

## HOMICIDE BY A MOTOR VEHICLE (FELONY)

The defendant is charged with homicide by a motor vehicle. Section 24G(a) of chapter 90 of our General Laws provides as follows:

“Whoever,

upon any way

*or* in any place to which the public has a right of access,

*or* upon any way or in any place to which members of the

public have access as invitees or licensees,

operates a motor vehicle

with a percentage, by weight, of alcohol in their blood of eight

one-hundredths or greater,

*or* while under the influence of intoxicating liquor

*or* [certain drugs] . . .

*and* so operates a motor vehicle recklessly or negligently so that

the lives or safety of the public might be endangered,

*and* by any such operation so described causes the death of

another person,

shall be guilty of homicide by a motor vehicle while under the

influence of an intoxicating substance . . . .”

In order to prove the defendant guilty of this offense, the Commonwealth must prove five things beyond a reasonable doubt:

**First:** That the defendant operated a motor vehicle;

**Second:** That he (she) operated it (on a way) (or) (in a place where the public has a right of access) (or) (in a place where members of the public have access as invitees or licensees);

**Third:** That while the defendant was operating the vehicle, he (she) (had a percentage, by weight, of alcohol in his [her] blood of .08% or greater)

(or) (was under the influence of intoxicating liquor)

(or) (was under the influence of [marihuana] [narcotic drugs, depressants, or stimulant substances, as I will define them for you in a moment] [vapors of glue] );

**Fourth:**

*Note: Based on the complaint, use only one of the following, unless they are charged in the alternative:*

**A. Reckless operation. That the defendant operated the vehicle**

**in a manner which is considered “reckless” under the laws of**

our Commonwealth;

**B. *Negligent operation.* That the defendant operated the vehicle**

**in a negligent manner so that the lives and safety of the public**

**might have been endangered;**

**and *Fifth*: That the defendant's actions caused the death of another person. The defendant caused the death if his (her) actions directly and substantially set in motion the entire chain of events that produced the death. The defendant is the cause of the death if his (her) actions produced it in a natural and continuous sequence, and the death would not have occurred without the defendant's actions.**

*At this point, the jury must be instructed on the definitions of "Operation of a motor vehicle" (Instruction 3.200) and "Public way" (Instruction 3.280). In addition, the jury must be instructed on the appropriate two predicate offenses: (1) either OUI-Liquor or with .08% Blood Alcohol (Instruction 5.300) or OUI-Drugs (Instruction 5.400), plus (2) either "Operating negligently so as to endanger" (Instruction 5.240) or "Operating recklessly" (Instruction 5.260). See also the supplemental instruction and notes to "Homicide by a Motor Vehicle (Misdemeanor)" (Instruction 5.160).*

NOTES:

1. **Continuance without a finding impermissible.** The prohibition in G.L. c. 90, § 24G(a) on filing or continuing without a finding a vehicular homicide charge governs all prosecutions "commenced under this section" and therefore applies both to felony vehicular homicide under § 24G(a) and misdemeanor vehicular homicide under § 24G(b). *Commonwealth v. Millican*, 449 Mass. 298, 867 N.E.2d 725 (2007).

2. **Parole eligibility.** A defendant convicted of felony vehicular homicide is eligible for parole, furlough, and good conduct deductions, subject to the one-year mandatory imprisonment requirement. *Commonwealth v. Haley*, 23 Mass. App. Ct. 10, 15-22, 498 N.E.2d 1063, 1068-1071 (1986).