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**MENTAL STATES - RECKLESSLY**

**DRAFT**

Part of the definition of the crime of \_\_\_\_\_ is that the defendant acted recklessly. A person acts recklessly when he/she is aware of and consciously disregards a substantial and unjustifiable risk that [certain circumstances existed when he/she acted] [his/her conduct would cause a certain result]. The risk must be of such a nature and degree that, considering the circumstances known to him/her, its disregard constitutes a gross deviation from the conduct that a law-abiding person would observe in the situation.

There are several components of a reckless mental state that the state must prove. They are:

1. The defendant was aware of a substantial and unjustifiable risk that [certain circumstances existed when he/she acted][his/her conduct would cause a particular result] and
2. The defendant consciously disregarded the risk. In other words, he/she elected to disregard the risk and take the chance that [certain circumstances existed][his/her conduct would cause a particular result]. It is not enough for the state to prove that the defendant failed to become aware of the risk involved. The state must prove that the defendant was aware of the risk and consciously disregarded it and
3. From what the defendant knew of the circumstances, his/her disregard of the risk was a gross deviation from what a law-abiding person would have done under the circumstances. The key words here are “gross deviation.” If you find that the defendant’s actions were unreasonable or thoughtless, that is not enough. To find that the defendant acted recklessly, you must find that his/her disregard of the risk was a substantial departure from what a law-abiding person would have done under the same circumstances.<sup>5</sup>

If the defendant created a risk but is unaware of the risk solely because he/she was voluntarily [intoxicated] [under hypnosis] you should still find that he/she acted recklessly. In other words, if voluntary [intoxication] [hypnosis] made the defendant unaware that his/her conduct created a substantial and unjustifiable risk, he/she nonetheless acted recklessly.<sup>1, 6</sup>

<sup>5</sup> In the appropriate case, the jury may be instructed that proof of a higher mental state satisfies the charged mental state. See R.S.A. 626:2, III; *State v. Bathalon*, 146 N.H. 485 (2001).

<sup>6</sup> The court and counsel should determine for the crime at issue which elements the mental state applies to, that is, which elements are material elements, as opposed to merely elements. See R.S.A. 625:11, IV. Unless a contrary intent plainly appears in the statute defining the crime at issue, the required mental state applies to all material elements. See R.S.A. 626:1, I.