

**VEHICULAR MANSLAUGHTER  
FIRST DEGREE  
(C Felony)  
(Premised on Vehicle & Traffic Law 1192 Violation While  
License Suspended, Etc.)  
PENAL LAW 125.13  
(Committed on or after Nov. 1, 1993)**

The \_\_\_\_\_ count is Vehicular Manslaughter in the First Degree.

Under our law, a person is guilty of Vehicular Manslaughter in the First Degree when,<sup>1</sup> with criminal negligence, that person causes another person's death by operating a vehicle<sup>2</sup>

*[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.<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

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<sup>1</sup>At this point, the statute states: he/she "commits the crime of vehicular manslaughter in the second degree as defined in section 125.12." The charge here substitutes for that language the definition of vehicular assault in the second degree as applied to operating a motor vehicle in violation of Vehicle and Traffic Law §§ 1192(2), (3), and (4).

<sup>2</sup>At this point, Penal Law § 125.12, incorporated by reference in this 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 First Degree are not provided, albeit the format of this charge may be used for those provisions, as necessary.

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

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

by the use of a drug.<sup>5]</sup>

[NOTE: At this point, there are two alternative elements. Add the following only when the suspension or revocation resulted from **refusal to submit to a chemical test**; otherwise, follow the procedure set forth in footnote six.<sup>6</sup>

and commits such crime while knowing or having reason to know that his or her license (or his or her privilege of operating a motor vehicle in the state of New York) (or his or her privilege of obtaining a license issued by the commissioner of motor vehicles) is suspended or revoked and such suspension or revocation is based upon a refusal to submit to a chemical test pursuant to section eleven hundred ninety-four (1194) of the vehicle and traffic law.]

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

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

<sup>6</sup>The definition of Vehicular Manslaughter in the First Degree contains three alternative elements--the one stated in the text; the following:

"and commits such crime while knowing or having reason to know that ... his [or her] license or his [or her] privilege of operating a motor vehicle in the state or his [or her] privilege of obtaining a license issued by the commissioner of motor vehicles is suspended or revoked . . . following a *conviction* for a violation of any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law" [Penal Law § 125.13(2)(b) (emphasis added)] ; and

a similar provision regarding revocation or suspension in *another state* based upon a *conviction* in such other state for an offense which would, if committed in this state, constitute the offense of driving while intoxicated or while one's ability is impaired by drugs pursuant to Vehicle & Traffic Law § 1192. Penal Law § 125.13(2)(a). Penal Law § 125.13(2)(a) (emphasis added)]

If either of the latter two elements applies, it must be charged in a special information. The defendant must be arraigned on it in accordance with the procedure set forth in CPL § 200.60(3). If, upon such arraignment, the defendant admits the element, the court must not make any reference to it in the definition of the offense or in listing the elements of the offense. But, if the defendant denies the element or remains mute, the court must add the applicable parts of the element to the definition of the offense and the list of elements. See, *People v. Cooper*, 78 NY2d 476 (1991).

meaning of the following term[s]:<sup>7</sup> "criminal negligence" [and] ["vehicle"]<sup>8</sup> [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.<sup>9</sup>

[The term DRUG includes (specify).]<sup>10</sup>

[NOTE: Here, either add the appropriate Vehicle and Traffic Law §

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<sup>7</sup> If causation, "death," or "person" is in issue, see Additional Charges at the end of this article.

<sup>8</sup> See 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.

<sup>9</sup> See Penal Law § 15.05(4); *People v. Boutin*, 75 N.Y.2d 692 (1990).

<sup>10</sup> See Vehicle & Traffic Law § 114-a and Public Health Law § 3306.

*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, each [both] of the following three [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 a vehicle was impaired by the use of a drug.]

[and]

- [3. That the defendant did so while knowing or having reason to know that his/her license (or his/her privilege of operating a motor vehicle in the state) (or his/her privilege of obtaining a license issued by the commissioner of motor vehicles) was suspended or revoked and such suspension or revocation was based upon a refusal to submit to a chemical test pursuant to section eleven hundred ninety-four (1194) of the vehicle and traffic law.<sup>11</sup>]

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<sup>11</sup>If one of the alternative elements is applicable, and the defendant admitted that element, then list **only** the first two elements for the jury.

If the alternative element involving a prior New York conviction is applicable and the defendant has denied that element or remained mute, the third element should read as follows:

**"and 3. That the defendant did so while knowing or having reason to know that his/her license [or his/her privilege of operating a motor vehicle in the state] [or his/her privilege of obtaining a license issued by the commissioner of motor vehicles] was suspended or revoked and such suspension or revocation was based upon a conviction for a violation of (specify)."**

If the alternative element involving a prior conviction in another jurisdiction is applicable and the defendant has denied that element or remained mute, the third element should read as follows:

Therefore, if you find that the People have proven beyond a reasonable doubt each [both] of those elements, you must find the defendant guilty of the crime of Vehicular Manslaughter in the First 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 [either one or both] of those elements, you must find the defendant not guilty of the crime of Vehicular Manslaughter in the First Degree as charged in the \_\_\_\_\_ count.

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**"and 3. That the defendant did so while knowing or having reason to know that his/her license [or his/her privilege of operating a motor vehicle in the state of (specify)] [or his/her privilege of obtaining a license to operate a motor vehicle in the state of (specify)] was suspended or revoked and such suspension or revocation was based upon a conviction in the state of (specify) for an offense which would, if committed in this state, constitute the offense of (specify)."**