

## 7.09A

### Definition Of Aggravated Reckless Homicide

A person commits the offense of aggravated reckless homicide when he:

[1] unintentionally causes the death of [(an individual) (two or more persons as part of a single course of conduct)] [without lawful justification] by [(driving a motor vehicle) (operating a snowmobile) (operating an all-terrain vehicle) (operating a watercraft)] recklessly and in a manner likely to cause death or great bodily harm, while upon a public thoroughfare where children pass going to and from school when a school crossing guard is performing official duties.

[or]

[2] unintentionally causes the death of [(an individual) (two or more persons as part of a single course of conduct)] [without lawful justification] by driving a motor vehicle recklessly and in a manner likely to cause death or great bodily harm, while in a construction or maintenance zone.

[or]

[3] unintentionally causes the death of [(an individual) (two or more persons as part of a single course of conduct)] [without lawful justification] by [(driving a motor vehicle) (operating a snowmobile) (operating an all-terrain vehicle) (operating a watercraft)] recklessly and in a manner likely to cause death or great bodily harm, while failing or refusing to comply with any lawful order or direction of any ([authorized police officer) (traffic control aide)] engaged in traffic control.

[or]

[4] unintentionally causes the death of 2 or more persons as part of a single course of conduct, while driving a vehicle and recklessly using an incline in a roadway, such as a railroad crossing, bridge approach, or hill, to cause the vehicle to become airborne.

[or]

[5] unintentionally causes the death of a peace officer during performance of his official duties as a peace officer, [without lawful justification] by [(driving a motor vehicle) (operating a snowmobile) (operating an all-terrain vehicle) (operating a watercraft)] recklessly and in a manner likely to cause death or great bodily harm.

[or]

[6] unintentionally causes the death of [(an individual) (two or more persons as part of a single course of conduct)] [without lawful justification] by driving a vehicle recklessly and in a manner likely to cause death or great bodily harm when approaching a stationary authorized

emergency vehicle displaying alternately flashing [(red) (red and white) (blue) (red and blue) (amber) (yellow)] warning lights, while on a highway having at least four lanes with not less than two lanes proceeding in the same direction as the defendant's vehicle, and then failing to proceed with due caution, reduce the speed of the vehicle, maintain a safe speed for road conditions, be prepared to stop, and leave a safe distance until safely passed the authorized emergency vehicle, and yield the right-of-way by making a lane change into a lane not adjacent to that of the authorized emergency vehicle if possible with due regard for safety and traffic conditions.

[or]

[7] unintentionally causes the death of [(an individual) (two or more persons as part of a single course of conduct)] [without lawful justification] by driving a vehicle recklessly and in a manner likely to cause death or great bodily harm when approaching a stationary authorized emergency vehicle displaying alternately flashing [(red) (red and white) (blue) (red and blue) (amber) (yellow)] warning lights, while on a roadway where changing lanes would be impossible or unsafe, and then failing to proceed with due caution, reduce the speed of the vehicle, maintain a safe speed for road conditions, and leave a safe distance until safely past the authorized emergency vehicle.

[or]

[8] unintentionally causes the death of a firefighter or other emergency medical services personnel in the performance of their official duties [without lawful justification] by driving a vehicle recklessly and in a manner likely to cause death or great bodily harm when approaching a stationary authorized emergency vehicle displaying alternately flashing [(red) (red and white) (blue) (red and blue) (amber) (yellow)] warning lights, while on a highway having at least four lanes with not less than two lanes proceeding in the same direction as the defendant's vehicle, and then failing to proceed with due caution, reduce the speed of the vehicle, maintain a safe speed for road conditions, be prepared to stop, and leave a safe distance until safely passed the authorized emergency vehicle, and yield the right-of-way by making a lane change into a lane not adjacent to that of the authorized emergency vehicle if possible with due regard for safety and traffic conditions.

[or]

[9] unintentionally causes the death of a firefighter or other emergency medical services personnel in the performance of their official duties [without lawful justification] by driving a vehicle recklessly and in a manner likely to cause death or great bodily harm when approaching a stationary authorized emergency vehicle displaying alternately flashing [(red) (red and white) (blue) (red and blue) (amber) (yellow)] warning lights, while on a roadway where changing lanes would be impossible or unsafe, and then failing to proceed with due caution, reduce the speed of the vehicle, maintain a safe speed for road conditions, and leave a safe distance until safely past the authorized emergency vehicle.

## Committee Note

720 ILCS 5/9-3(e-2) and 9-3(e-3) (West 2020), amended by P.A. 95-467, effective June 1, 2008); 720 ILCS 5/9-3(e-7) and (e-8) (West 2020), amended by P.A. 93-178, effective January 1, 2004); 720 ILCS 5/9-3(e-9) (West 2020), amended by P.A. 93-682, effective January 1, 2005); 720 ILCS 5/9-3(e-7) and (e-8) (West 2020), amended by P.A. 95-591, effective September 10, 2007); 720 ILCS 5/9-3(e-10) (West 2020), amended by P.A. 95-551, effective June 1, 2008; 720 ILCS 5/9-3(e-12) and (e-13) (West 2020), amended by P.A. 95-803, effective January 1, 2009; 720 ILCS 5/9-3(e-15) (West 2020), amended by P.A. 101-173, effective January 1, 2020; 625 ILCS 5/11-907 (West 2021), amended by P.A. 102-0336, effective January 1, 2022.

Give Instruction 5.01, defining the word “recklessness.”

When applicable, give Instruction 23.79X, defining the term “authorized emergency vehicle”.

When applicable, define the term “construction or maintenance zone”. See Instruction 4.23 on school speed zones.

In *People v. Phipps*, 238 Ill.2d 54, 69 (2010), and in *People v. Gancarz*, 228 Ill.2d 312, 315–16 (2008), the Illinois Supreme Court recognized that the General Assembly had substantively amended the aggravated reckless homicide offense by enacting P.A. 93-213, § 7, eff. July 18, 2003. That amendment removed the language in 720 ILCS 5/9-3 that defined aggravated reckless homicide while under the influence of alcohol or drugs, and then added to the language that defined the aggravated DUI offense in the Illinois Vehicle Code under 625 ILCS 5/11-501(d)(1) (West 2004). This instruction has been amended to properly reflect the changes in P.A. 93-213, as well as the new aggravating factors that were enacted since 2003.

The offense defined in paragraph [1] reflects the language of the reckless homicide statute as codified in 720 ILCS 5/9-3(e-2) and 720 ILCS 5/9-3(e-3), after enactment of P.A. 95-467, effective June 1, 2008.

The offense defined in paragraph [2] reflects the language of the reckless homicide statute as codified in 720 ILCS 5/9-3(e-7) and 720 ILCS 5/9-3(e-8), after enactment of P.A. 93-178, effective June 1, 2005.

The offense defined in paragraph [3] reflects the language of the reckless homicide statute as codified in 720 ILCS 5/9-3(e-7) and (e-8), after enactment of by P.A. 95-591, effective September 10, 2007).

The offense defined in paragraph [4] reflects the language of the reckless homicide statute as codified in 720 ILCS 5/9-3(e-9), after enactment of P.A. 93-682, effective January 1, 2005.

The offense defined in paragraph [5] reflects the language of the reckless homicide statute as codified in 720 ILCS 5/9-3(e-10), after enactment of P.A. 95-551, effective June 1, 2008.

The offense defined in paragraphs [6] and [7] reflects the language of the reckless homicide statute as codified in 720 ILCS 5/9-3(e-12) and (e-13), after enactment of P.A. 95-803, effective January 1, 2009.

The offense defined in paragraphs [8] and [9] reflects the language of the reckless homicide statute as codified in 720 ILCS 5/9-3(e-15), after enactment of P.A. 101-173, effective January 1, 2020.

Because the reckless homicide statute expressly refers to subsection (c) of Section 11-907 of the Illinois Vehicle Code, the bracketed language used in paragraphs [6], [7], [8], and [9] incorporates the requirements of Scott's Law as set forth in Instruction 23.79 and Instruction 23.79A.

The terms "due caution" and "due regard for safety and traffic conditions" in paragraphs [6], [7], [8], and [9] are undefined in the Illinois Vehicle Code, and the Committee takes no position on their meaning.

Use applicable paragraph and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury