

Reviewed by Committee 2/16/01, 6/15/01
Approved as amended 6/15/01

MENTAL STATES - NEGLIGENTLY **DRAFT**

Part of the definition of the crime of _____ is that the defendant acted negligently. A person acts negligently when he/she fails to become aware of a substantial and unjustifiable risk that [certain circumstance existed when he/she acted] [his/her conduct would cause a particular result]. The risk must be of such a nature and degree that his/her failure to become aware of it constitutes a gross deviation from the conduct that a reasonable person would observe in the situation.

There are three components of the negligent mental state that the state must prove. They are:

1. There was a substantial and unjustifiable risk that [certain circumstances existed when he acted] [his conduct would cause a particular result]; and
2. The defendant should have become aware of the risk but failed to do so; and
3. The risk was so great that the defendant’s failure to become aware of it was a “gross deviation” from what a reasonable 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. You must find that the defendant’s failure to become aware of the risk was a substantial departure from how a reasonable person would have acted under the same circumstances.

Some of you may be familiar with negligence in civil cases where one person sues another for negligently harming him. The standard for negligence in such cases is lower than the standards for negligence in criminal cases and the two standards should not be confused. Negligence in a civil case is simply the failure to exercise the degree of care that a reasonable person would exercise under the same circumstances. In a criminal case, like this one, proof of negligence requires evidence that the risk was more than an ordinary risk. It requires proof that the risk was substantial and unjustifiable and that the defendant’s failure to become aware of the risk was a gross deviation from how a reasonable person would have acted in the same situation.^{1, 2}

¹ 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.

² 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*.