

ENDANGERING THE WELFARE OF A CHILD, SEXUAL CONDUCT
(Third 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 who . . . engage[s] 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 the following elements:

1. That (name of victim) was a child.
2. That defendant knowingly engaged in sexual conduct with (name of victim), which would impair or debauch the morals of a child.²

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 sixteen (16) years at the time of the offense. **[IF SEXUAL CONDUCT OCCURRED AFTER AUGUST 14, 2013, use the following definition of child]** A "child" means any person under the age of eighteen (18) years at the time of the offense.³

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 **[choose appropriate]**[sixteen (16)] [eighteen (18)].⁴

The second element that the State must prove beyond a reasonable doubt is that defendant knowingly engaged in sexual conduct. Here, the State alleges that the sexual conduct committed by

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.

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 In the August 14, 2013 amendment, the Legislature eliminated third degree endangering's limitation that the victim be under 16 years of age.

⁴ See State v. Perez, 177 N.J. 540, 555 (2003).

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defendant consisted of **[summarize relevant allegations]**.⁵ **[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.⁶

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.

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

⁵ 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).

⁶ State v. Hackett, 166 N.J. 66, 86 (2001).