

**PARTS OF A DWI JURY CHARGE**  
(based on CPJC 49.16)

**LAW SPECIFIC TO THIS CASE**

Accusation

The state accuses the defendant of having committed the offense of driving while intoxicated.

Abstract Instructions

Definition of offense

**Relevant Statutes**

§ 49.04(a)

A person commits the offense of driving while intoxicated if the person is intoxicated while operating a motor vehicle in a public place.

*[Include the following if raised by the evidence.]*

See CPJC 49.4

Synergistic Effect

If a person by the use of medication renders himself more susceptible to the influence of alcohol than he otherwise would have been and by reason thereof became intoxicated from recent use of alcohol, he would be in the same position as though his intoxication was produced by the use of alcohol alone.

*[Include the following if raised by the evidence.]*

See CPJC 49.1 (citing *Black*, 491 SW2d 428, 431)

[*Substance*] is a [controlled substance/drug/dangerous drug].

**Definitions**

*Public Place* § 1.07(a)(40)

“Public place” means any place to which the public or a substantial group of the public has access. The term includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

*Intoxicated* § 49.01(2)

“Intoxicated” means either (1) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of

those substances, or any other substance into the body; or (2) having an alcohol concentration of 0.08 or more.

*Alcohol Concentration* § 49.01(1)

“Alcohol concentration” means the number of grams of alcohol per 210 liters of breath, 100 milliliters of blood, or 67 milliliters of urine.

*Motor Vehicle* § 49.01(3); § 32.34(a)

“Motor vehicle” means a device in, on, or by which a person or property is or may be transported or drawn on a highway, except a device used exclusively on stationary rails or tracks.

### **Application of Law to Facts**

You must determine whether the state has proved, beyond a reasonable doubt, three elements. The elements are that—

1. the defendant operated a motor vehicle in [county] County, Texas, on or about [date]; and
2. the defendant did this in a public place; and
3. the defendant did this while intoxicated, by either—
  - a. not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, or a combination of two or more of those substances into the body; or
  - b. having an alcohol concentration of 0.08 or more.

You must all agree on elements 1, 2, and 3 listed above, but you do not have to agree on the method of intoxication listed in elements 3.a and 3.b above.

If you all agree the state has failed to prove, beyond a reasonable doubt, one or more of elements 1, 2, and 3 listed above, you must find the defendant “not guilty.”

*[Select one of the following.]*

If you all agree the state has proved, beyond a reasonable doubt, each of the three elements listed above, you must find the defendant “guilty.”

*[or]*

Transition

If you all agree the state has proved, beyond a reasonable doubt, each of the three elements listed above, you must next consider whether the defendant is not guilty because his conduct is justified by the *[insert defense, e.g., necessity]* defense.

*[Include the following if raised by the evidence.]*

Defense—Abstract

**Necessity** § 9.22(1)-(2); CPJC 9.2 Commentary, citing *Williams*, 630 SW2d 640, 642-43

It is a defense to the offense of misdemeanor driving while intoxicated that, at the time of the conduct, both—

1. the person reasonably believed the conduct was immediately necessary to avoid imminent harm, and
2. the desirability and urgency of avoiding the harm clearly outweighed, according to ordinary standards of reasonableness, the harm sought to be prevented by the law prohibiting the conduct.

**Burden of Proof** Based on § 2.03(d); see CPJ 1.6, 8.2, 8.3

The defendant is not required to prove that necessity applies to this case. Rather, the state must prove, beyond a reasonable doubt, that the defendant did not act out of necessity.

### Definition

*Reasonable Belief* § 1.07(a)(42)

“Reasonable belief” means a belief that an ordinary and prudent person would have held in the same circumstances as the defendant.

## Application of Law to Facts

To decide the issue of necessity, you must determine whether the state has proved, beyond a reasonable doubt, that either—

1. the defendant did not reasonably believe the conduct that constituted driving while intoxicated was immediately necessary to avoid an imminent harm, in this case [*describe harm the defendant sought to avoid, such as the death of or serious bodily injury to someone*]; or
2. the desirability and urgency of avoiding [*describe harm the defendant sought to avoid, such as the death of or serious bodily injury to someone*] did not clearly outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the law prohibiting driving while intoxicated.

You must all agree that the state has proved, beyond a reasonable doubt, either element 1 or 2 listed above. You need not agree on which of these elements the state has proved.

If you find that the state has failed to prove, beyond a reasonable doubt, either element 1 or 2 listed above, you must find the defendant “not guilty.”

If you all agree the state has proved, beyond a reasonable doubt, each of the elements of the offense of driving while intoxicated, and you believe, beyond a reasonable doubt, that the defendant did not act out of necessity, you must find the defendant “guilty.”