

AGGRAVATED CRIMINAL SEXUAL CONTACT
N.J.S.A. 2C:14-3a [2C:14-2a(2)]

Count _____ of the indictment charges the defendant with aggravated criminal sexual contact.

[READ COUNT OF INDICTMENT]

That section of our statutes provides in pertinent part:

An actor is guilty of aggravated criminal sexual contact if he commits an act of sexual contact with a victim who is at least 13 years old but less than 16 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 over the victim because of his legal, professional or occupational status,

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 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;

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. Eq. 297 (E. & A. 1882).

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2. That at the time of the sexual contact, **(name of victim)** was at least 13 years old but less than 16 years old;
3. That defendant is related to the victim by blood or affinity to the first, second or third degree;

OR

3. That defendant had supervisory or disciplinary power over the victim because of his/her legal, professional or occupational status;

OR

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

The first element that the State must prove beyond a reasonable doubt is that defendant purposely 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. Here the State alleges that defendant committed an act of sexual contact by **(describe conduct alleged)**.

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

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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.² 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)**. “Field of vision” is not limited to the visual direction in which the alleged victim is focused upon at the particular time when the alleged sexual contact is said to have occurred. Field of vision includes the areas that **(name of victim)** was capable of viewing.³ 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 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 at the time of the contact **(name of victim)** was at least 13 years old but less than 16 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 between 13 and 16 years old.⁴

² State v. Zeidell, 154 N.J. 417 (1998).

³ State v. Breitweiser, 373 N.J. Super. 271, 276, 286-87 (App. Div. 2004).

⁴ State v. Perez, 177 N.J. 540, 555 (2003); N.J.S.A. 2C:14-5c.

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

[CHOOSE APPROPRIATE]

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 over the victim because of his/her legal, professional or occupational status. 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.⁵

OR

Defendant is a [resource family parent], [guardian] [stands in loco parentis 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.⁶

An in loco parentis relationship occurs when a person acts as a temporary guardian or

⁵ 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.

⁶ N.J.S.A. 30:4C-26.4.

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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**).⁷

If you find that the State has proven every element beyond a reasonable doubt, then you must find the defendant guilty of aggravated criminal sexual contact. 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 aggravated criminal sexual contact.

⁷ These factors are suggested by Hardwicke v. American Boychoir School, 188 N.J. 69, 91 (2006).