

**VEHICULAR MANSLAUGHTER
FIRST DEGREE
(C Felony)
PENAL LAW 125.13(1)
(Committed on or after Nov. 1, 2006)**

The _____ count is Vehicular Manslaughter in the First Degree.

Under our law, a person is guilty of Vehicular Manslaughter in the First Degree when he or she operates a motor vehicle while he or she has .18 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

[and while the person's ability to operate such motor vehicle is impaired by the combined influence of drugs or of alcohol and any drug or drugs]

and as a result of such intoxication

[or by the combined influence of drugs or of alcohol and any drug or drugs],

operates such motor in a manner that causes the death of another person.

[The term "drug" used in this definition has its own special meaning in our law. The term DRUG includes (specify).]¹

[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

¹ See Vehicle & Traffic Law § 114-a and Public Health Law § 3306.

unlawfully intoxicated [or impaired by the use of a drug, or by the combined influence of drugs or of alcohol and any drug or drugs] and while doing so caused the death of 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, or by the combined influence of drugs or of alcohol and any drug or drugs], the defendant operated the motor vehicle in a manner that caused such death.²

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, each of the following three elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), operated a motor vehicle: while he or she had .18 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

[and while the person's ability to operate such motor vehicle is impaired by the combined influence of drugs or of alcohol and any drug or drugs]

2. That the defendant operated such motor vehicle in a manner that caused the death of (specify); and
3. That the defendant did so as a result of such intoxication [or impairment by the use of a drug, or by the combined influence of drugs or of alcohol and any drug or drugs].

² See *People v. Mojica*, 62 A.D.3d 100, 874 N.Y.S.2d 195 (2d Dept. 2009). See also Legislative Memorandum in support of this statute, which 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.”

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

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Vehicular Manslaughter in the First Degree as charged in the _____ count.