

**OPERATING UNDER THE INFLUENCE OF DRUGS  
CAUSING SERIOUS INJURY**

**I. FELONY BRANCH - G. L.c. 90, § 24L (1)**

**The defendant is charged with causing serious bodily injury by operating a motor vehicle under the influence of (marihuana) (narcotic drugs) (depressants) (stimulant substances) (the fumes of any substance having the property of releasing toxic vapors) and by operating it (recklessly) (negligently so that the lives or safety of the public might be endangered).**

**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 the defendant 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 operating the vehicle, the defendant was under the influence of (marihuana) (narcotic drugs) (depressants) (stimulant substances) (the fumes of any substance having the property of releasing toxic vapors);**

***Fourth:***

*Based on the complaint, use only one of the following, unless they are both alleged in the alternative.*

- A. Reckless operation. That the defendant operated the vehicle  
recklessly;
- B. Negligent operation. That the defendant operated the vehicle  
negligently;

and *Fifth*: That the defendant's actions caused serious  
bodily injury to another person.

To prove the first element, the Commonwealth must prove  
beyond a reasonable doubt that the defendant was operating a motor  
vehicle. A person “operates” a motor vehicle not only while doing all  
of the well-known things that drivers do as they travel on a street or  
highway, but also when doing any act which directly tends to set the  
vehicle in motion. The law is that a person is “operating” a motor  
vehicle whenever they are in the vehicle and intentionally manipulate  
some mechanical or electrical part of the vehicle — like the gear shift  
or the ignition — which, alone or in sequence, will set the vehicle in  
motion.

Additional instructions on “operation” may be found in Instruction 3.200. Additional  
instruction on what constitutes a “motor vehicle” may be found in Instruction 3.210.

**To prove the second element, the Commonwealth must prove beyond a reasonable doubt that the defendant operated a motor vehicle on a public way. Any street or highway that is open to the public and is controlled and maintained by some level of government is a “public way.” This would include, for example, interstate and state highways as well as municipal streets and roads. In determining whether any particular street or road is a public way, you may consider evidence, if any, about whether it has some of the usual indications of a public way — for example, whether it is paved, whether it has streetlights, street signs, curbing and fire hydrants, whether there are buildings along the street, whether it has any crossroads intersecting it, and whether it is publicly maintained.**

Additional instructions on “public way”, including language related to a public “right of access” or access as “invitees or licensees”, may be found in Instruction 3.280.

**To prove the third element, the Commonwealth must prove that, when operating the vehicle, the defendant was under the influence of (marihuana) (narcotic drugs) (depressants) (stimulant substances) (the fumes of any substance having the property of releasing toxic vapors), namely: \_\_\_\_\_.**

**In determining whether the Commonwealth has done so, you may consider all the relevant evidence.**

**When the substance is alleged to be (narcotic drug) (depressant) (stimulant):**

*If the facts permit the taking of judicial notice that the particular substance meets the definition of narcotic drug, depressant or stimulant substance as provided by G.L. c. 94C, § 1:*

**I instruct as a matter of law that \_\_\_\_\_ is a (narcotic drug) (depressant) (stimulant).**

*If the facts do not permit the taking of judicial notice that the particular substance meets the definition of narcotic drug, depressant or stimulant substance as provided by G.L. c. 94C, § 1:*

**Narcotic Drug “Narcotic drug” is any of the following, whether produced directly or indirectly by extraction and chemical synthesis:**

**(a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;**

**(b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (a), but not including the isoquinoline alkaloids of opium;**

**(c) Opium poppy and poppy straw;**

**(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer,**

**derivative, or preparation thereof which is chemically equivalent or identical with any of the substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine;**

**Depressant or stimulant substance. “Depressant or stimulant substance” is**

**(a) a drug which contains any quantity of barbituric acid or any of the salts of barbituric acid; or any derivative of barbituric acid which the United States Secretary of Health, Education, and Welfare has by regulation designed as habit forming; or**

**(b) a drug which contains any quantity of amphetamine or any of its optical isomers; any salt of amphetamine or any salt of an optical isomer of amphetamine; or any substance which the United States Attorney General has by regulation designated as habit forming because of its stimulant effect on the central nervous system; or**

**(c) lysergic acid diethylamide; or**

**(d) any drug except marihuana which contains any quantity of a substance which the United States Attorney General has by regulation designated as having a potential for abuse because of its depressant**

**or stimulant effect on the central nervous system or its hallucinogenic effect.**

**What does it mean to be “under the influence” of (marihuana) (narcotic drugs) (depressants) (stimulant substances) (the fumes of any substance having the property of releasing toxic vapors).**

**Someone is “under the influence” of such a substance whenever they have consumed enough of it to reduce their ability to operate a motor vehicle safely by diminishing their alertness, judgment, and ability to respond promptly and effectively to unexpected emergencies.**

**This would include anyone who has consumed enough (marihuana) (narcotic drugs) (depressants) (stimulant substances) (the fumes of any substance having the property of releasing toxic vapors) to reduce their mental clarity, self-control and reflexes, and thereby left them with a reduced 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 consider 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 impaired.**

To prove the fourth element, the Commonwealth must prove beyond a reasonable doubt that the defendant operated the vehicle [recklessly] [negligently].

**Recklessly.** A person drives recklessly when they ignore the fact that their manner of driving is very likely to result in death or serious injury to someone, or they are indifferent to whether someone is killed or seriously injured. It is not enough for the Commonwealth to prove that the defendant acted negligently — that is, acted in a way that a reasonably careful person would not. It must be shown that the defendant's actions went beyond mere negligence and amounted to recklessness. The defendant was reckless if they knew, or should have known, that such actions would pose a grave danger of death or serious injury to others, but they chose, nevertheless, to run the risk and go ahead.

In determining whether the defendant drove recklessly in a manner that might have endangered the lives or safety of other people, you should take into account evidence, if any, about: the defendant's rate of

speed and manner of operation; the defendant's physical condition and how well they could see and control their vehicle; the condition of the defendant's vehicle; the kind of a road it was and who else was on the road; the time of day, the weather, and the road conditions; what any other vehicles or pedestrians were doing; and any other factors that you think are relevant. The defendant must have intended their acts, in the sense that the acts were not accidental. But it is not necessary that the defendant intended or foresaw the consequences of those acts, as long as a reasonable person would know that the acts were so dangerous that death or serious injury to other people would probably result.

Negligently. A person acts negligently when they fail to use due care, that is, when they act in a way that a reasonable person would not act. This can happen either by doing something that a reasonable person would not do under the circumstances, or by failing to do something that a reasonable person would do. The defendant acted



**negligently if they drove in a way that a reasonable person would not have, and by doing so created an unnecessary danger to other people, a danger that they could have avoided by driving more carefully.**

**The defendant's intent is not relevant in determining negligence. The Commonwealth is not required to prove that the defendant intended to act negligently. The issue here is whether or not the defendant drove as a reasonable person would have under the circumstances.**

**In determining whether the defendant drove negligently in a manner that might have endangered the lives or safety of other people, you should take into account evidence, if any, about: the defendant's rate of speed and manner of operation; the defendant's physical condition and how well they could see and control their vehicle; the condition of the defendant's vehicle; the kind of a road it was and who else was on the road; the time of day, the weather, and the road conditions; what any other vehicles or pedestrians were doing; and any other factors that you think are relevant.**

To prove the fifth element, the Commonwealth must prove beyond a reasonable doubt that the defendant's actions caused serious bodily injury to another person. This requires the Commonwealth to prove two things. First, the Commonwealth must prove that the defendant caused the injury. Second, the Commonwealth must prove that the injury was serious.

To prove that the defendant's act(s) caused the injury, the Commonwealth must prove beyond a reasonable doubt that the injury would not have occurred but for the defendant's act(s). The Commonwealth must prove that the defendant's conduct was necessary to bring about the injury. If the injury would have occurred without the defendant's act(s), the defendant is not responsible for that injury.

The Commonwealth must also prove beyond a reasonable doubt that a reasonable person in the defendant's position would have foreseen that their conduct could result in serious injury to a person. The Commonwealth does not have to establish that the defendant foresaw, or should have foreseen, the exact manner in which the injury occurred; but the Commonwealth must establish that the injury was a natural and probable consequence of the defendant's act(s).

**Second, the Commonwealth must prove that the injury was serious. 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.**

**If the Commonwealth has proven each of the elements beyond a reasonable doubt, you should return a verdict of guilty. If the Commonwealth failed to prove one or more elements beyond a reasonable doubt, you must return a verdict of not guilty.**

### **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. The first possibility is returning a verdict of guilty of the offense as charged if you find that the Commonwealth has proved all five elements of this offense beyond a**

reasonable doubt.

The second possibility is, 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 *[name of drug]*, and thereby caused another person 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 another person 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 *[name of drug]*]. 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 drugs.

Finally, if the Commonwealth has not proved all of the

**following 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 (*[name of drug]*) — then you must find the defendant not guilty.**

*When instructions are given on both lesser included offenses, see the appendix to this instruction for a sample jury verdict slip.*

If the Commonwealth has not separately charged the defendant with negligent or reckless operation, the judge may also instruct the jury that these are lesser included offenses, subject to the objections of the parties.

**II. MISDEMEANOR BRANCH – G. L. c. 90, § 24L(2)**

**The defendant is charged with causing serious bodily injury by operating a motor vehicle under the influence of (marihuana) (narcotic drugs) (depressants) (stimulant substances) (the fumes of any substance having the property of releasing toxic vapors). 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 the defendant 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 operating the vehicle, the defendant was under the influence of (marihuana) (narcotic drugs) (depressants) (stimulant substances) (the fumes of any substance having the property of releasing toxic vapors); and

***Fourth:*** That the defendant's actions caused serious bodily injury to another person.

*The judge should further instruct the jury about elements 1, 2, 3 and 5 of the instructions above.*

NOTES

*See the supplemental instructions, citations and notes under Instruction 5.300 (Operating with a Blood Alcohol Level of .08% or Greater) and Instruction 5.310 (Operating Under the Influence of Intoxicating Liquor). See also Instruction 3.640 (Expert Witness) if applicable.*

1. **Unit of prosecution.** The proper unit of prosecution is the number of victims seriously injured as a result of the defendant's conduct. See *Commonwealth v. Flanagan*, 76 Mass. App. Ct. 456, 461 (2010).