

7 Tenn. Prac. Pattern Jury Instr. T.P.I.-Crim. 38.01

Tennessee Practice Series September 2025 Update

Tennessee Pattern Jury Instructions—Criminal

Chapter 38. Motor Vehicle Offenses

T.P.I.—Crim. 38.01 Driving under the influence [accompanied by a child] [resulting in serious bodily injury to a child] [resulting in the killing of a child] (for offenses committed on or after 7/1/13)

Any person who commits the offense of driving under the influence of *[an intoxicant][marijuana][a controlled substance][a controlled substance analogue][a drug][a substance affecting the central nervous system][or any combination thereof][accompanied by a child][resulting in serious bodily injury to a child][resulting in the killing of a child]* is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:¹

(1) that the defendant was driving or was in physical control² of an automobile or motor driven vehicle **[Only for offenses committed on or after July 1, 2019: or electric scooter];**

and

(2) **Only for offenses committed on or after 7/1/13 but prior to 4/9/15:** that this act occurred on a *[public road or highway][shopping center][trailer park][apartment house complex][location which is generally frequented by the public at large];*

or

Only for offenses committed on or after 4/9/15: that this act occurred *[on any public road or highway][on any street or alley][while on the premises of any [shopping center][trailer park][apartment house complex][premises that is generally frequented by the public at large]];*

and

(a) that the defendant was under the influence of *[an intoxicant][marijuana][a controlled substance][a controlled substance analogue][a drug][a substance affecting the central nervous system][or any combination thereof];*

or

(b) that the alcohol concentration in the defendant's *[[blood or breath was eight-hundredths of one percent (.08%)] [only for offenses committed on or after 7/1/24: blood was fifteen-hundredths of one percent (.15%)] [only for offenses committed prior to 7/1/24: blood was twenty-hundredths of one percent (.20%)] [or more]]*.

or

(c) that the defendant's blood alcohol concentration was four-hundredths of one percent (.04%) [or more] and the vehicle was a commercial motor vehicle.

[and

(a) that the defendant was accompanied by a child under eighteen (18) years of age;

or

(b) that the defendant was accompanied by a child under eighteen (18) years of age, and such child suffered serious bodily injury³ as the proximate result of the defendant's driving under the influence;

or

(c) that the defendant was accompanied by a child under eighteen (18) years of age, and such child was killed as the proximate result of the defendant's driving under the influence.]

[[] is a Schedule ____ controlled substance.]⁴

[[] is a controlled substance analogue.]⁵

["Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(A) Has a gross vehicle weight rating or gross combination weight rating of twenty-six thousand one (26,001) or more pounds;

(B) Is designed to transport more than fifteen (15) passengers, including the driver; or

(C) Is of any size and is used in the transportation of hazardous materials, as defined in this section;

[The following vehicles are not commercial motor vehicles:

(i) Vehicles that are controlled and operated by a farmer or nursery worker that are used to transport either agricultural products, farm machinery, or farm supplies to or from a farm or nursery, and are not used in the operations of a common or contract motor carrier and are used within one hundred fifty (150) miles of the person's farm or nursery;

(ii) Vehicles designed and used solely as emergency vehicles that are necessary for the preservation of life or property or the execution of emergency governmental functions performed under emergency conditions and not subject to normal traffic regulation, operated by paid or non-paid personnel;

(iii) Vehicles operated for military purposes by active duty military personnel; members of the military reserves; members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training, and national guard military technicians (civilians who are required to wear military uniforms); and active duty United States coast guard personnel. This exception is not applicable to United States reserve technicians;

(iv) Vehicles designed and used primarily as recreational vehicles; and

(v) Vehicles leased strictly and exclusively to transport personal possessions or family members for nonbusiness purposes.]]⁶

["Recreational vehicle" means a motor vehicle primarily designed as temporary living quarters for recreational camping or travel, as defined in ANSI Standards A119.2 and A119.5. The basic entities are: travel trailer, camping trailer, truck camper, motor home and park trailer.]⁷

["Electric scooter" means a device weighing less than one hundred pounds (100 lbs.) that has handlebars and an electric motor, is solely powered by the electric motor or human power, or both, has a maximum speed of no more than twenty miles per hour (20 mph) on a paved level surface when powered solely by the electric motor, and does not include an electric bicycle, electric personal assistive mobility device, motorcycle, or motor-driven cycle.]⁸

["Intoxication" is defined as acting under the influence of *[an intoxicant][marijuana][a controlled substance][a controlled substance analogue][a drug][a substance affecting the central nervous system][or any combination thereof]*.

The expression “under the influence of *[an intoxicant][marijuana][a controlled substance][a controlled substance analogue][a drug][a substance affecting the central nervous system][or any combination thereof]*” covers not only all the well known and easily recognized conditions and degrees of intoxication, but also any mental or physical condition which is the result of taking *[an intoxicant][marijuana][a controlled substance][a controlled substance analogue][a drug][a substance affecting the central nervous system][or any combination thereof]* in any form and which deprives the driver of that clearness of mind and control of oneself which the driver would otherwise possess. In this situation, it would not be necessary that the person be in such a condition as would make *[him][her]* guilty of public drunkenness. The law merely requires that the person be under the influence of *[an intoxicant][marijuana][a controlled substance][a controlled substance analogue][a drug][a substance affecting the central nervous system][or any combination thereof]*. The degree of intoxication must be such that it impairs the driver's ability to safely operate a motor vehicle by depriving the driver of the clearness of mind and control of *[himself][herself]* which *[he][she]* would otherwise possess.^{9]}

[“Proximate result” means a result, which in natural and continuous sequence, is a product of an act occurring or concurring with another, which, had it not happened, the result would not have occurred.]^{10]}

COMMENTS

1. Driving under the influence (first offense) is punishable by a fine of not less than three hundred fifty dollars (\$350) nor more than one thousand five hundred dollars (\$1,500) and confinement in the county jail or workhouse for not less than forty-eight (48) hours nor more than eleven (11) months and twenty-nine (29) days, and, prior to 7/1/16, twenty-four (24) hours of litter pickup were required to be performed. T.C.A. §§ 55-10-402(a)(1)(A) and 55-10-403(a)(1). A defendant whose blood alcohol concentration was .15% (.20% for offenses committed prior to 7/1/24) shall serve a minimum of seven consecutive days rather than 48 hours. T.C.A. § 55-10-402(a)(1)(B). If the defendant has a prior conviction within the past five (5) years, the court “shall order such person to undergo a drug and alcohol assessment and receive treatment as appropriate.” T.C.A. § 55-10-410(a)(4). If the defendant is accompanied by a child, there is a mandatory minimum incarceration of 30 days, and the defendant shall be fined \$1,000 in addition to the fine for the DUI offense. T.C.A. §§ 55-10-402(b)(1) and 55-10-403(a)(5). The incarceration enhancement shall be served in addition to any period of incarceration received for the violation of T.C.A. § 55-10-401. T.C.A. § 55-10-402(b)(1). If the child suffers serious bodily injury as a proximate result, the DUI “shall be punished as provided in § 39-13-106, for vehicular assault.” T.C.A. § 55-10-402(b)(2). If the child is killed as a proximate result, the defendant “commits a Class B felony and shall be punished as provided in § 39-13-213(b)(2), for vehicular homicide involving intoxication.” T.C.A. § 55-10-402(b)(3). The judge must report any such child endangerment to appropriate authorities for investigation pursuant to T.C.A. § 37-1-403(c)(2).
2. In sentencing convictions for DUI committed on or after 7/1/16, the court may order an offender to be subject to monitoring using a transdermal, GPS or alcohol or drug monitoring device, electronic monitoring with random alcohol or drug testing, or any other monitoring device the court believes necessary to ensure the person complies with the conditions of probation and, if applicable, the results of a clinical substance abuse assessment. If the court orders a person to be subject to monitoring, the court, the department of correction, or any other supervising agency that is responsible for the supervision of such person shall require periodic reporting by the offender for verification of the proper operation of the monitoring device; require the offender to have the device monitored for proper use and accuracy at least every thirty (30) days, or more frequently if required, and immediately notify the court of any violations, which shall be considered a violation of the conditions of probation.
3. See T.P.I. — Crim. 38.02 (Lawful Use Not a Defense); T.P.I. — Crim. 38.03 (Additional Blood Sample); T.P.I. — Crim. 38.04 (Refusal of Test); T.P.I. — Crim. 38.05 (Blood Alcohol Test); T.P.I. — Crim. 38.06 (Physical Control); T.P.I. — Crim. 38.08 (Supplemental Instruction for Multiple Counts of Prior Convictions); and T.P.I. — Crim. 38.09 (Underage Driving While Impaired).
4. In addition to other punishment, a first offender's driver's license shall be revoked for 1 year; for a second offense, 2 years; for a third offense, 6 years; for a fourth or subsequent offense, 8 years. T.C.A. § 55-10-404(a)(1).

Footnotes

- 1 T.C.A. § 55-10-401 and T.C.A. § 55-8-101.
- 2 As DUI is a continuing offense, the State is not required to make an election as to whether the defendant was driving the vehicle or merely had physical control. See *State v. Ovitta Vaughn*, No. W2022-00364-CCA-R3-CD, 2023 WL 3730890, at *11 (Tenn. Crim. App. May 31, 2023), and the cases cited therein.
- 3 As driving under the influence is a Title 55 offense, the definition of “serious bodily injury” contained in T.C.A. § 39-11-106 does not strictly apply. T.C.A. § 39-11-106 begins with the language “As used in this Title,” and so the definitions contained in that statute only apply to Title 39 offenses. Upon agreement of the parties, it is recommended that a definition of serious bodily injury be included in the written charge. The court may desire to refer to Title 39 for the definition.
- 4 As DUI is a Title 55 offense, the definition of “controlled substance” contained in T.C.A. § 39-17-402(4) does not strictly apply. T.C.A. § 39-17-402 begins with the language “As used in this part and title 53,” and so the definitions contained in that statute only apply to Title 39 and 53 offenses. Upon agreement of the parties, it is recommended that a definition of controlled substance be included in the written charge. The court may desire to refer to Title 39 for the definition.
- 5 As DUI is a Title 55 offense, the definition of “controlled substance analogue” contained in T.C.A. § 39-17-454 does not strictly apply. T.C.A. § 39-17-454 begins with the language “As used in this section,” and so the definition contained in that statute applies only to T.C.A. § 39-17-454. Upon agreement of the parties, the trial judge should include this bracketed language if a controlled substance analogue is alleged in an element and it is one listed in T.C.A. § 39-17-452 as an analogue. If it is not listed, it will be a jury question, and the trial judge should utilize T.P.I. — Crim. 31.20, Controlled substance analogue.
- 6 T.C.A. § 55-50-102(12).
- 7 T.C.A. § 55-50-102(46).
- 8 T.C.A. § 55-8-101.
- 9 T.C.A. § 55-10-401(1).
- 10 The definition of “proximate result” is based on the definition of “proximate cause,” as set forth in T.P.I. — Crim. 7.05(b), Second degree murder (drugs as proximate cause).

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T.P.I.—Crim. 38.02 Driving Under The Influence: Lawful Use Not A Defense

[If it appears from the proof that the defendant was driving under the influence of any intoxicant, alcohol, marijuana, controlled substance, controlled substance analogue, drug, substance or combination thereof that causes impairment, it is not a defense to driving under the influence that the defendant was or had been entitled to use one (1) or more of such intoxicants, marijuana, controlled substances, controlled substance analogues, drugs, or substances.

Whether or not the defendant was under the influence of any intoxicant, marijuana, controlled substance, controlled substance analogue, drug or substance or combination thereof is for you to determine based upon all of the proof in the case.]¹

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Footnotes

¹ T.C.A. § 55-10-411.

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7 Tenn. Prac. Pattern Jury Instr. T.P.I.-Crim. 38.03

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T.P.I.—Crim. 38.03 Driving under influence: Additional blood sample

Any person who is arrested for the offense of driving under the influence of an intoxicant or drug and who takes a test at the request of the arresting officer to determine *[his]/[her]* blood alcohol or drug content, has the right to have an additional sample of blood or urine procured to be tested independently at the expense of the person arrested.¹

This does not require any arresting officer to transport such a person from the place of *[his]/[her]* incarceration to a hospital or any other place for such a test. It is the duty of the person arrested to make any arrangements for a second test and to pay for such test. It is the duty of the arresting officer to refrain from actively interfering with any efforts of the person arrested to have a doctor or other qualified person to come to the jail and take a sample of blood for testing.

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T.C.A. § 55-10-410(e).

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T.P.I.—Crim. 38.04 Driving under influence: Refusal of test

If you find from the proof that the defendant was offered and refused to submit to a test for the purpose of determining the alcohol or drug content of *[his]/[her]* blood and that the law enforcement officer advised the defendant that refusal to submit to such a test will result in suspension of *[his]/[her]* operator's license, then such refusal is not sufficient standing alone and by itself to establish the guilt of the defendant, but it is a fact which, if proved, may be considered by you in the light of all other proved facts in deciding whether the defendant is guilty or not guilty.¹ The weight to which such a circumstance is entitled and whether or not such conduct shows a consciousness of guilt are matters for your determination.

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Footnotes

1 See T.C.A. § 55-10-406.

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7 Tenn. Prac. Pattern Jury Instr. T.P.I.-Crim. 38.05

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Chapter 38. Motor Vehicle Offenses

T.P.I.—Crim. 38.05 Driving under influence: Blood alcohol test

You have heard from the proof that at the time of the defendant's arrest, *[he]/[she]* consented to and was given a test for the purpose of determining the alcohol content of the defendant's blood.

Evidence from the test that there was, at the time alleged, eight-hundredths of one percent (.08%) [for first offense DUI's only, committed prior to July 1, 2003, substitute "ten-hundredths of one percent (.10%)"] or more by weight of alcohol in the defendant's blood, creates¹ an inference that the defendant was under the influence of such intoxicant, and that the defendant's ability to drive was impaired.²

If you find from the proof that the defendant was found by means of a blood test to have eight-hundredths of one percent (.08%) or more by weight of alcohol in the defendant's blood, you, the Jury, are permitted to infer that the defendant was under the influence of such intoxicant, and that the defendant's ability to drive was therefore impaired sufficiently to constitute a violation of the law against driving under the influence of alcohol.

However, you are never required to make this inference. It is the exclusive province of the jury to determine whether the facts and circumstances shown by the evidence in this case warrant any inference which the law permits you the jury to draw from any blood test result. Also, the inference may be rebutted by other evidence and circumstances.

It is for the jury to determine, after a consideration of all the evidence, whether to make the inference which the law permits, the correctness of such inference, and what weight is to be given to such evidence.

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Footnotes

¹ This is a rewording of T.C.A. § 55-10-411(a). In the Committee's opinion, the statutory language "shall create a presumption" creates an unconstitutional mandatory presumption.

² T.C.A. § 55-10-411(a).

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T.P.I.—Crim. 38.06 Driving under the influence: Physical control

[In deciding whether or not the defendant was in physical control of an automobile or motor driven vehicle, you may take into account all the circumstances proven in the trial, including the location of the defendant in relation to the vehicle, the whereabouts of the ignition key, whether the motor was running, the defendant's ability, but for his intoxication, to direct the use or non-use of the vehicle, or the extent to which the vehicle itself is capable of being operated or moved under its own power or otherwise. The same considerations may be used by you as circumstantial evidence that the defendant had or had not been driving the vehicle.]¹ [You have heard proof that the vehicle allegedly controlled by the defendant was incapable of being operated. In making your decision as to whether the defendant was in physical control, you may also consider whether or not the vehicle was reasonably capable of being rendered operable by the defendant.]² Before you can convict the defendant, the State must prove the defendant was in physical control of an automobile or motor driven vehicle beyond a reasonable doubt. Whether or not the circumstances shown in the trial prove that the defendant drove or was in physical control of an automobile or motor driven vehicle are matters for your determination.

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Footnotes

1 State v. Lawrence, 849 S.W.2d 761, 765 (Tenn. 1993); cited in State v. Butler, 108 S.W.3d 845, 850 (Tenn. 2003).

2 State v. Butler, 108 S.W.3d 845, 852 (Tenn. 2003).

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7 Tenn. Prac. Pattern Jury Instr. T.P.I.-Crim. 38.08

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T.P.I.—Crim. 38.08 Driving under the influence: Supplemental instruction number one

Members of the Jury, you have determined that the defendant is guilty of driving under the influence of an intoxicant as charged in Count _____ of the indictment.

It will now be your duty to determine whether or not the defendant has previously been convicted of *[such offense]* *[vehicular homicide as a result of intoxication]* *[aggravated vehicular homicide]* *[vehicular assault]* *[aggravated vehicular assault]* *[adult driving while impaired]* **[only for offenses committed on or after 7/1/22: boating under the influence of an intoxicant]** and, if you so find, to fix the amount of the fine.

The statutory law of this state provides that when a person is convicted of a *[second]* *[third]* *[fourth or subsequent]* **[only for offenses committed on or after 7/1/16: sixth]** **[only for offenses committed on or after 7/1/19: seventh or subsequent]** offense 'of *[driving under the influence of an intoxicant]* *[vehicular homicide as a result of intoxication]* *[aggravated vehicular homicide]* *[vehicular assault]* *[aggravated vehicular assault]* *[adult driving while impaired]* **[only for offenses committed on or after 7/1/22: boating under the influence of an intoxicant]** *[any combination of the above]* then the punishment is enhanced or increased.

[The law of this state provides that a prior conviction for vehicular homicide as a result of intoxication, aggravated vehicular homicide, vehicular assault, aggravated vehicular assault, **[only for offenses committed on or after 7/1/22: boating under the influence of an intoxicant]** or adult driving while impaired, for the purpose of enhancing the punishment for the offense of driving under the influence of an intoxicant, shall be treated the same as a prior conviction for driving under the influence of an intoxicant.]¹

[For offenses committed on or after 7/1/10 but prior to 7/1/19: A person who is convicted of driving under the influence of an intoxicant shall not be considered a repeat or multiple offender if ten (10) or more years have elapsed between the date of the present violation and the date of any immediately preceding violation of driving under the influence of an intoxicant that resulted in a conviction for such offense. If, however, the date of a person's violation of driving under the influence of an intoxicant is within ten (10) years of the date of the present violation, then the person shall be considered a multiple offender. If a person is considered a multiple offender under this part, then every violation of driving under the influence of an intoxicant that resulted in a conviction for such offense occurring within ten (10) years of the date of the immediately preceding violation shall be considered in determining the number of prior offenses. However, a violation occurring more than twenty (20) years from the date of the instant violation shall never be considered a prior offense for that purpose.]

or

[For offenses committed on or after 7/1/19: A person who is convicted of driving under the influence of an intoxicant shall not be considered a repeat or multiple offender if ten (10) or more years have elapsed between the date of the present violation and the date of any immediately preceding violation of driving under the influence of an intoxicant that resulted in a conviction for such

offense, and twenty (20) or more years have elapsed between the date of the present violation and the date of any immediately preceding violation of vehicular homicide as a result of intoxication, aggravated vehicular homicide, vehicular assault, or adult driving while impaired that resulted in a conviction for such offense. If, however, the date of a person's violation of driving under the influence of an intoxicant is within ten (10) years of the date of the present violation, or the date of the person's violation of vehicular homicide as a result of intoxication, aggravated vehicular homicide, vehicular assault, or adult driving while impaired is within twenty (20) years of the date of the present offense, then the person shall be considered a multiple offender. If a person is considered a multiple offender under this part, then every violation of driving under the influence of an intoxicant that resulted in a conviction for such offense occurring within ten (10) years of the date of the immediately preceding violation, and every violation of vehicular homicide as a result of intoxication, aggravated vehicular homicide, vehicular assault, or adult driving while impaired occurred within twenty (20) years of the date of the present offense shall be considered in determining the number of prior offenses. However, any violation occurring more than twenty (20) years from the date of the instant violation shall never be considered a prior offense for that purpose.]²

[For purposes of determining if the defendant is a multiple offender, you may use a conviction for an offense committed in another state that would constitute the offense of *[driving under the influence of an intoxicant][vehicular assault][aggravated vehicular assault][vehicular homicide as a result of intoxication][aggravated vehicular homicide][only for offenses committed on or after 7/1/22: boating under the influence of an intoxicant]* if it had been committed in this state. That offense shall be considered a prior conviction of an offense in this state if the elements of that offense are the same as the elements of the offense in this state.]³

For conviction on the second offense there shall be imposed a fine of not less than six hundred dollars (\$600) nor more than three thousand five hundred dollars (\$3,500) [For the third conviction there shall be imposed a fine of not less than one thousand one hundred dollars (\$1,100) nor more than ten thousand dollars (\$10,000).] [For the fourth or subsequent conviction there shall be imposed a fine of not less than three thousand dollars (\$3,000) nor more than fifteen thousand dollars (\$15,000).]⁴ **[Only for offenses committed on or after 7/1/16:** For the sixth or subsequent offense you may in your discretion fix a fine in any amount not to exceed \$10,000.]⁵

You will first determine whether or not the defendant has been previously convicted of *[driving under the influence of an intoxicant][vehicular homicide as a result of intoxication][aggravated vehicular homicide][vehicular assault][aggravated vehicular assault][adult driving while impaired][only for offenses committed on or after 7/1/22: boating under the influence of an intoxicant]* beyond a reasonable doubt. If you so find, then you will fix a fine within the instructed limits. Your verdict on each of these matters must be unanimous; each juror must agree to any verdict.

Any record of prior conviction[s] of the defendant is evidence which you may consider. A judgment of conviction of any person under the same name as that of the defendant may create an inference that the identity of such person is the same as the defendant. However, the jury is not required to make this inference. It is the exclusive province of the jury to determine whether the facts and circumstances shown by all the evidence in the case warrant the inference which the law permits the jury to draw.⁶

If you find beyond a reasonable doubt that the conviction as set out in your previous verdict is a second conviction then your verdict will be:

We, the jury, find the defendant, _____, guilty of a second offense of driving under the influence of an intoxicant.” You will then report the amount of the fine.

[If you find beyond a reasonable doubt that the conviction as set out in your previous verdict is a third conviction then your verdict will be:

"We, the jury, find the defendant, _____, guilty of a third offense of driving under the influence of an intoxicant." You will then report the amount of the fine.]

[If you find beyond a reasonable doubt that the conviction as set out in your previous verdict is a fourth conviction then your verdict will be:

"We the jury, find the defendant, _____, guilty of a fourth offense of driving under the influence of an intoxicant." You will then report the amount of the fine.]

[If you find beyond a reasonable doubt that the conviction as set out in your previous verdict is a fifth conviction then your verdict will be:

"We the jury, find the defendant, _____, guilty of a fifth offense of driving under the influence of an intoxicant." You will then report the amount of the fine.]

[If you find beyond a reasonable doubt that the conviction as set out in your previous verdict is a sixth conviction then your verdict will be:

"We the jury, find the defendant, _____, guilty of a sixth offense of driving under the influence of an intoxicant." You will then report the amount of the fine.]

[If you find beyond a reasonable doubt that the conviction as set out in your previous verdict is a seventh conviction then your verdict will be:

"We the jury, find the defendant, _____, guilty of a seventh offense of driving under the influence of an intoxicant." You will then report the amount of the fine.]

If, however, you find that the defendant has not been previously convicted of driving under the influence of an intoxicant as charged in Count _____ of the indictment, or if you have a reasonable doubt thereof, then your verdict will be:

"We, the jury, find the defendant, _____, not guilty of Count _____."

In the event your verdict is that the defendant has committed a *[second]* *[third]* *[fourth]* *[fifth]* *[sixth]* *[seventh]* offense, then the fine you fix would replace the fine you reported to the Court by your verdict for Count _____. On the other hand, if you find that the defendant is not guilty of Count _____, then the fine which you set in the trial on Count _____ would be the fine for the case. As previously stated, the Court would fix other punishment.

You will take with you the indictment and the Court's previous written instructions. You should follow such previous instructions as to the law of consideration of evidence, deliberations, reasonable doubt, witnesses and any other relevant matters.

You may now retire to consider your verdict.

COMMENTS

1. A person whose convictions for violating DUI occur more than ten (10) years apart shall not be considered a multiple offender. T.C.A. § 55-10-403(a)(3). However, prior convictions for vehicular homicide as a result of intoxication, aggravated vehicular homicide, vehicular assault, aggravated vehicular assault, boating under the influence, and adult driving while impaired qualify if occurring any time within 20 years of the instant offense to qualify.

2. In addition to other punishment, a first offender's driver's license shall be revoked for one year; for a second offense, 2 years; for a third offense, 3 to 10 years for offenses committed prior to 7/1/11, 6 to 10 years for offenses committed on or after 7/1/11 but prior to 7/1/13, and 6 years for offenses committed on or after 7/1/13; for a fourth or subsequent offense, 5 years if committed prior to 7/1/11, and 8 years if committed on or after 7/1/11. T.C.A. § 55-10-404(a)(1).
3. For offenses committed on or after 7/1/23, upon a third or subsequent conviction for DUI involving the use of alcohol, the court shall order the defendant to wear a transdermal alcohol monitoring device for a minimum period of ninety (90) days of continuous sobriety without any confirmed drinking or tampering events upon release on probation. This requirement may be waived by the judge in the best interest of justice, if the person has already completed a ninety day period of continuous sobriety as a condition of release on bail. T.C.A. § 55-10-401(a)(3).

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Footnotes

- | | |
|---|---|
| 1 | T.C.A. § 55-10-405(c), T.C.A. § 55-10-418(b). |
| 2 | T.C.A. § 55-10-405(a). |
| 3 | T.C.A. § 55-10-405(b). |
| 4 | T.C.A. § 55-10-403(a)(1). |
| 5 | T.C.A. § 40-35-111(b)(3). |
| 6 | T.P.I.—Crim. 42.19, Inferences. |

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7 Tenn. Prac. Pattern Jury Instr. T.P.I.-Crim. 38.09(a)

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Chapter 38. Motor Vehicle Offenses

T.P.I.—Crim. 38.09(a) Underage driving while impaired (for offenses committed on or after 9/19/16)¹

Any person who is eighteen (18) years of age or over, but under twenty-one (21) years of age and who operates a motor vehicle while impaired is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:²

(1) that the defendant was driving or was in physical control of an automobile or motor driven vehicle;

and

(a) that the defendant was under the influence of *[an intoxicant][marijuana][a controlled substance][a controlled substance analogue][a drug][a substance affecting the central nervous system][or any combination thereof]*;

or

(b) that the alcohol concentration in the defendant's [blood or breath was two-hundredths of one percent (0.02%) or more];

and

(3) That the defendant was eighteen (18) years of age or over, but under twenty-one (21) years of age.

[] is a Schedule ____ controlled substance.]

[] is a controlled substance analogue.]

“Intoxication” is defined as acting under the influence of *[an intoxicant][marijuana][a controlled substance][a controlled substance analogue][a drug][a substance affecting the central nervous system][or any combination thereof]*.

The expression “under the influence of *[an intoxicant][marijuana][a controlled substance][a controlled substance analogue][a drug][a substance affecting the central nervous system][or any combination thereof]*” covers not only all the well known and easily recognized conditions and degrees of intoxication, but also any mental or physical condition which is the result of taking *[an intoxicant][marijuana][a controlled substance][a controlled substance analogue][a drug][a substance affecting the central nervous system][or any combination thereof]* in any form and which deprives the driver of that clearness of mind and control of oneself which the driver would otherwise possess. In this situation, it would not be necessary that the person be in such a condition as would make *[him][her]* guilty of public drunkenness. The law merely requires that the person be under the influence of *[an intoxicant][marijuana][a controlled substance][a controlled substance analogue][a drug][a substance affecting the central nervous system][or any combination thereof]*. The degree of intoxication must be such that it impairs the driver's ability to safely operate a motor vehicle by depriving the driver of the clearness of mind and control of *[himself][herself]* which *[he][she]* would otherwise possess.³

[It is not a defense to this offense that the defendant who drove while under the influence of narcotic drugs or barbitol drugs was lawfully entitled to use the drugs].⁴

Comments

1. Driving while impaired under age 21 is a Class A Misdemeanor, punishable only by a \$250 fine and by a driver's license suspension of one (1) year. The court may also impose, in its discretion, public service work T.C.A. § 55-10-415(d). Driving while impaired is a lesser included offense of driving while intoxicated. T.C.A. § 55-10-415(c).

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Footnotes

- 1 This offense was repealed by 2016 Tenn. Pub. Acts Ch. 1030 effective 7/1/16, and was reenacted by 2016 Second Executive Session, ch. 1, effective 9/19/16. This pattern instruction formerly contained the jury charge for Underage driving while impaired—Under 21 [For offenses committed prior to 7/1/16]. To obtain that pattern instruction, *see* T.P.I. 38.09(b) (28th Ed. 2024), or an earlier edition.
- 2 T.C.A. § 55-10-415(a).
- 3 T.C.A. § 55-10-415(a)(1).
- 4 T.C.A. § 55-10-415(b).

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7 Tenn. Prac. Pattern Jury Instr. T.P.I.-Crim. 6.04

Tennessee Practice Series September 2025 Update

Tennessee Pattern Jury Instructions—Criminal

Chapter 6. Assault

T.P.I.—Crim. 6.04 Vehicular assault

Any person who commits the offense of vehicular assault is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:¹

(1) that the defendant caused serious bodily injury to the alleged victim by the operation of a *[motor vehicle]* **[only for offenses committed on or after 7/1/21: vessel subject to registration]**;

and

(2) that the serious bodily injury was the proximate result of the driver's intoxication;

and

(3) that the defendant acted recklessly.

“Intoxication” is defined as acting under the influence of *[an intoxicant][marijuana][a controlled substance][a controlled substance analogue][a drug][a substance affecting the central nervous system][or any combination thereof]*. The expression “under the influence of *[an intoxicant][marijuana][a controlled substance][a controlled substance analogue][a drug][a substance affecting the central nervous system][or any combination thereof]*” covers not only all the well known and easily recognized conditions and degrees of intoxication, but also any mental or physical condition which is the result of taking *[an intoxicant][marijuana][a controlled substance][a controlled substance analogue][a drug][a substance affecting the central nervous system][or any combination thereof]* in any form and which deprives one of that clearness of mind and control of oneself which one would otherwise possess. In this situation, it would not be necessary that the person be in such a condition as would make *[him][her]* guilty of public drunkenness. The law merely requires that the person be under the influence of *[an intoxicant][marijuana][a controlled substance][a controlled substance analogue][a drug][a substance affecting the central nervous system][or any combination thereof]*. The degree of intoxication must be such that it impairs the driver's ability to safely operate a motor vehicle by depriving the driver of the clearness of mind and control of *[himself][herself]* which *[he][she]* would otherwise possess.]²

“Motor vehicle” means every vehicle that is self-propelled, excluding electric scooters, motorized bicycles, **[Only for offenses committed on or after July 1, 2020: personal delivery devices]**, and every vehicle that is propelled by electric power obtained from overhead trolley wires. “Motor vehicle” means any low speed vehicle³ or medium speed vehicle.⁴ “Motor vehicle” means any mobile home or house trailer as defined in § 55-1-105.]⁵

“Proximate result” means a result, which in natural and continuous sequence, is a product of an act occurring or concurring with another, which, had it not happened, the result would not have occurred.

“Serious bodily injury” means bodily injury that involves a substantial risk of death; protracted unconsciousness; extreme physical pain; protracted or obvious disfigurement; or protracted loss or substantial impairment of a function of a bodily member, organ or mental faculty [**only for offenses committed on or after 7/1/09: or a broken bone of a child who is eight (8) [only for offenses committed on or after 7/1/14: twelve (12)] years of age or less**].⁶ [“Bodily injury” includes a cut, abrasion, bruise, burn or disfigurement, and physical pain or temporary illness or impairment of the function of a bodily member, organ, or mental faculty.]⁷

“Recklessly” means that a person acts recklessly with respect to circumstances surrounding the conduct or the result of the conduct when the person is aware of, but consciously disregards, a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the accused person's standpoint.⁸

The requirement of “recklessly” is also established if it is shown that the defendant acted knowingly or intentionally.⁹

“Knowingly” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.¹⁰

“Intentionally” means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.¹¹

If recklessness establishes an element of an offense and the person is unaware of the risk because of voluntary intoxication, the person's unawareness is immaterial in a prosecution for that offense.¹² Voluntary intoxication means intoxication caused by a substance that the person knowingly introduced into the person's body, the tendency of which to cause intoxication was known or ought to have been known.¹³

[Any alleged victim includes a human embryo or fetus at any stage of gestation in utero.]¹⁴

Comments

1. Vehicular assault is a Class D felony. T.C.A. § 39-13-106(b).

For a first offense committed on or after 7/1/15, there is a mandatory minimum sentence of forty-eight (48) consecutive hours of incarceration before a defendant can qualify for diversion, T.C.A. § 40-35-313(a)(1)(B)(i)(c), or is eligible for release on probation. If the defendant has one (1) prior conviction for an alcohol-related offense (defined as DUI, vehicular assault, vehicular homicide as a result of intoxication or aggravated vehicular homicide), there is a mandatory minimum sentence of forty-five (45) consecutive days of incarceration. If the defendant has any combination of two (2) prior convictions for an alcohol-related offense, there is a mandatory minimum sentence of one hundred twenty (120) consecutive days of incarceration. If the defendant has any combination of three (3) or more prior convictions for an alcohol-related offense, there is a mandatory minimum sentence of one hundred fifty (150) consecutive days of incarceration. The trial judge should utilize T.P.I.—Crim. 6.04(a) when submitting prior offenses to the jury in a bifurcated proceeding. T.C.A. § 39-13-106(b). *See also* T.P.I.—Crim 42.19, Inferences.

2. A violation of T.C.A. § 39-15-401, child abuse and neglect, may be a lesser included offense of vehicular assault. T.C.A. § 39-15-401(g).

3. Tenn. Pub. Acts ch. 1006, §§ 2 & 4, effective 7/1/12, exempts from criminal liability “any act or omission by a pregnant woman with respect to an embryo or fetus with which she is pregnant.” See T.C.A. § 39-13-107(c) and -214(c). These statutes

explicitly prohibit a criminal action against a woman for narcotic drug use that results in her newborn's drug addiction or birth defects. See Tenn. Att'y Gen. Op. 13-01 (February 1, 2013), abrogating Tenn. Att'y Gen. Op. 08-114 (May 21, 2008).

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Footnotes

- 1 T.C.A. § 39-13-106(a).
- 2 T.C.A. § 55-10-401(a)(1).
- 3 T.C.A. § 55-1-122.
- 4 T.C.A. § 55-1-125.
- 5 T.C.A. § 55-1-103.
- 6 T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.
- 7 T.C.A. § 39-11-106.
- 8 T.C.A. § 39-11-106.
- 9 T.C.A. § 39-11-301(a)(2).
- 10 T.C.A. § 39-11-106.
- 11 T.C.A. § 39-11-106.
- 12 T.C.A. § 39-11-503(b).
- 13 T.C.A. § 39-11-503(d)(3).
- 14 T.C.A. § 39-13-107.

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7 Tenn. Prac. Pattern Jury Instr. T.P.I.-Crim. 6.04(a)

Tennessee Practice Series September 2025 Update

Tennessee Pattern Jury Instructions—Criminal

Chapter 6. Assault

T.P.I.—Crim. 6.04(a) Vehicular [assault] [homicide]: Supplemental instruction number one

Members of the Jury, you have determined that the defendant is guilty of vehicular [assault] [homicide] as charged in Count _____ of the indictment.

It will now be your duty to determine whether or not the defendant has previously been convicted of *[driving while under the influence] [vehicular assault] [vehicular homicide as a result of intoxication] [aggravated vehicular homicide]***[only for offenses committed on or after 7/1/21: boating under the influence]**.

Any record of prior conviction[s] of the defendant is evidence which you may consider. A judgment of conviction of any person under the same name as that of the defendant may create an inference that the identity of such person is the same as the defendant. However, the jury is not required to make this inference. It is the exclusive province of the jury to determine whether the facts and circumstances shown by all the evidence in the case warrant the inference which the law permits the jury to draw.¹

If you find beyond a reasonable doubt that the defendant has a prior conviction *[or convictions]*, then your verdict will be:

We, the jury, unanimously find the defendant has a prior conviction [or convictions] as follows: _____

If, however, you find that the defendant does not have a prior conviction, or if you have a reasonable doubt thereof, then your verdict will be:

“We, the jury, find the defendant not guilty of Count _____.”

You will take with you the indictment and the Court's previous written instructions. You should follow such previous instructions as to the law of consideration of evidence, deliberations, reasonable doubt, witnesses and any other relevant matters.

You may now retire to consider your verdict.

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Footnotes

¹ T.P.I. — Crim. 42.19, Inferences.

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7 Tenn. Prac. Pattern Jury Instr. T.P.I.-Crim. 6.05

Tennessee Practice Series September 2025 Update

Tennessee Pattern Jury Instructions—Criminal

Chapter 6. Assault

T.P.I.—Crim. 6.05 Aggravated vehicular assault

Members of the Jury, you have found the defendant guilty beyond reasonable doubt of vehicular assault as charged in Count ____ of the indictment.

It will now be your duty to determine whether the defendant is guilty of aggravated vehicular assault as charged in Count ____ of the indictment. The law provides for increased punishment for aggravated vehicular assault.¹

Any person who commits the offense of aggravated vehicular assault is guilty of a crime.

For you to find the defendant guilty of aggravated vehicular assault, the state must have proven beyond a reasonable doubt the existence of the following essential elements:²

[Part A:

(1) that the defendant has two (2) or more prior convictions for *[driving under the influence of an intoxicant]* **[Only for offenses committed on or after 7/1/21:boating under the influence of an intoxicant]** **[Only for offenses committed prior to 7/1/19:violation of the habitual motor vehicle offender law]** *[or any combination of such offenses]*.

or

[Part B:

(1) that the defendant has one (1) or more prior convictions for the offense of *[vehicular assault]* *[vehicular homicide by intoxication]* *[aggravated vehicular homicide]*.]

or

[Part C:

(1) that there was at the time of the offense an alcohol concentration in the defendant's blood or breath of **[only for offenses committed prior to 7/1/25: twenty-hundredths of one percent (.20%) or more]** **[only for offenses committed on or after 7/1/25: fifteen-hundredths of one percent (.15%) or more]**;

and

(2) that the defendant has one (1) prior conviction for *[driving under the influence of an intoxicant]* **[Only for offenses committed on or after 7/1/21:boating under the influence of an intoxicant]** **[Only for offenses committed on or after 7/1/19:a violation of the habitual motor vehicle offender law]**.]

Any record of prior conviction[s] of the defendant is evidence which you may consider. A judgment of conviction of any person under the same name as that of the defendant may create an inference that the identity of such person is the same as the defendant. However, the jury is not required to make this inference. It is the exclusive province of the jury to determine whether the facts and circumstances shown by all the evidence in the case warrant the inference which the law permits the jury to draw.³

“Prior conviction” means an offense for which the defendant was convicted prior to the commission of the instant vehicular assault charge, and includes prior convictions from this state or any other state, district or territory of the United States within the last twenty (20) years.⁴

COMMENTS

1. Aggravated vehicular assault is a Class C Felony, and there shall additionally be imposed a fine of not less than five thousand dollars (\$5,000) nor more than fifteen thousand dollars (\$15,000). T.C.A. § 39-13-115(e).
2. The procedure for charging and trying these cases is specifically set out in T.C.A. § 39-13-115(c).

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Footnotes

- | | |
|---|-----------------------------------|
| 1 | T.C.A. § 39-13-115(e). |
| 2 | T.C.A. § 39-13-115(b). |
| 3 | T.P.I. — Crim. 42.19, Inferences. |
| 4 | T.C.A. § 39-13-115(a). |

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7 Tenn. Prac. Pattern Jury Instr. T.P.I.-Crim. 7.08(a)

Tennessee Practice Series September 2025 Update

Tennessee Pattern Jury Instructions—Criminal

Chapter 7. Criminal Homicide

T.P.I.—Crim. 7.08(a) Vehicular homicide (reckless conduct)

Any person who commits the offense of vehicular homicide is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:¹

(1) that the defendant killed the alleged victim by the operation of a *[motor vehicle][automobile][airplane][only for offenses committed prior to 7/1/21: motorboat] [only for offenses committed on or after 7/1/21: vessel subject to registration under Title 69, chapter 9, part 2]*;

and

(2) that the defendant acted recklessly;

and

(3) that the killing was the proximate result of conduct creating a substantial risk of death or serious bodily injury to a person. *["Motor vehicle" means every vehicle, including a low-speed vehicle or a medium-speed vehicle, that is self-propelled, excluding [Only for offenses committed on or after July 1, 2019: electric scooters, electric bicycles as defined in § 55-8-301,] motorized bicycles, [Only for offenses committed on or after July 1, 2020: personal delivery devices,] [Only for offenses committed on or after March 29, 2021: motorized wheelchairs,] or any vehicle, including a low-speed vehicle or a medium-speed vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. "Low-speed vehicle" means any four-wheeled electric vehicle, excluding golf carts, whose top speed is greater than twenty miles per hour (20 mph) but not greater than twenty-five miles per hour (25 mph), including neighborhood vehicles. "Medium-speed vehicle" means any four-wheeled electric or gasoline-powered vehicle, excluding golf carts, whose top speed is greater than thirty miles per hour (30 mph) but not more than thirty-five miles per hour (35 mph). "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.]*²

"Proximate result" means a result, which in natural and continuous sequence, is a product of an act occurring or concurring with another, which, had it not happened, the result would not have occurred.³

"Serious bodily injury" means bodily injury that involves a substantial risk of death; protracted unconsciousness; extreme physical pain; protracted or obvious disfigurement; or protracted loss or substantial impairment of a function of a bodily member, organ or mental faculty *[only for offenses committed on or after 7/1/09: or a broken bone of a child who is eight (8) [only for offenses committed on or after 7/1/14: twelve (12)] years of age or less]*.⁴ "Bodily injury" includes a cut, abrasion, bruise, burn or disfigurement, and physical pain or temporary illness or impairment of the function of a bodily member, organ, or mental faculty.⁵

“Recklessly” means that a person acts recklessly with respect to circumstances surrounding the conduct or the result of the conduct when the person is aware of, but consciously disregards, a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the accused person's standpoint.⁶

The requirement of “recklessly” is also established if it is shown that the defendant acted knowingly or intentionally.⁷

“Knowingly” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.⁸

“Intentionally” means that a person acts intentionally with respect to the nature of the conduct or the result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.⁹

[If recklessness establishes an element of an offense and the person is unaware of the risk because of voluntary intoxication, the person's unawareness is immaterial in a prosecution for that offense.¹⁰ Voluntary intoxication means intoxication caused by a substance that the person knowingly introduced into the person's body, the tendency of which to cause intoxication was known or ought to have been known.¹¹]

[Any alleged victim includes a human embryo or fetus at any stage of gestation in utero.]¹²

Comments

1. Vehicular homicide by reckless conduct committed on or after 7/1/23 is a 100% offense. The defendant “shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn.” For offenses committed on or after 7/1/22, but prior to 7/1/23, it is a 100% crime with the ability to earn 15% credits toward release. T.C.A. § 40-35-501(cc)(1)(A), (cc)(2)(G). Vehicular homicide due to conduct creating a substantial risk of death or serious bodily injury is a Class C felony. T.C.A. § 39-13-213(b).
2. A violation of T.C.A. § 39-15-401, child abuse and neglect, may be a lesser included offense of vehicular homicide. T.C.A. § 39-15-401(g).
3. Tenn. Pub. Acts ch. 1006, §§ 2 & 4, effective 7/1/12, exempts from criminal liability “any act or omission by a pregnant woman with respect to an embryo or fetus with which she is pregnant.” See T.C.A. § 39-13-107(c) and -214(c). These statutes explicitly prohibit a criminal action against a woman for narcotic drug use that results in her newborn's drug addiction or birth defects. See Tenn. Att'y Gen. Op. 13-01 (February 1, 2013), abrogating Tenn. Att'y Gen. Op. 08-114 (May 21, 2008).

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Footnotes

- 1 T.C.A. § 39-13-213(a)(1).
- 2 T.C.A. § 55-8-101.
- 3 The definition of “proximate result” is based on the definition of “proximate cause,” as set forth in T.P.I. — CRIM. 7.05(b), Second degree murder (drugs as proximate cause).

4 T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if
not fairly raised in the proof.

5 T.C.A. § 39-11-106.

6 T.C.A. § 39-11-106.

7 T.C.A. § 39-11-301(a)(2).

8 T.C.A. § 39-11-106.

9 T.C.A. § 39-11-106.

10 T.C.A. § 39-11-503(b).

11 T.C.A. § 39-11-503(d)(3).

12 T.C.A. § 39-13-214.

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7 Tenn. Prac. Pattern Jury Instr. T.P.I.-Crim. 7.08(b)

Tennessee Practice Series September 2025 Update

Tennessee Pattern Jury Instructions—Criminal

Chapter 7. Criminal Homicide

T.P.I.—Crim. 7.08(b) Vehicular homicide (intoxication)

Any person who commits the offense of vehicular homicide is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:¹

(1) that the defendant killed the alleged victim by the operation of a *[motor vehicle][automobile][airplane][only for offenses committed prior to 7/1/21: motorboat][only for offenses committed on or after 7/1/21: vessel subject to registration under Title 69, chapter 9, part 2]*.

and

(2) that the defendant acted recklessly;

and

(3) that the killing was the proximate result of the *[driver's][only for offenses committed with a vessel as set forth in 69-9-217(a) on or after 7/1/21: operator's]* intoxication.

[For the purpose of your consideration of the offense in Count ____ only]² “Intoxication” is defined as acting under the influence of [an intoxicant][marijuana][a controlled substance][a controlled substance analogue][a drug][a substance affecting the central nervous system][or any combination thereof]. The expression “under the influence of [an intoxicant][marijuana][a controlled substance] a controlled substance analogue][a drug][a substance affecting the central nervous system][or any combination thereof]” covers not only all the well known and easily recognized conditions and degrees of intoxication, but also any mental or physical condition which is the result of taking [an intoxicant][marijuana][a controlled substance][a controlled substance analogue][a drug][a substance affecting the central nervous system][or any combination thereof] in any form and which deprives one of that clearness of mind and control of oneself which one would otherwise possess. In this situation, it would not be necessary that the person be in such a condition as would make [him][her] guilty of public drunkenness. The law merely requires that the person be under the influence of [an intoxicant][marijuana][a controlled substance][a controlled substance analogue][a drug][a substance affecting the central nervous system][or any combination thereof]. The degree of intoxication must be such that it impairs the driver's ability to safely operate a motor vehicle by depriving the driver of the clearness of mind and control of [himself][herself] which [he][she] would otherwise possess.]³

“Motor vehicle” means every vehicle, including a low-speed vehicle or a medium-speed vehicle, that is self-propelled, excluding **[Only for offenses committed on or after July 1, 2019: electric scooters, electric bicycles as defined in § 55-8-301,] motorized bicycles, [Only for offenses committed on or after July 1, 2020: personal delivery devices,] [Only for offenses committed on or after March 29, 2021: motorized wheelchairs,]** or any vehicle, including a low-speed vehicle or a medium-speed vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. “Low-speed vehicle” means any four-wheeled electric vehicle, excluding golf carts, whose top speed is greater than twenty miles per hour

(20 mph) but not greater than twenty-five miles per hour (25 mph), including neighborhood vehicles. “Medium-speed vehicle” means any four-wheeled electric or gasoline-powered vehicle, excluding golf carts, whose top speed is greater than thirty miles per hour (30 mph) but not more than thirty-five miles per hour (35 mph). “Vehicle” means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.]⁴

“Proximate result” means a result, which in natural and continuous sequence, is a product of an act occurring or concurring with another, which, had it not happened, the result would not have occurred.⁵

“Recklessly” means that a person acts recklessly with respect to circumstances surrounding the conduct or the result of the conduct when the person is aware of, but consciously disregards, a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the accused person's standpoint.⁶

The requirement of “recklessly” is also established if it is shown that the defendant acted knowingly or intentionally.⁷

“Knowingly” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.⁸

The requirement of “knowingly” is also established if it is shown that the defendant acted “intentionally”.

“Intentionally” means that a person acts intentionally with respect to the nature of the conduct or the result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.⁹

If recklessness establishes an element of an offense and the person is unaware of the risk because of voluntary intoxication, the person's unawareness is immaterial in a prosecution for that offense.¹⁰ Voluntary intoxication means intoxication caused by a substance that the person knowingly introduced into the person's body, the tendency of which to cause intoxication was known or ought to have been known.¹¹

[Any alleged victim includes a human embryo or fetus at any stage of gestation in utero.]¹²

Comments

1. Vehicular homicide by intoxication committed on or after 7/1/22 is a 100% offense. The defendant “shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn.” T.C.A. § 40-35-501(bb)(1). Vehicular homicide as the result of driver intoxication is a Class B felony. T.C.A. § 39-13-213(b). If this offense was committed on or after May 25, 2022, and the deceased victim had minor children, see Comment Two regarding mandatory restitution.

For offenses committed on or after 1/1/17, the defendant is ineligible for probation. For offenses committed prior to 7/1/15, any sentence of ten years or less is eligible for probation. For offenses committed on or after 7/1/15, but prior to 1/1/17, the following mandatory minimum rules apply: There is a mandatory minimum sentence of forty-eight (48) consecutive hours of incarceration before a defendant is eligible for release on probation. If the defendant has one (1) prior conviction for an alcohol-related offense (defined as DUI, vehicular assault, vehicular homicide as a result of intoxication or aggravated vehicular homicide), there is a mandatory minimum sentence of forty-five (45) consecutive days of incarceration. If the defendant has any combination of two (2) prior convictions for an alcohol-related offense, there is a mandatory minimum sentence of one hundred

twenty (120) consecutive days of incarceration. If the defendant has any combination of three (3) or more prior convictions for an alcohol-related offense, there is a mandatory minimum sentence of one hundred fifty (150) consecutive days of incarceration. The trial judge should utilize T.P.I.—Crim. 6.04(a) when submitting prior offenses to the jury in a bifurcated proceeding. T.C.A. § 39-13-106(b). *See also* T.P.I.—Crim 42.19, Inferences.

2. Pursuant to T.C.A. § 39-13-219, if the deceased victim of the offense was the parent of a minor child, then the sentencing court shall order the defendant to pay restitution in the form of child maintenance to each of the victim's children until each child reaches eighteen (18) years of age and has graduated from high school, or the class of which the child is a member when the child reached eighteen (18) years of age has graduated from high school. The court shall determine an amount that is reasonable and necessary for the maintenance of the victim's child after considering all relevant factors, including:

- (1) The financial needs and resources of the child;
- (2) The financial resources and needs of the surviving parent or guardian of the child, including the state if the child is in the custody of the department of children's services;
- (3) The standard of living to which the child is accustomed;
- (4) The physical and emotional condition of the child and the child's educational needs;
- (5) The child's physical and legal custody arrangements; and
- (6) The reasonable work-related child care expenses of the surviving parent or guardian.

The court shall order that child maintenance payments be made to the clerk of court as trustee for remittance to the child's surviving parent or guardian. The clerk shall remit the payments to the surviving parent or guardian within ten (10) working days of receipt by the clerk. The clerk shall deposit all payments no later than the next working day after receipt.

If a defendant who is ordered to pay child maintenance is incarcerated and unable to pay the required maintenance, then the defendant must have up to one (1) year after the release from incarceration to begin payment, including entering a payment plan to address any arrearage. If a defendant's child maintenance payments are set to terminate but the defendant's obligation is not paid in full, then the child maintenance payments shall continue until the entire arrearage is paid.

If the surviving parent or guardian of the child brings a civil action against the defendant prior to the sentencing court ordering child maintenance payments as restitution and the surviving parent or guardian obtains a judgment in the civil suit, then no maintenance shall be ordered.

If the court orders the defendant to make child maintenance payments as restitution and the surviving parent or guardian subsequently brings a civil action and obtains a judgment, then the child maintenance order shall be offset by the amount of the judgment awarded in the civil action.

If the offense is committed on or after 7/1/23, notwithstanding T.C.A. § 40-35-304, a surviving parent or guardian who is awarded restitution may convert the restitution order to a civil judgment at any time by filing a certified copy of the restitution order with an appropriate civil court having jurisdiction over the total amount of restitution ordered. The civil court may convert the restitution order into a civil judgment in the manner provided in T.C.A. § 40-35-304(h).

If the surviving parent or guardian of the child brings a civil action against the defendant prior to the sentencing court ordering child maintenance payments as restitution and the surviving parent or guardian obtains a judgment in the civil suit, then any maintenance ordered must be offset by the amount of damages that has been received by the surviving parent or guardian prior to the sentencing court entering an order of restitution.

If the court orders the defendant to make child maintenance payments as restitution under this section and the surviving parent or guardian subsequently brings a civil action and obtains a judgment, then the child maintenance order must be offset by the amount of damages received by the surviving parent or guardian pursuant to the civil action.

3. A violation of T.C.A. § 39-15-401, child abuse and neglect, may be a lesser included offense of vehicular homicide. T.C.A. § 39-15-401(g).
4. Tenn. Pub. Acts ch. 1006, §§ 2 & 4, effective 7/1/12, exempts from criminal liability “any act or omission by a pregnant woman with respect to an embryo or fetus with which she is pregnant.” See T.C.A. § 39-13-107(c) and -214(c). These statutes explicitly prohibit a criminal action against a woman for narcotic drug use that results in her newborn's drug addiction or birth defects. See Tenn. Att’y Gen. Op. 13-01 (February 1, 2013), abrogating Tenn. Att’y Gen. Op. 08-114 (May 21, 2008).

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Footnotes

- 1 T.C.A. § 39-13-213(a)(2).
- 2 The trial judge may wish to add this bracketed wording if instructing the jury as to an additional Vehicular Homicide count in the same trial that has a different definition for “intoxication”.
- 3 T.C.A. § 55-10-401(a)(1).
- 4 T.C.A. § 55-8-101.
- 5 The definition of “proximate result” is based on the definition of “proximate cause,” as set forth in T.P.I. — CRIM. 7.05(b), Second degree murder (drugs as proximate cause).
- 6 T.C.A. § 39-11-106.
- 7 T.C.A. § 39-11-301(a)(2).
- 8 T.C.A. § 39-11-106.
- 9 T.C.A. § 39-11-106.
- 10 T.C.A. § 39-11-503(b).
- 11 T.C.A. § 39-11-503(d)(3).
- 12 T.C.A. § 39-13-214.

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7 Tenn. Prac. Pattern Jury Instr. T.P.I.-Crim. 7.08(c)

Tennessee Practice Series September 2025 Update

Tennessee Pattern Jury Instructions—Criminal

Chapter 7. Criminal Homicide

T.P.I.—Crim. 7.08(c) Vehicular homicide (.08% alcohol concentration)

Any person who commits the offense of vehicular homicide is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:¹

(1) that the defendant killed the alleged victim by the operation of a *[motor vehicle][automobile][airplane][only for offenses committed prior to 7/1/21: motorboat] [only for offenses committed on or after 7/1/21: vessel subject to registration under Title 69, chapter 9, part 2]*.

and

(2) that the defendant acted recklessly;

and

(3) that the killing was the proximate result of the *[driver's] [only for offenses committed with a vessel as set forth in 69-9-217(a) on or after 7/1/21: operator's]* intoxication.

[For the purpose of your consideration of the offense in Count ____ only] “Intoxication” is defined as having an alcohol concentration in the blood or breath of eight-hundredths of one percent (.08%) or more [for offenses occurring prior to July 1, 2003, substitute “ten-hundredths of one percent (.10%) or more”].²

[“Motor vehicle” means every vehicle, including a low-speed vehicle or a medium-speed vehicle, that is self-propelled, excluding [Only for offenses committed on or after July 1, 2019: electric scooters, electric bicycles as defined in § 55-8-301,] motorized bicycles, [Only for offenses committed on or after July 1, 2020: personal delivery devices,] [Only for offenses committed on or after March 29, 2021: motorized wheelchairs,] or any vehicle, including a low-speed vehicle or a medium-speed vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. “Low-speed vehicle” means any four-wheeled electric vehicle, excluding golf carts, whose top speed is greater than twenty miles per hour (20 mph) but not greater than twenty-five miles per hour (25 mph), including neighborhood vehicles. “Medium-speed vehicle” means any four-wheeled electric or gasoline-powered vehicle, excluding golf carts, whose top speed is greater than thirty miles per hour (30 mph) but not more than thirty-five miles per hour (35 mph). “Vehicle” means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.]³

“Proximate result” means a result, which in natural and continuous sequence, is a product of an act occurring or concurring with another, which, had it not happened, the result would not have occurred.⁴

“Recklessly” means that a person acts recklessly with respect to circumstances surrounding the conduct or the result of the conduct when the person is aware of, but consciously disregards, a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the accused person's standpoint.⁵

The requirement of “recklessly” is also established if it is shown that the defendant acted knowingly or intentionally.⁶

“Knowingly” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.⁷

The requirement of “knowingly” is also established if it is shown that the defendant acted “intentionally.”⁸

“Intentionally” means that a person acts intentionally with respect to the nature of the conduct or the result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.⁹

If recklessness establishes an element of an offense and the person is unaware of the risk because of voluntary intoxication, the person's unawareness is immaterial in a prosecution for that offense.¹⁰ Voluntary intoxication means intoxication caused by a substance that the person knowingly introduced into the person's body, the tendency of which to cause intoxication was known or ought to have been known.¹¹

[Any alleged victim includes a human embryo or fetus at any stage of gestation in utero.]¹²

Comments

1. Pursuant to T.C.A. § 39-13-219, if the deceased victim of the offense was the parent of a minor child, then the sentencing court shall order the defendant to pay restitution in the form of child maintenance to each of the victim's children until each child reaches eighteen (18) years of age and has graduated from high school, or the class of which the child is a member when the child reached eighteen (18) years of age has graduated from high school. The court shall determine an amount that is reasonable and necessary for the maintenance of the victim's child after considering all relevant factors, including:

- (1) The financial needs and resources of the child;
- (2) The financial resources and needs of the surviving parent or guardian of the child, including the state if the child is in the custody of the department of children's services;
- (3) The standard of living to which the child is accustomed;
- (4) The physical and emotional condition of the child and the child's educational needs;
- (5) The child's physical and legal custody arrangements; and
- (6) The reasonable work-related child care expenses of the surviving parent or guardian.

The court shall order that child maintenance payments be made to the clerk of court as trustee for remittance to the child's surviving parent or guardian. The clerk shall remit the payments to the surviving parent or guardian within ten (10) working days of receipt by the clerk. The clerk shall deposit all payments no later than the next working day after receipt.

If a defendant who is ordered to pay child maintenance is incarcerated and unable to pay the required maintenance, then the defendant must have up to one (1) year after the release from incarceration to begin payment, including entering a payment plan to address any arrearage. If a defendant's child maintenance payments are set to terminate but the defendant's obligation is not paid in full, then the child maintenance payments shall continue until the entire arrearage is paid.

If the surviving parent or guardian of the child brings a civil action against the defendant prior to the sentencing court ordering child maintenance payments as restitution and the surviving parent or guardian obtains a judgment in the civil suit, then no maintenance shall be ordered.

If the court orders the defendant to make child maintenance payments as restitution and the surviving parent or guardian subsequently brings a civil action and obtains a judgment, then the child maintenance order shall be offset by the amount of the judgment awarded in the civil action.

2. Pursuant to T.C.A. § 39-13-219, if the deceased victim of the offense was the parent of a minor child, then the sentencing court shall order the defendant to pay restitution in the form of child maintenance to each of the victim's children until each child reaches eighteen (18) years of age and has graduated from high school, or the class of which the child is a member when the child reached eighteen (18) years of age has graduated from high school. The court shall determine an amount that is reasonable and necessary for the maintenance of the victim's child after considering all relevant factors, including:

- (1) The financial needs and resources of the child;
- (2) The financial resources and needs of the surviving parent or guardian of the child, including the state if the child is in the custody of the department of children's services;
- (3) The standard of living to which the child is accustomed;
- (4) The physical and emotional condition of the child and the child's educational needs;
- (5) The child's physical and legal custody arrangements; and
- (6) The reasonable work-related child care expenses of the surviving parent or guardian.

The court shall order that child maintenance payments be made to the clerk of court as trustee for remittance to the child's surviving parent or guardian. The clerk shall remit the payments to the surviving parent or guardian within ten (10) working days of receipt by the clerk. The clerk shall deposit all payments no later than the next working day after receipt.

If a defendant who is ordered to pay child maintenance is incarcerated and unable to pay the required maintenance, then the defendant must have up to one (1) year after the release from incarceration to begin payment, including entering a payment plan to address any arrearage. If a defendant's child maintenance payments are set to terminate but the defendant's obligation is not paid in full, then the child maintenance payments shall continue until the entire arrearage is paid.

If the surviving parent or guardian of the child brings a civil action against the defendant prior to the sentencing court ordering child maintenance payments as restitution and the surviving parent or guardian obtains a judgment in the civil suit, then no maintenance shall be ordered.

If the court orders the defendant to make child maintenance payments as restitution and the surviving parent or guardian subsequently brings a civil action and obtains a judgment, then the child maintenance order shall be offset by the amount of the judgment awarded in the civil action.

If the offense is committed on or after 7/1/23, notwithstanding T.C.A. § 40-35-304, a surviving parent or guardian who is awarded restitution may convert the restitution order to a civil judgment at any time by filing a certified copy of the restitution order with an appropriate civil court having jurisdiction over the total amount of restitution ordered. The civil court may convert the restitution order into a civil judgment in the manner provided in T.C.A. § 40-35-304(h).

If the surviving parent or guardian of the child brings a civil action against the defendant prior to the sentencing court ordering child maintenance payments as restitution and the surviving parent or guardian obtains a judgment in the civil suit, then any maintenance ordered must be offset by the amount of damages that has been received by the surviving parent or guardian prior to the sentencing court entering an order of restitution.

If the court orders the defendant to make child maintenance payments as restitution under this section and the surviving parent or guardian subsequently brings a civil action and obtains a judgment, then the child maintenance order must be offset by the amount of damages received by the surviving parent or guardian pursuant to the civil action.

3. A violation of T.C.A. § 39-15-401, child abuse and neglect, may be a lesser included offense of vehicular homicide. T.C.A. § 39-15-401(g).
4. Tenn. Pub. Acts ch. 1006, §§ 2 & 4, effective 7/1/12, exempts from criminal liability “any act or omission by a pregnant woman with respect to an embryo or fetus with which she is pregnant.” See T.C.A. § 39-13-107(c) and -214(c). These statutes explicitly prohibit a criminal action against a woman for narcotic drug use that results in her newborn's drug addiction or birth defects. See Tenn. Att’y Gen. Op. 13-01 (February 1, 2013), abrogating Tenn. Att’y Gen. Op. 08-114 (May 21, 2008).

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Footnotes

- | | |
|----|--|
| 1 | T.C.A. § 39-13-213(a)(2). |
| 2 | T.C.A. § 55-10-401(a)(2). |
| 3 | T.C.A. § 55-8-101. |
| 4 | The definition of “proximate result” is based on the definition of “proximate cause,” as set forth in T.P.I. — CRIM. 7.05(b), Second degree murder (drugs as proximate cause). |
| 5 | T.C.A. § 39-11-106. |
| 6 | T.C.A. § 39-11-301(a)(2). |
| 7 | T.C.A. § 39-11-106. |
| 8 | T.C.A. § 39-11-301(a)(2). |
| 9 | T.C.A. § 39-11-106. |
| 10 | T.C.A. § 39-11-503(b). |
| 11 | T.C.A. § 39-11-503(d)(3). |
| 12 | T.C.A. § 39-13-214. |

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7 Tenn. Prac. Pattern Jury Instr. T.P.I.-Crim. 7.11

Tennessee Practice Series September 2025 Update

Tennessee Pattern Jury Instructions—Criminal

Chapter 7. Criminal Homicide

T.P.I.—Crim. 7.11 Aggravated vehicular homicide

Members of the Jury, you have found the defendant guilty beyond a reasonable doubt of vehicular homicide as charged in Count [] of the indictment.

It is now your duty to determine whether the defendant is guilty of aggravated vehicular homicide as charged in Count [] of the indictment. The law provides for increased punishment for aggravated vehicular homicide.¹

Any person who commits the offense of aggravated vehicular homicide is guilty of a crime.

For you to find the defendant guilty of aggravated vehicular homicide, the state must have proven beyond a reasonable doubt the existence of the following essential elements:²

(A) that the defendant has two (2) or more prior convictions for driving under the influence of an intoxicant, **[only for offenses committed on or after 7/1/21: boating under the influence,] vehicular assault or any combination of such offenses.**

or

(B) that the defendant has one (1) or more prior convictions for the offense of vehicular homicide;

or

(1) that there was at the time of the offense **[only for offenses committed prior to 7/1/25: twenty-hundredths of one percent (.20%) or more] [only for offenses committed on or after 7/1/25: fifteen-hundredths of one percent (.15%) or more]** by weight of blood alcohol in the defendant's blood;

and

(2) that the defendant has one (1) prior conviction for driving under the influence of an intoxicant **[only for offenses committed on or after 7/1/21: boating under the influence,] or vehicular assault.**

Any record of prior conviction[s] of the defendant is evidence which you may consider. A judgment of conviction of any person under the same name as that of the defendant may create an inference that the identity of such person is the same as the defendant. However, the jury is not required to make this inference. It is the exclusive province of the jury to determine whether the facts and circumstances shown by all the evidence in the case warrant the inference which the law permits the jury to draw.³

“Prior conviction” means an offense for which the defendant was convicted prior to the commission of the instant vehicular homicide and includes convictions under the laws of any other state, government, or country which, if committed in this state, would have constituted vehicular homicide, vehicular assault or driving under the influence of an intoxicant.⁴

Comments

1. Aggravated vehicular homicide committed on or after 7/1/22 is a 100% offense. The defendant “shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn.” T.C.A. § 40-35-501(bb)(1). Aggravated vehicular homicide is a Class A felony. T.C.A. § 39-13-218(d). If this offense was committed on or after May 25, 2022, and the deceased victim had minor children, see Comment Two regarding mandatory restitution. There shall be no release eligibility for a person committing this offense **on or after July 1, 2015**, until the person has served sixty percent (60%) of the sentence imposed by the court less sentence credits earned and retained. However, no sentence reduction credits authorized by § 41-21-236, or any other law, shall operate to reduce below forty-five percent (45%) the percentage of sentence such person must serve before becoming release eligible. T.C.A. § 40-35-501(k)(8).
2. Pursuant to T.C.A. § 39-13-219, if the deceased victim of the offense was the parent of a minor child, then the sentencing court shall order the defendant to pay restitution in the form of child maintenance to each of the victim's children until each child reaches eighteen (18) years of age and has graduated from high school, or the class of which the child is a member when the child reached eighteen (18) years of age has graduated from high school. The court shall determine an amount that is reasonable and necessary for the maintenance of the victim's child after considering all relevant factors, including:
 - (1) The financial needs and resources of the child;
 - (2) The financial resources and needs of the surviving parent or guardian of the child, including the state if the child is in the custody of the department of children's services;
 - (3) The standard of living to which the child is accustomed;
 - (4) The physical and emotional condition of the child and the child's educational needs;
 - (5) The child's physical and legal custody arrangements; and
 - (6) The reasonable work-related child care expenses of the surviving parent or guardian.

The court shall order that child maintenance payments be made to the clerk of court as trustee for remittance to the child's surviving parent or guardian. The clerk shall remit the payments to the surviving parent or guardian within ten (10) working days of receipt by the clerk. The clerk shall deposit all payments no later than the next working day after receipt.

If a defendant who is ordered to pay child maintenance is incarcerated and unable to pay the required maintenance, then the defendant must have up to one (1) year after the release from incarceration to begin payment, including entering a payment plan to address any arrearage. If a defendant's child maintenance payments are set to terminate but the defendant's obligation is not paid in full, then the child maintenance payments shall continue until the entire arrearage is paid.

If the surviving parent or guardian of the child brings a civil action against the defendant prior to the sentencing court ordering child maintenance payments as restitution and the surviving parent or guardian obtains a judgment in the civil suit, then no maintenance shall be ordered.

If the court orders the defendant to make child maintenance payments as restitution and the surviving parent or guardian subsequently brings a civil action and obtains a judgment, then the child maintenance order shall be offset by the amount of the judgment awarded in the civil action.

3. The procedure for charging and trying these cases is specifically set out in T.C.A. § 39-13-218(c).

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Footnotes

1 T.C.A. § 39-13-218(d).

2 T.C.A. § 39-13-218(a).

3 T.P.I.—Crim 42.19, Inferences.

4 T.C.A. § 39-13-218(b).

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7 Tenn. Prac. Pattern Jury Instr. T.P.I.-Crim. 38.22

Tennessee Practice Series September 2025 Update

Tennessee Pattern Jury Instructions—Criminal

Chapter 38. Motor Vehicle Offenses

T.P.I.—Crim. 38.22 Boating under the influence [accompanied by a child]
[resulting in serious bodily injury to a child] [resulting in the killing of a child]

Any person who commits the offense of boating under the influence of *[an intoxicant][marijuana][a narcotic drug][a drug producing stimulating effects on the central nervous system]* is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:¹

(1) that the defendant was operating a *[vessel subject to registration][commercial vessel]* on the public waters of Tennessee;

and

(a) that the defendant was under the influence of *[an intoxicant][marijuana][a narcotic drug][a drug producing stimulating effects on the central nervous system]*;

or

(b) that the alcohol concentration in the defendant's *[[blood or breath was eight-hundredths of one percent (.08%)] [only for offenses committed on or after 7/1/21: blood was twenty-hundredths of one percent (.20%)]* or more.

[Only for offenses committed on or after 7/1/23: and

(a) that the defendant was accompanied by a child under eighteen (18) years of age;

or

(b) that the defendant was accompanied by a child under eighteen (18) years of age, and such child suffered serious bodily injury² as the proximate result of the defendant's driving under the influence;

or

(c) that the defendant was accompanied by a child under eighteen (18) years of age, and such child was killed as the proximate result of the defendant's driving under the influence.]

[Evidence that there was, at the time alleged, five-hundredths of one percent (.05%), or less, by weight of alcohol in the blood of the defendant, shall create no inference of intoxication.]³

["Commercial vessel" means any vessel used or whose principal use is to carry passengers for hire for monetary or other consideration or any vessel used or whose principal use is to transport or to assist in the transportation of goods or services.]⁴

[Only for offenses committed on or after 7/1/23: “Drugs producing stimulating effects on the central nervous system” includes any controlled substance, controlled substance analogue, drug, or combination of drug substances affecting the central nervous system, that impairs the person of the clearness of mind or the control of oneself that the person would otherwise possess.]

or

[Only for offenses committed prior to 7/1/23: “Drugs producing stimulating effects on the central nervous system” includes the salts of barbituric acid, also known as malonyl urea, or any compound, derivatives, or mixtures thereof that may be used for producing hypnotic or somnifacient effects, and includes amphetamine, desoxyephedrine or compounds or mixtures thereof, including all derivatives of phenylethylamine or any of the salts thereof, except preparations intended for use in the nose and unfit for internal use.]⁵

[“Intoxication” is defined as acting under the influence of *[an intoxicant][marijuana][a controlled substance][a controlled substance analogue][a drug][a substance affecting the central nervous system][or any combination thereof]*.

The expression “under the influence of *[an intoxicant][marijuana][a controlled substance][a controlled substance analogue][a drug][a substance affecting the central nervous system][or any combination thereof]*” covers not only all the well known and easily recognized conditions and degrees of intoxication, but also any mental or physical condition which is the result of taking *[an intoxicant][marijuana][a controlled substance][a controlled substance analogue][a drug][a substance affecting the central nervous system][or any combination thereof]* in any form and which deprives one of that clearness of mind and control of oneself which one would otherwise possess. In this situation, it would not be necessary that the person be in such a condition as would make *[him][her]* guilty of public drunkenness. The law merely requires that the person be under the influence of *[an intoxicant][marijuana][a controlled substance][a controlled substance analogue][a drug][a substance affecting the central nervous system][or any combination thereof]*. The degree of intoxication must be such that it impairs the operator's ability to safely operate a *[vessel subject to registration][commercial vessel]* by depriving the operator of the clearness of mind and control of *[himself][herself]* which *[he][she]* would otherwise possess.^{6]}

[“Proximate result” means a result, which in natural and continuous sequence, is a product of an act occurring or concurring with another, which, had it not happened, the result would not have occurred.]⁷

[It is not a defense that the defendant, while under the influence of narcotic or barbitol drugs, was or had been entitled to use such drugs under the laws of this state.]⁸

[It is an exception to this offense that at the time of the alleged intoxication the vessel was moored or anchored.]⁹

COMMENTS

1. If a defendant convicted of BUI is charged as a multiple offender, the trial judge should utilize T.P.I. Crim. 38.08, changing DUI to BUI in the text and the verdict forms.
2. For offenses committed on or after 7/1/23, mandatory fines similar to the fines for DUI (first, second, third offense, etc.) must be assessed. Although a first, second or third offense of boating under the influence is usually a Class A misdemeanor, if the offense was committed on or after 7/1/23 and the defendant is convicted of being accompanied by a child under eighteen (18) years of age, then the defendant's sentence shall be enhanced by a mandatory minimum period of incarceration of thirty (30) days, which incarceration enhancement shall be served in addition to any period of incarceration received for the BUI, and a fine of one thousand dollars (\$1,000) in addition to any other fine received for the BUI. If the child suffers serious bodily injury, it is a Class D felony and shall be punished as provided in § 39-13-106 for vehicular assault with an enhancement of the fine by one thousand dollars (\$1,000), in addition to the fine for BUI. If the child is killed, it is a Class B felony and

shall be punished as provided in § 39-13-213(b)(2) for vehicular homicide involving intoxication, with a fine of one thousand dollars (\$1,000), which enhanced fine is in addition to any other fine received for the BUI. T.C.A. § 69-9-219(c)(1)(H).

Boating under the influence is a Class A misdemeanor. For offenses committed prior to 7/1/21, a first offense is punishable by a fine of not less than two hundred fifty dollars (\$250) nor more than two thousand five hundred dollars (\$2,500), and confinement for up to eleven (11) months and twenty-nine (29) days. In the discretion of the court, the person's privilege to operate any vessel subject to registration on the public waters of the state shall be suspended for a period not to exceed one (1) year. A second offense carries a fine of not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500), and confinement for a period not to exceed eleven (11) months and twenty-nine (29) days, and the court shall prohibit such convicted person from operating any vessel subject to registration on the public waters of the state for a period of two (2) years. A third or subsequent conviction is punishable by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) and confinement for not less than thirty (30) days nor more than eleven (11) months and twenty-nine (29) days, and the court shall prohibit such person from operating any vessel subject to registration on the public waters of the state for a period of not less than three (3) years nor more than ten (10) years. T.C.A. § 69-9-219(c)(1). In addition, the court, in its discretion, may require any defendant to remove litter from public areas, playgrounds, picnic ramps and areas giving the public access to the public waters of the state or to work in a recycling center or other appropriate location for any prescribed period of time in addition to any of the penalties otherwise provided in this section. T.C.A. § 69-9-219(c)(2).

For offenses committed on or after 7/1/21, a first offense is punishable by not less than forty-eight (48) consecutive hours nor more than eleven (11) months and twenty-nine (29) days. A conviction for the first offense with a blood alcohol concentration of twenty-hundredths of one percent (0.20%) or more, shall serve a minimum of seven (7) consecutive days rather than forty-eight (48) hours. A second offense is punishable by not less than forty-five (45) consecutive days nor more than eleven (11) months and twenty-nine (29) days, and as a condition of probation, the judge may order the defendant to participate in a substance abuse treatment program, which includes any aftercare recommended by the treatment program, licensed or certified by the department of mental health and substance abuse services, which includes a certified drug court or DUI court, if the person first completes a clinical substance abuse assessment conducted pursuant to § 55-10-402(h) and serves at least twenty-five (25) days of the period of incarceration imposed in the county jail or workhouse. A third offense is punishable by not less than one hundred twenty (120) consecutive days nor more than eleven (11) months and twenty-nine (29) days, and as a condition of probation the judge may order the person to participate in a substance abuse treatment program, which includes any aftercare recommended by the treatment program, licensed or certified by the department of mental health and substance abuse services, which includes a certified drug court or DUI court, if the person first completes a clinical substance abuse assessment conducted pursuant to § 55-10-402(h); and serves at least sixty-five (65) days of the period of incarceration imposed in the county jail or workhouse. A fourth offense shall be sentenced as a felon to serve not less than one hundred fifty (150) consecutive days nor more than the maximum punishment authorized for the appropriate range of a Class E felony. A fifth offense, for which prior convictions for vehicular assault under § 39-13-106, aggravated vehicular assault under § 39-13-115, vehicular homicide under § 39-13-213(a) (2), or aggravated vehicular homicide under § 39-13-218 are to be included, shall be sentenced as a felon to serve not less than the minimum sentence of imprisonment established for a fourth offender, and not more than the maximum punishment authorized for the appropriate range of a Class D felony. A sixth or subsequent conviction, for which prior convictions for vehicular assault under § 39-13-106, aggravated vehicular assault under § 39-13-115, vehicular homicide under § 39-13-213(a) (2), or aggravated vehicular homicide under § 39-13-218 are to be included, is a Class C felony and shall be sentenced to serve no less than the minimum sentence of imprisonment established for a fourth offender, and not more than the maximum punishment authorized for the appropriate range of a Class C felony.

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Footnotes

- 1 T.C.A. § 69-9-217(a) and (j)(2).
- 2 As driving under the influence is a Title 55 offense, the definition of “serious bodily injury” contained in T.C.A. § 39-11-106 does not strictly apply. T.C.A. § 39-11-106 begins with the language “As used in this

Title,” and so the definitions contained in that statute only apply to Title 39 offenses. Upon agreement of the parties, it is recommended that a definition of serious bodily injury be included in the written charge. The court may desire to refer to Title 39 for the definition.

3 T.C.A. § 69-9-217(j)(1).

4 T.C.A. § 69-9-217(b)(1).

5 T.C.A. § 69-9-217(b)(2).

6 This definition was taken from T.C.A. § 55-10-401(1), the DUI statute.

7 The definition of “proximate result” is based on the definition of “proximate cause,” as set forth in T.P.I.—
Crim. 7.05(b), Second degree murder (drugs as proximate cause).

8 T.C.A. § 69-9-217(c).

9 T.C.A. § 69-9-217(n).

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