

**ENDANGERING THE WELFARE OF A CHILD, ABUSE OR NEGLECT**

**(Third Degree)**

**(N.J.S.A. 2C:24-4a(2))**<sup>1</sup>

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 . . . causes the child harm that would make the child an abused or neglected 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 caused the (name of victim) harm that would make the child abused or neglected;
3. That defendant knew that such conduct would cause the (name of victim) harm that would make the (name of victim) abused or neglected.

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 ABUSE OR NEGLECT 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.

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 **[choose appropriate]** [under the age of sixteen (16)] [under the age of eighteen (18)].<sup>2</sup>

The second element that the State must prove beyond a reasonable doubt is that defendant

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<sup>1</sup> 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.

<sup>2</sup> See State v. Perez, 177 N.J. 540, 555 (2003).

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knowingly caused (name of victim) harm that would make the child abused or neglected.<sup>3</sup>

**[CHARGE APPROPRIATE DEFINITION]**  
**(N.J.S.A. 9:6-1; 9:6-3)**

**Abuse of a child shall consist in any of the following acts:** (a) disposing of the custody of a child contrary to law; (b) employing or permitting a child to be employed in any vocation or employment injurious to its health or dangerous to its life or limb, or contrary to the laws of this State; (c) employing or permitting a child to be employed in any occupation, employment or vocation dangerous to the morals of such child; (d) the performing of any indecent, immoral or unlawful act or deed, in the presence of a child, that may tend to debauch or endanger or degrade the morals of the child; (e) permitting or allowing any other person to perform any indecent, immoral or unlawful act in the presence of the child that may tend to debauch or endanger the morals of such child; (f) using excessive physical restraint on the child under circumstances which do not indicate that the child's behavior is harmful to himself, others or property; or (g) in an institution,<sup>4</sup> willfully isolating the child from ordinary social contact under circumstances which indicate emotional or social deprivation.

**Cruelty to a child shall consist in any of the following acts:** (a) inflicting unnecessarily severe corporal punishment upon a child; (b) inflicting upon a child unnecessary suffering or pain, either mental or physical; (c) habitually tormenting, vexing or afflicting a child; (d) any willful act of omission or commission whereby unnecessary pain and suffering, whether mental or physical, is caused or permitted to be inflicted on a child; (e) or exposing a child to unnecessary hardship, fatigue or mental or physical strains that may tend to injure the health or physical or moral well-being of such child.

A person acts knowingly with respect to the nature of his/her conduct or the attendant

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<sup>3</sup> In this regard, see State v. N.I., 349 N.J. Super. 299 (App. Div. 2002), which holds that the term “willfully forsaken” as used in N.J.S.A. 9:6-1 requires an intent to abandon a child permanently, a permanent giving up or relinquishment of the child. N.I. interprets “willfully” to mean “intentionally or purposely as distinguished from inadvertently or accidentally.” Id. at 313-14, quoting State v. Burden, 126 N.J. Super. 424, 427 (1974). Finally, N.I. holds that the relevant mental state is “knowing.” Note that certain sections of Title 9 apply only to those with custody of a child or duty to care for a child and are not applicable to third degree offenders.

<sup>4</sup> See definition of institution in N.J.S.A. 9:6-8.21.

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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 knew that his/her conduct would cause the child harm that would make the child abused or neglected. I have previously defined the concept of “knowing” for you.

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.