**T.P.I. – CRIM. 38.17(a)**

***[REFUSING [PREVENTING] [OBSTRUCTING]* THE ADMINISTRATION OF A REQUIRED *[BREATH] [BLOOD]* TEST**

**(for offenses committed on or after 7/1/17 but prior to 7/1/19)**

Any person who commits the offense of *[refusing] [preventing] [obstructing]* the administration of a required *[breath] [blood]* test 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:

[Part A (REQUIRED BREATH TEST):

(1) that the defendant had been operating a motor vehicle in this state;

and

(2)(a) that the defendant had been involved in an accident resulting in the injury or death of another and the defendant had committed a violation of *[vehicular assault under § 39-13-106] [aggravated vehicular assault under § 39-13-115] [vehicular homicide due to intoxication under § 39-13-213(a)(2)] [aggravated vehicular homicide under § 39-13-218] [driving under the influence of an intoxicant under § 55-10-401]* ;

or

(2)(b) that the defendant had committed a violation of *[vehicular assault under § 39-13-106] [aggravated vehicular assault under § 39-13-115] [vehicular homicide due to intoxication under § 39-13-213(a)(2)] [aggravated vehicular homicide under § 39-13-218] [driving under the influence of an intoxicant under § 55-10-401]* and a passenger in the motor vehicle was a child under sixteen (16) years of age;

or

(2)(c) that the defendant had committed a violation of *[vehicular assault under § 39-13-106] [aggravated vehicular assault under § 39-13-115] [vehicular homicide due to intoxication under § 39-13-213(a)(2)] [aggravated vehicular homicide under § 39-13-218] [driving under the influence of an intoxicant under § 55-10-401]* and at the time of the offense had a prior conviction of a violation of *[vehicular assault under § 39-13-106] [aggravated vehicular assault under § 39-13-115] [vehicular homicide due to intoxication under § 39-13-213(a)(2)] [aggravated vehicular homicide under § 39-13-218] [driving under the influence of an intoxicant under § 55-10-401]* ;

or

(2)(d) that the defendant had been required to submit to a *[breath] [blood]* test pursuant to a search warrant issued in accordance with the law;

and

(3) that the defendant intentionally *[refused] [prevented] [obstructed]* the administration of a breath test to determine the alcohol or drug content of the operator’s blood.

[and

(4) that the defendant refused the test, and was driving on a license that was revoked , suspended, or cancelled due to a prior conviction for *[vehicular assault under § 39-13-106] [aggravated vehicular assault under § 39-13-115] [vehicular homicide due to intoxication under § 39-13-213(a)(2)] [aggravated vehicular homicide under § 39-13-218] [driving under the influence of an intoxicant under § 55-10-401].*]]

[Part B (REQUIRED BLOOD TEST):

(1) that the defendant had been operating a motor vehicle in this state;

and

(2)(a) that the defendant had been required to submit to a blood test pursuant to a search warrant issued in accordance with the law;

or

(2)(b) that the law enforcement officer was administering a blood test without the consent of the defendant and one (1) or more of the recognized exigent circumstances to the search warrant requirement existed;

and

(3) that the defendant intentionally *[refused] [prevented] [obstructed]* the administration of a blood test to determine the alcohol or drug content of the operator’s blood.

and

(4) that the blood test was being administered by a *[qualified practitioner] [person acting at the direction of a medical examiner] [physician holding an unlimited license to practice medicine in Tennessee under procedures established by the department of health].*

[and

(5) that the defendant refused the test, and was driving on a license that was revoked , suspended, or cancelled due to a prior conviction for *[vehicular assault under § 39-13-106] [aggravated vehicular assault under § 39-13-115] [vehicular homicide due to intoxication under § 39-13-213(a)(2)] [aggravated vehicular homicide under § 39-13-218] [driving under the influence of an intoxicant under § 55-10-401].*]]

An “exigent circumstance” exists only when the State has shown that the search

is imperative. An exigent circumstance is one in which the urgent need for immediate action becomes too compelling to impose upon governmental actors the attendant delay that accompanies obtaining a warrant. One recognized exigent circumstance is when a warrantless search becomes imperative to prevent the imminent destruction of evidence. The inquiry is whether the circumstances give rise to an objectively reasonable belief that there was a compelling need to act and insufficient time to obtain a warrant.

“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, and every 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.

[“Qualified practitioner” means a

(A) Physician;

(B) Registered nurse;

(C) Licensed practical nurse;

(D) Clinical laboratory technician;

(E) Licensed paramedic;

(F) Licensed emergency medical technician approved to establish intravenous catheters,

(G) Technologist; or

(H) A trained phlebotomist who is operating under a hospital protocol, has completed phlebotomy training through an educational entity providing such training, or has been properly trained by a current or former employer to draw blood.]