

AGGRAVATED ASSAULT - UPON CERTAIN CORRECTIONS PERSONNEL
(NEGLIGENTLY CAUSING BODILY INJURY WITH A DEADLY WEAPON)

N.J.S.A. 2C:12-1b(5)(h)

Count _____ of this indictment charges the defendant with aggravated assault.

(Read appropriate count of indictment)

The defendant is accused of violating a law that provides, in pertinent part:

A person is guilty of aggravated assault if he/she negligently causes bodily injury to any (Department of Corrections Employee)(County Corrections Officer)(Juvenile Corrections Officer)(State Juvenile Facility Employee)(Juvenile Detention staff member)(Juvenile Detention officer)(Probation Officer)(Sheriff, undersheriff, or sheriff's officer) acting in the performance of (his/her) duties while in uniform or exhibiting evidence of (his/her) authority or because of (his/her) status as a (Department of Corrections Employee)(County Corrections Officer)(Juvenile Corrections Officer)(State Juvenile Facility Employee)(Juvenile Detention staff member)(Juvenile Detention officer)(Probation Officer)(Sheriff, undersheriff, or sheriff's officer), with a deadly weapon.

In order for you to find the defendant guilty of this charge, the State must prove each of the following elements beyond a reasonable doubt:

1. That the defendant did cause bodily injury to **(NAME OF VICTIM)**;
2. That the defendant caused the bodily injury with a deadly weapon;
3. That the defendant acted negligently in causing bodily injury to **(NAME OF VICTIM)**;
4. That **(NAME OF VICTIM)** was a (Department of Corrections Employee)(County Corrections Officer)(Juvenile Corrections Officer)(State Juvenile Facility Employee)(Juvenile Detention staff member)(Juvenile Detention officer)(Probation Officer)(Sheriff, undersheriff, or sheriff's officer);
5. That the defendant knew **(NAME OF VICTIM)** was a (Department of Corrections Employee)(County Corrections Officer)(Juvenile Corrections Officer)(State Juvenile Facility Employee)(Juvenile Detention staff member)(Juvenile Detention officer)(Probation Officer)(Sheriff, undersheriff, or sheriff's officer);
6. That **(NAME OF VICTIM)** was a (Department of Corrections Employee)(County Corrections Officer)(Juvenile Corrections

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Officer)(State Juvenile Facility Employee)(Juvenile Detention staff member)(Juvenile Detention officer)(Probation Officer)(Sheriff, undersheriff, or sheriff's officer) acting in the performance of (his/her) duties or while in uniform or exhibiting evidence of (his/her) authority

-or-

That the defendant acted because the **(NAME OF VICTIM)** was a (Department of Corrections Employee)(County Corrections Officer)(Juvenile Corrections Officer)(State Juvenile Facility Employee)(Juvenile Detention staff member)(Juvenile Detention officer)(Probation Officer)(Sheriff, undersheriff, or sheriff's officer);

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

Bodily injury is defined as physical pain, illness or any impairment of the physical condition.¹

The second element that the State must prove beyond a reasonable doubt is that the defendant caused the bodily injury by use of a deadly weapon.

A deadly weapon is any firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury. Serious bodily injury means bodily injury that creates a substantial risk of death or that causes serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

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

First, that but for the defendant's conduct, **(NAME OF VICTIM)** would not have sustained bodily injury.

Second, that the bodily injury sustained by **(NAME OF VICTIM)** was within the risk of which the defendant should have been aware. If not, it must involve the same kind of injury or harm as the probable result, 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 the bodily injury sustained by **(NAME OF VICTIM)** was not so unexpected or unusual that

¹ N.J.S.A. 2C:11-1(a).

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it would be unjust to find the defendant guilty of a simple assault.

The third element that the State must prove beyond a reasonable doubt is that the defendant acted negligently in causing bodily injury to **(NAME OF VICTIM)**.

A person acts negligently when he/she should be aware of a substantial and unjustifiable risk (of causing bodily injury). The risk must be of such a nature and degree that defendant's failure to perceive it, considering the nature and purpose of his/her conduct and the circumstances known to him/her, involves a gross deviation from the standard of care that a reasonable person would observe in the same situation.² In other words, for you to find that defendant acted negligently, you must be satisfied beyond a reasonable doubt that defendant should have been aware of a substantial and unjustifiable risk that his/her conduct would cause bodily injury to **(NAME OF VICTIM)**.

[CHARGE WHERE APPROPRIATE]

[When the actual victim was one other than the intended victim, add:

It is immaterial that (name the victim) was or was not the intended victim.]³

[CHARGE IN ALL CASES]

You should understand that negligence is a condition of the mind. It cannot be seen. It can only be determined by inferences from conduct, words or acts. Therefore, it is not necessary for the State to produce witnesses to testify that defendant stated, for example, that he/she acted negligently when he/she did a particular thing. It is within your power to find that proof of negligence has been furnished beyond a reasonable doubt by inference which may arise from the nature of the acts and the surrounding circumstances. The place where the acts occurred and all that was done or said by defendant preceding, connected with, and immediately succeeding the events in question are among the circumstances to be considered.

The fourth element that the State must prove beyond a reasonable doubt is that **(NAME OF VICTIM)** was a (Department of Corrections Employee)(County Corrections Officer)(Juvenile Corrections Officer)(State Juvenile Facility Employee)(Juvenile Detention staff member)(Juvenile Detention officer)(Probation Officer)(Sheriff, undersheriff, or sheriff's officer).

² See N.J.S.A. 2C:2-2(b)(4).

³ N.J.S.A. 2C:2-3(d).

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The fifth element that the State must prove beyond a reasonable doubt is that the defendant knew that **(NAME OF VICTIM)** was a (Department of Corrections Employee)(County Corrections Officer)(Juvenile Corrections Officer)(State Juvenile Facility Employee)(Juvenile Detention staff member)(Juvenile Detention officer)(Probation Officer)(Sheriff, undersheriff, or sheriff's officer).

A person acts knowingly with respect to causing bodily injury if a person is aware that his/her conduct is of that nature, or that such circumstances exist or a person is aware of a high probability of their existence. A person acts knowingly with respect to a result of his/her conduct if a person is aware that it is practically certain that his/her conduct will cause bodily injury. One is said to act knowingly if one acts with knowledge, if one acts consciously, if he/she comprehends his/her acts.

The sixth element that the State must prove beyond a reasonable doubt is that

(CHOOSE APPROPRIATE)

(NAME OF VICTIM) was a (Department of Corrections Employee)(County Corrections Officer)(Juvenile Corrections Officer)(State Juvenile Facility Employee)(Juvenile Detention staff member)(Juvenile Detention officer)(Probation Officer)(Sheriff, undersheriff, or sheriff's officer) acting in the performance of (his/her) duties or while in uniform or exhibiting evidence of (his/her) authority.

-OR-

The defendant acted because the **(NAME OF VICTIM)** was a (Department of Corrections Employee)(County Corrections Officer)(Juvenile Corrections Officer)(State Juvenile Facility Employee)(Juvenile Detention staff member)(Juvenile Detention officer)(Probation Officer)(Sheriff, undersheriff, or sheriff's officer);

(RESUME MAIN CHARGE - CHARGE IN ALL CASES)

If you find that the State has proved each element of the offense beyond a reasonable doubt, then you must find the defendant guilty. If, however, you find that the State has failed to prove any element of the offense beyond a reasonable doubt, then you must find the defendant not guilty.