

KIDNAPPING CHILD UNDER 16: ADDITIONAL FACTORS
(N.J.S.A. 2C:13-1c)

If you find that the State has proven beyond a reasonable doubt that the defendant committed the crime of kidnapping, you must go on to determine whether the State also has proven beyond a reasonable doubt two additional factors.

The first factor that the State must prove beyond a reasonable doubt is that (name of victim) was less than 16 years of age at the time of the kidnapping.

The second factor that the State must prove beyond a reasonable doubt is that, during the kidnapping,

[CHOOSE APPROPRIATE]¹

- a. defendant committed [an aggravated sexual assault][a sexual assault] [an aggravated criminal sexual contact]² against (name of victim).

OR

- b. defendant caused or permitted (name of victim) to engage in a prohibited sexual act³ or in the simulation of such an act which defendant knew might be [photographed] [filmed] [reproduced] [reconstructed] [part of an exhibition or performance] or intended to be [photographed] [filmed] [reproduced] [reconstructed] [part of an exhibition or performance].

OR

- b. (name of victim) was photographed or filmed in a prohibited sexual act or in the simulation of such an act.

OR

- c. defendant sold or delivered (name of victim) to another person for pecuniary gain other than in circumstances which led to the return of (name of victim) to a parent, guardian or other person responsible for the general supervision of (name of victim).

¹ Attempts to commit these crimes do not satisfy the statutory provision. State v. Smith, 279 N.J. Super. 131, 142-43 (App. Div. 1995).

² Only the aggravated criminal sexual contacts set forth in N.J.S.A. 2C:14-3a are applicable to this provision.

³ Prohibited sexual act is defined in N.J.S.A. 2C:24-4b(1).

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[CHOOSE APPROPRIATE]

Later on in the charge, I will instruct you on the elements of [aggravated sexual assault] [sexual assault] [aggravated criminal sexual contact] **OR** [relevant endangering allegation].

OR

Earlier in the charge, I instructed you on the elements of [aggravated sexual assault] [sexual assault] [aggravated criminal sexual contact] **OR** [relevant endangering allegation].

[CHARGE IN ALL CASES]

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

If you find that the State has proven beyond a reasonable doubt that the defendant is guilty of kidnapping, but found that the State has failed to prove beyond a reasonable doubt that (name of victim) was less than 16 years of age at the time of the kidnapping and that during the kidnapping, **[choose appropriate]** [an aggravated sexual assault] [a sexual assault] [an aggravated criminal sexual contact] was committed against the victim, then you must find the defendant guilty of kidnapping in the second degree.

OR

[relevant endangering allegation] was committed against (name of victim), then you must find the defendant guilty of kidnapping in the second degree.

OR

[defendant sold or delivered (name of victim) to another person for pecuniary gain other than in circumstances which led to the return of (name of victim) to a parent, guardian or other person responsible for the general supervision of (name of victim)], then you must find defendant guilty of kidnapping in the second degree.

If you find that the State has proven beyond a reasonable doubt that the defendant is guilty of kidnapping and that (name of victim) was less than 16 years of age at the time of the kidnapping and that during the kidnapping, **[choose appropriate]** [an aggravated sexual assault] [a sexual assault] [an aggravated criminal sexual contact] was committed against the victim, then you must find the

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defendant guilty of kidnapping in the first degree.

OR

[relevant endangering allegation] was committed against (name of victim), then you must find the defendant guilty of kidnapping in the first degree.

OR

[defendant sold or delivered (name of victim) to another person for pecuniary gain other than in circumstances which led to the return of (name of victim) to a parent, guardian or other person responsible for the general supervision of (name of victim)], then you must find the defendant guilty of kidnapping in the first degree.