

VEHICULAR ASSAULT SECOND DEGREE
(E Felony)
(Premised on Vehicle & Traffic Law 1192 Violation)
PENAL LAW 120.03(1) and (2)
(Committed or after Nov. 1, 1985)

The _____ count is Vehicular Assault in the Second Degree.

Under our law, a person is guilty of Vehicular Assault in the Second Degree when, with criminal negligence, that person causes serious physical injury to another person, and causes such serious physical injury by operation of a vehicle.¹

[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.²

or while he or she is in an intoxicated condition.³

or while his or her ability to operate such a vehicle is impaired by the use of a drug.^{4]}

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the

¹At this point, Vehicular Assault 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 to charge. Charges for the remaining alternatives of vehicular assault in the second degree are not provided, albeit the format of this charge may be used for those provisions as necessary.

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

³ See Vehicle and Traffic Law § 1192 (3).

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

following terms: “serious physical injury” [and] “criminal negligence”[and] [“vehicle”⁵] [and] [“drug”].

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.⁶

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 serious physical injury when

that person engages in conduct which creates or contributes to a substantial and unjustifiable risk that serious physical injury to another person 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

⁵See Penal Law § 10.00(14) for the definition of “vehicle.” That definition encompasses the definition of “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.

⁶See Penal Law § 10.00(10).

situation.⁷

[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.]

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 serious physical injury to (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

⁷See Penal Law § 15.05(4); *People v. Boutin*, 75 N.Y.2d 692 (1990).

⁸See Vehicle & Traffic Law § 114-a.

defendant guilty of the crime of Vehicular Assault 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 Assault in the Second Degree as charged in the _____ count.