

VEHICULAR ASSAULT SECOND DEGREE
(E Felony)
PENAL LAW 120.03(1) ¹
(Committed or after June 8, 2005)

The ____ count is Vehicular Assault in the Second Degree.

Under our law, a person is guilty of Vehicular Assault in the Second Degree when he or she operates a motor vehicle²

Select appropriate alternative(s):

while he or she has .08 of one per centum or more by weight of alcohol in his or her blood as shown by chemical analysis of his or her blood, breath, urine or saliva;³

or while he or she is in an intoxicated condition;⁴

or while his or her ability to operate such a vehicle is impaired by the use of a drug;⁵

and as a result of such intoxication [or impairment by the use of a drug], operates such motor vehicle in a manner that causes

¹Charges for the remaining alternatives of vehicular assault in the second degree are not provided. The format of this charge, however, may be used for those provisions as necessary.

² At this point, Vehicular Assault in the Second Degree states: "in violation of subdivision two, three or four of section eleven hundred ninety-two of the vehicle and traffic law...." This charge substitutes the operative language of each of those subdivisions. The court should select the appropriate subdivision(s) to charge.

³ See Vehicle & Traffic Law § 1192 (2).

⁴ See Vehicle and Traffic Law § 1192 (3).

⁵ See Vehicle & Traffic Law § 1192 (4).

serious physical injury to another person.⁶

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: “serious physical injury” [and “drug”].

SERIOUS PHYSICAL INJURY means impairment of a person's physical condition which creates a substantial risk of death, or which causes death, or serious and protracted disfigurement, or protracted impairment of health or protracted loss or impairment of the function of any bodily organ.⁷

[The term DRUG includes *(specify)*.⁸]

[NOTE: Here, either add the appropriate Vehicle and Traffic Law § 1192 charge, or if that Vehicle and Traffic Law provision has been separately charged to the jury, cross-reference the applicability of that charge to this crime.]

Under our law, if the People prove beyond a reasonable doubt that the defendant was operating a motor vehicle while unlawfully intoxicated [or impaired by the use of a drug] and while doing so caused serious physical injury to another person, then you may, but are not required to, infer that, as a result of such intoxication [or impairment by the use of a drug], the defendant operated the motor vehicle in a manner that caused such serious

⁶ The text of the statute contains two references to causing “serious physical injury. In order to avoid redundancy and for clarity, the pattern charge contains one reference to such term.

⁷ See Penal Law § 10.00(10).

⁸ The term "drug," when used in the Vehicle and Traffic Law, “means and includes any substance listed in section thirty-three hundred six of the public health law.” Vehicle & Traffic Law § 114-a.

physical injury.⁹

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, both of the following two elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), operated a motor vehicle:

Select appropriate alternative(s):

while the defendant had .08 of one per centum or more by weight of alcohol in his/her blood as shown by chemical analysis of his/her blood, breath, urine or saliva;

or while the defendant was in an intoxicated condition;

or while the defendant's ability to operate such vehicle was impaired by the use of a drug; and

2. That as a result of such intoxication [or impairment by the use of a drug], the defendant operated the motor vehicle in a manner that caused serious physical injury to another person.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Vehicular Assault in the Second Degree as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of the crime of _____

⁹ The Legislative Memorandum in support of this statute states that “the addition of the rebuttable presumption provision would create a causal link between a driver who causes serious physical injury or death and a presumption that it was his or her intoxication or impairment that was the cause of such serious physical injury or death.”

Vehicular Assault in the Second Degree as charged in the _____
count.