

SEXUAL ASSAULT - VICTIM LESS THAN 13
ACTOR AT LEAST 4 YEARS OLDER THAN VICTIM
(N.J.S.A. 2C:14-2b)

Count _____ of the indictment charges the defendant with sexual assault.

[READ COUNT OF INDICTMENT]

That section of our statutes provides in pertinent part:

An actor is guilty of sexual assault if he commits an act of sexual contact with a victim who is less than 13 years old and the actor is at least four years older than the victim.

In order to convict defendant of this charge, the State must prove the following elements beyond a reasonable doubt:

1. That defendant purposely committed an act of sexual contact with another person;
- OR**
1. That defendant purposely committed an act of sexual contact by touching himself/herself and the touching was in the view of **(name of victim)** who defendant knew was present;
2. That **(name of victim)** was less than 13 years old at the time of the sexual contact, and
3. That at the time of the sexual contact, defendant was at least four years older than the **(name of victim)**.

The first element that the State must prove beyond a reasonable doubt is that defendant committed an act of sexual contact with **(name of victim)**.

Sexual contact means an intentional touching by **(name of victim)** or by the defendant, either directly or through clothing, of **(name of victim's)** or defendant's intimate parts for the purpose of degrading or humiliating **(name of victim)** or sexually arousing or gratifying defendant.

Intimate parts means **[CHOOSE APPROPRIATE]** sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person.

To find that defendant committed an act of criminal sexual contact, you must find beyond a

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reasonable doubt both that the touching was intentional and that it was done with the purpose of degrading or humiliating (**name of victim**) or sexually arousing or gratifying the defendant. Intentional means purposeful. A person acts purposely with respect to the nature of his/her conduct or a result thereof if it is his/her conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to the attendant circumstances if he/she is aware of the existence of such circumstances or believes or hopes that they exist.

[WHEN DEFENDANT IS CHARGED WITH TOUCHING HIMSELF/HERSELF, ADD THE FOLLOWING:] The State must prove beyond a reasonable doubt that the touching was in view of the victim whom the defendant knew to be present.¹ The State is not required to prove that (**name of victim**) actually observed or witnessed the alleged sexual contact. Rather, the State must prove that the alleged sexual contact occurred in the view of (**name of victim**). “In the view” is defined as within the victim’s field of vision. “Field of vision” is not limited to the visual direction in which the child is focused upon at the particular time when the alleged sexual contact is said to have occurred. Field of vision includes the area that the child was capable of viewing.² The State must prove beyond a reasonable doubt that (**name of victim**) was present.

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 the conduct will cause a result. “Knowing,” “with knowledge,” or equivalent terms have the same meaning].

Purpose [and knowledge] [is] [are] [a] condition[s] of the mind. [It] [They] cannot be seen. Often, [it] [they] 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

¹ State v. Zeidell, 154 N.J. 417 (1998).

² State v. Breitweiser, 373 N.J. Super. 271, 276, 286-87 (App. Div. 2004).

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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 second element that the State must prove beyond a reasonable doubt is that **(name of victim)** was less than 13 years old at the time that the sexual contact occurred. 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 13.³

The third element that the State must prove beyond a reasonable doubt is that defendant was at least four years older than **(name of victim)** at the time of the sexual contact.

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

³ N.J.S.A. 2C:14-5c.