



The successful defense of those accused of DUI with death or injury offenses meshes with several of the concepts discussed in other chapters of this book.<sup>1</sup> For instance, accident reconstruction often plays a crucial role for the defense in an accident case. Therefore, it is imperative that you quickly retain an expert and direct an independent accident investigation and reconstruction.

Since much of your success at trial will depend upon the skill, care and diligence of your preparation, the artful practitioner must attempt to preserve any potential evidence in the case, including the vehicle or vehicles involved, blood samples, and the like, in order to compare or counter the police investigation into your client's conduct. Additionally, medical records should be quickly ordered and obtained from the paramedics and hospital. Photographs should be taken of the vehicles and the scene of the accident; investigators might take independent statements of witnesses and conduct an area canvas, which I have found often



**§ 18-2(a). Causation and DUI Manslaughter.**

Many state statutes on DUI manslaughter declare that the defendant is guilty of committing the offense if, while under the influence of alcohol to the extent her faculties were impaired, or while she had an unlawful blood alcohol level, by the operation of a motor vehicle, she caused the death in question.<sup>11</sup>

The question then is whether, under the interpretation of said statutes, all that is needed to prove that an accused is guilty of manslaughter by operating a motor vehicle while under the influence is that (1) a death occurred; (2) the death resulted from the operation of a vehicle by the defendant; and (3) that the defendant was under the influence of alcohol to the extent her normal faculties



§ 18-2(a)

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MURDER, MANSLAUGHTER, ETC.

§ 18-2(b)

§ 18-3

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**§ 18-3(a). Causation and Vehicular Homicide.**

Just as with DUI manslaughter, proof of proximate cause is an essential requirement for conviction of vehicular homicide in many states.<sup>36</sup>



**§ 18-4. DUI with Serious Bodily Injury — The Elements.**

A “DUI with serious bodily injury” occurs when, by reason of the operation of a motor vehicle, “serious bodily injury” results.<sup>42</sup>

Most state statutes define “serious bodily injury” as “an injury to any person,

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Although precedents defining what constitutes “serious personal disfigurement” under such statutes are sparse, a case from Hawaii’s highest court is illustrative of the point.

In *State v. Malufau*,

§ 18-5.

§ 18-6

Because the allegation is an essential element of the crime, “it must be noticed and proved beyond a reasonable doubt.”<sup>69</sup>

Recognizing, however, that a defendant’s presumption of innocence might be

