

**Subject:
CRIMINAL VEHICULAR OPERATION: COLLECTION OF EVIDENCE****Effective Date
06/01/1993****Revised Date
06/10/2020****Page 1 of 8****PURPOSE:**

To establish procedures and provide for uniformity in obtaining blood samples from drivers/operators suspected of criminal vehicular operation.

820.01**STATE STATUTE 609.2112 CRIMINAL VEHICULAR OPERATION****609.2112 Criminal Vehicular Homicide.****Subdivision 1. Criminal vehicular homicide.**

(a) Except as provided in paragraph (b), a person is guilty of criminal vehicular homicide and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both, if the person causes the death of a human being not constituting murder or manslaughter as a result of operating a motor vehicle:

- (1) in a grossly negligent manner;
- (2) in a negligent manner while under the influence of:
 - (i) alcohol;
 - (ii) a controlled substance; or
 - (iii) any combination of those elements;
- (3) while having an alcohol concentration of 0.08 or more;
- (4) while having an alcohol concentration of 0.08 or more, as measured within two hours of the time of driving;
- (5) in a negligent manner while under the influence of an intoxicating substance and the person knows or has reason to know that the substance has the capacity to cause impairment;
- (6) in a negligent manner while any amount of a controlled substance listed in Schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols, is present in the person's body;
- (7) where the driver who causes the collision leaves the scene of the collision in violation of section [169.09, subdivision 1](#) or 6; or
- (8) where the driver had actual knowledge that a peace officer had previously issued a citation or warning that the motor vehicle was defectively maintained, the driver had actual knowledge that remedial action was not taken, the driver

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had reason to know that the defect created a present danger to others, and the death was caused by the defective maintenance.

(b) If a person is sentenced under paragraph (a) for a violation under paragraph (a), clauses (2) to (6), occurring within ten years of a qualified prior driving offense, the statutory maximum sentence of imprisonment is 15 years.

Subd. 2. Affirmative defense.

It shall be an affirmative defense to a charge under subdivision 1, clause (6), that the defendant used the controlled substance according to the terms of a prescription issued for the defendant in accordance with sections [152.11](#) and [152.12](#).

609.2113 Criminal Vehicular Operation; Bodily Harm

Subdivision 1. Great bodily harm.

A person is guilty of criminal vehicular operation resulting in great bodily harm and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the person causes great bodily harm to another not constituting attempted murder or assault as a result of operating a motor vehicle:

- (1) in a grossly negligent manner;
- (2) in a negligent manner while under the influence of:
 - (i) alcohol;
 - (ii) a controlled substance; or
 - (iii) any combination of those elements;
- (3) while having an alcohol concentration of 0.08 or more;
- (4) while having an alcohol concentration of 0.08 or more, as measured within two hours of the time of driving;
- (5) in a negligent manner while under the influence of an intoxicating substance and the person knows or has reason to know that the substance has the capacity to cause impairment;
- (6) in a negligent manner while any amount of a controlled substance listed in Schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols, is present in the person's body;
- (7) where the driver who causes the accident leaves the scene of the accident in violation of section [169.09, subdivision 1](#) or 6; or

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(8) where the driver had actual knowledge that a peace officer had previously issued a citation or warning that the motor vehicle was defectively maintained, the driver had actual knowledge that remedial action was not taken, the driver had reason to know that the defect created a present danger to others, and the injury was caused by the defective maintenance.

Subd. 2. **Substantial bodily harm.**

A person is guilty of criminal vehicular operation resulting in substantial bodily harm and may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$10,000, or both, if the person causes substantial bodily harm to another as a result of operating a motor vehicle:

(1) in a grossly negligent manner;

(2) in a negligent manner while under the influence of:

(i) alcohol;

(ii) a controlled substance; or

(iii) any combination of those elements;

(3) while having an alcohol concentration of 0.08 or more;

(4) while having an alcohol concentration of 0.08 or more, as measured within two hours of the time of driving;

(5) in a negligent manner while under the influence of an intoxicating substance and the person knows or has reason to know that the substance has the capacity to cause impairment;

(6) in a negligent manner while any amount of a controlled substance listed in Schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols, is present in the person's body;

(7) where the driver who causes the accident leaves the scene of the accident in violation of section [169.09, subdivision 1](#) or 6; or

(8) where the driver had actual knowledge that a peace officer had previously issued a citation or warning that the motor vehicle was defectively maintained, the driver had actual knowledge that remedial action was not taken, the driver had reason to know that the defect created a present danger to others, and the injury was caused by the defective maintenance.

Subd. 3. **Bodily harm.**

A person is guilty of criminal vehicular operation resulting in bodily harm and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both, if the person causes bodily harm to another as a result of operating a motor vehicle:

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- (1) in a grossly negligent manner;
- (2) in a negligent manner while under the influence of:
 - (i) alcohol;
 - (ii) a controlled substance; or
 - (iii) any combination of those elements;
- (3) while having an alcohol concentration of 0.08 or more;
- (4) while having an alcohol concentration of 0.08 or more, as measured within two hours of the time of driving;
- (5) in a negligent manner while under the influence of an intoxicating substance and the person knows or has reason to know that the substance has the capacity to cause impairment;
- (6) in a negligent manner while any amount of a controlled substance listed in Schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols, is present in the person's body;
- (7) where the driver who causes the accident leaves the scene of the accident in violation of section [169.09, subdivision 1](#) or 6; or
- (8) where the driver had actual knowledge that a peace officer had previously issued a citation or warning that the motor vehicle was defectively maintained, the driver had actual knowledge that remedial action was not taken, the driver had reason to know that the defect created a present danger to others, and the injury was caused by the defective maintenance.

Subd. 4. **Affirmative defense.**

It shall be an affirmative defense to a charge under subdivisions 1, clause (6); 2, clause (6); and 3, clause (6), that the defendant used the controlled substance according to the terms of a prescription issued for the defendant in accordance with sections [152.11](#) and [152.12](#).

609.2114 Criminal Vehicular Operation; Unborn Child

Subdivision 1. **Death to an unborn child.**

(a) Except as provided in paragraph (b), a person is guilty of criminal vehicular operation resulting in death to an unborn child and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both, if the person causes the death of an unborn child as a result of operating a motor vehicle:

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- (1) in a grossly negligent manner;
 - (2) in a negligent manner while under the influence of:
 - (i) alcohol;
 - (ii) a controlled substance; or
 - (iii) any combination of those elements;
 - (3) while having an alcohol concentration of 0.08 or more;
 - (4) while having an alcohol concentration of 0.08 or more, as measured within two hours of the time of driving;
 - (5) in a negligent manner while under the influence of an intoxicating substance and the person knows or has reason to know that the substance has the capacity to cause impairment;
 - (6) in a negligent manner while any amount of a controlled substance listed in Schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols, is present in the person's body;
 - (7) where the driver who causes the accident leaves the scene of the accident in violation of section [169.09, subdivision 1](#) or 6; or
 - (8) where the driver had actual knowledge that a peace officer had previously issued a citation or warning that the motor vehicle was defectively maintained, the driver had actual knowledge that remedial action was not taken, the driver had reason to know that the defect created a present danger to others, and the injury was caused by the defective maintenance.
- (b) If a person is sentenced under paragraph (a) for a violation under paragraph (a), clauses (2) to (6), occurring within ten years of a qualified prior driving offense, the statutory maximum sentence of imprisonment is 15 years.

Subd. 2. Injury to an unborn child.

A person is guilty of criminal vehicular operation resulting in injury to an unborn child and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the person causes the great bodily harm to an unborn child subsequently born alive as a result of operating a motor vehicle:

- (1) in a grossly negligent manner;
- (2) in a negligent manner while under the influence of:
 - (i) alcohol;
 - (ii) a controlled substance; or

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- (iii) any combination of those elements;
- (3) while having an alcohol concentration of 0.08 or more;
- (4) while having an alcohol concentration of 0.08 or more, as measured within two hours of the time of driving;
- (5) in a negligent manner while under the influence of an intoxicating substance and the person knows or has reason to know that the substance has the capacity to cause impairment;
- (6) in a negligent manner while any amount of a controlled substance listed in Schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols, is present in the person's body;
- (7) where the driver who causes the accident leaves the scene of the accident in violation of section [169.09, subdivision 1](#) or 6; or
- (8) where the driver had actual knowledge that a peace officer had previously issued a citation or warning that the motor vehicle was defectively maintained, the driver had actual knowledge that remedial action was not taken, the driver had reason to know that the defect created a present danger to others, and the injury was caused by the defective maintenance.

Subd. 3. **Conviction not bar to punishment for other crimes.**

A prosecution for or a conviction of a crime under this section relating to causing death or injury to an unborn child is not a bar to conviction of or punishment for any other crime committed by the defendant as part of the same conduct.

Subd. 4. **Affirmative defense.**

It shall be an affirmative defense to a charge under subdivisions 1, clause (6), and 2, clause (6), that the defendant used the controlled substance according to the terms of a prescription issued for the defendant in accordance with sections [152.11](#) and [152.12](#).

820.02

ARREST

Whenever a person or unborn child dies, or receives any type of physical injury as the result of the operation of a vehicle, aircraft or watercraft, the driver/operator should be placed under arrest for criminal vehicular operation if the officer has probable cause to believe that the driver/operator has been either grossly negligent, negligent and under the influence of alcohol, a controlled substance, an intoxicating substance or any combination, or negligent and having an alcohol concentration of 0.08 or more.

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Subd. 1 When a driver/operator has been placed under arrest for criminal vehicular operation/homicide, the officer should obtain a search warrant through eCharging for a blood draw. Use the following process to obtain and execute the search warrant:

1. Log into eCharging and click “Create new eCharging form.”
2. Open a search warrant on eCharging. Do not open a DWI event.
3. Select DWI/CVO search warrant and select “Yes” to the injury/death question.
4. Complete the “Search Warrant Details” page and uncheck the “Urine Sample” box.
5. Advance through signing the search warrant application and assign it to the appropriate judge.
6. When the judge returns the approved search warrant, ignore the refusal advisory reminder.
7. Serve the driver/operator with a copy of the search warrant and obtain a blood sample from an authorized individual.
 - a. Reasonable force may be used to accomplish the testing. (Ref. <https://www.revisor.mn.gov/statutes/cite/171.177> Subd. 13(b))
8. Complete the information sheet located in the BCA Blood Kit (pink paper) and enclose it with the blood sample.
9. Do not create a “DWI Event” in eCharging and do not submit the blood kit information in eCharging to the BCA.

Subd. 2 If the officer has probable cause that the crime of criminal vehicular operation has occurred and the driver/operator is unconscious, the driver/operator should be transported to the appropriate medical facility. The officer should follow the instructions provided in Subdivision 1 in obtaining a search warrant for a blood sample. Once the search warrant is obtained, the officer should have an authorized individual conduct the legal blood draw.

Subd. 3 If the officer believes probable cause exists that a person has violated any alcohol or drug-related criminal vehicular operation/homicide, the officer shall submit the CVO/Homicide Peace Officer’s Certificate in eCharging. (Ref. 629.344)

Subd. 4 Persons authorized to draw blood for evidentiary testing per MN SS [169A.51](#) subd. 7(a).

Only a physician, medical technician, emergency medical technician-paramedic, registered nurse, medical technologist, medical laboratory technician,

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phlebotomist, laboratory assistant or other qualified person acting at the request of a peace officer may withdraw blood for the purpose of determining the presence of alcohol, controlled substances, or an intoxicating substance. This limitation does not apply to the taking of a breath or urine sample.

<https://www.revisor.mn.gov/statutes/cite/169A.51>

820.04 REPORTS AND STATEMENTS

- Subd. 1** Formal statements should be taken from all involved persons and witnesses.
- Subd. 2** Complete an arrest report.
- Subd. 3** Refer to section 620.00 of this manual for the completion of all reports, activities and notifications necessary in relation to deaths and serious injuries resulting from motor vehicle operation.

820.05 EVIDENCE

The arresting officer should make sure that blood sample(s) are collected in a biological specimen container and secured in the refrigerated locker located in the Edina Police Department property staging area. An Edina Property Inventory Report must be filled out.