

AGGRAVATED VEHICULAR HOMICIDE
(B Felony)
(Death of a Child)
PENAL LAW 125.14(7)
(Committed on or after Dec. 18, 2009)

The _____ count is Aggravated Vehicular Homicide.

Under our law, person is guilty of Aggravated Vehicular Homicide when he or she

engages in Reckless Driving¹

Select appropriate alternative(s):²

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

¹ At this point, the statute continues "and commits the crime of vehicular manslaughter in the second degree as defined in section 125.12 of this article." That portion of vehicular manslaughter in the second degree which is applicable to this crime is incorporated here.

² If the defendant is charged with having operated a motor vehicle with a gross vehicle weight rating of more than eighteen thousand pounds which contains flammable gas, radioactive materials or explosives (see Penal Law 125.12[2]), the VTL subsection and causation requirements are slightly different: "in violation of subdivision one of section eleven hundred ninety-two of the vehicle and traffic law, and such flammable gas, radioactive materials or explosives is the cause of such death, and as a result of such impairment by the use of alcohol, operates such motor vehicle in a manner that causes the death of such other person." In such cases, the charge must be modified.

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

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

use of a drug.⁵

or while his or her ability to operate such a vehicle is impaired by the combined influence of drugs or of alcohol and any drug or drugs.⁶

and 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], operates such motor vehicle in a manner that causes the death of a passenger in the vehicle who is fifteen years of age or less.⁷

Under our law, a person is guilty of RECKLESS DRIVING when that person drives or uses any motor vehicle,⁸ in a manner which unreasonably interferes with the free and proper use of a public highway, road, street, or avenue, or unreasonably endangers users of a public highway, road, street, or avenue.⁹

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 alcohol [or a drug, or by the combined influence of

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

⁶ Vehicle & Traffic Law § 1192(4-a).

⁷ The statute states “commits such crime while operating a motor vehicle while a child who is fifteen years of age or less is a passenger in such motor vehicle and causes the death of such child.” The charge has modified the statutory language for the sake of clarity.

⁸ At this point, the statute continues: “motorcycle or any other vehicle propelled by any power other than a muscular power or any appliance or accessory thereof.” (Vehicle and Traffic Law § 1212). Such language has been omitted here due to the all encompassing term “motor vehicle.” The additional statutory language has been inserted if that type of vehicle is at issue.

⁹ The term “public highway” used twice in the definition of “reckless driving,” is separately defined to include “[a]ny highway, road, street, avenue, alley, public place, public driveway or any other public way.” Vehicle and Traffic Law § 134. Instead of separately defining that term, the most common types of “public highway” (road, street, or avenue) have been incorporated directly into the definition of “reckless driving.” Of course, if one of the omitted types of “public highway” is in issue, that type of “public highway” should be added.

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 alcohol [or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs], such person operated the motor vehicle in a manner that caused such death.¹⁰

[The term “drug” used in this definition has its own special meaning in our law. The term DRUG includes (specify).]¹¹

[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.]

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 four elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), engaged in reckless driving of a motor vehicle;
2. That the defendant did so

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.

¹⁰ 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.” See *People v. Mojica*, 62 A.D.3d 100 (2nd Dept. 2009), lv. denied 12 N.Y.3d 856 (2009).

¹¹ See Vehicle & Traffic Law § 114-a and Public Health Law § 3306.

- 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.
- or* by the combined influence of drugs or of alcohol and any drug or drugs;
3. That the defendant operated such motor vehicle in a manner that caused the death of (*specify*), a passenger in the vehicle who was fifteen years of age or less; and
 4. 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].

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 Aggravated Vehicular Manslaughter 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 Aggravated Vehicular Manslaughter as charged in the _____ count.