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**Drunk Driving and Related Vehicular Offenses, Fourth Edition**  
**Robert S. Reiff**

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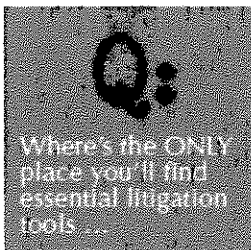
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at the time she operated the vehicle.<sup>12</sup> Some statutes require neither specific intent nor causal connection between the act and the death. Moreover, in such situations, there is no burden placed upon the prosecution to prove that at the time of the incident, the defendant was negligent. Rather, the essential element of the charge is established just as long as it is demonstrated that the defendant was not, at the time of the accident, in possession of her faculties due to the use of intoxicants.<sup>13</sup>

In most instances, the element of causation is a meaningful one derived from statutory definitions of DUI manslaughter, for it is traditionally in that context that discussions of causation arise, i.e., in situations where DUI penalties may be enhanced due to accidents involving serious bodily injury or death.

In *Baker v. State*,<sup>14</sup> the Florida Supreme Court initially held that the prosecution did not have to prove proximate cause to prove DUI manslaughter. In *Magaw v. State*,<sup>15</sup> however, the Court reversed course and held that causation is a required element of the state's proof. Thus, in order to obtain a conviction for this charge, the Court held that the prosecution must prove the defendant was under the influence, and, by his operation of a motor vehicle, exhibited conduct establishing a "causal connection" between the driver's conduct, i.e., the operation of the vehicle, and the "resulting accident which caused the victim's death."<sup>16</sup>

12. See generally *Baker v. State*, 377 So. 2d 17 (Fla. 1979); *Roddenberry v. State*, 152 Fla. 197, 11 So. 2d 582 (1942); *Cannon v. State*, 107 So. 360 (1926); *State v. Kearney*, 535 So. 2d 711 (Fla. 1st Dist. Ct. App. 1988); *State v. Naumowicz*, 535 So. 2d 702 (Fla. 1st Dist. Ct. App. 1988).

13. *Baker*, 377 So. 2d at 18.

14. 377 So. 2d 17 (Fla. 1979).

15. 537 So. 2d 564 (Fla. 1989).

16. *Id.* at 566 (element of causation inserted into definitions of DUI crimes which call for increased penalties due to accidents involving serious bodily injury or death). See also *State v. Hamrick*, 1997 Ohio App. LEXIS 5643 (conviction reversed for failure of the prosecution to prove proximate cause of the death was due to defendant's actions); *Buckles v. State*, 830 P.2d 702 (Wyo. 1992) (proximate causation relevant); *Nugent v. State*, 749 S.W.2d 595 (Tex. App. 1988) (jury should have been allowed to weigh each driver's conduct to determine if the defendant's actions were sufficient to cause the accident); *State v. Wieskamp*, 490 N.W.2d 566 (Iowa App. 1992) (defendant's intoxication not proximate cause of accident); *Webber v. State*, 577 A.2d 58 (Md. 1990) (defendant's negligence was not proximate cause of death, even though he had a blood alcohol level of 0.23%, due to fact that the victim's blood alcohol level was 0.16%, and an accident reconstruction expert testified that a sober driver in the defendant's position could not have avoided the victim). But see *State v. McGill*, 336 S.E.2d 90 (N.C. 1985) (conviction for involuntary manslaughter permitted where the prosecution showed a causal link between the defendant's intoxication and the subsequent death); *State v. Morris*, 705 So. 2d 634 (Fla. 1st Dist. Ct. App. 1998) (error to dismiss manslaughter charge on grounds that no proximate cause existed between the defendant's actions and the death where intoxicated defendant ordered reluctant, unlicensed juvenile to drive late at night, causing fatal accident).