

206.55A INVOLUNTARY MANSLAUGHTER - (IMPAIRED DRIVING). FELONY.

NOTE WELL: This instruction is to be used for offenses occurring on or after December 1, 2006. For offenses occurring before December 1, 2006, use N.C.P.I.—Crim. 206.56.

CAUTION: If the jury convicts the defendant of this involuntary manslaughter offense involving impaired driving¹ and driving while impaired, the court should arrest judgment on the driving while impaired offense.

The defendant has been charged with involuntary manslaughter.²

For you to find the defendant guilty of this offense, the State must prove four things beyond a reasonable doubt:

First, that the defendant was driving³ a [vehicle]⁴ [commercial vehicle].

Second, that the defendant was driving that vehicle upon a [highway] [street] [public vehicular area] within the state.⁵

Third, that at the time the defendant was driving that [vehicle] [commercial vehicle] the defendant:

- a) [was under the influence of an impairing substance.⁶ ((*Name substance involved*) is an impairing substance.) The defendant is under the influence of an impairing substance when the defendant has taken (or consumed) a sufficient quantity of that impairing substance to cause the defendant to lose the normal control of the defendant's bodily or mental faculties, or both, to such an extent that there is an appreciable impairment⁷ of either or both of these faculties.⁸]
- b) [had consumed sufficient alcohol that a chemical analysis⁹ made at any relevant time after driving showed the defendant to have an alcohol concentration¹⁰ of [0.08] [0.04]¹¹ or more grams of

alcohol [per 210 liters of breath] [per 100 milliliters of blood]. A relevant time is any time after driving in which the driver still has in the driver's body alcohol consumed before or during driving].¹²

- c) [had any amount of [a Schedule I controlled substance] [metabolites of a Schedule I controlled substance] in the defendant's [blood] [urine] [breath]]. (*Name substance*) is a Schedule I controlled substance or is a metabolite¹³ of a Schedule I controlled substance.].¹⁴

(If the evidence tends to show that [a chemical test known as a(n) [intoxilizer] [breathalyzer] [blood test] [urine test]¹⁵ was offered to the defendant by a law enforcement officer and that the defendant refused to take the test] [the defendant refused to perform a field sobriety test at the request of an officer], you may consider this evidence together with all other evidence in determining whether the defendant was under the influence of an impairing substance at the time the defendant (allegedly) drove a motor vehicle.)¹⁶

And Fourth, that the impaired driving by the defendant proximately caused the victim's death. Proximate cause is a real cause, a cause without which the victim's death would not have occurred, and one that a reasonably careful and prudent person could foresee would probably produce such [injury] [damage] or some similar injurious result. (The defendant's act(s) need not have been the last, or nearest cause. It is sufficient if [it] [they] concurred with some other cause acting at the same time which, in combination with, proximately caused the victim's death.)

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant drove a [vehicle] [commercial vehicle] on a [highway] [street] [public vehicular area] and that when the

defendant did so the defendant [was under the influence of an impairing substance] [had consumed sufficient alcohol that a chemical analysis made at any relevant time after driving showed the defendant to have an alcohol concentration of [0.08] [0.04] or more grams of alcohol [per 210 liters of breath] [per 100 milliliters of blood]][had any amount of [a Schedule I controlled substance] [metabolites of a Schedule I controlled substance] in the defendant’s blood or urine], and that defendant’s impaired driving proximately caused the victim’s death, it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.¹⁷

¹. See *S v. Williams*, 90 N.C. App. 614, *disc. rev. den’d*, 323 N.C. 369 (1988), holding that felony death by vehicle is not a lesser included offense of involuntary manslaughter, but misdemeanor death by vehicle may be.

See also *State v. Mumford*, 364 N.C. 394, 699 S.E.2d 911 (2010), holding that verdicts of guilty of the greater offense of felony serious injury by vehicle but not guilty on the lesser offense of driving while impaired were inconsistent but not mutually exclusive. N.C. Gen. Stat. § 20-141.1(a3), felony serious injury by vehicle, does not require a conviction of driving while impaired, but only a finding that defendant was engaged in the conduct described.

². As a matter of law the violation of the driving while impaired statute, N.C. Gen. Stat. § 20-138.1 (1983), constitutes culpable negligence. *S. v. McGill*, 314 N.C. at 637 (1985).

³. N.C. Gen. Stat. § 20-4.01 defines the driver as the operator of a vehicle.

⁴. If there is any doubt, define “vehicle” under N.C. Gen. Stat. § 20-4.01(49), or “motor vehicle” under § 20-4.01(23).

⁵. If there is any doubt, define “highway” or “street” in accordance with N.C. Gen. Stat. § 20-4.01(13). “Public vehicular area” is defined in N.C. Gen. Stat. § 20-4.01(32).

⁶. An impairing substance includes alcohol, controlled substance under Chapter 90 of the General Statutes, or any other drug or psychoactive substance capable of impairing a person’s physical or mental faculties, or any combination of these substances. N.C. Gen. Stat. § 20-4.01(14a).

⁷. The phrase “appreciable impairment” is not defined in N.C. Gen. Stat. § 20-4.01 or other subsequent statutes. However, appellate case law has defined appreciable to mean the effect of the impairing substance “must be...sufficient to be recognized and estimated.” *State v. Harrington*, 78 N.C. App. 39, 45, 336 S.E.2d 852, 855 (1985). This additional language may be provided to the jury, if requested.

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INVOLUNTARY MANSLAUGHTER—(IMPAIRED DRIVING). FELONY.
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N.C. Gen. Stat. § 20-141.4

⁸. N.C. Gen. Stat. § 20-4.01(48b).

⁹. N.C. Gen. Stat. § 20-4.01(3a) defines chemical analysis as “a chemical analysis of the breath or blood of a person to determine his alcohol concentration, performed in accordance with N.C. Gen. Stat. § 20-139.1. The term ‘chemical analysis’ includes duplicate or sequential analyses when necessary or desirable to ensure the integrity of test results.”

¹⁰. N.C. Gen. Stat. § 20-4.01(1b) defines alcohol concentration as “the concentration of alcohol in a person, expressed either as (a) grams of alcohol per 100 milliliters of blood; or (b) grams of alcohol per 210 liters of breath.

¹¹. Use 0.04 where a commercial vehicle is involved.

¹². N.C. Gen. Stat. § 20-4.01(33a).

¹³. A metabolite is any substance produced or used during metabolism (digestion). In drug use, the term usually refers to the end product that remains after metabolism.

¹⁴. Driving with any Schedule I controlled substance, or its metabolites in one’s blood or urine is a *per se* violation of impaired driving offense.

¹⁵. Note that if the offense occurred between December 1, 2006 and June 27, 2007, there was no statutory provision during this time that required the defendant to take a urine test.

¹⁶. N.C. Gen. Stat. § 20-139.1(f).

¹⁷. Note that Misdemeanor Death by Vehicle can be a lesser offense included within this offense. See note 1.