

**KNOWINGLY OR RECKLESSLY FAILING TO TAKE REASONABLE
MEASURES TO PREVENT OR MITIGATE WIDESPREAD INJURY OR DAMAGE
(N.J.S.A. 2C:17-2d)**

Count _____ of the indictment charges the defendant with knowingly or recklessly failing to take reasonable measures to prevent or mitigate widespread injury or damage in violation of a statute which provides as follows:

A person who knowingly or recklessly fails to take reasonable measures to prevent or mitigate widespread injury or damage commits a crime . . .if:

- (1) He knows that he is under an official, contractual or other legal duty to take such measures; or
- (2) He did or assented to the act causing or threatening the injury or damage.

In order for the defendant to be found guilty of knowingly or recklessly failing to take reasonable measures to prevent or mitigate widespread injury or damage, the State must prove the following elements beyond a reasonable doubt:

- (1) that the defendant failed to take reasonable measures to prevent or mitigate widespread injury or damage; and

[CHOOSE THE APPROPRIATE SECOND ELEMENT]

- (2) that defendant knew that he/she was under an official, contractual or other legal duty to take such measures; and

[OR]

- (2) that defendant did or assented to the act causing or threatening the injury or damage; and
- (3) that the defendant acted [knowingly] [recklessly].

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The first element the State must prove beyond a reasonable doubt is that the defendant failed to take reasonable measures to prevent or mitigate widespread injury or damage. The term “widespread injury or damage” means serious bodily injury to five or more people or damage to five or more habitations or to a building which would normally have contained 25 or more persons at the time of the offense. “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 the State must prove beyond a reasonable doubt is [that the defendant knew that he/she was under an official, contractual or other legal duty to take such measures] [that the defendant did or assented to the act causing or threatening the injury or damage].

The third element the State must prove beyond a reasonable doubt is that the defendant acted knowingly or recklessly. 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 he/she is aware of a high probability of their existence. A person acts knowingly with respect to a 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 nature of his/her conduct or a result thereof when he/she consciously disregards a substantial and unjustifiable risk. The risk must be of such a nature and degree that, considering the nature and purpose of the actor’s conduct and the

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circumstances known to him/her, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.¹

You must realize that knowledge and recklessness are states of mind which cannot be seen and can only be determined by drawing inferences from one's conduct, words or actions, and from all of the surrounding circumstances. It therefore is not necessary that the State produce witnesses to testify that the defendant said that he/she was acting knowingly or recklessly. His/Her state of mind is to be determined by you after you examine his/her conduct and actions, all that was said or done at that particular time and place, and all the surrounding circumstances.

If the State has failed to prove any one or more of the elements as I have described them to you beyond a reasonable doubt, you must find the defendant not guilty of knowingly or recklessly failing to take reasonable measures to prevent or mitigate widespread injury or damage. If the State has proven each element beyond a reasonable doubt, you must find the defendant guilty of the crime of knowingly or recklessly failing to take reasonable measures to prevent or mitigate widespread injury or damage.

¹ See N.J.S.A. 2C:2-2b(3).