

AGGRAVATED MANSLAUGHTER
(N.J.S.A. 2C:11-4a)

The defendant is charged by indictment with the crime of aggravated manslaughter, and the indictment alleges he/she caused (insert victim's name) death on (Date).

A person is guilty of aggravated manslaughter if he/she recklessly causes the death of another person under circumstances manifesting extreme indifference to human life.

In order for you to find the defendant guilty of aggravated manslaughter, the State is required to prove each of the following elements beyond a reasonable doubt:

- (1) that the defendant caused (insert victim's name) death, and
- (2) that the defendant did so recklessly, and
- (3) that the defendant did so under circumstances manifesting extreme indifference to human life.

One element that the State must prove beyond a reasonable doubt is that the defendant acted recklessly.

A person who causes another's death does so recklessly when he/she is aware of and consciously disregards a substantial and unjustifiable risk that death will result from his/her conduct. The risk must be of such a nature and degree that, considering the nature and purpose of defendant's conduct and the circumstances known to defendant, his/her disregard of that risk is a gross deviation from the standard of conduct that a reasonable person would follow in the same situation.¹

In other words, you must find that defendant was aware of and consciously disregarded the risk of causing death. If you find that defendant was aware of and disregarded the risk of causing death, you must determine whether the risk that he/she disregarded was substantial and

¹ N.J.S.A. 2C:2-2(3).

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unjustifiable. In doing so, you must consider the nature and purpose of defendant's conduct, and the circumstances known to defendant, and you must determine whether, in light of those factors, defendant's disregard of that risk was a gross deviation from the conduct a reasonable person would have observed in defendant's situation.²

(Summarize, if helpful, all of the evidence relevant to recklessness, including any contrasting accounts of events by the defense and the State.)³

Another element that the State must prove beyond a reasonable doubt is that the defendant acted under circumstances manifesting extreme indifference to human life. The phrase "under circumstances manifesting extreme indifference to human life" does not focus on defendant's state of mind, but rather on the circumstances under which you find he/she acted. If, in light of all the evidence, you find that defendant's conduct resulted in a probability as opposed to a mere possibility of death, then you may find that he/she acted under circumstances manifesting extreme indifference to human life.⁴ (On the other hand, if you find that his/her

² This expanded explanation of recklessness is adapted from the following portion of the Code Commentary:

The Code requires, however, that the risk thus consciously disregarded by the actor be substantial and unjustifiable; even substantial risks may be created without recklessness when the actor seeks to serve a proper purpose. Accordingly, to aid the ultimate determination, the Code points expressly to the factors to be weighed in judgment: the nature and degree of the risk disregarded by the actor, the nature and purpose of his conduct and the circumstances known to him in acting.

Some principle must be articulated, however, to indicate what final judgment is demanded after everything is weighed. There is no way to state this value judgment that does not beg the question in the last analysis. The point is that the jury must evaluate the conduct and determine whether it should be condemned. The Code, therefore, proposes that this difficulty be resolved by asking the jury whether the defendant's conduct involved a gross deviation from the standard of conduct that a reasonable person would observe. This seems to us to be the most appropriate way to put the issue to a jury. (2 Final Report of the New Jersey Criminal Law Revision Commission, Commentary (1971) at 42.)

³ In State v. Concepcion, 111 N.J. 373, 380-81 (1988), the Supreme Court reversed the defendant's conviction of reckless manslaughter because the trial judge had selectively summarized only one aspect of the critical events and had failed to explain that the jury must make a preliminary finding resolving contrasting factual accounts of events.

⁴ In State v. Curtis, 195 N.J. Super. 354, 364-65 (App. Div. 1984), the court found that the difference between aggravated and reckless manslaughter is the degree of risk created by defendant's conduct. If, under all the surrounding circumstances, the defendant's conduct creates a probability, as opposed to a "mere possibility" of death, then the circumstances manifest "extreme indifference to human life" and the offense is aggravated manslaughter. Id. at 365-65. The Supreme Court endorsed Curtis in State v. Breakiron, 108 N.J. 591, 605 (1987).

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conduct resulted in only a possibility of death, then you must acquit him/her of aggravated manslaughter and consider the crime of reckless manslaughter, which I will explain to you shortly.)⁵

The final element that the State must prove beyond a reasonable doubt is that the defendant caused (insert victim's name) death.

(If causal relationship between conduct and result is not an issue, charge the following:)

You must find that (insert victim's name) would not have died but for defendant's conduct.⁶

(If causal relationship between conduct and result is an issue, charge the following:)⁷

Causation has a special meaning under the law. To establish causation, the State must prove two elements, each beyond a reasonable doubt:

First, that but for the defendant's conduct, (insert victim's name) would not have died.

Second, (insert victim's name) death must have been within the risk of which the defendant was aware. If not, it must involve the same kind of injury or harm as the probable result of the defendant's conduct, 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 liability or on the gravity of his/her offense. In other words, the State must prove beyond a reasonable doubt that (insert victim's name) death was not so unexpected or unusual that it would be unjust to find the defendant guilty of aggravated manslaughter.⁸

[NOTE: in cases where Causation - Removal of Life Support is an issue, the jury should be instructed as follows:

⁵ To be used if reckless manslaughter is being charged in the case.

⁶ N.J.S.A. 2C:2-3(a)(1).

⁷ State v. Concepcion, 111 N.J. 373, 377 (1988); N.J.S.A. 2C:2-3c.

⁸ State v. Martin, 119 N.J. at 33.

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You have heard testimony that on [date], **(insert victim's name)** was taken off life support and that he/she died at some point after this was done. Should you find beyond a reasonable doubt that **(insert victim's name)** died from medical complications that resulted from injuries caused by defendant's actions, the removal of life support, in this case (method of removal), is not an intervening cause that relieves defendant of any criminal liability for those actions.⁹ That is, if defendant's actions set in motion **(insert victim's name)** need for life support, without which death would result naturally, then the causal link between defendant's action and the death of **(insert victim's name)** was not broken by an unforeseen, extraordinary act when **(insert victim's name)** was removed from life support and then expired, unless there was an intervening volitional act of another.]¹⁰

(Where the defendant and State offer contrasting factual theories of causation, each version should be summarized for the jury.¹¹)

[CHARGE IN ALL CASES]

If after consideration of all the evidence you are convinced beyond a reasonable doubt that the defendant recklessly caused (insert victim's name) death under circumstances manifesting extreme indifference to human life, then your verdict must be guilty of aggravated manslaughter.

If, however, after consideration of all the evidence you are not convinced beyond a reasonable doubt that the defendant recklessly caused (insert victim's name) death under circumstances manifesting extreme indifference to human life, you must find the defendant not guilty of aggravated manslaughter (and go on to consider whether the defendant should be convicted of reckless manslaughter).¹²

⁹ State v. Pelham, 176 N.J. 448, 455-456 and n. 2 (2003).

¹⁰ Pelham, 176 N.J. at 467.

¹¹ State v. Martin, 119 N.J. at 18.

¹² To be used if reckless manslaughter is being charged in the case.