

AGGRAVATED ASSAULT – SIGNIFICANT BODILY INJURY
TO A VICTIM OF DOMESTIC VIOLENCE
N.J.S.A. 2C:12-1b(12)¹

In Count _____ of the Indictment, the defendant(s) is (are) charged with the crime of aggravated assault in that (he/she/they) allegedly on _____ in the _____
(Date) (Municipality)

(READ PERTINENT LANGUAGE OF INDICTMENT)

The defendant(s) is (are) accused of violating a section of our state statutes that reads as follows:

A person is guilty of aggravated assault if he . . . [a]ttempts to cause significant bodily injury or causes significant bodily injury purposely or knowingly or, under circumstances manifesting extreme indifference to the value of human life, recklessly causes significant bodily injury to a person who, with respect to the actor, meets the definition of a victim of domestic violence

OPTION ONE²
(Causing Significant Bodily Injury)

To find the defendant(s) guilty of aggravated assault for causing significant bodily injury to a person who, with respect to the actor, meets the definition of a victim of domestic violence, the State must prove beyond a reasonable doubt each of the following elements:

1. That the defendant(s) caused significant bodily injury to [name of person];
2. That the defendant(s) acted purposely or knowingly or under circumstances manifesting extreme indifference to the value of human life, recklessly; and
3. That [name of person] meets the definition of a victim of domestic violence.

The first element that the State must prove beyond a reasonable doubt is that the defendant(s) caused significant bodily injury to [name of person].

Causation³ has a special meaning under the law. To establish causation, the State must

¹ N.J.S.A. 2C:12-1b(12) took effect on August 10, 2015.

² Options One and Two of this model charge are not mutually exclusive and, therefore, it may be appropriate to charge the jury as to both respective theories — that is, causing and attempting to cause significant bodily injury — depending on the nature of the Indictment and the evidence adduced at trial.

³ N.J.S.A. 2C:2-3.

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prove two elements, each beyond a reasonable doubt: First, but for the defendant's (defendants') conduct, the result in question would not have happened. In other words, without defendant's (defendants') actions the result would not have occurred.

(When Purposeful or Knowing Conduct Involved)

Second, the actual result must have been within the design or contemplation of the defendant(s). If not, it must involve the same kind of injury or harm as that designed or contemplated, and must also not be too remote, too accidental in its occurrence or too dependent on another's volitional act to have a just bearing on the defendant's (defendants') liability or on the gravity of (his/her/their) offense.

(When Reckless Conduct Involved)

Second, [for reckless conduct] that the actual result must have been within the risk of which the defendant(s) was (were) aware. If not, it must involve the same kind of injury or harm as the probable result and must also not be too remote, too accidental in its occurrence or too dependent on another's volitional act to have a just bearing on the defendant's (defendants') liability or on the gravity of (his/her/their) offense.

(CHARGE IN ALL CASES)

Significant bodily injury means bodily injury which creates a temporary loss of the function of any bodily member or organ or temporary loss of any one of the five senses.⁴ As you know, the five senses are sight, hearing, taste, touch and smell. Bodily injury means physical pain, illness or any impairment of physical condition.⁵

The second element that the State must prove beyond a reasonable doubt is that the defendant(s) acted purposely or knowingly or under circumstances manifesting extreme indifference to the value of human life, recklessly.

A person acts purposely with respect to the result of his/her conduct if it is his/her

⁴ N.J.S.A. 2C:11-1d.

⁵ N.J.S.A. 2C:11-1a.

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conscious object to cause such a result. A person acts purposely if he/she acts with design, with a specific intent, with a particular object or purpose, or if he/she means to do what he/she does.

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that his/her conduct is of that nature or that such circumstances exist or if he/she is aware of a high probability of their existence. A person acts knowingly with respect to the result of his/her conduct if he/she is aware that it is practically certain that his/her conduct will cause such a result.

A person acts recklessly with respect to the result of his/her conduct if he/she consciously disregards a substantial and unjustifiable risk that the result will occur from his/her conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to the actor, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. One is said to act recklessly if one acts with recklessness, with scorn for the consequences, heedlessly, fool-hardily.

The phrase “under circumstances manifesting extreme indifference to the value of human life” does not focus on the state of mind of the actor, but rather on the circumstances under which you find that he/she acted. If, in light of all the evidence, you find that the conduct of the defendant(s) resulted in a probability as opposed to a mere possibility of significant bodily injury, then you may find that (he/she/they) acted under circumstances manifesting extreme indifference to the value of human life.⁶

⁶ In *State v. Curtis*, 195 N.J. Super. 354, 364–65 (App. Div.), *certif. denied*, 99 N.J. 212 (1984), the court found, in the context of aggravated manslaughter, that the difference between recklessness under circumstances manifesting extreme indifference to human life and mere recklessness is the difference between the probability as opposed to the possibility that a certain result will occur. The Supreme Court endorsed *Curtis* in *State v. Breakiron*, 108 N.J. 591, 605 (1987). The case law has applied the *Curtis* probability standard to the aggravated-assault statute. *State v. Scher*, 278 N.J. Super. 249, 272 (App. Div. 1994), *certif. denied*, 140 N.J. 276 (1995); *State v. Oriole*, 243 N.J. Super. 688, 693 (Law Div. 1990). Please note that in the aggravated-assault statute the Legislature has used the term “extreme indifference to the value of human life,” while the aggravated-manslaughter statute speaks in terms of “extreme

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In determining whether the defendant(s) acted purposely or knowingly or under circumstances manifesting extreme indifference to the value of human life, recklessly, you may consider the nature of the act(s) itself (themselves) and the severity of the resulting injury (injuries).

Purpose, knowing and reckless are conditions of the mind that cannot be seen and can only be determined by inferences drawn from the defendant's (defendants') conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she engaged in a particular act. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference, which may arise from the nature of the defendant's (defendants') acts and conduct, from all that (he/she/they) said and did at the particular time and place, and from all surrounding circumstances.

The third element that the State must prove beyond a reasonable doubt is that [name of person] meets the definition of a victim of domestic violence.⁷ In order for the State to prove this element, the State must first prove beyond a reasonable doubt that the defendant(s) caused significant bodily injury to [name of person], and that the defendant(s) acted purposely or knowingly or under circumstances manifesting extreme indifference to the value of human life, recklessly. The State must then prove beyond a reasonable doubt that

(CHOOSE AS APPROPRIATE)⁸

indifference to human life.” Therefore, the indifference referred to in the aggravated-assault statute would appear not to relate to whether the victim lives or dies but rather to the value of the victim's life.

⁷ N.J.S.A. 2C:25-19d.

⁸ The definition of “victim of domestic violence” as contained in N.J.S.A. 2C:25-19d refers to a specified person, protected under the Prevention of Domestic Violence Act of 1991, who “has been subjected to domestic violence” by another specified person. The possible relationships between the parties as enumerated in N.J.S.A. 2C:25-19d are separated into three classes for purposes of this model charge. The term, “domestic violence,” as referenced in N.J.S.A. 2C:25-19d, is defined in N.J.S.A. 2C:25-19a as the occurrence of one or more of seventeen predicate acts inflicted upon a person protected

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(Relationship Class One)

[name of person] is 18 years of age or older or an emancipated minor and the defendant(s) is [name of person's] spouse, former spouse, or any other person who is a present household member or was at any time a household member. Emancipated minor means a person who is under 18 years of age but who has been married, has entered military service, has a child or is pregnant or has been previously declared by a court or an administrative agency to be emancipated.⁹

(Relationship Class Two)

[name of person], regardless of age, has a child in common with the defendant(s), or [name of person], regardless of age, anticipates having a child in common with the defendant(s), if one of the parties is pregnant.

(Relationship Class Three)

[name of person], regardless of age, has had a dating relationship with the defendant(s).

(CHARGE IN ALL CASES)

All jurors do not have to agree unanimously concerning which form of aggravated assault is present so long as all believe that it was one form of aggravated assault or the other. However, to be guilty of aggravated assault, all jurors must agree that the defendant(s) either purposely or knowingly caused significant bodily injury to a person who, with respect to the actor, meets the definition of a victim of domestic violence or, under circumstances manifesting extreme indifference to the value of human life, recklessly caused significant bodily injury to such

under the Prevention of Domestic Violence Act of 1991 by an adult or an emancipated minor. Since this model charge only concerns significant-bodily-injury aggravated assault to a person who, with respect to the actor, meets the definition of a victim of domestic violence, each of the seventeen predicate acts as enumerated in N.J.S.A. 2C:25-19a need not be considered by a jury with regard to whether [name of person] meets the definition of a victim of domestic violence. Indeed, the legislative purpose of N.J.S.A. 2C:12-1b(12) is to remove the presumption of non-incarceration which is otherwise applicable to third-degree crimes for first-time offenders when a domestic-violence-related assault involves actual or attempted significant bodily injury. S. Judiciary Comm. Statement to S.B. No. S2559 (June 11, 2015).

⁹ N.J.S.A. 2C:25-19e.

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person.

If you find that the State has proved each element beyond a reasonable doubt, then you must find the defendant(s) guilty.

If you find that the State has failed to prove any element beyond a reasonable doubt, then you must find the defendant(s) not guilty.

OPTION TWO
(Attempt to Cause Significant Bodily Injury)

To find the defendant(s) guilty of attempting to cause significant bodily injury to a person who, with respect to the actor, meets the definition of a victim of domestic violence, the State must prove beyond a reasonable doubt each of the following elements:

1. That the defendant(s) purposely¹⁰ attempted to cause significant bodily injury to [name of person]; and
2. That [name of person] meets the definition of a victim of domestic violence.

If you find beyond a reasonable doubt that the defendant(s) attempted to cause significant bodily injury, it does not matter whether such injury actually resulted.

The first element that the State must prove beyond a reasonable doubt is that the defendant(s) purposely attempted to cause significant bodily injury to [name of person].

The law provides that a person is guilty of attempt if, acting purposefully, he/she:

(CHOOSE AS APPROPRIATE)

1. Engaged in conduct that would constitute the offense if the attendant circumstances were as a reasonable person would believe them to be;

(or)

¹⁰ When a person actually causes significant bodily injury, “he is guilty whether his mental state is purposeful, knowing or reckless. However, where the person does not cause serious bodily injury but only attempts to do so, he is guilty only if the attempt to cause that result is purposeful.” State v. McAllister, 211 N.J. Super. 355, 362 (App. Div. 1986) (citing N.J.S.A. 2C:5-1a; State v. Battle, 209 N.J. Super. 255, 258-59 (App. Div.1986)).

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2. Did (or omitted to do) anything with the purpose of causing significant bodily injury to another without further conduct on his/her part. This means that the defendant(s) did something designed to cause significant bodily injury without having to take any further action.

(or)

3. Did (or omitted to do) anything that, under the circumstances as a reasonable person would believe them to be, was an act (or omission) constituting a substantial step in a course of conduct planned to culminate in his commission of the crime. The step taken must be one that is strongly corroborative of the defendant's (defendants') criminal purpose. The accused must be shown to have had a firmness of criminal purpose in light of the step(s) he/she had already taken. These preparatory steps must be substantial and not just very remote preparatory acts.¹¹

A person acts purposely with respect to the result of his/her conduct if it is his/her conscious object to cause such a result. A person acts purposely if he/she acts with design, with a specific intent, with a particular object or purpose, or if he/she means to do what he/she does.

In determining whether the defendant(s) acted purposely, you may consider the nature of the act(s) itself (themselves) and the severity of the resulting injury (injuries).

Purpose is a condition of the mind that cannot be seen and can only be determined by inferences drawn from the defendant's (defendants') conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she engaged in a particular act. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference, which may arise from the nature of the defendant's (defendants') acts and conduct, from all that (he/she/they) said and did at the particular time and place, and from all surrounding circumstances.

(CHARGE IN ALL CASES)

Significant bodily injury means bodily injury which creates a temporary loss of the function of any bodily member or organ or temporary loss of any one of the five senses.¹² As

¹¹ State v. Fornino, 223 N.J. Super. 531, 538 (App. Div.), certif. denied, 111 N.J. 570 (1988), cert. denied, 488 U.S. 859, 109 S. Ct. 152, 102 L. Ed. 2d 123 (1988).

¹² N.J.S.A. 2C:11-1d.

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you know, the five senses are sight, hearing, taste, touch and smell. Bodily injury means physical pain, illness or any impairment of physical condition.¹³

The second element that the State must prove beyond a reasonable doubt is that [name of person] meets the definition of a victim of domestic violence.¹⁴ In order for the State to prove this element, the State must first prove beyond a reasonable doubt that the defendant(s) purposely attempted to cause significant bodily injury to [name of person]. The State must then prove beyond a reasonable doubt that

(CHOOSE AS APPROPRIATE)¹⁵

(Relationship Class One)

[name of person] is 18 years of age or older or an emancipated minor and the defendant(s) is [name of person's] spouse, former spouse, or any other person who is a present household member or was at any time a household member. Emancipated minor means a person who is under 18 years of age but who has been married, has entered military service, has a child or is pregnant or has been previously declared by a court or an administrative agency to be emancipated.¹⁶

(Relationship Class Two)

¹³ N.J.S.A. 2C:11-1a.

¹⁴ N.J.S.A. 2C:25-19d.

¹⁵ The definition of “victim of domestic violence” as contained in N.J.S.A. 2C:25-19d refers to a specified person, protected under the Prevention of Domestic Violence Act of 1991, who “has been subjected to domestic violence” by another specified person. The possible relationships between the parties as enumerated in N.J.S.A. 2C:25-19d are separated into three classes for purposes of this model charge. The term, “domestic violence,” as referenced in N.J.S.A. 2C:25-19d, is defined in N.J.S.A. 2C:25-19a as the occurrence of one or more of seventeen predicate acts inflicted upon a person protected under the Prevention of Domestic Violence Act of 1991 by an adult or an emancipated minor. Since this model charge only concerns significant-bodily-injury aggravated assault to a person who, with respect to the actor, meets the definition of a victim of domestic violence, each of the seventeen predicate acts as enumerated in N.J.S.A. 2C:25-19a need not be considered by a jury with regard to whether [name of person] meets the definition of a victim of domestic violence. Indeed, the legislative purpose of N.J.S.A. 2C:12-1b(12) is to remove the presumption of non-incarceration which is otherwise applicable to third-degree crimes for first-time offenders when a domestic-violence-related assault involves actual or attempted significant bodily injury. S. Judiciary Comm. Statement to S.B. No. S2559 (June 11, 2015).

¹⁶ N.J.S.A. 2C:25-19e.

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[name of person], regardless of age, has a child in common with the defendant(s), or [name of person], regardless of age, anticipates having a child in common with the defendant(s), if one of the parties is pregnant.

(Relationship Class Three)

[name of person], regardless of age, has had a dating relationship with the defendant(s).

(CHARGE IN ALL CASES)

If you find that the State has proved beyond a reasonable doubt that the defendant(s) purposely attempted to cause significant bodily injury to a person who, with respect to the actor, meets the definition of a victim of domestic violence, then you must find the defendant(s) guilty.¹⁷

If you find that the State has failed to prove any element beyond a reasonable doubt, then you must find the defendant(s) not guilty.¹⁸

¹⁷ Where appropriate, renunciation should be charged. N.J.S.A. 2C:5-1d.

¹⁸ In third-degree aggravated assault cases involving the use of a deadly weapon, it may be appropriate to instruct the jury on the following lesser offenses: fourth-degree aggravated assault, N.J.S.A. 2C:12-1b(3), and simple assault, N.J.S.A. 2C:12-1a(1) and (2). Cf. State v. Villar, 292 N.J. Super. 320, 326–30 (App. Div. 1996), rev'd. o.g., 150 N.J. 503, 517 n.4 (1997). See also State v. Sloane, 111 N.J. 293, 301 (1988). These may be charged as lesser offenses even though fourth-degree aggravated assault and a(2) disorderly persons simple assault contain an element (a deadly weapon) that is not an element of third-degree aggravated assault. Cf. Villar, supra; Sloane, supra. When these lesser offenses are to be charged, the trial court and counsel should construct a sequence of the lesser offenses to be charged. Villar, supra, 150 N.J. at 517 n.4.