

**ABUSE/ABANDONMENT/CRUELTY/NEGLECT OF CHILD
(PARENT/GUARDIAN/PERSON HAVING CONTROL)
(N.J.S.A. 9:6-1; N.J.S.A. 9:6-3)**

Count _____ of the indictment charges defendant with [abusing] [abandoning] [acting cruelly toward] [neglecting] a child.

The statute upon which this count of the indictment is based states in pertinent part:

Any parent, guardian or person having the care, custody or control of any child who [abuses][abandons] [acts cruelly toward] [neglects] a child . . . is guilty of a crime.

In order to find defendant guilty of this crime, the State must prove beyond a reasonable doubt

1. That the victim was a child.
2. That the defendant was a [parent] [guardian] [person having the care, custody or control] of the child.
3. That the defendant knowingly¹ [abused] [abandoned] [acted cruelly toward] [neglected] the victim.

The first element that the State must prove beyond a reasonable doubt is that (name of child) is a child. A “child” means any person under the age of eighteen (18) years at the time of the offense.

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

¹ The State must prove that the defendant’s conduct was knowing to convict of a Title 9 criminal offense. State v. Overton, 357 N.J. Super. 387, 393 (App. Div.), certif. denied, 177 N.J. 219 (2003).

**ABUSE/ABANDONMENT/CRUETY/NEGLECT OF CHILD
PARENT/GUARDIAN/PERSON HAVING CONTROL
(N.J.S.A. 9:6-1; N.J.S.A. 9:6-3)**

was a [parent] [guardian]² [person having the care, custody or control] of (name of child).
[**CHOOSE APPROPRIATE**] [Parent includes natural parent,³ stepfather and stepmother, adoptive or resource family parent] [The person having the care, custody and control of any child means any person who has assumed the care of a child, or any person with whom the child is living at the time the offense is committed, including a teacher, employee or volunteer, whether compensated or uncompensated, of an institution⁴ who is responsible for the child's welfare, and a person who legally or voluntarily assumes the care, custody, maintenance or support of the child] [any other staff person of an institution regardless of whether or not the person is responsible for the care or supervision of the child] [a teaching staff member or other employee whether compensated or uncompensated of a day school⁵].

[CHOOSE APPROPRIATE THIRD ELEMENT]

The third element that the State must prove beyond a reasonable doubt is that defendant knowingly abused (name of child) by [**choose appropriate**]⁶

- (a) disposing of (his/her) custody contrary to law.
- (b) employing or permitting (him/her) to be employed in any vocation or employment injurious to (his/her) health or dangerous to (his/her) life or limb, or contrary to the

² N.J.S.A. 9:6-2 defines parent and custodian but does not define guardian. N.J.S.A. 9:6-8.21 defines "parent or guardian" as a natural parent, adoptive parent, resource family parent, stepparent, paramour of any parent, any person who has assumed responsibility for the care, custody or control of a child or any person upon whom there is a legal duty for the care, custody or control of a child.

³ N.J.S.A. 9:2-13(f).

⁴ Institution means a public or private facility in the State which provides children with out of home care, supervision or maintenance. Institution includes, but is not limited to, a correctional facility, detention facility, treatment facility, day care center, residential school, shelter and hospital. N.J.S.A. 9:6-8.21.

⁵ Day school means a public or private school which provides general or special education services to day students in grades kindergarten through 12. N.J.S.A. 9:6-8.21h. It does not include a residential facility

ABUSE/ABANDONMENT/CRUETY/NEGLECT OF CHILD
PARENT/GUARDIAN/PERSON HAVING CONTROL
(N.J.S.A. 9:6-1; N.J.S.A. 9:6-3)

laws of New Jersey.

- (c) employing or permitting (him/her) to be employed in any occupation, employment or vocation dangerous to the morals of the child.
- (d) habitually using, in the hearing of (name of child) profane, indecent or obscene language.
- (e) performing any indecent, immoral or unlawful act or deed in the presence of (name of child) that may tend to debauch or endanger or degrade the morals of (name of child).
- (f) permitting or allowing any other person to perform any indecent, immoral or unlawful act or deed in the presence of (name of child) that may tend to debauch or endanger or degrade the morals of (name of child).
- (g) using excessive physical restraint on (name of child) under circumstances which did not indicate that (name of child)'s behavior was harmful to (himself/herself), others or property.
- (h) in an institution, isolating (name of child) from ordinary social contact under circumstances which indicate emotional or social deprivation.

OR

The third element that the State must prove beyond a reasonable doubt is that defendant knowingly abandoned (name of child) by **(choose appropriate⁷)**

- (a) forsaking (him/her).

which provides 24 hour care. Id.

⁶ See N.J.S.A. 9:6-1.

**ABUSE/ABANDONMENT/CRUELTY/NEGLECT OF CHILD
PARENT/GUARDIAN/PERSON HAVING CONTROL
(N.J.S.A. 9:6-1; N.J.S.A. 9:6-3)**

- (b) failing to care for and keep the control and custody of (name of child) so that (he/she) was exposed to physical or moral risk without proper and sufficient protection.
- (c) failing to care for and keep the control and custody of (name of child) so that (he/she) was liable to be supported and maintained at the expense of the public or by child caring societies or private persons not legally chargeable with (his/her) care, custody and control.

OR

The third element that the State must prove beyond a reasonable doubt is that defendant knowingly committed an act of cruelty against (name of child) by (**choose appropriate**⁸)

- (a) inflicting on (him/her) unnecessarily severe corporal punishment.
- (b) inflicting on (him/her) unnecessary suffering or pain, either mental or physical.
- (c) habitually tormenting, vexing, or afflicting (him/her).
- (d) committing any act of omission or commission whereby unnecessary pain and suffering, whether mental or physical, was caused or permitted to be inflicted on (him/her).
- (e) exposing (him/her) to unnecessary hardship, fatigue or mental or physical strains that might tend to injure (his/her) health or physical or moral well being.

OR

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

⁷ See N.J.S.A. 9:6-1.

⁸ See N.J.S.A. 9:6-1.

**ABUSE/ABANDONMENT/CRUETY/NEGLECT OF CHILD
PARENT/GUARDIAN/PERSON HAVING CONTROL
(N.J.S.A. 9:6-1; N.J.S.A. 9:6-3)**

knowingly neglected (name of child) by (**choose appropriate**⁹)

- (a) failing to provide (him/her) with proper and sufficient food, clothing, maintenance, regular school education as required by law, medical attendance or surgical treatment, and a clean and proper home.
- (b) failing to do or permit to be done any act necessary for (his/her) physical or moral well being.
- (c) continuing to permit (his/her) continued inappropriate placement in an institution, with the knowledge that the placement has resulted and may continue to result in harm to (his/her) mental or physical well being.

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 such 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 inferences 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

⁹ See N.J.S.A. 9:6-1.

ABUSE/ABANDONMENT/CRUETY/NEGLECT OF CHILD
PARENT/GUARDIAN/PERSON HAVING CONTROL
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by inferences 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 every element of the offense beyond a reasonable doubt, then you must find defendant guilty. If you find that the State has failed to prove any element beyond a reasonable doubt, then you must find defendant not guilty.