AGGRAVATED VEHICULAR HOMICIDE
(B Felony)
(Reckless Driving; Vehicular Manslaughter;
BAC .18 and Death)
PENAL LAW 125.14 (1)
(Committed on or after Nov. 1, 2007)
(Revised January, 2013) [1]

The _____ count is Aggravated Vehicular Homicide.

Under our law, a person is guilty of Aggravated Vehicular Homicide when he or she engages in Reckless Driving[2] and commits the crime of Vehicular Manslaughter in the Second Degree[3] and does so[4] while operating 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.[5]

Some of the terms in that definition have their own special meaning in our law. I will now give you the meaning of the following terms: "Engages in Reckless Driving," and "Commits the

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[1] The 2013 revision was for the purpose of inserting into the charge the law as applied to a reckless driving charge where the driver is also alleged to have been intoxicated. *See* footnote eight and the text it references.

[2] At this point, the statute continues: “as defined by section twelve hundred twelve of the vehicle and traffic law.” That definition is utilized in this charge in the definition of “reckless driving.”

[3] At this point, the statute continues: “as defined in section 125.12 of this article.”

[4] The "and does so" is substituted for the statutory language of: "and commits such crimes." The reference to "crimes" in the context of this statute is not correct. While "reckless driving" is a crime, the statute does not recite that the offender must commit the "crime" of "reckless driving"; rather, the statute recites that the offender must "engage" in "reckless driving."

[5] At this point, the statute continues “made pursuant to the provisions of section eleven hundred ninety-four of the vehicle and traffic law.”

Crime of Vehicular Manslaughter in the Second Degree."

A person ENGAGES IN RECKLESS DRIVING when that person drives or uses any motor vehicle,[6] 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.[7]

Intoxication, absent more, does not establish reckless driving. One can engage in reckless driving without being intoxicated and, conversely, one can drive while intoxicated without engaging in reckless driving. Evidence of an individual's intoxication and how that condition may have affected his or her ability to perceive and react to risks commonly encountered while operating a motor vehicle on a public highway may be considered in determining whether a person was engaged in reckless driving when that evidence is coupled with evidence of the manner in which the motor vehicle was being operated.[8]

A person commits the crime of VEHICULAR

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[6] 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 & Traffic Law § 1212*). Such language has been omitted here due to the all encompassing term "motor vehicle." The additional statutory language should, however, be inserted if that type of vehicle is at issue.

[7] 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.

[8] *People v Goldblatt*, 98 AD3d 817 (3d Dept 2012).

MANSLAUGHTER IN THE SECOND DEGREE when he or she[9] operates a motor vehicle[10] 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;[11] 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 another person.

> *[**Note**: if a separate instruction to the jury was given for the applicable VTL 1192 offense incorporate it here by reference; otherwise select applicable portions and insert here.]*

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 drugs or of alcohol and any drug or drugs], and while doing so caused death of another person, then you may, but are not required to, infer that, as a result of such intoxication or impairment, such person operated the motor

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[9] At this point the statute states "causes the death of another...." That portion is omitted here because that language is repeated at the end of the statute where it makes more sense. Thus, to avoid redundancy and for clarity, this charge utilizes the reference to death at the end of the statute.

[10] At this point, the statute states: “in violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of the vehicle and traffic law or operates a vessel or public vessel in violation of paragraph (b), (c), (d) or (e) of subdivision two of section forty-nine-a of the navigation law.” Given that the instant crime, “Aggravated Vehicular Assault, requires that the defendant have an alcohol reading of .18, this charge inserts here only the operative language of subdivision two of VTL 1192 which requires a reading of .08.

[11] Vehicle & Traffic Law § 1192 (2).

vehicle in a manner that caused such death of another person.[12]

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of 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*), engaged in reckless driving of a motor vehicle; and

2. That the defendant did so while he/she had .18 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; and

3. That as a result of such intoxication or impairment, the defendant operated such motor vehicle in a manner that caused the death of (*specify*).

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 Homicide 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 Homicide as charged in the _____ count.

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[12] 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 AD3d 100 (2d Dept 2009), lv denied 12 NY3d 856 (2009).