

ANIMAL CRUELTY – SEXUAL USE/CONTACT
(N.J.S.A. 4:22-17(c)(4))

The indictment charges the defendant with animal cruelty. That section of our statute reads in pertinent part:

It is unlawful to purposely, knowingly, or recklessly use, or cause or procure the use of, an animal or creature in any kind of sexual manner or initiate any kind of sexual contact with the animal or creature, including, but not limited to, sodomizing the animal.

In order to find the defendant guilty of this offense, the State must prove each of the following elements beyond a reasonable doubt:

1. That the defendant acted purposely, knowingly, or recklessly;
2. That the defendant used, or caused or procured the use of, an animal or creature; and
3. That the animal or creature was used in any kind of sexual manner, or that the defendant initiated any kind of sexual contact with the animal or creature.

The first element that the State must prove beyond a reasonable doubt is that the defendant acted either purposely, knowingly, or recklessly. A person acts purposely with respect to the nature of their conduct or a result thereof if it is their conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if they are aware of the existence of such circumstances or they believe or hope that those attendant circumstances exist.

A person acts knowingly with respect to the nature of their conduct or the attendant circumstances if they are aware that their conduct is of that nature, or that such circumstances exist, or he/she is aware of a high probability of their existence. A person acts knowingly with respect to a result of their conduct if they are aware that it is practically certain that their conduct will cause such a result. “Knowing,” “with knowledge” or equivalent terms have the same meaning.¹

A person acts recklessly when they are aware of and consciously disregard a substantial and unjustifiable risk. The risk must be of such a nature and degree that, considering the nature and purpose of the person’s conduct and the circumstances known to them, their disregard of that

¹ N.J.S.A. 2C:2-2(b)(2).

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risk involves a gross deviation from the standard of conduct that a reasonable person would follow in the actor's situation. One is said to act recklessly if one acts with recklessness, with scorn for the consequences, heedlessly, or foolhardily.

Purpose, knowledge, and recklessness are conditions of the mind that cannot be seen and can only be determined by inferences from conduct, words or acts. The State need only prove one state of mind – that is, that the defendant acted either purposely, knowingly, or recklessly. The State does not have to prove a combination of these states of mind.

A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary, members of the jury, that the State produce witnesses to testify that an accused said he/she had a certain state of mind when he/she engaged in a particular act. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of his/her acts and his/her conduct, and from all he/she said and did at the particular time and place, and from all of the surrounding circumstances.

The second element that the State must prove beyond a reasonable doubt is that the defendant used, or caused or procured the use of, an animal or creature. "Animal" or "creature" includes the whole brute creation.²

The third element that the State must prove beyond a reasonable doubt is that the animal or creature was used in any kind of sexual manner, or that the defendant initiated any kind of sexual contact with the animal or creature. This includes, but is not limited to, sodomizing the animal. "Sexual contact" means any contact between a person and an animal by penetration of the penis or a foreign object into the vagina or anus, contact between the mouth and genitalia, or by contact between the genitalia of one and the genitalia or anus of the other.³ "Sexual contact" does not include any medical procedure performed by a licensed veterinarian practicing veterinary medicine or an accepted animal husbandry practice.⁴

If you find that the State has proven every element of the offense beyond a reasonable doubt, then you must find the defendant guilty. If you find that the State has failed to prove any element of the offense beyond a reasonable doubt, then you must find the defendant not guilty.

² N.J.S.A. 4:22-15.

³ N.J.S.A. 4:22-17(c)(4).

⁴ N.J.S.A. 4:22-17(c)(4).

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If you find the defendant guilty, you must then determine whether the animal or creature died or suffered serious bodily injuries as a result of the defendant's actions. "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.⁵

⁵ N.J.S.A. 4:22-15.