**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.]

[**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.]

[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.]

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).] [**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.]

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.

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.