

**VEHICULAR ASSAULT IN THE FIRST DEGREE**  
**Penal Law § 120.04(4)**  
**(Cause serious physical injury to more than one person)**  
**(Committed on or after December 15, 2006)**

The (*specify*) count is Vehicular Assault in the First Degree.

Under our law, a person is guilty of Vehicular Assault in the First Degree when he or she<sup>1</sup> operates a motor vehicle<sup>2</sup>

*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.<sup>3</sup>

*or* while he or she is in an intoxicated condition.<sup>4</sup>

*or* while his or her ability to operate such a vehicle is impaired by the use of a drug.<sup>5</sup>

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<sup>1</sup> At this point, Vehicular Assault in the First Degree states: “commits the crime of vehicular assault in the second degree as defined in section 120.03 of this article.” This charge omits the statutory language and sets forth the elements and alternatives for the underlying offense.

<sup>2</sup> At this point, the statute for the underlying offense of Vehicular Assault in the Second Degree states: “in violation of subdivision two, three, four or four-a 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. The Navigation Law provisions of the second-degree crime are omitted.

<sup>3</sup> See Vehicle & Traffic Law § 1192(2).

<sup>4</sup> See Vehicle & Traffic Law § 1192(3).

<sup>5</sup> See Vehicle & Traffic Law § 1192(4).

or while his or her ability to operate such motor vehicle is impaired by the combined influence of drugs or of alcohol and any drug or drugs.<sup>6</sup>

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 serious physical injury to more than one other person.<sup>7</sup>

The following term(s) used in that definition (has / have) a special meaning:

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.<sup>8</sup>

[The term "drug" used in that definition includes (specify).]<sup>9</sup>

*[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 alcohol or a drug or by the combined influence of drugs or of alcohol and any drug

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<sup>6</sup> See Vehicle & Traffic Law § 1192(4-a).

<sup>7</sup> The text of the statute contains two references to causing "serious physical injury to another person." In order to avoid redundancy and for clarity, the pattern charge contains one reference to such term.

<sup>8</sup> Penal Law § 10.00(10).

<sup>9</sup> See Vehicle & Traffic Law § 114-a and Public Health Law § 3306.

or drugs<sup>10</sup>] and while doing so caused serious physical injury to more than one other 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], the defendant operated the motor vehicle in a manner that caused the serious physical injury to more than one other person.<sup>11</sup>

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:

*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.

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<sup>10</sup> This paragraph reproduces the "rebuttable presumption" (*i.e.*, a permissible inference) set forth in Penal Law § 120.03(last paragraph). The words here in brackets, "by the combined influence of drugs or of alcohol and any drug or drugs," while an alternative element of the crime, do not appear at this point in the presumption statute as a predicate to the permissible inference which follows. The permissible inference which follows, however, does recite those words.

<sup>11</sup> Penal Law § 125.12. See *People v. Mojica*, 62 A.D.3d 100 (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."

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

*or* while the defendant's ability to operate such motor vehicle was impaired by the combined influence of drugs or of alcohol and any drug or drugs.

2. That the defendant operated the motor vehicle in a manner that caused serious physical injury to more than one other person, and
3. That the defendant did so as a result of that intoxication [or impairment by the use of a drug, or by the combined influence of drugs or of alcohol and any drug or drugs].

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.