

AGGRAVATED ASSAULT
(THROWING BODILY FLUID AT A CORRECTIONS EMPLOYEE)
(N.J.S.A. 2C:12-13)

Count ____ of this indictment charges the defendant with aggravated assault.

(Read appropriate count of indictment).

The applicable statute provides, in pertinent part, that:

[a] person who throws a bodily fluid at a Department of Corrections employee, [or county corrections officer, juvenile corrections officer, juvenile detention staff member, any sheriff, undersheriff or sheriff's officer or any municipal, county or State law enforcement officer] while in the performance of his duties or otherwise purposely subjects such employee to contact with a bodily fluid commits an aggravated assault.

In order for you to find the defendant guilty of this offense, the State must prove each of the following elements beyond a reasonable doubt:

1. that the defendant purposely¹ threw a bodily fluid at **(insert name of victim)** or otherwise purposely subjected **(insert name of victim)** to contact with a bodily fluid;
2. that **(insert name of victim)** was a Department of Corrections employee [or county corrections officer, juvenile corrections officer, juvenile detention staff member, any sheriff, undersheriff or sheriff's officer or any municipal, county or State law enforcement officer];
3. that **(insert name of victim)** was at the time engaged in the performance of (his/her) duties; and

¹ There is a question of statutory construction as to the applicable culpability element under N.J.S.A. 2C:12-13 for one who "throws" a bodily fluid. The absence of an explicitly stated culpability requirement in the first portion of the statute could support an argument that knowledge applies under N.J.S.A. 2C:2-2c(3), but a majority of the Model Criminal Jury Charge Committee has concluded that the subsequent statutory reference to purpose requires that purpose be applied to all material elements of the offense under N.J.S.A. 2C:2-2c(1).

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4. that the defendant knew that **(insert name of victim)** was a Department of Corrections employee [or county corrections officer, juvenile corrections officer, juvenile detention staff member, any sheriff, undersheriff or sheriff's officer or any municipal, county or State law enforcement officer] and that the defendant knew that **(insert name of victim)** was at the time engaged in the performance of (his/her) duties.¹

The first element that the State must prove beyond a reasonable doubt is that the defendant purposely threw a bodily fluid at **(insert name of victim)**, or otherwise purposely subjected **(insert name of victim)** to contact with a bodily fluid. "Bodily fluid" means saliva, blood, urine, feces, seminal fluid or any other bodily fluid..²

A person acts purposely with respect to the nature of (his/her) conduct or a result thereof if it is a person's conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if a person is aware of the existence of such circumstances or a person believes or hopes that they exist. One can be deemed to be acting purposely if one acts with design, with a purpose, with a particular object, if one really means to do what (he/she) does.³

The second element that the State must prove beyond a reasonable doubt is that **(insert name of victim)** was a Department of Corrections employee [or county corrections officer, juvenile corrections officer, juvenile detention staff member, any sheriff, undersheriff or sheriff's officer or any municipal, county or State law enforcement officer].

The third element that the State must prove beyond a reasonable doubt is that **(insert name of victim)** was engaged in the performance of the duties of (his/her) office at the time.

¹ State v. Green, 318 N.J. Super. 361, 376 (App. Div. 1999), aff'd. o.b. 163 N.J. 140 (2000) (the defendant must know that the victim is a law enforcement officer). If transferred intent is an issue, the charge should be modified accordingly. State in the Interest of S.B., 333 N.J. Super. 236, 243 (App. Div. 2000).

² N.J.S.A. 2C:12-12.

³ N.J.S.A. 2C:2-2b(1).

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[CHARGE WHERE APPROPRIATE]

“Department of Corrections employee” means any Corrections officer, parole officer, or other employee of the New Jersey Department of Corrections and any person under contract to provide services to the department.⁴

[CHARGE IN ALL CASES]

The fourth element that the State must prove beyond a reasonable doubt is that the defendant knew that **(insert name of victim)** was a Department of Corrections employee [or county corrections officer, juvenile corrections officer, juvenile detention staff member, any sheriff, undersheriff or sheriff’s officer or any municipal, county or State law enforcement officer] and that the defendant knew that such individual was engaged in the performance of the duties of (his/her) office at the time.

A person acts knowingly with respect to the nature of (his/her) conduct or the attendant circumstances if a person is aware that (his/her) conduct is of that nature, or that such circumstances exist or a person is aware of a high probability of their existence. A person acts knowingly with respect to a result of (his/her) conduct if a person is aware that it is practically certain that (his/her) conduct will cause such a result. One is said to act knowingly if one acts with knowledge, if one acts consciously, if (he/she) comprehends (his/her) acts.⁵

Purpose and knowledge are conditions of the mind that cannot be seen and that can often be determined only from inferences from conduct, words or acts. It is not necessary for the State to produce a witness to testify that the defendant stated that (he/she) acted with a particular state of mind. It is within your power to find that proof of purpose or knowledge has been furnished beyond a reasonable doubt by inferences that may arise from the nature of the acts and circumstances surrounding the conduct in question.

If you find that the State has proven every element beyond a reasonable doubt, then you must find the defendant guilty. If, however, the State has failed to prove any element beyond a reasonable doubt, then you must find the defendant not guilty.

⁴ N.J.S.A. 2C:12-12.

⁵ N.J.S.A. 2C:2-2b(2)

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[CHARGE WHERE APPROPRIATE]

If, and only if, you find the defendant guilty of the crime charged beyond a reasonable doubt, you must proceed to determine whether the State has proven one additional element beyond a reasonable doubt, and that is whether **(insert name of victim)** suffered bodily injury as a consequence of the defendant's conduct.⁶

"Bodily injury" is defined as physical pain, illness, or any impairment of physical condition.⁷ Record your finding as to this additional element in the place provided on your verdict sheet.

⁶ Where causation is an issue, charge appropriately under N.J.S.A. 2C:2-3.

⁷ N.J.S.A. 2C:11-1a.