

ASSAULT BY AUTO OR VESSEL
(SERIOUS BODILY INJURY, WITH DRUNK DRIVING OR REFUSAL¹)
(N.J.S.A. 2C:12-1c)

The defendant (Name) is charged in count _____ with the crime of assault by auto [or vessel].

The indictment alleges:

(READ APPROPRIATE COUNT OF INDICTMENT)

The statute upon which this charge is based provides:

A person is guilty of assault by auto [or vessel] when the person drives a vehicle [or vessel] recklessly and causes...serious bodily injury...to another.

In order for you to find the defendant guilty of this crime, the State must prove the following elements beyond a reasonable doubt:

1. That defendant was driving a vehicle [or vessel];²
2. That defendant caused serious bodily injury to (name victim); and
3. That defendant caused such serious bodily injury by driving the vehicle [or vessel] recklessly.

Bodily injury is defined as physical pain, illness or any impairment of physical condition.³ Serious bodily injury is defined as bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.⁴

¹ "Drunk Driving" is utilized as a convenient short-hand label in the caption. The statute is broader in scope and also includes driving while under the influence of substances other than alcohol. In appropriate cases the charge will have to be adapted to fit the facts.

² N.J.S.A. 2C:12-1c provides: "As used in this section, 'vessel' means a means of conveyance for travel on water and propelled otherwise than by muscular power."

³ N.J.S.A. 2C:11-1a.

⁴ N.J.S.A. 2C:11-1b.

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In order to find that defendant caused (victim's) injury, you must find that (victim) would not have been injured but for defendant's conduct⁵

A person acts recklessly when he/she consciously disregards a substantial and unjustifiable risk that serious bodily injury will result from his/her conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the defendant's conduct and the circumstances known to him/her, disregard of the risk involves a gross deviation from the standard of conduct that a reasonable person would observe in the defendant's situation.

In other words, in order for you to find the defendant drove a vehicle [or vessel] recklessly, the State must prove beyond a reasonable doubt that the defendant was aware that he/she was operating a vehicle [or vessel] in such a manner or under such circumstances as to create a substantial and unjustifiable risk of serious bodily injury to another. The State must also prove beyond a reasonable doubt that the defendant consciously disregarded this risk and that the disregard of the risk was a gross deviation from the way a reasonable person would have conducted himself/herself in the situation.

In determining whether the State has proven beyond a reasonable doubt that defendant acted recklessly, defendant's unawareness of a risk, due to self-induced intoxication⁶, is immaterial.⁷ In other words, you may find that the State has proven recklessness beyond a reasonable doubt even though the defendant was unaware of a risk of which he/she would have been aware were he/she not intoxicated.⁸

⁵ N.J.S.A. 2C:2-3a(1). If proximate cause is an issue, N.J.S.A. 2C:2-3c should be charged.

⁶ There is no legal distinction between intoxication resulting from alcohol use and that resulting from drug use. Cannel, New Jersey Criminal Code Annotated, Comment 2 to N.J.S.A. 2C:2-8 (Gann 2004) (citing State v. Sette, 259 N.J. Super. 156, 173-74 (App. Div. 1992), certif. denied, 130 N.J. 597 (1992); State v. Green, 318 N.J. Super. 361, 370 (App. Div. 1999), aff'd o.b., 163 N.J. 140 (2001).

⁷ N.J.S.A. 2C:2-8b. For the exact statutory definition of self-induced intoxication, please see the full text of N.J.S.A. 2C:2-8b.

⁸ 1971 Code Commentary to N.J.S.A. 2C:2-8 as reproduced in Cannel, supra, Comment to N.J.S.A. 2C:2-8.

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Recklessness is a condition of the mind that cannot be seen and that can often be determined only from inferences from conduct, words, or acts. It is not necessary for the State to produce a witness to testify that the defendant stated that he/she acted with a particular state of mind. It is within your power to find that proof of recklessness has been furnished beyond a reasonable doubt by inferences that may arise from the nature of the acts and circumstances surrounding the conduct in question.

**[WHERE A VIOLATION OF THE MOTOR VEHICLE STATUTES
IS ALLEGED, ADD THE FOLLOWING]**

The State alleges that the defendant's conduct involved [a] violation[s] of the motor vehicle laws of this State. Specifically, it is alleged that the defendant [**list motor vehicle violations alleged and their elements**]. It may be necessary for you to determine whether defendant operated a vehicle while in violation of New Jersey's drunk driving law [and/or that defendant thereafter refused to submit to a breathalyzer examination as required by New Jersey law], as I will explain shortly. [**Charge where appropriate:** However, with that one possible exception, whether defendant is guilty or not of a motor vehicle offense will be determined by an appropriate court.⁹ In other words, it is not your job to decide whether defendant is guilty or not guilty of any motor vehicle offense other than drunk driving (and/or refusal).] In any event, you may consider the evidence that he/she committed [a] motor vehicle offense[s] in deciding whether he/she was reckless.

[CHARGE IN ALL CASES]

In conclusion, the three elements of the crime of assault by auto [or vessel] are:

1. That the defendant was driving a vehicle [or vessel];
2. That the defendant caused serious bodily injury to (name victim); and
3. That the defendant caused such serious bodily injury by driving the vehicle [or vessel] recklessly.

If you are satisfied that the State has proven each and every one of these elements beyond a reasonable doubt, then you must find the defendant guilty of assault by auto [or vessel]. However, if the State has failed to prove any element beyond a reasonable doubt, then you must find the defendant not guilty of assault by auto [or vessel].

⁹ State v. Muniz, 118 N.J. 319 (1990).

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If, and only if, you find the defendant guilty of the crime charged beyond a reasonable doubt, you must proceed to determine whether the State has also proven beyond a reasonable doubt that the defendant operated the auto [or vessel] while in violation of New Jersey's drunk driving law [or that defendant thereafter refused to submit to a breathalyzer examination as required by New Jersey law].

In order for you to find that the defendant violated the drunk driving law, the State must prove beyond a reasonable doubt that the defendant operated a motor vehicle [or vessel] while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or operated a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in his/her blood.¹⁰

[CHARGE WHERE AND TO THE EXTENT APPROPRIATE]

If, and only if, you find the defendant guilty of the crime charged beyond a reasonable doubt, and you also decide that the State has proven beyond a reasonable doubt that the defendant operated the auto [or vessel] while in violation of New Jersey's drunk driving law [or that defendant thereafter refused to submit to a breathalyzer examination as required by New Jersey law], you must also proceed to determine whether the State has further proven beyond a reasonable doubt that

the defendant did so while on any school property used for school purposes which was owned by or leased to any elementary or secondary school or school board, or within 1,000 feet of such property.

[OR]

the defendant did so while driving through a school crossing, if the municipality, by ordinance or resolution, had designated the school crossing as such. A "school crossing" means that portion of a highway where school

¹⁰ N.J.S.A. 39:4-50. There is a substantial body of case law interpreting this statute, and, in appropriate cases, more elaborate instructions may have to be given as to the definitions and application of the statutory language. The charge will also have to be modified where the State alleges refusal to submit to a breathalyzer examination under N.J.S.A. 39:4-50a. Note that N.J.S.A. 39:4-50 was amended, effective January 20, 2004, and that for crimes alleged to have been committed before that date a blood alcohol concentration of 0.10% will be required.

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children are required to cross the highway in the vicinity of a school.¹¹

[OR]

the defendant did so while driving through a school crossing knowing that juveniles were present, if the municipality had not designated the school crossing as such by ordinance or resolution. A “school crossing” means that portion of a highway where school children are required to cross the highway in the vicinity of a school.¹²

It is no defense to a prosecution under the statute that the defendant was unaware that the prohibited conduct took place while on or within 1,000 feet of any school property [**OR** while driving through a school crossing that has been designated as such by municipal ordinance or resolution]. Nor is it a defense in such a case that no juveniles were present on the school property [**OR** crossing zone] at the time of the offense, or that the school was not in session.¹³

[CHARGE IF APPLICABLE]

The additional element of operating a vehicle [or vessel] in violation of the drunk driving law through a school crossing that has **not** been designated as such by municipal ordinance or resolution can only be found where there is proof beyond a reasonable doubt that the defendant knew that juveniles were present at the time. A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if a person is aware that his/her conduct is of that nature, or that such circumstances exist, or a person is aware of a high probability of their existence. A person

¹¹ N.J.S.A. 39:1-1.

¹² N.J.S.A. 39:1-1.

¹³ N.J.S.A. 2C:12-1c. Note that the last sentence of this paragraph does **not** apply to the third alternative specified in N.J.S.A. 2C:12-1c(3)(c), which requires that a defendant knows juveniles to be present in a school crossing that has not been designated as such by municipal ordinance or resolution.

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acts knowingly with respect to a result of his/her conduct if a person is aware that it is practically certain that his/her conduct will cause such a result. One is said to act knowingly if one acts with knowledge, if one acts consciously, if he/she comprehends his/her acts.¹⁴

Knowledge, like recklessness, is a condition of the mind that cannot be seen and that can often be determined only from inferences from conduct, word, or acts. As I told you before, it is not necessary for the State to produce a witness to testify that the defendant stated that he/she acted with a particular state of mind. It is within your power to find that proof of knowledge has been furnished beyond a reasonable doubt by inferences that may arise from the nature of the acts and circumstances surrounding the conduct in question.

Record your additional finding(s) in the place(s) provided on your verdict sheet.

¹⁴ N.J.S.A. 2C:2-2b(2).