

March 30 Draft: This table is a work in progress

Facts that were insufficient or sufficient to sustain a conviction of negligent vehicular homicide: States following Model Penal Code (cases of driver intoxication ignored because all states ignore such convictions)

	Conviction Reversed	Conviction Affirmed
NH <sup>1</sup>	<p>Strayed over double yellow line for two seconds before colliding with oncoming motorcycle. Driver was inattentive for “only a few seconds”.<sup>2</sup></p> <p>Not criminal negligence: dozing off, changing a CD or the radio, mind wanders (dicta)<sup>3</sup></p> <p>Entrusted auto to friend whom he knew to be drunk<sup>4</sup></p>	<p>36 ft boat traveling at 25 kt overtook, collided, and ran over smaller boat with operational running lights on a clear night.<sup>5</sup></p> <p>Speed boat ran into a group of swimmer in waist-high water near shore.</p>
NY	<p>Mistakenly entered freeway via the exit ramp and exited by making a U-turn across 3 lanes of freeway traffic.<sup>6</sup></p> <p>70-72 mph through a 40 mph curve warning; speed limit 55 mph ; country road at night Spun out of control.<sup>7</sup></p> <p>80 mph on rural road with speed limit 55 mph<sup>8</sup></p> <p>82-87 mph on 55 mph freeway during rush hour; skidded by dramatic pressing of the break<sup>9</sup></p> <p>Struck marked police car stopped in the right-hand travel lane of Interstate 87 on a rainy, foggy night<sup>10</sup></p>	<p>90 miles per hour in a 55 mph "radar zone," accelerated after being warned by passenger to slow down, continued past a line of cars that had been stopped by police, and struck and killed state trooper attempting to direct him off the highway.<sup>11</sup></p> <p>Speeding on city street and failed to stop at red light before killing pedestrian crossing street with green light in her favor<sup>12</sup></p> <p>Drag racing on city street<sup>13</sup></p>
CT		<p>Full dump truck coming to yellow traffic light, accelerates; too fast to successfully negotiate the turn after the light, turned over, and killed driver in another car. Driver had driven through the same intersections earlier that day.<sup>14</sup></p> <p>Police car exceeding the speed limit ran red light, violating the statute for emergency vehicles, killing driver with right of way<sup>15</sup></p> <p>63 mph in a 25 mph zone<sup>16</sup></p> <p>While stopped at red light, victim punched driver through car window; when light turned green driver drove off, dragging victim and reaching speed of 37 mph, hit brakes, accelerated.<sup>17</sup></p>
KA <sup>18</sup>	<p>Ran red light just before it turned green, and then collided with car of victim who had run a yellow light and was ¼ through intersection when light changed (to red for victim and green for defendant)<sup>19</sup></p>	<p>Ran stop sign at a high rate of speed.<sup>20</sup></p> <p>Tractor trailer driving 55 mph in a 45 mph zone ran into the rear of the paving company pickup truck with a yellow flashing light that was picking up construction cones. Passenger riding in back of the truck saw accident coming and jumped off truck.<sup>21</sup></p>
AR <sup>22</sup>		<p>Garbage truck crossed centerline by 7 feet into 8-foot oncoming lane on a bridge for 150 feet before colliding with victim.<sup>23</sup></p>

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<sup>1</sup> Under RSA 626:2, II(d), a person acts "negligently with respect to a material element of an offense when he fails to become aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct." RSA 626:2, II(d) specifies that "[t]he risk must be of such a nature and degree that his failure to become aware of it constitutes a gross deviation from the conduct that a reasonable person would observe in the situation. *State v. Shepard*, 973 A. 2d 318 (N.H. 2009)

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *State v. Etzweiler*, 125 NH 57 - NH: Supreme Court 1984.

<sup>5</sup> *State v. Littlefield*, 152 NH 331 - NH: Supreme Court 2005

<sup>6</sup> *PEOPLE v. JAMES McGRANTHAM*, 12 N.Y.3d 892 (2009)

<sup>7</sup> *People v Cabrera* 10 N.Y.3d 370 (2008), 887 N.E.2d 1132 "'the carelessness required for criminal negligence is appreciably more serious than that for ordinary civil negligence, and that the carelessness must be such that its *seriousness would be apparent to anyone who shares the community's general sense of right and wrong*. Moreover, criminal negligence requires a defendant to have *engaged in some blameworthy conduct creating or contributing to a substantial and unjustifiable risk* of a proscribed result; *nonperception of a risk*, even if [the proscribed result occurs], *is not enough*" (*id.* at 872 [internal quotation marks and citations omitted; emphasis added]).

<sup>8</sup> *People v Perry*, 123 AD2d 492, 493 [4th Dept 1986], *aff'd* 70 NY2d 626 [1987]

<sup>9</sup> *People v Badke*, 21 Misc.3d 471 (2008), 865 N.Y.S.2d 488

<sup>10</sup> *People v Boutin*. 75 N.Y.2d 692 (1990)

<sup>11</sup> *People v Paul V.S.* (75 NY2d 944 [1990])

<sup>12</sup> *People v Haney*, 30 NY2d 328 [1972]

<sup>13</sup> *People v Soto*, 44 NY2d 683 [1978]; and *People v Ricardo B.*, 73 NY2d 228 [1989]

<sup>14</sup> *State v. Pickles*, 28 Conn. App. 283 - Conn: Appellate Court 1992

<sup>15</sup> *State v Scribner*, 72 Conn. App. 736 (2002)

<sup>16</sup> *State v Potter*, 894 A.2d 1063 (2006) 95 Conn.App. 89

<sup>17</sup> *STATE v. NAZARIAN*. (AC 30290) (2010) Appellate Court of Connecticut

<sup>18</sup> "Vehicular homicide is the unintentional killing of a human being committed by the operation of an automobile, airplane, motor boat or other motor vehicle in a manner which creates an unreasonable risk of injury to the person or property of another and which constitutes a material deviation from the standard of care which a reasonable person would observe under the same circumstances....'Substantial' and 'material' have been construed as synonymous terms." <sup>18</sup> *State v. Krovvidi* , 274 Kan. 1059, 58 P.3d 687 (2002)

<sup>19</sup> *State v. Krovvidi* , 274 Kan. 1059, 58 P.3d 687 (2002)

<sup>20</sup> *State v. Boydston*, 4 Kan. App.2d 540, 609 P.2d 224 (1980)

<sup>21</sup> *State v. Trcka*, 20 Kan. App.2d 84, 884 P.2d 434 (1994)

<sup>22</sup> (A) A person acts negligently with respect to attendant circumstances or a result of his or her conduct when the person should be aware of a substantial and justifiable risk that the attendant circumstances exist or the result will occur.

(B) The risk must be of such a nature and degree that the actor's failure to perceive the risk involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation considering the nature and purpose of the actor's conduct and the circumstances known to the actor.. *State v. Krovvidi* 274 Kan. 1059 (2002) 58 P.3d 687

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<sup>23</sup> Utley v States **237 S.W.3d 27 (Ark. 2006)**