

**OPERATING UNDER THE INFLUENCE
CAUSING SERIOUS INJURY**

I. FELONY BRANCH

The defendant is charged with causing serious bodily injury by operating a motor vehicle under the influence of (intoxicating liquor) (marihuana) (narcotic drugs) (depressants) (stimulant substances) (the vapors of glue) and by operating it (recklessly) (negligently so that the lives or safety of the public might be endangered). Section 24L(1) 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 while under the influence of

(intoxicating liquor) (marihuana) (narcotic drugs) (certain

depressants) (certain stimulant substances) (the vapors of

glue) . . .

and so operates a motor vehicle (recklessly) (negligently so that the lives or safety of the public might be endangered), and by . . . such operation . . . causes serious bodily injury, shall be punished”

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) was under the influence of (intoxicating liquor) (marihuana) (a narcotic drug, as defined in our statute) (a depressant, as defined in our statute) (a stimulant substance, as defined in our statute) (the vapors of glue);

Fourth:

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 serious bodily injury to someone.

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).

The third thing the Commonwealth must prove is that when the defendant was operating his (her) vehicle, he (she) was under the influence of (intoxicating liquor) (marihuana) (narcotic drugs) (depressants) (stimulant substances) (the vapors of glue).

If applicable, the jury must be instructed at this point on the definition of "Marihuana," "Narcotic Drug," or "Depressant or Stimulant Substance" from G.L. c. 90C, § 1.

If the evidence suggests that the defendant was under the influence of drugs rather than alcohol, the following four paragraphs should be replaced with the equivalent paragraphs from Instruction 5.400 (OUI-Drugs).

What does it mean to be "under the influence" of alcohol? A person

does not have to be drunk or unconscious to be “under the influence” of alcohol. Someone is “under the influence” whenever he has consumed enough alcohol to reduce his ability to operate a motor vehicle safely.

The purpose of the statute is to protect the public from any driver whose alertness, judgment and ability to respond promptly have been lessened by alcohol. This would include someone who is drunk, but it would also include anyone who has consumed enough alcohol to reduce his mental clarity, self-control and reflexes, and thereby left him with a reduced ability to drive safely. The amount of alcohol necessary to do this may vary from person to person.

The Commonwealth is not required to prove that the defendant *actually drove* in an unsafe or erratic manner, but it must prove that the defendant had a diminished *capacity* or *ability* to drive safely.

You are to decide this from all the believable evidence in this case, together with any reasonable inferences that you draw from the evidence. You may rely on your experience and common sense about the effects of alcohol. You should evaluate all the believable evidence about the defendant’s appearance, condition and behavior at the time, in order to determine whether the defendant’s ability to drive safely was diminished by

alcohol.

Here the jury must be instructed either on “Operating Negligently so as to Endanger” (Instruction 5.240) or “Operating Recklessly” (Instruction 5.260) .

The fifth and final thing which the Commonwealth must prove is that the defendant’s actions were the cause of serious bodily injury to someone, that is, they directly and substantially set in motion a chain of events that produced the serious injury in natural and continuous sequence. A bodily injury is “serious” if it had any one of the following four characteristics: (1) it created a substantial risk of death; (2) it involved total disability; (3) it involved the loss of any bodily function for a substantial period of time; or (4) it involved substantial impairment of any bodily function for a substantial period of time.

SUPPLEMENTAL INSTRUCTION

Possible verdicts involving lesser included offenses.

There are four possible verdicts that you may render in this case. Depending on your evaluation of what has been proved, you will find the defendant either guilty as charged, or not guilty, or guilty only of

one or the other of two lesser included offenses.

If the Commonwealth has proved all five elements of this offense to you beyond a reasonable doubt, you should return a verdict that the defendant is guilty of the offense as charged.

If the Commonwealth has failed to prove that the defendant drove (recklessly) (negligently so that the lives and safety of the public might have been endangered), but has proved the other four elements beyond a reasonable doubt — that the defendant operated a motor vehicle (on a public way) ([substitute for public way]) while under the influence of (intoxicating liquor) (marihuana) (narcotic drugs) (depressants) (stimulant substances) (the vapors of glue), and thereby caused someone serious bodily injury — then you should return a verdict that the defendant is guilty of that lesser offense, as indicated on the verdict slip.

The third possibility is that the Commonwealth has not proved that the defendant caused serious bodily injury to anyone, but has proved beyond a reasonable doubt that the defendant operated a motor vehicle (on a public way) ([substitute for public way]) while under the influence of (intoxicating liquor)

(marihuana) (narcotic drugs) (depressants) (stimulant substances) (the vapors of glue). In that case, you should return a verdict that the defendant is guilty of the lesser offense of operating a motor vehicle under the influence of (intoxicating liquor) (marihuana) (narcotic drugs) (depressants) (stimulant substances) (the vapors of glue).

Finally, if the Commonwealth has not proved at least three things beyond a reasonable doubt — that the defendant operated a motor vehicle (on a public way) ([*substitute for public way*]) while under the influence of (intoxicating liquor) (marihuana) (narcotic drugs) (depressants) (stimulant substances) (the vapors of glue) — then you must find the defendant not guilty.

Where both lesser included offenses are instructed on, see the appendix to this instruction for a sample jury verdict slip.

See the supplemental instructions, citations and notes under Instruction 5.300 (OUI-Liquor or .08% Blood Alcohol).

II. MISDEMEANOR BRANCH

The defendant is charged with causing serious bodily injury by operating a motor vehicle under the influence of (intoxicating liquor) (marihuana) (narcotic drugs) (depressants) (stimulant substances) (the vapors of glue). Section 24L(2) 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
while under the influence of (intoxicating liquor)
(marihuana) (narcotic drugs) (certain depressants)
(certain stimulant substances) (the vapors of glue) . . .
and by . . . such operation . . . causes serious bodily injury,
shall be punished”

In order to prove the defendant guilty of this offense, the Commonwealth must prove four 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) was under the influence of (intoxicating liquor) (marihuana) (a narcotic drug, as defined in our statute) (a depressant, as defined in our statute) (a stimulant substance, as defined in our statute) (the vapors of glue);

and ***Fourth:*** That the defendant's actions caused serious bodily injury to someone.

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).

The third thing the Commonwealth must prove is that when the defendant was operating his (her) vehicle, he (she) was under the influence of (intoxicating liquor) (marihuana) (narcotic drugs) (depressants) (stimulant substances) (the vapors of glue).

If applicable, the jury must be instructed at this point on the definition of "Marihuana," "Narcotic Drug," or "Depressant or Stimulant Substance" from G.L. c. 90C, § 1.

If the evidence suggests that the defendant was under the influence of alcohol, here insert the four paragraphs starting with "What does it mean . . ." on pp. 3-4, supra. If the evidence suggests that

the defendant was under the influence of drugs, here insert the equivalent paragraphs from Instruction 5.400 (OUI-Drugs).

The fourth and final thing which the Commonwealth must prove is that the defendant's actions were the cause of serious bodily injury to someone, that is, they directly and substantially set in motion a chain of events that produced the serious injury in natural and continuous sequence. A bodily injury is "serious" if it had any one of the following four characteristics: (1) it created a substantial risk of death; (2) it involved total disability; (3) it involved the loss of any bodily function for a substantial period of time; or (4) it involved substantial impairment of any bodily function for a substantial period of time.

See the supplemental instructions, citations and notes under Instruction 5.300 (OUI-Liquor or .08% Blood Alcohol).