

AGGRAVATED CRIMINAL SEXUAL CONTACT
N.J.S.A. 2C:14-3a [2C:14-2a(5)]

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

[READ COUNT OF INDICTMENT]

The statute on which this charge is based provides that an actor is guilty of aggravated criminal sexual contact if, aided and abetted by one or more other persons, he commits an act of sexual contact with another person, using physical force or coercion.

In order to convict defendant of this charge, the State must prove each of 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;
2. That defendant was aided or abetted by one or more other persons in the commission of the act of sexual contact, and
3. That defendant used physical force or coercion in committing the act of sexual contact.

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

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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, 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.¹ 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.² 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.

¹ State v. Zeidell, 154 N.J. 417 (1998).

² State v. Breitweiser, 373 N.J. Super. 271, 276, 286-87 (App. Div. 2004).

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The second element that the State must prove beyond a reasonable doubt is that the defendant was aided or abetted by one or more other persons in the commission of the act of sexual contact.

The word aid means to assist, support or supplement the efforts of another, and the word abet means to encourage, counsel, incite or instigate the commission of the crime. Aiding or abetting does not have to be proved by direct evidence of a formal plan to commit the crime, verbally agreed to by all who are charged or involved. The proof may be circumstantial. Participation and agreement can be established from conduct as well as spoken words.

The third element that the State must prove beyond a reasonable doubt is that the defendant used physical force or coercion in committing the act of sexual contact.³ The State is not required to prove that the victim resisted.

The terms "physical force" and "coercion" have special meaning under this statute which I will now explain to you.⁴

Physical force is defined as the commission of the act of sexual contact without the victim's freely and affirmatively given permission to the specific act of contact alleged to have occurred. You must decide whether the defendant's alleged act of contact was undertaken in circumstances that led the defendant reasonably to believe that the victim had freely given affirmative permission to the specific act of sexual contact. Simply put, affirmatively given permission means the victim did or said something which would lead a reasonable person to believe (he/she) was agreeing to engage in the act of sexual contact, and freely given permission means the victim agreed of (his/her) own free will to engage in the act of sexual contact.

Freely and affirmatively given permission can be indicated either through words or through actions that, when viewed in the light of all the surrounding circumstances, would demonstrate to a reasonable person that affirmative and freely given permission for the specific act of sexual contact had been given. Persons need not, of course, expressly announce their

³ Note that where a defendant's sexual contact is with his own intimate parts in view of an adult victim, a conviction on a charge of criminal sexual contact requires proof of physical force or coercion beyond defendant's act of touching himself; in the absence of such evidence of force or coercion, defendant's conduct may constitute the lesser included offense of lewdness. State v. Lee, 417 N.J. Super. 219 (App. Div. 2010), certif. denied, 206 N.J. 64 (2011). In an appropriate case, the court must (1) decide which charge(s) to submit to the jury and (2) tailor its instructions accordingly.

⁴ The definition of "physical force" in this charge is taken from State in the Interest of M.T.S., 129 N.J. 422, 444-449 (1992).

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consent to engage in an act of sexual intercourse for there to be affirmative permission. Permission to engage in an act of sexual contact can be and indeed often is indicated through physical actions rather than words. Permission is demonstrated when the evidence, in whatever form, is sufficient to demonstrate that a reasonable person would have believed that the alleged victim had affirmatively and freely given authorization to the act.

Proof that the act of sexual contact occurred without the victim's permission can be based on evidence of conduct or words in light of surrounding circumstances, and must demonstrate beyond a reasonable doubt that a reasonable person would not have believed that there was affirmative and freely given permission. If there is evidence to suggest that the defendant reasonably believed that such permission had been given, the State must demonstrate either that the defendant did not actually believe that such permission had been freely given, or that such a belief was unreasonable under all of the circumstances. In determining the reasonableness of defendant's belief that the victim had freely given affirmative permission, you must keep in mind that the law places no burden on the alleged victim to have expressed non-consent or to have denied permission. You should not speculate as to what the alleged victim thought or desired or why (he/she) did not resist or protest. The State is not required to prove that the victim resisted.

To find that the defendant used coercion, you must find that with the purpose, that is, conscious object, to unlawfully restrict [victim's] freedom of action to engage in or refrain from engaging in the act of sexual contact, the defendant threatened to:⁵

[charge applicable language]

- (1) inflict bodily injury on anyone or any other offense;
- (2) accuse anyone of an offense;
- (3) expose any secret which would tend to subject any person to hatred, contempt or ridicule, or to impair his or her credit or business repute;
- (4) take or withhold action as an official, or cause an official to take or withhold action;
- (5) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

⁵ See N.J.S.A. 2C:14-1j and 2C:13-5.

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- (6) perform any other act which would not in itself substantially benefit the actor but which is calculated to substantially harm another person with respect to his or her health, safety, business, calling, career, financial condition, reputation or personal relationships.

In other words, to find that the defendant used coercion, you must find that the defendant's purpose, that is, conscious object, was to compel [victim] to engage in an act of sexual contact by threatening (him/her).

**[SUMMARIZE FACTUAL ALLEGATIONS OF STATE AND
DEFENSE, IF APPROPRIATE]**

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.