

VIOLATION OF A CONDITION OF PAROLE SUPERVISION FOR LIFE
FOURTH DEGREE
(N.J.S.A. 2C:43-6.4(d))

(For offenses occurring on or after January 14, 2004)¹

The indictment charges the defendant with the offense of violating a condition of a Special Sentence of Parole Supervision for Life:

(Read pertinent count of the indictment)

The statute on which this charge is based provides that an actor is guilty of the offense of Violation of a Condition of Parole Supervision for Life if, without good cause, he/she knowingly violates a condition of a special sentence of Parole Supervision for Law which had been imposed upon him/her.²

In order for you to find the defendant guilty of violating a condition of a special sentence of Parole Supervision for Life, you must find that the State has proved beyond a reasonable doubt the following elements:

- (1) that the defendant was subject to conditions imposed upon him/her by a special sentence of Parole Supervision for Life, as imposed by law;
- (2) that the defendant knowingly violated a condition imposed on him/her as a result of a special sentence of Parole Supervision for Life;
- (3) that the defendant did not have good cause to violate the alleged condition.

Here the State alleges that the defendant knowingly violated the following condition(s): (INSERT ALLEGATIONS MADE BY STATE. IF REQUESTED, SUMMARIZE DEFENDANT'S FACTUAL CONTENTIONS, AS WELL).

The first element that the State must prove beyond a reasonable doubt is that the defendant was subject to conditions imposed upon him/her by a special sentence of Parole Supervision for Life, as imposed by law.

The second element that the State must prove beyond a reasonable doubt is that the defendant knowingly violated a condition imposed upon him/her as a result of a special sentence

¹ For any offense committed on or after January 14, 2004, a special sentence of Parole Supervision for Life can be imposed pursuant to the terms of N.J.S.A. 2C:43-6.4 for certain enumerated sexual offenses. For offenses committed from October 31, 1994 to January 13, 2004 (inclusive), a defendant would be subject to a special sentence of Community Supervision for Life. See P.L. 1994, c. 130, sec. 2.

² N.J.S.A. 2C:43-6.4(d).

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as imposed by law.³

(CHARGE IN ALL CASES)

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.

A condition imposed on a defendant by the special sentence of Parole Supervision for Life include:

(SELECT APPROPRIATE SECTION(S))⁴

³ It may be necessary to conduct a bifurcated trial if the defendant is simultaneously charged with a substantive offense that is being alleged to act as one of the predicate offenses that form the basis of criminal liability under the Violation of the Special Sentence of Parole Supervision for Life statute. See State v. Ragland, 105 N.J. 189, 193-194 (1986) (The charge of Certain Persons Previously Convicted of a Crime Not to Possess a Weapon, N.J.S.A. 2C:39-7, to be bifurcated from any substantive weapons possessions charge); State v. Chenique-Puey, 145 N.J. 334, 343 (1996) (Bifurcated trial ordered when charges of contempt of a domestic-violence restraining order and an underlying criminal offense arise from the same criminal episode).

If a bifurcated trial is appropriate, it should be conducted before the same jury and the charges tried sequentially. See Ragland, *supra*, 105 N.J. at 195; Chenique-Puey, *supra*, 145 N.J. at 343. A unitary trial might still be appropriate if the Violation of Parole Supervision for Life charge was being tried alone. See State v. Brown, 180 N.J. 572 (2004).

⁴ See N.J.S.A. 2C:43-6.4(b) and citations to the Parole Supervision provisions cited therein. See Generally, N.J.S.A. 30:4-123.59(b)(1) and N.J.A.C. 10A:71-6.12.

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- (A) a requirement that the defendant obey all laws and ordinances.⁵
- (B) a requirement that defendant will not own or possess any firearm as defined in N.J.S.A. 2C:39-1(f) or any other weapon enumerated in N.J.S.A. 2C:39-1(r).⁶
- (C) a requirement that the defendant refrain from the use, possession or distribution of a controlled dangerous substance, controlled substance analog or imitation controlled dangerous substance as defined in N.J.S.A. 2C:35-2 and N.J.S.A. 2C:35-11,⁷ or any paraphernalia related to such substances except as prescribed by a physician.⁸
- (D) a requirement that the defendant obtain permission from his parole officer for any change in his residence.
- (E) a requirement that the defendant report at reasonable intervals to an assigned parole officer.
- (F) a requirement that the defendant make full or partial restitution, and the defendant refused or failed to make a good faith effort to make such payment(s).⁹
- (G) a requirement the defendant have no contact with the victim, which special condition may include, but need not be limited to, restraining the defendant from entering the victim's residence, place of employment, business or school, and from harassing or stalking the victim or victim's relatives in any way, or refrain from any contact (verbal, written or through a third party) with the victim(s) of the offense unless contact is authorized by the assigned parole officer;¹⁰
- (H) a requirement that the defendant shall not own or possess an animal for an unlawful purpose or to interfere in the performance of duties by a parole officer.
- (I) a requirement that the defendant make specified fine payments to the State Parole Board or the Juvenile Justice Commission. For violation of such conditions, or

⁵ N.J.S.A. 30:4-123-59(b)(1) and N.J.A.C. 10A:71-6.12(d)(1).

⁶ The jury should be instructed as to the appropriate statutory definition(s) as warranted by the facts.

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⁸ N.J.A.C. 10A:71-6.12(d)(10).

⁹ N.J.S.A. 2C:43-3 and N.J.S.A. 30:4-123.59(g).

¹⁰ N.J.S.A. 30:4-123-59(b)(1) and N.J.A.C. 10A:71-6.12(d)(16).

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for violation of a special condition requiring restitution, parole may be revoked only for refusal or failure to make a good faith effort to make such payment.

- (J) a requirement that the defendant pay any fines imposed as a condition of his sentence, and the defendant refused or failed to make a good faith effort to make such payment(s).¹¹
- (K) a requirement that the defendant appear before a designated review board for consideration of an adjustment to the defendant's parole status.¹²
- (L) any other requirement imposed by the Division of Parole of the State Parole Board appropriate to protect the public and to foster rehabilitation, which may include the following conditions that the defendant:
 - 1. Obey all laws and ordinances;
 - 2. Report to the assigned parole officer as instructed;
 - 3. Notify the assigned parole officer immediately after any arrest, after being served with or receiving a complaint or summons and after accepting any pre-trial release including bail;
 - 4. Notify the assigned parole officer immediately upon the issuance by the appropriate court, pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et. seq., or under the provisions of a similar Federal or state statute, of an order granting emergency relief, a temporary or final restraining order or an order establishing conditions of release or bail in a criminal matter or offense arising out of a domestic violence situation, and comply with any condition established within the respective order until the order is dissolved by the appropriate court or until a condition is modified or discharged by the appropriate court;
 - 5. Reside at a residence approved by the assigned parole officer;
 - 6. Obtain the permission of the assigned parole officer prior to any change of residence;
 - 7. Obtain the permission of the assigned parole officer prior to leaving the state of the approved residence for any purpose;

¹¹ N.J.S.A. 2C:43-3 and N.J.S.A. 30:4-123.59(g).

¹² N.J.S.A. 30:4-123.61(a).

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8. Refrain from the purchase, use, possession, distribution or administration of any narcotic or controlled dangerous substance, controlled dangerous substance analog, imitation controlled dangerous substance or any paraphernalia related to such substances except as prescribed by a physician;
9. Cooperate in any medical and/or psychological examination or tests as directed by the assigned parole officer;
10. Participate in and successfully complete an appropriate community or residential counseling or treatment program as directed by the assigned parole officer;
11. Submit to drug or alcohol testing at any time as directed by the assigned parole officer;
12. Obtain the permission of the assigned parole officer prior to securing, accepting or engaging in any employment, business or volunteer activity and prior to a change of employment;
13. Notify the assigned parole officer immediately of any change in employment status;
14. Comply with any curfew established by the assigned parole officer;
15. Refrain from behavior which results in the issuance of a final restraining order pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et. seq., or under the provisions of a similar Federal or state statute;
16. Refrain from operating a motor vehicle without a valid driver's license;
17. Refrain from any contact (written or otherwise) with any group, club, association or organization that engages in, promotes or encourages illegal or sexually deviant behavior;
18. Submit to a search conducted by a parole officer, without a warrant, of the defendant's person, place of residence, vehicle or other real or personal property within the defendant's control at any time a parole officer has a reasonable, articulable basis to believe that the search will produce

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contraband or evidence that a condition of supervision has been violated, is being violated or is about to be violated and permit the confiscation of any contraband;

19. Submit to a polygraph examination ordered to be administered, pursuant to N.J.S.A. 30:4-123.88.
20. Refrain from using any computer and/or device to create any social networking profile or to access any social networking service or chat room in the defendant's name or any other name for any reason unless expressly authorized by the district parole supervisor.

(M) (CHARGE IF DEFENDANT WAS ON PAROLE SUPERVISION FOR LIFE AND CONDITION ALLEGED INVOLVES CONTACT WITH A PERSON UNDER THE AGE OF EIGHTEEN)

If the victim(s) of an offense specified in (a) above was a minor, meaning under the age of 18, a defendant serving a special sentence of parole supervision for life shall or refrain from initiating, establishing or maintaining contact with any minor and/or refrain from attempting to initiate, establish or maintain contact with any minor, except (SELECT APPROPRIATE) a) when the minor is engaged in a lawful commercial or business activity, the defendant may engage in the lawful commercial or business activity, provided the activity takes place in an area open to the public view; b) when the minor is in the physical presence of his or her parent or legal guardian (the defendant may not be the parent or legal guardian); c) when the defendant is present in a public area, as long as the defendant is not associating with a minor, and the public area is not one frequented mainly or exclusively by minors; d) when the appropriate court may authorize contact with a minor; or e) when the district parole supervisor or designated representative may authorize the defendant to have contact with a minor.¹³

21. Refrain from residing with any minor without the prior approval of the district parole supervisor or designated representative.

(N) (CHARGE THE FOLLOWING IF IT IS ALLEGED THE VIOLATION RELATES TO THE COMMISSION OF NEW CRIME WHILE ON PAROLE):

¹³ N.J.A.C. 10A:71-6.12(f).

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The State alleges the defendant was convicted of a crime committed while on parole or adjudication of delinquency for an act which, if committed by an adult, would constitute a crime. The facts surrounding the underlying conviction may not be relitigated in the context of this case. You may only consider whether the State has proven whether the fact of the conviction exists, and whether the defendant was the person so convicted.¹⁴

(O) (CHARGE THE FOLLOWING IF A VIOLATION OF A CONDITION RELATING TO INTERNET ACCESS IS ALLEGED):

The State alleges the defendant knowingly failed to comply with Internet Access conditions as set forth in N.J.S.A. 2C:43-6.4(f), to wit:

(SELECT AS APPROPRIATE)

- (1) that the defendant violated a condition that prohibited him/her from accessing or using a computer or any other device with Internet capability without the prior written approval of the Superior Court judge and the State has proven such use was not in connection with the defendant's employment or search for employment as approved by the defendant's parole officer;
- (2) that the defendant refused to submit to periodic unannounced examinations of the person's defendant's computer or any other device with Internet capability by a parole officer, law enforcement officer or assigned computer or information technology specialist, including the retrieval and copying of all data from the computer or device and any internal or external peripherals and removal of such information, equipment or device to conduct a more thorough inspection;
- (3) that the defendant failed to submit to the installation on the his/her computer or device with Internet capability, at the person's expense, one or more hardware or software systems to monitor his/her Internet use;
- (4) that the defendant failed to comply or submit to any other appropriate restrictions concerning the person's use or access of a computer or any other device with Internet capability.¹⁵

(CHARGE IF APPLICABLE)

¹⁴ White v. N.J. Jersey State Parole Bd., 136 N.J.Super. 360 (App. Div. 1975).

¹⁵ This condition regarding limiting Internet access would apply to only those convictions which arise from a date of offense that occurred after February 25, 2008. See P.L. 2007, c. 219.

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The Special Sentence of Parole Supervision for Life commences immediately upon the release of a defendant from incarceration.¹⁶

(RESUMPTION OF MAIN CHARGE)

The third element the State must prove beyond a reasonable doubt is that the defendant did not have good cause for the violation.

Good cause is defined as a substantial reason that affords a legal excuse for the failure to abide by the condition.¹⁷

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

If you find that the State has proved each and every element of the offense beyond a reasonable doubt, then you must find the defendant guilty.

¹⁶ N.J.S.A. 2C:43-6.4(b).

¹⁷ The statute does not define good cause. It has been noted that “it is impossible to lay down a universal definition of good cause for disclosure and inspection, or an all-inclusive and definitive catalogue of all of the circumstances to be considered by a court in determining whether there is good cause.” Ullmann v. Hartford Fire Ins. Co., 87 N.J. Super. 409, 414 (App. Div. 1965). Since the statute does not define good cause, the definition in this Model Jury Charge is adapted from the term’s use in cases involving the opening of a default which would appear to be analogous to the conduct being proscribed by the alleged crime as it relates to a party’s actions as opposed to the attorney’s actions. See Nemeth v. Otis Elevator Co., 55 N.J. Super. 493, 497 (App. Div. 1959)(“Whenever the words ‘good cause’ appear in statutes or rules relating to the opening of defaults they mean (in the absence of other modifying or controlling words) a substantial reason that affords legal excuse for the default.”). See also R. 4:43.3.

However, the Committee notes that the term good cause is used in other contexts in statutes and the Court Rules. See, e.g., R. 1:13-7(a) (reinstatement after dismissal for lack of prosecution); R. 1:40-6(d) (removal from mediation); R. 3:10-2(d)(Time of making certain jurisdictional motions); R. 3:13-3(g)(Protective Orders regarding discovery in criminal matters); R. 4:10-3 (protective orders); R. 4:21A-4(f) (relief from orders entered based on failure to appear for arbitration).