

ENDANGERING THE WELFARE OF A CHILD, SEXUAL CONDUCT
(Second Degree)
N.J.S.A. 2C:24-4a(1)¹

Defendant is charged with endangering the welfare of a child

(Read Pertinent Count(s) of the Indictment)

The statute upon which this charge is based reads, in pertinent part:

Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child who engages-in sexual conduct which would impair or debauch the morals of a child is guilty of a crime.

To find (defendant) guilty of this crime, the State must prove beyond a reasonable doubt these elements:

1. That (name of victim) was a child.
2. That defendant knowingly engaged in sexual conduct, which would impair or debauch the morals of a child.²
3. That defendant had a legal duty for the care of the child or had assumed responsibility for the care of the child.

The first element that the State must prove beyond a reasonable doubt is that (name of victim) was a child.

A "child" means any person under the age of eighteen (18) years at the time of the offense. The State must prove only the age of (name of victim) at the time of the offense beyond a reasonable doubt. It does not have to prove that defendant knew or reasonably should have known that (name of victim) was under the age of eighteen (18).³

The second element that the State must prove beyond a reasonable doubt is that defendant knowingly engaged in sexual conduct, which would impair or debauch the morals of a child. Here, the State alleges that the sexual conduct committed by defendant consisted of **[summarize relevant**

¹ By amendment effective August 14, 2013, the Legislature reconfigured the endangering statute so that N.J.S.A. 2C:24-4a(1) refers to endangering by sexual conduct and N.J.S.A. 2C:24-4a(2) refers to endangering abuse or neglect. This amendment has no effect on the substantive provisions of the statute.

² In State v. Bryant, 419 N.J. Super. 15, 27-28 (App. Div. 2011), the court concluded that when sexual activity is involved, it need only be shown that the defendant engaged in the sexual activity knowingly, not that he knew that his conduct would impair or debauch the morals of the child.

³ See State v. Perez, 177 N.J. 540, 555 (2003).

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allegations.⁴ [IF APPLICABLE: **summarize defense claims.**] Sexual conduct which would impair or debauch the morals of the child is conduct which tends to corrupt, mar, or spoil the morals of a child under eighteen (18) years of age.

The State does not have to show that the sexual conduct actually impaired or debauched the morals of (the victim). In analyzing the proofs to determine whether the evidence demonstrates that defendant's conduct would tend to impair or debauch the morals of the child, evaluate the proofs in the context of objectively reasonable contemporary standards.⁵

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 such conduct will cause a result. "Knowing," "with knowledge," or equivalent terms have the same meaning.

Knowledge is a condition of the mind. It cannot be seen. It 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 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 third element that the State must prove beyond a reasonable doubt is that defendant had a legal duty for the care of the child or assumed responsibility for the care of the child. A person having a legal duty for the care of a child, or who has assumed responsibility for the care of the child, includes a natural parent, adoptive parent, resource family parent, step-parent or any other person

⁴ If the sexual conduct has been charged in the indictment, remind the jury of the specific conduct to which the indictment refers. If the sexual conduct is not alleged in the indictment, instruct the jury on the elements of the specific sexual offense which the State alleges has been committed. See "sexual conduct" as defined in N.J.S.A. 2C:24-4b, 2C:14-1 and in State v. D.R., 109 N.J. 348 (1988); State v. Miller, 108 N.J. 112 (1987); State v. Hess, 198 N.J. Super. 322 (App. Div. 1984); State v. Davis, 229 N.J. Super. 66 (App. Div. 1988).

⁵ State v. Hackett, 166 N.J. 66, 86 (2001).

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who has assumed responsibility for the care, custody or control of a child or upon whom there is a legal duty for such care. A person who has assumed the responsibility for the care of the child includes any person who assumes a general and ongoing responsibility for the child and who establishes a continuing or regular supervisory or caretaker relationship with the child.⁶

The general and ongoing responsibility for the care of the child may be legal and formal or it may arise from informal arrangements. It may be based, not only on a parental relationship or legal custody, but also on less structured relations such as cohabitation with the parent of the child.

A person who assumes temporary, brief or occasional caretaking functions such as irregular or infrequent babysitting would not meet the standards of general and ongoing responsibility for the care of a child.

A person who supervised a child on a regular and continuing basis over extended periods of time and engages in matters that are generally committed to the child's parents would meet this standard of general and ongoing responsibility for the care of a child.

In determining the nature of the relationship between the defendant and the child you should consider these factors: the disparity in ages or maturity, the importance of the activity or activities the adult supervises to the child, the extension of the supervising relationship beyond "guidance and advice" expected given the adult's supervising role, and the degree of dependence and trust the child places in the adult⁷

If the State has proven each of these elements beyond a reasonable doubt, then you must find defendant guilty of endangering the welfare of a child. If the State has failed to prove any of the elements of the offense beyond a reasonable doubt, then you must find defendant not guilty.

⁶ State v. Galloway, 133 N.J. 631, 659-62 (1993). A person who has assumed responsibility for the care of a child may include a teacher, employee, volunteer, whether compensated or uncompensated, of an institution who is responsible for the child's welfare, or a person who legally or voluntarily assumes the care, custody, maintenance, or support of the child. It can also include any staff person, as well as teaching staff members or other employees, who have a legal duty for the care and supervision of the child.

⁷ State v. Galloway, 133 N.J. 631, 659-62 (1993). No reliance upon the definitions provided in N.J.S.A. 9:6-2 or 9:6-8.21 should be utilized in describing the role of a parent, guardian or custodian. State v. McInerney, 428 N.J. Super. 432, 449 (App. Div. 2012), certif. denied, 214 N.J. 175 (2013).