

AGGRAVATED CRIMINAL SEXUAL CONTACT
(VICTIM HELPLESS, MENTALLY INCAPABLE/INCAPACITATED)
(N.J.S.A. 2C:14-3a [2C:14-2a(7)]) (Offenses arising after March 17, 2012)

Count_____ of the indictment charges the defendant with aggravated criminal sexual contact.

[READ COUNT OF INDICTMENT]

That section of our statutes provides in pertinent part:

A person is guilty of aggravated criminal sexual contact if he commits an act of sexual contact with another person whom the actor knew or should have known was **[choose appropriate]** physically helpless, mentally incapacitated, or had a mental disease or defect which rendered the victim temporarily or permanently incapable of understanding the nature of his conduct, including, but not limited to, being incapable of providing consent.

In order to convict defendant of this charge, the State must prove the following elements beyond a reasonable doubt:

- 1. That defendant purposely committed an act of sexual contact with another person, and

OR

- 1. That defendant purposely committed an act of sexual contact by touching himself/herself and the touching was in the view of **(name of victim)** who defendant knew was present, and
- 2. That at the time of the sexual contact the victim was **[choose appropriate]** physically helpless, mentally incapacitated, or had a mental disease or defect which rendered the victim temporarily or permanently incapable of understanding the nature of (his/her) conduct, including, but not limited to, being incapable of providing consent,¹ and
- 3. That defendant knew or should have known that the victim was **[choose**

¹ P.L. 2011, c. 232, effective March 17, 2012, eliminated the term “mentally defective.”

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appropriate] physically helpless, mentally incapacitated, or had a mental disease or defect which rendered the victim temporarily or permanently incapable of understanding the nature of (his/her) conduct, including, but not limited to, being incapable of providing consent.

The first element that the State must prove beyond a reasonable doubt is that defendant committed an act of sexual contact upon **(name of victim)**. Sexual contact means an intentional touching by **(name of victim)** or by the defendant, either directly or through clothing, of **(name of victim's)** or defendant's intimate parts for the purpose of degrading or humiliating **(name of victim)** or sexually arousing or gratifying defendant.

Intimate parts means **[CHOOSE APPROPRIATE]** sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person.

To find that defendant committed an act of criminal sexual contact, you must find beyond a reasonable doubt both that the touching was intentional and that it was done with the purpose of degrading or humiliating **(name of victim)** or sexually arousing or gratifying the defendant.

Intentional means purposeful. A person acts purposely with respect to the nature of his/her conduct or a result thereof if it is his/her conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to the attendant circumstances if he/she is aware of the existence of such circumstances or believes or hopes that they exist.

[WHEN DEFENDANT IS CHARGED WITH TOUCHING HIMSELF/HERSELF,
ADD THE FOLLOWING: The State must prove beyond a reasonable doubt that the touching

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was in view of the victim whom the defendant knew to be present.² The State is not required to prove that **(name of victim)** actually observed or witnessed the alleged sexual contact. Rather, the State must prove that the alleged sexual contact occurred in the view of **(name of victim)**. “Field of vision” is not limited to the visual direction in which the alleged victim is focused upon at the particular time when the alleged sexual contact is said to have occurred. Field of vision includes the areas that **(name of victim)** was capable of viewing.³ The State must prove beyond a reasonable doubt that **(name of victim)** was present.

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that the conduct is of that nature or that such circumstances exist or the person is aware of a high probability of their existence. A person acts knowingly with respect to a result of the conduct if he/she is aware that it is practically certain that the conduct will cause a result. “Knowing,” “with knowledge,” or equivalent terms have the same meaning.]

Purpose [and knowledge] [is] [are] [a] condition[s] of the mind. [It] [They] cannot be seen. Often, [it] [they] can only be determined by inference from defendant’s conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she did a particular thing. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which

² State v. Zeidell, 154 N.J. 417 (1998).

³ State v. Breitweiser, 373 N.J. Super. 271, 276, 286-87 (App. Div. 2004).

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may arise from the nature of his/her acts and conduct and from all he/she said and did at the particular time and place and from all surrounding circumstances established by the evidence.

The second element that the State must prove beyond a reasonable doubt is that at the time of the sexual contact, the victim was [**choose appropriate**] physically helpless, mentally incapacitated, or had a mental disease or defect which rendered the victim temporarily or permanently incapable of understanding the nature of (his/her) conduct, including, but not limited to, being incapable of providing consent.

Physically helpless means that condition in which a person is unconscious or is physically unable to flee or is physically unable to communicate unwillingness to act.⁴

Mentally incapable means that condition in which a person suffers has a mental disease or defect which renders that person temporarily or permanently incapable of understanding the nature of (his/her) conduct, including but not limited to, being incapable of providing consent.⁵

A person is mentally incapable if, at the time of the sexual activity, the mental disease or defect rendered (him/her) unable to comprehend the distinctively sexual nature of the conduct, or incapable of understanding or exercising the right to refuse to engage in such conduct with another. It includes both the capacity to understand and the capacity to consent with respect to personal sexual activity.

The capacity to consent involves knowing that one's body is private and is not subject to the physical invasions of another and that one has the right and ability to refuse to engage in

⁴ N.J.S.A. 2C:14-1g.

⁵ N.J.S.A. 2C:14-1h.

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sexual activity. The capacity to understand, which is part of the idea of the capacity to consent, involves the knowledge that the conduct is distinctively sexual. Here, that knowledge extends only to the physical or physiological aspects of sex; it does not extend to an awareness that sexual acts may be morally right or wrong and have probable serious consequences, such as pregnancy and birth, disease, infirmities, adverse psychological or emotional disorders.⁶

Mentally incapacitated means that condition in which a person is rendered temporarily incapable of understanding or controlling (his/her) conduct due to the influence of a narcotic, anesthetic, intoxicant, or other substance administered to that person without (his/her) prior knowledge or consent, or due to any other act committed upon that person which rendered that person incapable of appraising or controlling (his/her) conduct.⁷

The third element that the State must prove beyond a reasonable doubt is that defendant knew or should have known under the circumstances that the **(name of victim)** was [**choose appropriate**] physically helpless, mentally incapacitated, or had a mental disease or defect which rendered the victim temporarily or permanently incapable of understanding the nature of (his/her) conduct, including, but not limited to, being incapable of providing consent.

If you find that the State has proven every element beyond a reasonable doubt, then you must find the defendant guilty of aggravated criminal sexual contact. If you find that the State has failed to prove any of these elements beyond a reasonable doubt, then you must find the defendant not guilty of aggravated criminal sexual contact.

⁶ State v. Olivio, 123 N.J. 550, 563-64 (1991).

⁷ N.J.S.A. 2C:14-1i.