

7.9 [VEHICULAR] [VESSEL] HOMICIDE

§ 782.071 or § 782.072, Fla. Stat.

To prove the crime of [Vehicular] [Vessel] Homicide, the State must prove the following two elements beyond a reasonable doubt:

- 1. (Defendant) operated a [motor vehicle] [vessel] in a reckless manner likely to cause the death of or great bodily harm to another person.**
- 2. [His] [Her] reckless operation of a [motor vehicle] [vessel] caused the death of [(victim)] [an unborn child by injury to the mother].**

“Great bodily harm” means harm that is more than slight, trivial, minor, or moderate.

Luzardo v. State, 147 So. 3d 1083 (Fla. 3d DCA 2014).

The State does not have to prove the defendant intended to harm or injure anyone. However, the reckless operation of a [motor vehicle] [vessel] requires the State to prove more than a failure to use ordinary care. A “reckless manner” means in willful or wanton disregard for the safety of persons or property. “Willful” means intentional, knowing, and purposeful. “Wanton” means with a conscious and intentional indifference to consequences and with the knowledge that damage is likely to be done to persons or property.

Give if applicable. Reaves v. State, 979 So. 2d 1066 (Fla. 1st DCA 2008).

The conduct of [(victim)] [another] [another person] is a defense to this crime only when that conduct was the sole cause of the accident that resulted in a death.

Give if applicable.

If you find the defendant guilty of [Vehicular] [Vessel] Homicide, you must then determine whether the State has further proved beyond a reasonable doubt that:

- 1. At the time of the accident, (defendant) knew, or should have known, that the accident occurred; and**
- 2. (Defendant) failed to give information and render aid as required by law. (Read applicable portion of § 316.062, Fla. Stat., or § 327.30, Fla. Stat.)**

The State is not required to prove (defendant) knew that the accident resulted in injury or death.

Give only if applicable. § 782.071, Fla. Stat.

An “unborn child” means a member of the species *Homo sapiens*, at any stage of development, who is carried in the womb.

Applicable only to Vehicular Homicide. § 316.003, Fla. Stat. Some of these terms have their own statutory definitions which should be given if necessary.

A “motor vehicle” is a self-propelled vehicle not operated upon rails or guideway[, but not including any bicycle, electric bicycle, motorized scooter, electric personal assistive mobility device, mobile carrier, personal delivery device, swamp buggy, or moped].

Applicable only to Vessel Homicide. § 327.02, Fla. Stat.

“Vessel” is synonymous with boat and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

“Operate” means to be in charge of, in command of, or in actual physical control of a vessel upon the waters of this state, to exercise control over or to have responsibility for a vessel’s navigation or safety while the vessel is underway upon the waters of this state, or to control or steer a vessel being towed by another vessel upon the waters of the state.

Lesser Included Offenses

[VEHICULAR] [VESSEL] HOMICIDE — 782.071 OR 782.072			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Reckless [driving] [operation of a vessel]*		316.192 or 327.33	28.5 or 28.19
	Culpable negligence *	784.05(2)	8.9
	Culpable negligence*	784.05(1)	8.9

Comments

It is unclear whether the language in *Union v. State*, 642 So. 2d 91, 94 (Fla. 1st DCA 1994) and *Michel v. State*, 752 So. 2d 6 Fla. 5th DCA 2000) about it being unfair or unjust to hold the defendant criminally responsible based on the decedent’s conduct should be given as a special instruction. *Cf. Reaves v. State*, 979 So. 2d 1066, 1069 (Fla. 1st DCA 2008).

*Non-homicide lesser included crimes need not be given where it is undisputed that a death occurred as a result of the operation of the vehicle or vessel. *See Knowles v. State*, 29 So.3d 466 (Fla. 4th DCA 2010) and *Barritt v. State*, 531 So.2d 338 (Fla. 1988).

As of October 1, 2025, a conviction for Vehicular or Vessel Homicide becomes a first degree felony if the defendant has a prior conviction for DUI Manslaughter, BUI Manslaughter, Vehicular Homicide, or Vessel Homicide. As of October 2025, it was unclear whether the existence of such a prior conviction is an element of the crime that must be proven to a jury beyond a reasonable doubt or a recidivist factor that can be proven to the judge under a preponderance of the evidence standard at sentencing.

If the court treats the prior conviction as an element, it would generally be improper to allow the jury to hear about the conviction before the verdict on the underlying charge. Under that circumstance, do not read the allegation of a prior conviction to the jury and do not send the charging document into the jury room. If the defendant is found guilty, the historical fact of a prior conviction should then be determined by the jury in a bifurcated proceeding.

This instruction was adopted in 1981 and amended in 1989, 2006 [946 So. 2d 1061], 2008 [994 So. 2d 1038], 2015 [176 So. 3d 938], 2019 [262 So. 3d 59], on October 2, 2020, and on September 12, 2025.