissible in affecting the functioning of the courts and access to justice.

The committee voted 5 to 1 to oppose HB 4738 and HB 4739 as drafted.

4. HB 4850 (Glanville) Courts: juries; exemption from jury service for certain military personnel; allow. Amends sec. 1307a of 1961 PA 236 (MCL 600.1307a).

The committee reviewed the following recommendations: Civil Procedure & Courts Committee.

The committee agreed this legislation is *Keller* permissible in affecting the functioning of the courts.

The committee voted unanimously to support HB 4850.

Order

Michigan Supreme Court
Lansing, Michigan

June 7, 2023

Elizabeth T. Clement,
Chief Justice

ADM File No. 2017-28

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

Proposed Amendments of
Rules 1.109, 5.302, and 8.108
of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 1.109, 5.302, and 8.108 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the [Public Administrative Hearings](#) page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

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

Rule 1.109 Court Records Defined; Document Defined; Filing Standards; Signatures;
Electronic Filing and Service; Access

(A)-(C) [Unchanged.]

(D) Filing Standards.

(1)-(9) [Unchanged.]

(10) Request for Copy of Public Document with Protected Personal Identifying
Information; Redacting Personal Identifying Information; Responsibility;
Certifying Original Record; Other.

(a)-(b) [Unchanged.]

(c) Redacting Personal Identifying Information.

(i)-(iii) [Unchanged.]

(iv) Unredacted protected personal identifying information may be

included on transcripts filed with the court but must be redacted pursuant to a written request submitted under MCR 1.109(D)(10)(c)(i). The written request must identify the page and line number for each place in the transcript where the protected information is located.

(d)-(e) [Unchanged.]

(E)-(H) [Unchanged.]

Rule 5.302 Commencement of Decedent Estates

(A) Methods of Commencement. A decedent estate may be commenced by filing an application for an informal proceeding or a petition for a formal testacy proceeding. A request for supervised administration may be made in a petition for a formal testacy proceeding.

(1) When filing either an application or petition to commence a decedent estate, a copy of the death certificate must be attached. If the death certificate is not available, the petitioner may provide alternative documentation of the decedent's death. All protected personal identifying information on the death certificate or alternative documentation must be redacted as required by MCR 1.109(D)(9).

(2) If a will that is being submitted to the court for the purposes of commencing an estate contains protected personal identifying information, the filer must provide the will being submitted for probate and a copy that has the protected personal identifying information redacted as required by MCR 1.109(D)(9). The unredacted version of the will shall be maintained by the court as a nonpublic record.

(2)-(3) [Renumbered (3)-(4) but otherwise unchanged.]

(B)-(D) [Unchanged.]

Rule 8.108 Court Reporters and Recorders

(A)-(E) [Unchanged.]

(F) Filing Transcript.

(1)-(2) [Unchanged.]

- (3) Unless notice has been previously provided under a different rule, immediately after the transcript is filed, the court reporter or recorder must notify the court and all parties that it has been filed and file in the court an affidavit of mailing of notice to the parties.

(G) [Unchanged.]

Staff Comment (ADM File No. 2017-28): The proposed amendments of MCR 1.109, 5.302, and 8.108 would provide clear direction on the process for protecting personal identifying information in transcripts, wills, and death certificates.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by October 1, 2023 by clicking on the “Comment on this Proposal” link under this proposal on the [Court’s Proposed & Adopted Orders on Administrative Matters](#) page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2017-28. Your comments and the comments of others will be posted under the chapter affected by this proposal.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 7, 2023

Clerk

Public Policy Position

ADM File No. 2017-28: Proposed Amendments of MCR 1.109, 5.302, and 8.108

Support with Amendment

Explanation

The Committee voted to support the proposed amendments of MCR 1.109, 5.302, and 8.108. The Committee further recommends that MCR 5.302(A)(1) be amended to require that both a redacted and unredacted version of a death certificate or alternative documentation be filed and that unredacted version be maintained as a nonpublic record.

Position Vote:

Voted For position: 19

Voted against position: 0

Abstained from vote: 0

Did not vote (absence): 14

Contact Person:

Lori J. Frank lori@markofflaw.com

Name: Valerie Robbins, Mecosta County Probate Register

Date: 06/12/2023

ADM File Number: 2017-28

Comment:

Specifically, MCR 5.302(A)(1) proposed change is of concern in validating the individual's identity. Probate Register's typically use the death certificate to validate the individual whom personal representative of the estate is being sought is the same individual listed on the death certificate. Cross referencing the Application/Petition with the date of birth, social security number, name, and residence. If this proposed change were made, it may be difficult for the Probate Register to validate the individual is one in the same as the decedent, especially with common names such as John Smith.

To my knowledge, I believe there are at least three ways courts are processing death certificates across the state at this time:

1. Retaining the death certificate and a redacted death certificate.
2. Marking the death certificate confidential as it is not a document the court would provide copies as it is a certified copy of the Clerk and contains PII, directing copies to be obtained at the Clerk.
3. Redacting through their electronic filing system.

These solutions, although very different, still allow the Probate Register, or Judge for formal proceedings, to validate that the decedent's identity prior to issuing Letters of Authority. The proposed change will prohibit this important validation.

Thank you for taking the time to listen to my concerns.

Order

Michigan Supreme Court
Lansing, Michigan

June 28, 2023

Elizabeth T. Clement,
Chief Justice

ADM File No. 2022-34

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

Proposed Amendments of
Rules 3.993 and 6.428 of
the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 3.993 and 6.428 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the [Public Administrative Hearings](#) page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

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

Rule 3.993 Appeals

(A)-(E) [Unchanged.]

(F) If a party was denied the right to appellate review or the appointment of appellate counsel due to errors by the party's prior attorney or the court, or other factors outside the party's control, the trial court must issue an order restarting the time in which to file an appeal or request counsel, except that the court must not issue any order which would extend the time for appealing an order terminating parental rights beyond 63 days from entry of the order terminating rights. A party filing an appeal after receiving an order issued under this subrule should provide the Court of Appeals with a copy of the order when filing the appeal.

Rule 6.428 Restoration of Appellate Rights

If the defendant, whether convicted by plea or at trial, was denied the right to appellate review or the appointment of appellate counsel due to errors by the defendant's prior attorney or the court, or other factors outside the defendant's control, the trial court shall

issue an order restarting the time in which to file an appeal or request counsel. A party filing an appeal after receiving an order issued under this subrule should provide the Court of Appeals with a copy of the order when filing the appeal.

Staff Comment (ADM File No. 2022-34): The proposed amendment of MCR 3.993 would provide for the restoration of appellate rights in juvenile cases, similarly to that of criminal cases under MCR 6.428, and the proposed amendments would further ask parties to provide the Court of Appeals with a copy of the order when filing the appeal.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by October 1, 2023 by clicking on the “Comment on this Proposal” link under this proposal on the [Court’s Proposed & Adopted Orders on Administrative Matters](#) page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2022-34. Your comments and the comments of others will be posted under the chapter affected by this proposal.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 28, 2023

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

Clerk

Public Policy Position
ADM File No. 2022-34: Proposed Amendments of MCR 3.993 and 6.428

Support

Explanation:

The Committee voted unanimously (16) to support the proposed amendments of MCR 3.993 and 6.428. The Committee noted that the proposed language mirrors the provision providing for restoration of appellate rights in criminal matters and that the Committee proposed this language when it considered the prior iteration of ADM File No. 2022-34—which was recently approved by the Court. The Board of Commissioners previously voted to support the Committee’s recommendation.

Position Vote:

Voted For position: 16

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 11

Contact Persons:

Katherine L. Marcuz kmarcuz@sado.org

Lore A. Rogers rogersl4@michigan.gov

Public Policy Position
ADM File No. 2022-34: Proposed Amendments of MCR 3.993 and 6.428

Support

Explanation

The Committee voted to support the proposed amendments of MCR 3.993 and 6.428. The Committee believes it is appropriate to provide for restoration of appellate rights in juvenile matters and notes that the State Bar of Michigan proposed this amendment in its position on ADM File No. 2021-21, based on a recommendation from the Access to Justice Policy Committee.

Position Vote:

Voted For position: 18

Voted against position: 0

Abstained from vote: 4

Did not vote (absence): 11

Contact Person:

Lori J. Frank lori@markofflaw.com

Public Policy Position
ADM File No. 2022-34: Proposed Amendments of MCR 3.993 and 6.428

Support

Explanation:

The Committee voted to support ADM File No. 2022-34. The Committee noted that restoration of appellate rights is presently available in the criminal matters and would be similarly useful and appropriate in juvenile matters. The Committee also noted that much of the language in ADM File No. 2022-34 was recommended by the State Bar of Michigan when the Board of Commissioners considered a prior administrative file.

Position Vote:

Voted For position: 16

Voted against position: 0

Abstained from vote: 0

Did not vote: 10

Contact Persons:

Nimish R. Ganatra ganatran@washtenaw.org

Sofia V. Nelson snelson@ndsdetroit.org

Public Policy Position
ADM File No. 2022-34: Proposed Amendments of MCR 3.993 and 6.428

Support

Explanation

The Children's Law Section supports ADM File No 2022-34 without further comment.

Position Vote:

Voted for position: 10

Voted against position: 0

Abstained from vote: 0

Did not vote: 9

Contact Person: Joshua Pease

Email: jpease@sado.org

January 31, 2023

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

RE: ADM File No. 2022-34 – Proposed Amendments of Rules 3.913, 3.943, 3.977, and 3.993 and Proposed Addition of Rule 3.937 of the Michigan Court Rules

Dear Clerk Royster:

At its January 20, 2023 meeting, the Board of Commissioners of the State Bar of Michigan considered ADM File No. 2022-34. In its review, the Board considered recommendations from the Bar's Access to Justice Policy Committee, Civil Procedure & Courts Committee, and Criminal Jurisprudence & Practice Committee, as well as the Children's Law Section and Appellate Practice Section. The Board voted unanimously to support the proposed amendments of Rules 3.913, 3.943, 3.977, and 3.993 of the Michigan Court Rules, as well as the addition of proposed Rule 3.937.

Navigating the juvenile justice system is a daunting challenge for far too many young people whose lack of familiarity with the procedural intricacy of the legal system may result in the accidental waiver of their appellate rights, often with profound consequences. By requiring that juveniles be fully advised of their rights at times and in a manner that will ensure understanding of those rights, this proposal will provide greater due process protection for these young people and result in better youth and system outcomes.

The Board also recommends that the Court's proposal be further amended to provide for the restoration of appellate rights in juvenile cases. Rule 6.428 currently permits restoration in criminal matters, but the Rules do not provide a similar mechanism in juvenile court cases. Therefore, the Bar proposes a new Rule 3.993(F), as follows:

If a party was denied the right to appellate review or the appointment of appellate counsel due to errors by the party's prior attorney or the court, or other factors outside the party's control, the trial court must issue an order restating the time in which to file an appeal or request counsel, except that the court must not issue any order which would extend the time for appealing an order terminating parental rights beyond 63 days from entry of the order terminating rights.

The Bar's proposed addition largely mirrors the comparable criminal rule, while also accounting for the unique limitation on appeals in cases involving termination of parental rights imposed by Rule 3.993(C)(2).

Thank you for the opportunity to comment on the proposed amendments.

Sincerely,



Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
 James W. Heath, President



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

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by November 1, 2023. Comments may be sent in writing to Andrea Crumback, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The Committee proposes a model criminal jury instruction, M Crim JI 7.25a (Self-Defense as Defense to Brandishing a Firearm), for the defense found in the brandishing a firearm in public statute found at MCL 750.234e(2)(b). The instruction is entirely new.

**[NEW] M Crim JI 7.25a Self-Defense as Defense to Brandishing
a Firearm**

(1) The defendant claims that [he / she] acted in lawful [self-defense / defense of [(*identify person*)] when [he / she] brandished the firearm. A person may brandish a firearm to defend [himself / herself / another person] under certain circumstances, even where it would otherwise be unlawful for [him / her] to point it, wave it about, or display it in a threatening manner. If a person brandishes a firearm to act in lawful [self-defense / defense of others], [his / her] actions are justified, and [he / she] is not guilty of brandishing a firearm.

(2) Just as when considering the claim of self-defense to the charge of [*identify principal assaultive charge to which the defendant is asserting self-defense*],¹ you should consider all the evidence and use the following rules to decide whether the defendant used a firearm to act in lawful [self-defense / defense of (*identify person*)]. You should judge the defendant's conduct according to how the circumstances appeared to [him / her] at the time [he / she] acted.

(3) First, when [he / she] acted, the defendant must have honestly and reasonably believed that [he / she] had to brandish the firearm to protect

[himself / herself / (*identify person*)] from the imminent unlawful use of force by another. If [his / her] belief was honest and reasonable, [he / she] could act to defend [himself / herself / (*identify person*)] with a firearm, even if it turns out later that [he / she] was wrong about how much danger [he / she / (*identify person*)] was in.

(4) Second, a person is only justified in brandishing a firearm when necessary at the time to protect [himself / herself / (*identify person*)] from danger of death, great bodily harm, or sexual assault.² The defendant may only point, wave about, or display a firearm in a threatening manner if it is appropriate to the attack made and the circumstances as [he / she] saw them. When you decide whether the brandishing of the firearm was what seemed necessary, you should consider whether the defendant knew about any other ways of protecting [himself / herself / (*identify person*)], but you may also consider how the excitement of the moment affected the choice the defendant made.

(5) Third, at the time [he / she] brandished the firearm, the defendant must not have been engaged in a criminal act that would tend to provoke a person to try to defend [himself / herself] from the defendant.³

Use Note

The court must read M Crim JI 7.20, Burden of Proof – Self Defense, for this instruction.

1. There will not always be an assaultive-offense count charged with the brandishing-a-firearm charge. Eliminate this first phrase if no assaultive offense is charged as a principal offense.
2. *People v Ogilvie*, 341 Mich App 28; 989 NW2d 250 (2022), holds that merely pointing a firearm is not deadly force. The Committee on Model Criminal Jury Instructions expresses no view whether the limitation of brandishing a firearm to cases where the danger of death, great bodily harm, or sexual assault was alleged to have been the reason for brandishing the firearm as used in this sentence may be too restrictive.
3. This paragraph should be given only when supported by the facts; that is, where there is evidence that, at the time the defendant brandished the firearm, he or she was engaged in the commission of some crime likely to lead to the other person's assaultive behavior. For example, this paragraph is usually unwarranted if the defendant was engaged in a drug transaction and used force in self-defense against an unprovoked

attack by the other party in the transaction. *See People v Townes*, 391 Mich 578, 593; 218 NW2d 136 (1974). On the other hand, this paragraph would apply to a defendant who engaged in a robbery of another person and that other person reacted with force. This paragraph is unnecessary where there are no issues other than who was the aggressor in the situation, whether the defendant had an honest and reasonable belief of the use of imminent force by another, or whether the degree of force used was necessary.

Public Policy Position
Model Criminal Jury Instructions 7.25a

Support while Expressing Concerns

Explanation:

The committee voted 10 to 9 with 1 abstention to support the instructions, while noting the following concerns:

- Some committee members felt that these specific instructions were unnecessary and the general instructions could be referred to.
- Committee members thought the second sentence in Section 4 could be deleted for clarification.
- Some committee members felt that the following amendment should be made so that the first sentence of Section 4 reads: Second, a person is only justified in brandishing a firearm when necessary at the time to protect [himself / herself / (*identify person*)] from what the person reasonable believe to be the danger of death, great bodily harm, or sexual assault.

Position Vote:

Voted For position: 10

Voted against position: 9

Abstained from vote: 1

Did not vote (absent): 6

Contact Persons:

Nimish R. Ganatra ganatran@washtenaw.org

Sofia V. Nelson snelson@ndsdetroit.org

Tobacco Products Tax Act has been paid / had a tax stamp from another state].

(5) Fourth, that when the defendant [exchanged / sold / offered to sell / disposed of] tobacco cigarettes or a tobacco product, [he /she] knew that the tobacco cigarettes or product [did not have a stamp from the Michigan Department of Treasury showing that the tax imposed under the Tobacco Products Tax Act has been paid / had a tax stamp from another state].

**[NEW] M Crim JI 12.10a Illegal Possession or Transportation
of Untaxed Cigarettes**

(1) [The defendant is charged with the / You may also consider the less serious] crime of acquiring, possessing, transporting, or offering for sale [(3,000 or more untaxed cigarettes / untaxed tobacco products with a value of \$250 or more) / (between 1,200 and 2,999 untaxed cigarettes / untaxed tobacco products with a value of \$100 or more, but less than \$250) / (between 600 and 1,199 untaxed cigarettes / untaxed tobacco products with a value of \$50 or more but less than \$100)]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [acquired / possessed / transported / offered for sale] tobacco cigarettes or a tobacco product.

(3) Second, that the tobacco cigarettes or product did not have a stamp from the Michigan Department of Treasury showing that the tax imposed under the Tobacco Products Tax Act has been paid.

(4) Third, that when the defendant [acquired / possessed / transported / offered for sale] the tobacco cigarettes or tobacco product, [he /she] knew that the tobacco cigarettes or product did not have a stamp from the Michigan Department of Treasury showing that the tax imposed under the Tobacco Products Tax Act has been paid.

(5) Fourth, that the defendant [acquired / possessed / transported / offered for sale] [(3,000 or more untaxed cigarettes / untaxed tobacco products with a value of \$250 or more) / (between 1,200 and 2,999 untaxed cigarettes / untaxed tobacco products with a value of \$100 or more but less than \$250) / (between 600 and 1,199 untaxed cigarettes / untaxed tobacco products with a value of \$50 or more but less than \$100)].

**[NEW] M Crim JI 12.10b Making, Possessing, or Using an
Unauthorized Department of
Treasury Tobacco Tax Stamp**

(1) The defendant is charged with the crime of making, possessing, or using [a counterfeit tobacco tax stamp / a tobacco tax stamp without authorization from the Michigan Department of Treasury]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant intentionally [made / possessed / used] [a counterfeit tobacco tax stamp / a tobacco tax stamp without authorization from the Michigan Department of Treasury].

(3) Second, that the defendant knew that the tobacco tax stamp [he / she] [made / possessed / used] was [a counterfeit tobacco tax stamp / a tobacco tax stamp not authorized by the Michigan Department of Treasury].

**[NEW] M Crim JI 12.10c Illegally Purchasing or Obtaining a
Department of Treasury Tobacco
Tax Stamp**

(1) The defendant is charged with the crime of illegally purchasing or obtaining a Michigan Department of Treasury tobacco tax stamp as a licensee. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that the defendant was a licensee under the Tobacco Products Tax Act.

(3) Second, that the defendant bought or obtained a Michigan Department of Treasury stamp for showing that the tax imposed under the Tobacco Products Tax Act has been paid from a person other than the Michigan Department of Treasury.

(4) Third, that when the defendant bought or obtained the Michigan Department of Treasury stamp for showing that the tax imposed under the Tobacco Products Tax Act had been paid, [he / she] knew that the person from whom [he / she] bought or obtained a Michigan Department of Treasury stamp was not an employee of the Michigan Department of Treasury.

[NEW] M Crim JI 12.10d Falsifying a Tobacco Manufacturer's Label

(1) The defendant is charged with the crime of falsifying a tobacco manufacturer's label. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant intentionally made a label that was an imitation of a label used by the tobacco manufacturer [*identify tobacco manufacturer*].

(3) Second, that the defendant used the imitation label to falsely identify cigarettes that [he / she] knew were not produced by [*identify tobacco manufacturer*] as being made by [*identify tobacco manufacturer*].

[NEW] M Crim JI 12.10e Making or Possessing a False License to Purchase or Sell Tobacco Products as a Retailer or Wholesaler

(1) The defendant is charged with the crime of [making or possessing a false license to purchase or sell tobacco products as a retailer or wholesaler / possessing a device that could be used to forge, alter, or counterfeit a license to purchase or sell tobacco products as a retailer or wholesaler]. To prove this charge, the prosecutor must prove beyond a reasonable doubt:

[Select according to the charge and evidence:]

(2) That the defendant intentionally [made, counterfeited, or altered / assisted in making or caused to be made / purchased or received] a false [license to purchase or sell tobacco products as a retailer or wholesaler / vending machine disc or marker for the sale of tobacco cigarettes or products] knowing it was false.

[Or]

(2) That the defendant intentionally possessed a device that [he / she] knew could be used to forge, alter, or counterfeit a [license to purchase or sell tobacco products as a retailer or wholesaler / vending machine disc or marker for the sale of tobacco cigarettes or products].

Public Policy Position
Model Criminal Jury Instructions 12.10 12.10a 12.10b 12.10c 12.10d 12.10e

Support

Explanation:

The Committee voted unanimously to support Model Criminal Jury Instructions 12.10 12.10a 12.10b 12.10c 12.10d 12.10e.

Position Vote:

Voted For position: 20

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 6

Contact Persons:

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Sofia V. Nelson snelson@ndsdetroit.org



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

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by November 1, 2023. Comments may be sent in writing to Andrea Crumback, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The Committee proposes the following amended model criminal jury instruction, M Crim JI 13.15 (Assaulting a prison employee) under MCL 750.197c to match the statutory language as observed by the Court of Appeals panel in *People v Nixon*, unpublished opinion (COA #353438) issued 4/21/22. The statute forbids an assault “through the use of violence, threats of violence or dangerous weapons,” while the instruction as currently written only requires proof of an assault, not mentioning violence, threats of violence or dangerous weapons. Deletions are in strike-through, and new language is underlined.

[AMENDED] 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 legally confined at [*state place of confinement*].
- (3) Second, that ~~[he / she] was legally confined there~~ [*name complainant*] was employed at [*state place of confinement*]¹.
- (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*].*~~ the defendant knew that [*name complainant*] was an employee² or custodian at [*state place of confinement*].
- (5) Fourth, that ~~at the time of the assault, the defendant knew that [*name complainant*] was an employee of [*state place of confinement*].~~ the defendant intentionally assaulted [*name complainant*]. An assault is an attempt to commit a

battery or to do something that would cause someone to fear a battery. A battery is a forceful, violent, or offensive touching of the person. [An assault cannot happen by accident.]

(6) Fifth, that the defendant committed the assault through the use of violence, a threat to use violence, or the use of a dangerous weapon. Violence is the use of physical force likely to cause embarrassment, injury, or death.³ A dangerous weapon is an instrument that is used in a way that is likely to cause serious physical injury or death.

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; *leave denied*, 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).~~

1. Place of confinement in this context may include a prison. *See People v Wingo*, 95 Mich App 101; 290 NW2d 93 (1980).
2. An employee may include an independent contractor.
3. This definition of *violence* comes from *People v Terry*, 217 Mich App 660, 662; 553 NW2d 23 (1996).

**Public Policy Position
Model Criminal Jury Instructions 13.15**

Support with Amendment

Explanation:

The Committee voted 16 to 4 to support M Crim JI 13.15 with an amendment adding “harm” to the definition of “violence” in Section 6 as follows:

Violence is the use of physical force likely to cause embarrassment, injury, ~~or death,~~ or harm.

The Committee agreed that this amendment would be consistent with *People v Terry*, 217 Mich App 660, 662; 553 NW2d 23 (1996).

Position Vote:

Voted For position: 16

Voted against position: 4

Abstained from vote: 0

Did not vote (absent): 6

Contact Persons:

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Sofia V. Nelson snelson@ndsdetroit.org



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

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PROPOSED

The Committee proposes the following amended model criminal jury instruction, M Crim JI 13.17 (Absconding on a Bond) under MCL 750.199a to add an element involving notice to the defendant concerning conditions of bond consistent with *People v Rorke*, 80 Mich App 476; 264 NW2d 30 (1978). Deletions are in strike-through, and new language is underlined.

[AMENDED] M Crim JI 13.17 Absconding on a Bond

- (1) 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:
- (2) First, that the defendant was on bond for a felony charge. [(*State charge*) is a felony.]¹ A bond is an agreement to do or not do certain things, including to appear in court when required.
- (3) Second, that the defendant was informed that [he / she] could not leave the state of Michigan without permission of the court and that [he / she] had to appear at all scheduled court dates unless otherwise directed by the court.
- (4) Third, that the defendant absconded on the bond. Absconding means to leave the state of Michigan or to hide or conceal oneself.
- (5) Fourth, that the defendant left the state of Michigan or hid or concealed [himself / herself] with the intent to avoid the legal process.

Use Note

1. The defendant may stipulate that he or she was on bond for a felony to avoid

the court identifying that specific felony and the prosecutor offering proof of that felony. *See People v Swint*, 225 Mich App 353; 572 NW2d 666 (1997), citing *Old Chief v United States*, 519 US 172 (1997). If that is the case, the court may say, “The defendant stipulates that [he / she] was on bond for a felony.”

**Public Policy Position
Model Criminal Jury Instructions 13.17**

Support with Amendment

Explanation:

The committee voted unanimously to support Model Criminal Jury Instructions 13.17 with the following amendment to Paragraph 3:

(3) Second, that the defendant was informed that [he / she] ~~could not leave the state of Michigan without permission of the court and that [he / she] had to appear at all scheduled court dates unless otherwise directed by the court.~~

Position Vote:

Voted For position: 17

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 9

Contact Persons:

Nimish R. Ganatra ganatran@washtenaw.org

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

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PROPOSED

The Committee proposes the following new model criminal jury instruction, M Crim JI 27.6, for dumping refuse on the property of another to cover criminal activity under MCL 750.552a. This instruction is entirely new.

[NEW] M Crim JI 27.6 Dumping Refuse on the Property of Another

- (1) The defendant is charged with the crime of dumping refuse or garbage on property belonging to another person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
- (2) First, that [*name complainant*] owned, rented, or possessed the property or premises located at [*identify address of property, including city or township and county*].
- (3) Second, that the defendant placed, deposited, or dumped filth, garbage, or refuse on [*name complainant*]'s property or premises at [*identify address of property*].
- (4) Third, that the defendant did not have [*name complainant*]'s specific permission to place, deposit, or dump the filth, garbage, or refuse on the property or premises at [*identify address of property*].
- (5) Fourth, that the defendant knew that the location where [he / she] dumped, deposited, or placed the filth, garbage, or refuse was not [his / her] own property.¹

Use Note

1. The Committee on Model Criminal Jury Instructions believes that a claim by

the defendant that he or she thought he or she was dumping the refuse on his or her own property is an affirmative defense, and this paragraph should only be read when there is evidence to support the defense.

Public Policy Position
Model Criminal Jury Instructions 27.6

Support

Explanation:

The Committee voted unanimously to support Model Criminal Jury Instructions 27.6.

Position Vote:

Voted For position: 21

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 5

Contact Persons:

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

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PROPOSED

The Committee proposes the following new model criminal jury instruction, M Crim JI 27.7, for trespassing on state correctional facility property to cover criminal activity under MCL 750.552b. This instruction is entirely new.

[NEW] M Crim JI 27. 7 Trespassing on State Correctional Facility Property

(1) The defendant is charged with the crime of trespassing on the property of a state correctional facility. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [entered / remained / entered and remained] on property that was part of [*identify state correctional facility*], which is a state correctional facility.

(3) Second, that the defendant knew [he / she] [entered / remained / entered and remained] on property that was part of a state correctional facility.

[*Select the appropriate third element:*]

(4) Third, that the defendant did not have permission or authority to [enter / remain / enter and remain] on the property of the state correctional facility.

[*Or*]

(4) Third, that the defendant [entered / remained / entered and remained] on the property without permission or authority after being instructed [not to enter / to leave] the property.

(5) Fourth, that the defendant knew that [he / she] did not have permission or

authority to [enter / remain / enter and remain] on the property.¹

Use Note

1. This paragraph may not be necessary where the defendant was instructed not to enter or was instructed to leave the property.

**Public Policy Position
Model Criminal Jury Instructions 27.7**

Support

Explanation:

The Committee voted unanimously to support Model Criminal Jury Instructions 27.7.

Position Vote:

Voted For position: 21

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 5

Contact Persons:

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instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.²

Use Note

1. The court may read any that apply.
2. The definition of computer comes from MCL 752.792(3). MCL 750.145d(9)(a) provides the same definition but adds the following language: “Computer includes a computer game device or a cellular telephone, personal digital assistant (PDA), or other handheld device.”

**Public Policy Position
Model Criminal Jury Instructions 35.13b**

Support

Explanation:

The Committee voted unanimously to support Model Criminal Jury Instructions 35.13b.

Position Vote:

Voted For position: 21

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 5

Contact Persons:

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

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PROPOSED

The Committee proposes the following new model criminal jury instruction, M Crim JI 40.6 (Indecent or Obscene Conduct) for offenses found in MCL 750.167(f), a subsection of the “disorderly persons” statute.

[NEW] M Crim JI 40.6 Indecent or Obscene Conduct

- (1) The defendant is charged with the crime of indecent or obscene conduct. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
- (2) First, that the defendant was in a public place at [*identify location*] or was exposed to persons who could see defendant from a public place.
- (3) Second, that while at [*identify location*], the defendant performed an act of [*describe sexual conduct by the defendant*] / [*describe other conduct alleged to have been indecent or obscene*].
- (4) Third, that the defendant’s conduct was shocking to the sensibilities of a reasonable person, was outside of reasonable societal standards of decency, and would be offensive to a reasonable person.

Public Policy Position
Model Criminal Jury Instructions 40.6

Support with Amendment

Explanation:

The Committee voted 10 to 9 to support the proposed model criminal jury instructions with a recommendation that the Jury Instructions Committee either add additional language clarifying that the alleged conduct must not be constitutionally protected, or incorporate the statutory definition of obscenity into the instruction.

Position Vote:

Voted For position: 10
Voted against position: 9
Abstained from vote: 0
Did not vote (absent): 7

Contact Persons:

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