

## **7.8 DRIVING UNDER THE INFLUENCE MANSLAUGHTER**

§ 316.193(3)(a), (3)(b), and (3)(c)3., Fla. Stat.

**To prove the crime of Driving Under the Influence Manslaughter, the State must prove the following three elements beyond a reasonable doubt:**

(Defendant) **drove [or was in actual physical control of] a vehicle.**

**While driving [or in actual physical control of] the vehicle,** (defendant)

*Give 2a or 2b or both as applicable.*

**was under the influence of [alcoholic beverages] [a chemical substance] [a controlled substance] to the extent that [his] [her] normal faculties were impaired.**

**had a [blood] [breath]-alcohol level of .08 or more grams of alcohol per [100 milliliters of blood] [210 liters of breath].**

**As a result of operating the vehicle,** (defendant) **caused or contributed to the cause of the death of [(victim)] [an unborn child].**

*Give if § 316.193(3)(a), (3)(b), and (3)(c)3.b., Fla. Stat., is charged.*

**If you find the defendant guilty of Driving Under the Influence Manslaughter, you must further determine whether the State proved beyond a reasonable doubt that:**

(Defendant), **at the time of the crash,**

**knew or should have known that the crash occurred**

**and**

**failed to either give information or render aid as required by law.**

**Florida law requires that the driver of any vehicle involved in a crash resulting in injury to or death of any person, or damage to any vehicle or other property which is driven or attended by any person, must supply [his] [her] name, address, and the registration number of the vehicle [he] [she] is driving to any person injured in the crash or to the driver or occupant of or person attending any vehicle or other property damaged in the crash. Upon request and if available, the driver shall also exhibit [his] [her] license or permit to drive.**

**The driver shall give the same information and, upon request, exhibit his or her license or permit, to any police officer who is at the scene of the crash or who is investigating the crash.**

**The driver shall also render reasonable assistance to any person injured in the crash, including carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary, or if such carrying is requested by the injured person.**

**In the event none of the persons specified above are in condition to receive the information to which they otherwise would be entitled, and no police officer is present, the driver of a vehicle involved in the crash, after trying to fulfill the requirements listed above as much as possible, shall immediately report the crash to the nearest office of a duly authorized police authority and supply the information specified above.**

*Give if applicable. § 316.193(4), Fla. Stat.*

**If you find the defendant guilty of Driving Under the Influence Manslaughter, you must also determine whether the State has proven beyond a reasonable doubt whether:**

**the defendant had a [blood] [breath]-alcohol level of .15 or higher while driving [or in actual physical control of] the vehicle.**

**the defendant was accompanied in the vehicle by a person under the age of 18 years at the time of the Driving Under the Influence.**

*§ 316.003, Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.*

**“Vehicle” is every device in, upon, or by which any person or property is or may be transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].**

*§ 316.1934, Fla. Stat.*

**“Normal faculties” include but are not limited to the ability to see, hear, walk, talk, judge distances, drive an automobile, make judgments, act in emergencies and, in general, to normally perform the many mental and physical acts of our daily lives.**

*Shaw v. State, 783 So. 2d 1097 (Fla. 5th DCA 2001).*

**“Impaired” means diminished in some material respect.**

*Give if applicable. The option of “on a vehicle” pertains to vehicles such as motorcycles and bicycles.*

**“Actual physical control of a vehicle” means the defendant must be physically in [or on] the vehicle and have the capability to operate the vehicle, regardless of whether [he] [she] is actually operating the vehicle at the time.**

*§ 322.01(2), Fla. Stat.*

**“Alcoholic beverages” are considered to be substances of any kind and description which contain alcohol.**

§ 877.111(1), Fla. Stat.

( ) is a chemical substance under Florida law.

Chapter 893, Fla. Stat.

( ) is a controlled substance under Florida law.

§ 775.021, Fla. Stat.

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

*Give if applicable. § 775.021(5)(b), Fla. Stat.*

**Driving Under the Influence Manslaughter does not require the State to prove that the defendant knew or should have known that (victim) was pregnant or that the defendant intended to cause the death of the unborn child.**

*Give if appropriate. § 316.1934(2)(a) and (2)(b), Fla. Stat.*

**If you find from the evidence that while driving [or in actual physical control of] a vehicle, the defendant had a blood or breath-alcohol level of .05 or less, you shall presume that the defendant was not under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired; but this presumption may be overcome by other evidence demonstrating that the defendant was under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired.**

**If you find from the evidence that while driving [or in actual physical control of] a vehicle, the defendant had a blood or breath-alcohol level in excess of .05 but less than .08, that fact does not give rise to any presumption that the defendant was or was not under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired. In such cases, you may consider that evidence along with other evidence in determining whether the defendant was under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired.**

*It is not necessary to instruct on the “prima facie evidence of impairment” in § 316.1934(2)(c), Fla. Stat., if the State charged the defendant with driving with a blood or breath-alcohol level of .08 or over. In those cases, if the jury finds that the defendant drove with an unlawful blood or breath-alcohol level, impairment becomes moot. Tyner v. State, 805 So. 2d 862 (Fla. 2d DCA 2001).*

*Give only if appropriate. State v. Burns, 661 So.2d 842 (Fla. 5th DCA 1995); Kurecka v. State, 67 So.3d 1052 (Fla. 4th DCA 2010).*

**A person [arrested] [being investigated] for Driving Under the Influence does not have the right to consult with an attorney before deciding whether to submit to a [breath] [urine] [blood] test.**

*Give only if appropriate*

**A person [arrested] [being investigated] for Driving Under the Influence does not have the right to consult with an attorney before deciding whether to submit to a [breath] [urine] [blood] test. However, if the defense maintains that the defendant mistakenly believed that [he] [she] did have such a right and refused to provide a [breath] [blood] [urine] sample because of that mistaken belief, you may consider that claim, as well as the state's competing claim that the defendant's refusal shows that [he] [she] did not want the police to obtain evidence regarding [his] [her] [[breath] [blood] alcohol level] [or] [drug consumption].**

*Defense of inoperability; give if applicable.*

**It is a defense to the charge of Driving Under the Influence Manslaughter if at the time of the alleged offense, the vehicle was inoperable. However, it is not a defense if the defendant was driving under the influence before the vehicle became inoperable. Therefore, if you are not convinced beyond a reasonable doubt that the vehicle was operable at the time of the alleged offense, you should find the defendant not guilty. However, if you are convinced that the vehicle was operable at the time of the alleged offense, then you should find the defendant guilty, if all the other elements of the charge have been proved beyond a reasonable doubt.**

#### **Lesser Included Offenses**

##### **DRIVING UNDER THE INFLUENCE MANSLAUGHTER — 316.193(3)(a), (3)(b), AND (3)(c)3.**

| <b>CATEGORY ONE</b>         | <b>CATEGORY TWO</b>                                              | <b>FLA. STAT.</b>                   | <b>INS. NO.</b> |
|-----------------------------|------------------------------------------------------------------|-------------------------------------|-----------------|
| Driving under the Influence |                                                                  | 316.193(1)                          | 28.1            |
|                             | Driving under the influence causing serious bodily injury        | 316.193(3)(a), (3)(b), and (3)(c)2. | 28.3            |
|                             | Driving under the influence causing damage to person or property | 316.193(3)(a), (3)(b), and (3)(c)1. | 28.1(a)         |

### **Comments**

DUI Manslaughter becomes a first degree felony if the defendant had a prior qualifying conviction. *See* § 316.193(3)(c), Fla. Stat. Because the fact of a prior qualifying conviction is purely a recidivist factor, the Committee on Standard Jury Instructions in Criminal Cases did not create an instruction for the jury to find the existence of the prior qualifying conviction. However, the courts may treat this enhancement as an element that must be proven to the jury under the beyond a reasonable doubt standard in a bifurcated proceeding. If so, a special instruction would be needed. The judge and the parties can look toward the end of standard instruction #28.2 for some language for a special instruction for the bifurcated proceeding.

This instruction was adopted in 1981 and amended in 1985 [477 So. 2d 985], 1987 [508 So. 2d 1221], 1992 [603 So. 2d 1175], 1995 [665 So. 2d 212], 1998 [723 So. 2d 123], 2006 [946 So. 2d 1061], 2009 [6 So. 3d 574], 2016 [190 So. 3d 1055], 2017 [211 So. 3d 995], 2019 [262 So. 3d 59], on October 2, 2020, on December 15, 2023, and on June 12, 2026.