

**AGGRAVATED ASSAULT - SERIOUS BODILY INJURY**  
**N.J.S.A. 2C:12-1b(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 serious bodily injury to another, or causes such injury purposely or knowingly or under circumstances manifesting extreme indifference to the value of human life recklessly causes such injury.

Under this statute, the defendant(s) can be found guilty if (he/she/they) EITHER caused serious bodily injury to another OR attempted to cause serious bodily injury to another.

To find the defendant(s) guilty of aggravated assault for causing serious bodily injury to another, the State must prove beyond a reasonable doubt each of the following elements:

1. That the defendant(s) caused serious bodily injury to another; and
2. That the defendant(s) acted purposely or knowingly or acted recklessly under circumstances manifesting extreme indifference to the value of human life.

The first element that the State must prove beyond a reasonable doubt is that the defendant(s) caused serious bodily injury to another.

Serious bodily injury means 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.

The second element that the State must prove beyond a reasonable doubt is that the defendant(s) acted purposely or knowingly or acted recklessly under circumstances manifesting

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extreme indifference to the value of human life.

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 (e.g., “I did it on purpose”).

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 serious bodily injury, then you may find that (he/she/they) acted under circumstances manifesting extreme indifference to the value of human life.<sup>1</sup>

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<sup>1</sup> In State v. Curtis, 195 N.J. Super. 354, 364-65 (App. Div. 1984), certif. den., 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. den., 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 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.

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

(NOTE: When the actual victim is one other than the intended victim, the jury should be instructed that it is immaterial that the actual victim was not the intended victim).

If you find that the State has proved each element beyond a reasonable doubt, then you must find the defendant(s) guilty. All jurors do not have to agree unanimously concerning which form of serious bodily injury aggravated assault is present so long as all believe that it was one form of serious bodily injury or the other. However, for a defendant to be guilty of serious bodily injury aggravated assault, all jurors must agree that the defendant either knowingly or purposely or recklessly under circumstances manifesting extreme indifference to the value of human life caused serious bodily injury to **(insert victim's name)**.

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 of the charge of aggravated assault in that (he/she/they) caused serious bodily injury to another.

As I previously instructed you, the defendant(s) can be found guilty if (he/she/they) EITHER caused serious bodily injury to another OR attempted to cause serious bodily injury to another.

To find the defendant(s) guilty of attempting to cause serious bodily injury to another, the State must prove beyond a reasonable doubt that the defendant(s) purposely<sup>2</sup> attempted to cause serious bodily injury to another. If you find beyond a reasonable doubt that the defendant(s) attempted to cause serious bodily injury, it does not matter whether such injury actually resulted.

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<sup>2</sup> When a person actually causes serious bodily injury, it does not matter whether his mental state is purposeful, knowing or reckless (under circumstances manifesting extreme indifference to the value of human life). When, however, the person attempts to cause, but does not cause, serious bodily injury, he must act purposefully. Cf. State v. McAllister, 211 N.J. Super. 355, 362 (App. Div. 1986).

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

**(select appropriate section)**

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

**(or)**

2. Did (or omitted to do) anything with the purpose of causing serious bodily injury to another without further conduct on his/her part. This means that the defendant(s) did something designed to cause serious 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 as substantial step in a course of conduct planned to culminate in his/her commission of the crime. The step taken must be one that is strongly corroborative of the defendant's 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.<sup>3</sup>

Serious bodily injury means 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.

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 (e.g., "I did it on purpose").

If you find that the State has proved beyond a reasonable doubt that the defendant(s)

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<sup>3</sup> State v. Fornino, 223 N.J. 531, 538 (App. Div. 1988), certif. den., 111 N.J. 570 (1988); cert. den., 488 U.S. 859, 109 S.Ct. 152, 102 L.Ed. 2d 123 (1988).

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attempted to cause serious bodily injury to another, then you must find the defendant(s) guilty.<sup>4</sup>

If you find that the State has failed to prove beyond a reasonable doubt that the defendant(s) attempted to cause serious bodily injury to another, then you must find the defendant(s) not guilty.<sup>5</sup>

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<sup>4</sup> Where appropriate, renunciation should be charged. N.J.S.A. 2C:5-1(d).

<sup>5</sup> In second degree aggravated assault cases involving the use of a deadly weapon, it may be appropriate to instruct the jury on the following lesser offenses: third degree aggravated assault, N.J.S.A. 2C:12-1b(2); 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). State v. Villar, 292 N.J. Super. 320, 326-330 (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 offenses may be charged as lesser offenses even though third degree aggravated assault, fourth degree aggravated assault and a(2) disorderly persons simple assault contain an element (a deadly weapon) that is not an element of second degree aggravated assault. State v. Villar, supra; State v. 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. State v. Villar, 150 N.J. at 517 n. 4.