

**VEHICULAR MANSLAUGHTER
SECOND DEGREE
(D Felony)
(Premised on Vehicle & Traffic Law
1192 Violation)
PENAL LAW 125.12(1) & (2)
(Committed on or after Nov. 1, 1992)**

The _____ count is Vehicular Manslaughter in the Second Degree.

Under our law, a person is guilty of Vehicular Manslaughter in the Second Degree when,¹ with criminal negligence, that person causes another person's death by operating a vehicle²

[NOTE: Select appropriate alternative:

while he or she has .10 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]

¹At this point, the statute states: he/she "commits the crime of criminally negligent homicide as defined in section 125.10." The charge here substitutes for that language the definition of criminally negligent homicide.

²At this point, the statute 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 to charge. Charges for the remaining alternatives of vehicular manslaughter in the second degree are not provided, albeit the format of this charge may be used for those provisions, as necessary.

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

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

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

One [Some] of the terms used in this definition has its [have their] own special meaning in our law. I will now give you the meaning of the following term[s]:⁶ "criminal negligence" [and] ["vehicle"]⁷ [and "drug"].

CRIMINAL NEGLIGENCE is not the same as that type of negligence you may be familiar with that permits a person injured by ordinary negligence to obtain a monetary judgment in a civil law suit. The carelessness required for criminal negligence is appreciably more serious than that for ordinary civil negligence.

A person acts with CRIMINAL NEGLIGENCE with respect to a death when

that person engages in conduct which creates or contributes to a substantial and unjustifiable risk that another person's death will occur,

and when he or she fails to perceive that risk,

and when that risk is of such nature and degree that failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.⁸

[The term DRUG includes (specify).]⁹

⁶If causation, "death," or "person" is in issue, see Additional Charges at the end of this article.

⁷See Penal Law § 10.00(14) for the definition of "vehicle." That definition encompasses "motor vehicle," as defined in the Vehicle and Traffic Law § 125. Vehicle and Traffic Law § 1192 is applicable only to a "motor vehicle." If the "vehicle" in issue is within the statutory and ordinary meaning of the term and not otherwise in issue, it should not be necessary to charge the definition. If it is necessary, the definition of "motor vehicle" should be charged.

⁸See Penal Law § 15.05(4); *People v. Boutin*, 75 NY2d 692 (1990).

⁹See Vehicle & Traffic Law § 114-a and Public Health Law § 3306.

[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, both of the following two elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), caused the death of (specify); and
2. That the defendant did so with criminal negligence and by operation of a vehicle

[NOTE: Select appropriate provision:

while the defendant had .10 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.]

Therefore, if you find that the People have proven beyond a reasonable doubt both 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 either one or both 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.