

**CJI2d 15.1 (New)**  
**Operating While Intoxicated—OWI**  
**[Use for Offenses Committed On or After September 30, 2003]**

*[Editor's note: For the version of this instruction to be used in cases arising before September 30, 2003, see page 15-\_\_.]*

The defendant is charged with operating a motor vehicle while intoxicated by:

- (1) operating a motor vehicle while under the influence of alcohol\* [and / or]
- (2) operating a motor vehicle with an unlawful bodily alcohol level.

*Use Note*

\*If the defendant is charged with operating under the influence of a controlled substance or under the influence of a combination of alcohol and a controlled substance, modify this portion of the instruction accordingly.

*History*

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.

*Commentary*

See MCL 257.625 in "Statutes" at the end of this chapter.

The CJI committee wrote this introductory instruction in 1990 to reflect that a defendant may be charged under alternative theories: operating a motor vehicle while under the influence of alcohol or the *per se* violation of operating while having an unlawful bodily alcohol level.

A prosecutor is not required to elect between the two theories and a conviction can be based on either or both theories. See commentary to CJI2d 15.6.

**CJI2d 15.2 (New)**

**Elements Common to Operating While Intoxicated [OWI] and  
Operating While Visibly Impaired [OWVI]  
[Use for Offenses Committed On or After September 30, 2003]**

*[Editor's note: For the version of this instruction to be used in cases arising before September 30, 2003, see page 15-\_\_.]*

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*

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.

*Commentary*

The committee adopted this instruction in 1993 as part of an overall restructuring of chapter 15. The revisions were made upon recommendation of the Michigan District Judges Association after publication in the Michigan Bar Journal for comment.

**CJI2d 15.3 (New)**  
**Specific Elements of Operating While Intoxicated [OWI]**  
**[Use for Offenses Committed On or After September 30, 2003]**

*[Editor's note: For the version of this instruction to be used in cases arising before September 30, 2003, see page 15-\_\_.]*

(1) To prove that the defendant operated a motor vehicle while intoxicated, the prosecutor must also prove beyond a reasonable doubt that the defendant was [either] under the influence of alcohol<sup>1</sup> while operating the vehicle [or that that defendant 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].<sup>2</sup>

(2) "Under the influence of alcohol" means that because of drinking alcohol, 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 what is called "dead drunk," that is, falling down or hardly able to stand up. On the other hand, just because a person has drunk alcohol or smells of alcohol does not prove, by itself, that the person is under the influence of alcohol. The test is whether, because of drinking alcohol, 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 operating under the influence of a controlled substance or under the influence of a combination of alcohol and a controlled substance, modify this portion of the instruction accordingly.
2. If the defendant is charged with OWI by virtue of operating under the influence only, delete the bracketed references to bodily alcohol content. If the defendant is charged with OWI by virtue of bodily alcohol content only, use the bracketed material in paragraph (1) and delete paragraph (2).

*History*

CJ2d 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.

*Commentary*

See MCL 257.625 in "Statutes" at the end of this chapter.

To prove the offense of operating a motor vehicle under the influence of intoxicating liquor, the prosecution must establish that (1) the defendant was operating a motor vehicle on a highway or other place open to the general public; (2) while so operating the defendant was under the influence of alcohol, controlled substances, or a combination thereof; and (3) as a result of the drinking or taking of a controlled substance, the defendant was substantially deprived of normal control or clarity of mind. *People v Raisanen*, 114 Mich App 840, 844, 319 NW2d 693 (1982); *People v Kelley*, 60 Mich App 162, 230 NW2d 357 (1975); MCL 257.625(1).

Operating a motor vehicle under the influence of intoxicating liquor is a general intent crime. *Raisanen*.

In *People v Pomeroy (On Rehearing)*, 419 Mich 441, 355 NW2d 98 (1984), the court held that a person asleep behind the wheel of a motionless car was not "operating" the vehicle. However, the court stated that if the car had been in motion, the person in the driver's seat might be found to be "operating" it even though he asserted that he was asleep, and, if the person in the driver's seat had been awake, he might be found to have been in such physical control of the car that he was "operating" it even if the car was not moving. *Id.* at 446-447.

The scope of the *Pomeroy* concept of "operating" was clarified by the supreme court in *People v Wood*, 450 Mich 399, 538 NW2d 351 (1995). In *Wood*, the police found the defendant unconscious behind the wheel of his vehicle at a fast food drive-through window. The car was running, the transmission was in drive, his foot was resting on the brake pedal, a twenty-dollar bill was in his hand, and beer was between his legs. The supreme court concluded that the driver was "operating" the motor vehicle for purposes of the OUIL statute, MCL 257.625(1). Justice Levin wrote for the majority:

We conclude that "operating" should be defined in terms of the danger the OUIL statute seeks to prevent: the collision of a vehicle being operated by a person under the influence of intoxicating liquor with other persons or property. Once 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.

In *People v Schinella*, 160 Mich App 213, 407 NW2d 621 (1987), the court of appeals said that a defendant found behind the wheel of a stationary car may be convicted of OUIL where there is sufficient direct or circumstantial evidence that the defendant operated the car while under the influence of liquor prior to discovery by the police. In *People v Smith*, 164 Mich App 767, 417 NW2d 261 (1987), the court found sufficient circumstantial evidence to survive a motion for directed verdict where police found the intoxicated defendant slumped over the wheel of a car on the shoulder of a freeway.

In *People v Walters*, 160 Mich App 396, 402, 407 NW2d 662 (1987), the court cited the CJI 15:1:01(6) (now CJI2d 15.3(2)) definition of *under the influence* after noting that the statute fails to define the phrase. The court held that in order to obtain an OUIL conviction, the prosecution must establish that the defendant was unable to drive normally.

See *People v Tracy*, 18 Mich App 529, 171 NW2d 562 (1969), for a discussion of what constitutes a highway or other place open to the public.

In *People v Hawkins (On Remand)*, 181 Mich App 393, 448 NW2d 858 (1989), the court of appeals held that the trial court erred in ruling that a shopping center parking lot that was accessible to the public without restriction was not a "highway or other place open to the general public" within the scope of the OUIL statute. In *People v Nickerson*, 227 Mich App 434, 575 NW2d 804 (1998), the court of appeals held that the pit area of a racetrack, which spectators could enter only by paying a \$14 fee, was a "place ... generally accessible to motor vehicles" as that phrase is used in MCL 257.625(1).

This instruction was adopted in 1993 when this entire chapter was restructured. The contents of the present instruction were found formerly at CJI2d 15.2.

**CJI2d 15.4 (New)**

**Specific Elements of Operating While Visibly Impaired  
[OWVI]**

**[Use for Offenses Committed On or After September 30, 2003]**

*[Editor's note: For the version of this instruction to be used in cases arising before September 30, 2003, see page 15-\_\_.]*

[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 also prove beyond a reasonable doubt that, due to the drinking of alcohol\*, 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*

\*If the defendant is charged with operating while visibly impaired due to the consumption of a controlled substance or a combination of alcohol and a controlled substance, modify this portion of the instruction accordingly.

*History*

CJI2d 15.4 was amended October, 1993; amended September, 2003, to reflect statutory changes in 2003 PA 61, effective September 30, 2003.

*Commentary*

See MCL 257.625b in "Statutes" at the end of this chapter.

This instruction comes from *People v Lambert*, 395 Mich 296, 305, 235 NW2d 338 (1975). In *Lambert*, the court said that the crimes of operating under the influence and operating while impaired are distinguished by the degree of intoxication established. The degree of intoxication may be established by bodily alcohol test results or by testimony of someone who observed the impaired driving.

In *People v Walters*, 160 Mich App 396, 401, 407 NW2d 662 (1987), the court cited CJI 15:2:01(5) (now CJI2d 15.4) for the proposition that the defendant's ability must be so weakened or reduced by the consumption of alcohol "that he operated the vehicle with less ability than would an ordinary, careful and

CJ2d 15.4 (New)

*Traffic Offenses*

prudent driver.” However, some amount of normal driving does not preclude a DWI conviction. The statute requires reduction, not elimination, of the ability to drive normally. *Id.* at 402.

This instruction was adopted in 1993 as part of a general revision of chapter 15.

**CJI2d 15.5 (New)**

**Factors in Considering Operating While Intoxicated [OWI]  
and Operating While Visibly Impaired [OWVI]  
[Use for Offenses Committed On or After September 30, 2003]**

*[Editor's note: For the version of this instruction to be used in cases arising before September 30, 2003, see page 15-\_\_.]*

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?

(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].

(5) If you find that there were 0.08 grams or more of alcohol [per 100 milliliters of the defendant's blood / per 210 liters of the defendant's breath / per 67 milliliters of the defendant's urine] when [he / she] operated the vehicle, you may find the defendant guilty of operating a motor vehicle with an unlawful bodily alco-

hol 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.

(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.

#### *History*

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.

#### *Commentary*

The supreme court, in *People v Wager*, 460 Mich 118, 594 NW2d 487 (1999), held that there is no requirement that a blood test be conducted within a "reasonable time" of the driving to render the results admissible. The court concluded instead: "To the extent that the passage of time reduces the probative value of the test, the diminution goes to the weight, not admissibility, and is for the parties to argue before the finder of fact." *Id.* at 126.

In *People v Campbell*, 236 Mich App 490, 601 NW2d 114 (1999), the court of appeals, citing *Wager*, held that the prosecution need not extrapolate alcohol test results back to the time of driving. Rather, delay between driving and testing should be evaluated by the trial court under general principles of relevancy, MRE 401, 402, and 403.

In *People v Nicolaidis*, 148 Mich App 100, 383 NW2d 620 (1985), the defendant was charged in a two-count complaint. The first count charged that he operated a motor vehicle under the influence of intoxicating liquor; the second count that he operated a motor vehicle while having a blood alcohol content of 0.10 percent or more. Before trial, the district court granted the defendant's motion to force the prosecution to elect between the two counts and proceed to trial on either one charge or the other. The court of appeals reversed, holding that the prosecution cannot be forced to elect between the two theories before trial. As long as there is evidence supporting both theories, the prosecution may charge both in a single-count complaint, may present both at trial, and "need make no election until after the jury returns its verdict." The defendant's rights are protected "by limiting the prosecution to one final conviction." *Id.* at 103.

*See also People v Cynthia Smith*, 182 Mich App 436, 453 NW2d 257 (1990).

Factors to consider in assessing the accuracy and reliability of Breathalyzer samples are discussed in *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).

This instruction is part of the 1993 revision of chapter 15. Its contents had been found at CJI2d 15.5 and 15.6.

**CJI2d 15.7 (New)**

**Verdict Form**

**[Use for Offenses Committed On or After September 30, 2003]**

*[Editor's note: For the version of this instruction to be used in cases arising before September 30, 2003, see page 15-\_\_.]*

We, the Jury, find the defendant:

- (1)  Not guilty
- (2)  Guilty of Operating While Intoxicated [OWI] because:
  - (A)  operating under the influence of—
    - (i)  alcohol
    - (ii)  a controlled substance
    - (iii)  a combination of alcohol and a controlled substance
  - (B)  operating with a bodily alcohol content of 0.08% or more
- (3)  Guilty of the less serious offense of Operating While Visibly Impaired [OWVI] due to the consumption or use of
  - (A)  alcohol
  - (B)  a controlled substance
  - (C)  a combination of alcohol and a controlled substance

*Use Note*

If, as is usually the case, there is no claim that the defendant operated under the influence of a controlled substance or a combination of alcohol and a controlled substance, those portions of the form should be deleted.

*History*

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.

*Commentary*

A prosecutor is not required to elect between charging the defendant with operating a motor vehicle under the influence of liquor or operating while having an unlawful bodily alcohol level. A prosecutor may proceed on alternative theories for the same count. *People v Nicolaidis*, 148 Mich App 100, 383 NW2d 620 (1985).

**CJI2d 15.9 (New)**

**Defendant's Decision to Forgo Chemical Testing**

**[Use for Offenses Committed On or After September 30, 2003]**

*[Editor's note: For the version of this instruction to be used in cases arising before September 30, 2003, see page 15-\_\_.]*

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*

CJI2d 15.9 was CJI 15:2:05; amended by the committee in September, 2003.

*Commentary*

In *South Dakota v Neville*, 459 US 553 (1983), the United States Supreme Court held that evidence of a defendant's refusal to submit to blood alcohol testing does not violate the Fifth Amendment right against self-incrimination.

## CJI2d 15.10 (New)

## Felony Driving

[Use for Offenses Committed On or After September 30, 2003]

*[Editor's note: For the version of this instruction to be used in cases arising before September 30, 2003, see page 15-\_\_.]*

(1) [The defendant is charged with the crime of / You may also consider the lesser charge of<sup>1</sup>] felony 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<sup>2</sup> or other place that was open to the public [*or generally accessible to motor vehicles, including a designated parking area*].

(3) Second, that the defendant drove the vehicle in a grossly negligent manner.<sup>3</sup>

(4) Third, that this gross negligence was a substantial cause of an accident that injured [*name complainant*].

(5) Fourth, that the injury was a serious impairment of a body function.<sup>4</sup>

*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. CJI2d 16.18, Gross Negligence, should also be given.
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

CJI2d 15.10 was CJI 15:5:01; last amended in November, 2002, to reflect statutory changes at MCL 257.626c.

#### Commentary

The statute talks of alternate ways of committing this crime: driving “carelessly and heedlessly in wilful and wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property.” This implies that the statute would cover acts of either ordinary or gross negligence. But the case law holds that gross negligence is required. The first case to address this issue, *People v Marshall*, 74 Mich App 523, 255 NW2d 351 (1977), held that felonious driving required only ordinary negligence. Judge (now Justice) Cavanagh dissented, and would have held ordinary negligence insufficient for this crime. *People v Chatterton*, 102 Mich App 248, 301 NW2d 490 (1980), held that ordinary negligence was insufficient. The supreme court summarily affirmed *Chatterton*, 411 Mich 867, 307 NW2d 333 (1981), “for the reasons stated in its opinion and in the dissent of Judge Cavanagh in *People v Marshall*.” The committee extensively debated whether this meant the statute required gross negligence or some other standard. The committee eventually concluded, with some dissent, that gross negligence was the requisite standard.

In *People v Sherman*, 188 Mich App 91, 469 NW2d 19 (1991), the court said that defendant’s failure to adequately secure his trailer, which came loose from his car and struck the car in which the victims were riding, was criminally actionable under the felonious driving statute. The statute may be violated by driving a vehicle on a highway “carelessly and heedlessly in wilful and wanton disregard of the rights or safety of others”; this criminalizes the operation of an inherently dangerous vehicle in an otherwise reasonable manner.

In *People v Johnson*, 174 Mich App 108, 435 NW2d 465 (1989), the court held that it was not necessary to show that the defendant himself actually struck the victim; it was necessary to show only that the defendant’s acts caused the injury. Thus, where the defendant forced another car to make an emergency turn and the other car struck a pedestrian, the defendant was properly charged with felonious driving even though he himself did not hit the pedestrian.

In *People v Bartel*, 213 Mich App 726, 540 NW2d 491 (1995), the court of appeals held that “highway” for purposes of the felonious driving statute should be defined by reference to the Michigan Vehicle Code, MCL 257.20, .64, as a *publicly maintained* road. The fact that a privately maintained alley is open for

public travel does not render it a highway under the felonious driving statute.  
Rather, public maintenance is the test.

**CJI2d 15.11 (New)**  
**Operating While Intoxicated [OWI] and**  
**Operating While Visibly Impaired [OWVI] Causing Death**  
**[Use for Offenses Committed On or After September 30, 2003]**

*[Editor's note: For the version of this instruction to be used in cases arising before September 30, 2003, see page 15-\_\_.]*

(1) The defendant is charged with the crime of operating 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 the defendant was operating while intoxicated or was visibly impaired while [he / she] was operating the vehicle.

(5) Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed alcohol [or a controlled substance or a combination of alcohol and a controlled substance] and might be intoxicated or visibly impaired.

(6) Fifth, that the defendant's intoxicated or visibly impaired driving was a substantial cause of the victim's death.

*Use Note*

If the conduct of the victim or a third party is claimed to be a sole or contributing cause, see commentary to CJI2d 16.20, Contributing Negligence.

*History*

CJI2d 15.11 was adopted as a new instruction in October, 1991 and was modified in June, 1995 to reflect changes in 1994 PA 449 and 450. The instruc-

tion was modified by the committee in September, 1996 to reflect the holding in *People v Lardie*, 452 Mich 231, 551 NW2d 656 (1996). The instruction was amended in September, 2003, to reflect the changes found in 2003 PA 61, effective September 30, 2003.

*Commentary*

In *People v Lardie*, 452 Mich 231, 551 NW2d 656 (1996), the supreme court held the OUIL-causing-death statute, MCL 257.625(4), is constitutional against a claim that it imposed strict liability without regard to the defendant's mens rea. In doing so, the supreme court held that the statute creates a general intent crime that requires proof that the defendant voluntarily drove knowing that he or she had consumed alcohol and might be intoxicated. *Lardie*, 452 Mich at 259–260.

Convictions of both OUIL causing death, MCL 257.625(4), and involuntary manslaughter, MCL 750.321, for causing a single death do not violate the double jeopardy provisions of the United States and Michigan Constitutions, US Const, amend V; Const 1963, art 1, sec 15. *People v Kulpinski*, 243 Mich App 8, 620 NW2d 537 (2000).

**CJI2d 15.12 (New)**  
**Operating While Intoxicated [OWI] and**  
**Operating While Visibly Impaired [OWVI]**  
**Causing Serious Impairment of a Body Function**  
**[Use for Offenses Committed On or After September 30, 2003]**

*[Editor's note: For the version of this instruction to be used in cases arising before September 30, 2003, see page 15-\_\_.]*

(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 the defendant was operating while intoxicated or was visibly impaired while [he / she] was operating the vehicle.

(5) Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed alcohol [or a controlled substance or a combination of alcohol and a controlled substance] and might be intoxicated or visibly impaired.

(6) Fifth, that the defendant's intoxicated or visibly impaired driving was a substantial cause<sup>1</sup> of a serious impairment of a body function<sup>2</sup> to (*name victim*).

*Use Notes*

1. If the conduct of the victim or a third party is claimed to have been a sole or contributing cause, see commentary to CJI2d 16.20, Contributing Negligence.

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*

CJI2d 15.12 was adopted in October, 1991 and was modified in June, 1995 to reflect statutory changes found in 1994 PA 449. The instruction was modified by the committee in September, 1996 to reflect the holding in *People v Lardie*, 452 Mich 231, 551 NW2d 656 (1996). This instruction was amended in September, 2003, to reflect the statutory changes found in 2003 PA 61, effective September 30, 2003.

*Commentary*

See commentary to CJI2d 15.11.

**CJI2d 15.13 (New)**  
**Operating a Commercial Vehicle with**  
**an Unlawful Bodily Alcohol Content [UBAL]**  
**[Use for Offenses Committed On or After September 30, 2003]**

*[Editor's note: For the version of this instruction to be used in cases arising before September 30, 2003, see page 15-\_\_.]*

(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<sup>1</sup> 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 percent or more but less than 0.08 percent when operating the commercial motor vehicle.

(4) Third, that the defendant was operating the commercial motor vehicle in the [county / city] of \_\_\_\_\_.

*Use Note*

1. For the definition of *commercial motor vehicle*, see MCL 257.7a.

*History*

CJI2d 15.13 was adopted in October, 1993; amended in June, 1995, to reflect statutory changes in 1994 PA 449 and 450; amended by the committee in September, 2003.

*Commentary*

This instruction is based upon MCL 257.625m, as last amended by 2003 PA 61, effective September 30, 2003.