

**VEHICULAR MANSLAUGHTER
SECOND DEGREE
(D Felony)
PENAL LAW 125.12(1)¹
(Committed on or after November 1, 2006)**

The _____ count is Vehicular Manslaughter in the Second Degree.

Under our law, a person is guilty of Vehicular Manslaughter 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

¹ Charges for the remaining alternatives of vehicular manslaughter 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 Manslaughter 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 & Traffic Law § 1192(3).

⁵ 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.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 in a manner that causes the death of such other person.⁷

[The term “drug” used in this definition has its own special meaning in our law. 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 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], the defendant operated the motor vehicle in a manner that caused such death.⁹

⁶ See Vehicle & Traffic Law § 1192(4-a).

⁷ The text of the statute contains two references to causing “the death of another person.” In order to avoid redundancy and for clarity, the pattern charge contains one reference to such term.

⁸ See Vehicle & Traffic Law § 114-a and Public Health Law § 3306.

⁹ 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.”

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 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.

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

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].

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 Second 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 Second Degree as charged in the
_____ count.