ASSAULT BY AUTO OR VESSEL (BODILY INJURY, WITHOUT DRUNK DRIVING OR REFUSAL) (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...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];
- That defendant caused bodily injury to (name victim); and
- That defendant caused such bodily injury by driving the vehicle [or vessel] recklessly.

Bodily injury is defined as physical pain, illness or any impairment of physical condition.²

In order to find that defendant caused (victim's) injury, you must find that (victim) would not have been injured but for defendant's conduct.³

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."

N.J.S.A. 2C:11-1a.

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

A person acts recklessly when he/she consciously disregards a substantial and unjustifiable

risk that 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 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.

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]. Whether he/she is guilty or not of that [those] offense[s] will be determined by

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an appropriate court.⁴ In other words, it is not your job to decide whether he/she is guilty or not guilty of the motor vehicle offense[s]. However, 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];
- That the defendant caused bodily injury to (name victim); and
- 3. That the defendant caused such 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].

⁴ State v. Muniz, 118 N.J. 319 (1990).