

SEXUAL ASSAULT
VICTIM AT LEAST 16 BUT LESS THAN 18
(N.J.S.A. 2C:14-2c(3))

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 penetration with another person where the victim is at least sixteen but less than eighteen years old and:

[CHOOSE APPROPRIATE]

The actor is related to the victim by blood or affinity to the third degree,¹

OR

The actor has supervisory or disciplinary power of any nature or in any capacity over the victim,

OR

The actor is a resource family parent, guardian, or stands in loco parentis within the household.

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

1. That defendant committed an act of sexual penetration with the victim;
2. That at the time of the penetration, **(name of victim)** was at least 16 years old but less than 18 years old, and
3. That defendant is related to the victim by blood or affinity to the first, second or third degree;

OR

That defendant had supervisory or disciplinary power of any nature or in any capacity over the victim;

¹ First degree - - parents and children; Second degree -- grandparents, grandchildren, brothers and sisters; Third degree - - uncles, aunts, nieces, nephews, great grandparents, great grandchildren. See generally State v. Gaines, 36 N.J.

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OR

That defendant is a [resource family parent], [guardian] [stands in loco parentis, that is, in the place of the parents within the household], and

4. That defendant acted knowingly.

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

According to the law, [**choose appropriate**] vaginal intercourse, cunnilingus, fellatio or anal intercourse or insertion of the hand, finger or object into the anus or vagina, either by the defendant or by another person upon the defendant's instruction, constitute(s) "sexual penetration." Any amount of insertion, however slight, constitutes penetration; that is, the depth of insertion is not relevant.

[Choose the appropriate definition(s)]

The definition of "vaginal intercourse" is the penetration of the vagina, or [**where appropriate**] of the space between the labia majora or outer lips of the vulva.²

The definition of "cunnilingus" is oral contact with the female sex organ.³

The definition of "fellatio" is oral contact with the male sexual organ.⁴

The definition of "anal intercourse" is penetration, however slight, into the anus.⁵

The second element that the State must prove beyond a reasonable doubt is that at the time of the penetration, **(name of victim)** was at least 16 years old but less than 18 years old. The State must prove only the age of the **(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 at least 16 but less than 18 years old.⁶

The third element that the State must prove beyond a reasonable doubt is that:

[CHOOSE APPROPRIATE]

¹Eq. 297 (E. & A. 1882).

²State v. J.A., 337 N.J. Super. 114 (Ap. Div. 2001). The Appellate Division upheld the charge given by the trial court in that case which included the following language which can be used if the circumstances of the specific case are appropriate: "This means that if you find from all of the evidence presented beyond a reasonable doubt that there was [penile] penetration to the outer area of the vaginal opening, what is commonly referred to as the vaginal lips, that is sufficient to establish penetration under the law."

³State v. Fraction, 206 N.J. Super. 532, 535-36 (App. Div. 1985), certif. denied, 104 N.J. 434 (1986).

⁴State in the Interest of S.M., 284 N.J. Super. 611, 616-19 (App. Div. 1995).

⁵State v. Gallagher, 286 N.J. Super. 1, 13 (App. Div. 1995), certif. denied, 146 N.J. 569 (1996).

⁶State v. Perez, 177 N.J. 540, 555 (2003); N.J.S.A. 2C:14-5c.

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Defendant is related to the victim by blood or affinity to the first, second or third degree. Here, the State alleges that defendant is related to **(name of victim)** by **(type of relationship)**.

OR

Defendant had supervisory or disciplinary power of any nature or in any capacity over the victim. In this case, the State alleges that defendant had [supervisory] [disciplinary] power over **(name of victim)** because of defendant's status as **(insert allegation)**. In determining whether defendant had [supervisory] [disciplinary] power over **(name of victim)**, you must examine the entire context of the relationship between the defendant and **(name of victim)**. To do so, you should consider the nature of the relationship between the defendant and the victim and whether the relationship was so unequal as to vest [supervisory] [disciplinary] power in the defendant. Among the factors you may consider are whether there was a significant disparity in ages and/or maturity level between the defendant and victim, whether the defendant offered advice and guidance to the **(name of victim)** on questions and issues outside the defendant's role as _____ and the power or ability of the defendant to affect the **(name of victim)** future participation or success.⁷

OR

Defendant is a [resource family parent], [guardian] [stands in loco parentis, that is, in the place of the parents within the household] of **(name of victim)**. "Resource family parent" means any person other than a natural or adoptive parent with whom a child in the care, custody or guardianship of the Department of Children and Families is placed by the department, or with its approval, for care, and shall include any person with whom a child is placed by the Division of Youth and Family Services for the purpose of adoption until the adoption is finalized.⁸

An in loco parentis relationship occurs when a person acts as a temporary guardian or caregiver of a child, taking on all or some of the responsibilities of a parent. Among the factors you may consider to determine whether defendant stood in loco parentis during the relevant period are whether defendant took on the responsibility to maintain, rear and educate **(name of victim)** as well as the duties of supervision, care and rehabilitation of **(name of victim)**.⁹

⁷ These factors are suggested by State v. Buscham, 360 N.J. Super. 346, 362 (App. Div. 2003), where the issue was defendant's role as a coach. The parties should identify factors in their own particular case which would be significant for the jury to consider in determining whether the defendant had supervisory or disciplinary power over the victim.

⁸ N.J.S.A. 30:4C-26.4.

⁹ These factors are suggested by Hardwicke v. American Boychoir School, 189 N.J. 69, 91 (2006).

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The fourth element that the State must prove beyond a reasonable doubt is that defendant acted knowingly. 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.

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 you find that the State has proven beyond a reasonable doubt each of these four elements, then you must find the defendant guilty of the crime of sexual assault. On the other hand, if you find that the State has failed to prove any of these elements beyond a reasonable doubt, then you must find the defendant not guilty of sexual assault.