

**MURDER, PASSION/PROVOCATION AND
AGGRAVATED/RECKLESS MANSLAUGHTER**¹
N.J.S.A. 2C:11-3a(1) and (2); 2C:11-4a, b(1) and b(2)

Defendant is charged by indictment with the murder of **(insert victim's name)**. Count _____ of the indictment reads as follows: **(Read pertinent count of indictment)**

A person is guilty of murder if he/she:

- (1) caused the victim's death or serious bodily injury that then resulted in death; and
- (2) the defendant did so purposely or knowingly; and
- (3) did not act in the heat of passion resulting from a reasonable provocation.²

If you find beyond a reasonable doubt that defendant purposely or knowingly caused **(insert victim's name)** death or serious bodily injury that then resulted in death and that he/she did not act in the heat of passion resulting from a reasonable provocation, defendant would be guilty of murder. If, however, you find that defendant purposely or knowingly caused death or serious bodily injury that then resulted in death and that he/she did act in the heat of passion resulting from a reasonable provocation, defendant would be guilty of passion/provocation manslaughter.

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

- (1) that defendant caused **(insert victim's name)** death or serious bodily injury that then resulted in **(insert victim's name)** death, and
- (2) that defendant did so purposely or knowingly, and
- (3) that defendant did not act in the heat of passion resulting from a reasonable provocation.

One of the elements that the State must prove beyond a reasonable doubt is that defendant acted purposely or knowingly.

¹ This charge is to be given when passion/provocation and aggravated/reckless manslaughter are in the case. See, for example, footnote 1 of Model Jury Charge, Justification – Self Defense In Self Protection (N.J.S.A. 2C:3-4) (rational basis for either or both forms of manslaughter can be found in evidence supporting pre-Code theory of imperfect self defense). If passion/provocation manslaughter is not in the case, see charge on Murder and Aggravated/Reckless Manslaughter. When an auto or vessel is involved, see the charge on Vehicular Homicide (N.J.S.A. 2C:11-5).

² In State v. Coyle, 119 N.J. 194, 222 (1990), the Supreme Court found that "the trial court's initial charge concerning purposeful murder failed to make clear that if there is evidence of passion/provocation, a jury cannot convict for murder without first finding that the defendant did not kill in the heat of passion." In State v. Grunow, 102 N.J. 133, 145 (1986), the Court held that the trial judge must instruct the jury that the State bears the burden of disproving passion/provocation.

NOTE: A Sample Verdict Sheet is included at the end of this charge.

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**N.J.S.A. 2C:11-3a(1) and (2);
2C:11-4a, b(1) and b(2)**

A person acts purposely when it is the person's conscious object to cause death or serious bodily injury resulting in death.³

A person acts knowingly when the person is aware that it is practically certain that his/her conduct will cause death or serious bodily injury resulting in death.⁴

The nature of the purpose or knowledge with which defendant acted toward (**insert victim's name**) is a question of fact for you the jury to decide. Purpose and knowledge are conditions of the mind which cannot be seen and can only be determined by inferences from conduct, words or acts. It is not necessary for the State to produce a witness or witnesses who could testify that defendant stated, for example, that his/her purpose was to cause death or serious bodily injury resulting in death; or that he/she knew that his/her conduct would cause death or serious bodily injury resulting in death. It is within your power to find that proof of purpose or knowledge has been furnished beyond a reasonable doubt by inferences which may arise from the nature of the acts and the surrounding circumstances. Such things as the place where the acts occurred, the weapon used, the location, number and nature of wounds inflicted, and all that was done or said by defendant preceding, connected with, and immediately succeeding the events leading to the death of (**insert victim's name**) are among the circumstances to be considered.

Although the State must prove that defendant acted either purposely or knowingly, the State is not required to prove a motive. If the State has proved the essential elements of the offense beyond a reasonable doubt, defendant must be found guilty of that offense regardless of defendant's motive or lack of a motive. If the State, however, has proved a motive, you may consider that insofar as it gives meaning to other circumstances.⁵ On the other hand, you may consider the absence of motive in weighing whether or not defendant is guilty of the crime charged.

[Charge where appropriate]

The use of a deadly weapon, such as (describe the deadly weapon used) in itself would permit you to draw an inference that defendant's purpose was to take life or cause serious bodily injury resulting in death.⁶ A deadly weapon is any firearm or other weapon, device, instrument, material or substance, which in the manner it is used or is intended to be used, is known to be

³ N.J.S.A. 2C:2-2b(1).

⁴ N.J.S.A. 2C:2-2b(2).

⁵ State v. Beard, 16 N.J. 50, 60 (1954).

⁶ State v. Martini, 131 N.J. 176, 269-74 (1993). Note that while the jury is permitted to draw the inference from defendant's use of a deadly weapon, it may not draw such an inference from the commission of the homicide itself. State v. Chavies, 345 N.J. Super. 254, 267-68 (App. Div. 2001).

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capable of producing death or serious bodily injury.⁷ In your deliberations you may consider the weapon used and the manner and circumstances of the killing, and if you are satisfied beyond a reasonable doubt that defendant (shot) (stabbed) and killed (**insert victim's name**) with a (gun) (knife) you may draw an inference from the weapon used, that is, the (gun) (knife), and from the manner and circumstances of the killing, as to defendant's purpose or knowledge.

[Charge in all cases]

Another element that the State must prove beyond a reasonable doubt is that defendant caused (**insert victim's name**) death or serious bodily injury that then resulted in death.

As I previously advised you, in order to convict defendant of murder, the State must prove beyond a reasonable doubt that defendant either purposely or knowingly caused the victim's death or serious bodily injury resulting in death. In that regard, "serious bodily injury" means bodily injury that creates a substantial risk of death. A substantial risk of death exists where it is highly probable that the injury will result in death.⁸

In order for you to find defendant guilty of purposeful serious bodily injury murder, the State must prove beyond a reasonable doubt that it was defendant's conscious object to cause serious bodily injury that then resulted in the victim's death; that defendant knew that the injury created a substantial risk of death; and that it was highly probable that death would result. In order for you to find defendant guilty of knowing serious bodily injury murder, the State must prove beyond a reasonable doubt that defendant was aware that it was practically certain that his/her conduct would cause serious bodily injury that then resulted in the victim's death; that defendant knew that the injury created a substantial risk of death; and that it was highly probable that death would result.

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

Whether the killing is committed purposely or knowingly, causing death or serious bodily injury resulting in death must be within the design or contemplation of defendant.

(If causal relationship between conduct and result is an issue, charge the following⁹)

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 defendant's conduct, (**insert victim's name**) would not have died.

⁷ N.J.S.A. 2C:11-1c.

⁸ N.J.S.A. 2C:11-1b; State v. Cruz, 163 N.J. 403 (2000).

⁹ State v. Martin, 119 N.J. 2, 16-18 (1990).

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Second, **(insert victim's name)** death must have been within the design or contemplation of defendant. If not, it must involve the same kind of injury or harm as that designed or contemplated, 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 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 defendant guilty of murder.¹⁰

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

All jurors do not have to agree unanimously concerning which form of murder is present so long as all believe that it was one form of murder or the other. However, for a defendant to be guilty of murder, all jurors must agree that defendant either knowingly or purposely caused the death or serious bodily injury resulting in the death of **(insert victim's name)**.

The third element that the State must prove beyond a reasonable doubt to find defendant guilty of murder is that defendant did not act in the heat of passion resulting from a reasonable provocation.

Passion/provocation manslaughter is a death caused purposely or knowingly that is committed in the heat of passion resulting from a reasonable provocation.

Passion/provocation manslaughter has four factors which distinguish it from murder.¹² In order for you to find defendant guilty of murder, the State need only prove the absence of any one of them beyond a reasonable doubt. The four factors are:

- (1) There was adequate provocation;
- (2) The provocation actually impassioned defendant;
- (3) Defendant did not have a reasonable time to cool off between the provocation and the act which caused death; and
- (4) Defendant did not actually cool off before committing the act which caused death.

The first factor you must consider is whether the State has proven beyond a reasonable doubt that the provocation was not adequate. Whether the provocation is inadequate essentially amounts to whether loss of self-control is a reasonable reaction to the circumstances. In order

¹⁰ State v. Martin, 119 N.J. at 33.

¹¹ State v. Martin, 119 N.J. at 18.

¹² The four factors of passion/provocation manslaughter and their definitions are set forth in State v. Mauricio, 117 N.J. 402, 412-15 (1990).

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for the State to carry its burden it must prove beyond a reasonable doubt that the provocation was not sufficient to arouse the passions of an ordinary person beyond the power of his/her control.¹³ For example, words alone do not constitute adequate provocation.¹⁴ On the other hand, a threat with a gun or knife¹⁵ or a significant physical confrontation might be considered adequate provocation.¹⁶ Again, the State must prove that the provocation was not adequate.

The second factor you must consider is whether the State has proven beyond a reasonable doubt that defendant was not actually impassioned, that is, that he/she did not actually lose his/her self-control.

The third factor you must consider is whether the State has proven beyond a reasonable doubt that defendant had a reasonable time to cool off. In other words, you must determine whether the State has proven that the time between the provoking event(s) and the act(s) which caused death was adequate for the return of a reasonable person's self-control.

The fourth factor you must consider is whether the State has proven beyond a reasonable doubt that defendant actually did cool off before committing the act(s) which caused death, that is, that he/she was no longer actually impassioned.

If you determine that the State has proven beyond a reasonable doubt that there was not adequate provocation or that the provocation did not actually impassion the defendant or that defendant had a reasonable time to cool off or that defendant actually cooled off, and, in addition to proving beyond a reasonable doubt that at least one of these factors was not present, you determine that the State has proven beyond a reasonable doubt that defendant purposely or knowingly caused death or serious bodily injury resulting in death, you must find defendant guilty of murder.

If, on the other hand, you determine that the State has not disproved at least one of the factors of passion/provocation manslaughter beyond a reasonable doubt, but that the State has proven beyond a reasonable doubt that defendant purposely or knowingly caused death or serious bodily injury resulting in death, then you must find him/her guilty of passion/provocation manslaughter.

¹³ State v. Mauricio, 117 N.J. at 412, quoting State v. King, 37 N.J. 285, 301-02 (1962).

¹⁴ State v. Mauricio, 117 N.J. at 413, quoting State v. Crisantos, 102 N.J. 265, 274 (1986).

¹⁵ State v. Mauricio, 117 N.J. at 414, quoting State v. Powell, 84 N.J. 305, 320 (1980), and State v. Bonano, 59 N.J. 515, 523-24 (1971).

¹⁶ Where applicable, the jury must be instructed that a continuing course of ill treatment by the decedent against the defendant or a third person "with whom the defendant stands in close relationship", can constitute adequate provocation. State v. Coyle, 119 N.J. at 225-28, citing State v. Kelly, 97 N.J. 178 (1984), and State v. Guido, 40 N.J. 191 (1963).

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If, however, the State has failed to prove beyond a reasonable doubt that defendant purposely or knowingly caused death or serious bodily injury resulting in death, you must find the defendant not guilty of murder and passion/provocation manslaughter, (and go on to consider whether defendant should be convicted of the crimes of aggravated or reckless manslaughter).

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

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

One element that the State must prove beyond a reasonable doubt is that 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.¹⁷

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 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.¹⁸

¹⁷ N.J.S.A. 2C:2-2(3).

¹⁸ This expanded explanation of recklessness is adapted from the following position 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 weighted in judgment: the nature and degree of the risk disregarded

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(Summarize, if helpful, all of the evidence relevant to recklessness, including any contrasting accounts of events by the defense and the State.)¹⁹

Another element that the State must prove beyond a reasonable doubt is that 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.²⁰ On the other hand, if you find that his/her conduct resulted in only a possibility of death, then you must acquit him/her of aggravated manslaughter and consider the offense of reckless manslaughter, which I will explain to you shortly.

The final element that the State must prove beyond a reasonable doubt is that 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.²¹

(If causal relationship between conduct and result is an issue, charge the following)²²

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. (Final Report of the New Jersey Criminal Law Revision Commission, Commentary (1971) at 42.)

¹⁹ 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.

²⁰ 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).

²¹ N.J.S.A. 2C:2-3(a)(1).

²² State v. Concepcion, 111 N.J. 373, 377 (1988); N.J.S.A. 2C:2-3c.

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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 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 defendant was aware. If not, it must involve the same kind of injury or harm as the probable result of 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 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.²³

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

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.²⁴ 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.]²⁵

(Where defendant and State offer contrasting factual theories of causation, each version should be summarized for the jury.²⁶)

[CHARGE IN ALL CASES]

If after consideration of all the evidence you are convinced beyond a reasonable doubt that 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 defendant recklessly caused **(insert victim's name)** death under

²³ State v. Martin, 119 N.J. at 33.

²⁴ State v. Pelham, 176 N.J. 448, 455-56 and n. 2 (2003).

²⁵ Pelham, 176 N.J. at 467.

²⁶ State v. Martin, 119 N.J. at 18.

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circumstances manifesting extreme indifference to human life, you must find defendant not guilty of aggravated manslaughter (and go on to consider whether defendant should be convicted of reckless manslaughter²⁷).

A person is guilty of reckless manslaughter if he/she recklessly causes the death of another person.

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

- (1) that defendant caused (**insert victim's name**) death, and
- (2) that defendant did so recklessly.

One element that the State must prove beyond a reasonable doubt is that 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.²⁸

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 that risk that he/she disregarded was substantial and 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.²⁹

(Summarize, if helpful, all of the evidence relevant to recklessness, including any contrasting accounts of events by the defense and the State.)³⁰

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

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

²⁷ If appropriate, where the instrumentality of death is an auto or vessel, give a separate charge on Vehicular Homicide (N.J.S.A. 2C:11-5).

²⁸ N.J.S.A. 2C:2-2(3).

²⁹ See n.17, supra.

³⁰ See n.18, supra.

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You must find that **(insert victim's name)** would not have died but for defendant's conduct.³¹

(If causal relationship between conduct and result is an issue, charge the following)³²

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 defendant's conduct, the victim would not have died.

Second, **(insert victim's name)** death must have been within the risk of which defendant was aware. If not, it must involve the same kind of injury or harm as the probable result of 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 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 defendant guilty of reckless manslaughter.³³

(Where defendant and State offer contrasting factual theories of causation, each version should be summarized for the jury.³⁴)

If after consideration of all the evidence you are convinced that the State has proven beyond a reasonable doubt that defendant recklessly caused **(insert victim's name)** death, then your verdict must be guilty of reckless manslaughter.

If, however, after consideration of all the evidence you are not convinced that the State has proven beyond a reasonable doubt that defendant recklessly caused **(insert victim's name)** death, you must find defendant not guilty of reckless manslaughter.

³¹ N.J.S.A. 2C:2-3 (a)(1).

³² State v. Concepcion, 111 N.J. 373, 377 (1988); N.J.S.A. 2C:2-3c.

³³ State v. Martin, 119 N.J. at 33.

³⁴ State v. Martin, 119 N.J. at 18.

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SAMPLE VERDICT SHEET

(Murder (Own Conduct), Passion/Provocation and Aggravated/Reckless Manslaughter)

[TO BE USED WHERE PASSION-PROVOCATION IS SUBMITTED TO JURY]

STATE OF NEW JERSEY : **SUPERIOR COURT OF NEW JERSEY**
 : **LAW DIVISION _____ COUNTY**
v. :
_____, : **INDICTMENT No. _____**
Defendant. :

This form is only to be used to report your verdict.

QUESTION NUMBER ONE

On the charge of Murder, we find the defendant:

- 1a. Not Guilty of Murder _____
- 1b. Guilty of Passion/Provocation Manslaughter _____
- 1c. Guilty of Murder _____

If you have found the defendant Not Guilty of Murder, go to question number two.

If you have found the defendant Guilty of Murder, please answer the following:

Do you find that the defendant committed the Murder by his/her own conduct?

Yes No

(INSERT IF ADDITIONAL CHARGES: If you have found the defendant guilty on question number 1b or question number 1c, and have answered the accompanying question regarding own conduct, go to Question Four)

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QUESTION NUMBER TWO

On the charge of Aggravated Manslaughter, we find the defendant:

- 2a. Not Guilty of Aggravated Manslaughter _____
- 2b. Guilty of Aggravated Manslaughter _____

If you have found the defendant Not Guilty of Aggravated Manslaughter, go to question number three.

(INSERT IF ADDITIONAL CHARGES: If you have found the defendant guilty of question number 2b, go to Question Four)

QUESTION NUMBER THREE

On the charge of Reckless Manslaughter, we find the defendant:

- 3a. Not Guilty of Reckless Manslaughter _____
- 3b. Guilty of Reckless Manslaughter _____

[INSERT ADDITIONAL CHARGES IF APPROPRIATE]

PLEASE ADVISE THE SHERIFF'S OFFICER THAT YOU HAVE REACHED A VERDICT.