

AGGRAVATED CRIMINAL SEXUAL CONTACT
N.J.S.A. 2C:14-3a [2C:14-2a(6)]

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 he/she commits an act of sexual contact with another person, using physical force or coercion, and severe personal injury is sustained by the victim.

In order for you to find the defendant guilty of aggravated criminal sexual contact, you must find that the State has proven each of the following three elements beyond a reasonable doubt:

1. That the defendant committed an act of sexual contact with [insert name of victim],
2. That the defendant used physical force or coercion, and
3. That as a result of the defendant's conduct, the victim sustained severe personal injury.

For a person to be found guilty of aggravated criminal sexual contact, the State is not required to prove that the victim resisted.

The first element the State is required to prove is that the defendant committed an act of sexual contact with **(name of victim)** as charged in the indictment. Under the law, sexual contact means an intentional touching by the victim or the defendant, either directly or through clothing, of the victim's or defendant's intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the defendant. To constitute criminal conduct under this statute, sexual contact of the defendant with himself/herself must be in view of the victim whom the defendant knows to be present, and must be done with the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the defendant.

Intimate parts means the following body parts: sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person.

For you to find that the 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 the victim or sexually arousing or sexually gratifying the

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defendant. 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 he/she believes or hopes that they exist.

The second 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. 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.¹

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 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

¹ 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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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:²

[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
- (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).

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

² See N.J.S.A. 2C: 14-1j and 2C:13-5.

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of the defendant's conduct, the victim sustained severe personal injury. According to the law, "severe personal injury" means severe bodily injury, disfigurement, disease, incapacitating mental anguish or chronic pain. Bodily injury means physical pain, illness or any impairment of physical condition.

[Charge if applicable]

"Incapacitating mental anguish" means severe emotional distress or suffering which results in a temporary or permanent inability of the victim to function in some significant aspect of (his/her) life, such as in (his/her) employment, (his/her) ability to care for (himself/herself), or in (his/her) capacity as spouse, homemaker or mother/father. Temporary incapacity means more than a mere fleeting, short-lived or brief incapacity.^{3]}

[If there is an issue as to whether the defendant's conduct caused the injury, add the following:

To find that the severe injury sustained by the victim was caused by the defendant's conduct, you must find first, that but for the defendant's conduct, the victim would not have sustained severe personal injury; and second, that the victim's injury was the probable consequence of the defendant's conduct.⁴ In order for the injury to be a probable consequence of the defendant's conduct, the injury must not have been too remote, or too accidental in its occurrence, or too dependant on another's volitional act(s) to have a just bearing on the defendant's liability or the gravity of his offense. In other words, you must decide if the State has proven beyond a reasonable doubt that the injury did not occur in such an unexpected or unusual manner that it would be unjust to find defendant responsible for the injury.^{5]}

³ State v. Walker, 216 N.J. Super. 39, 44 (App. Div.), certif. denied, 108 N.J. 179 (1987).

⁴ This language on causation is written on the assumption that no culpability on the part of the defendant is required for causing injury to the victim. If, however, causing the injury is a material element for which a purposeful [knowing] mental state is required, see N.J.S.A. 2C:2-2c(3), the second part of the causation element should read: two, that the victim's injury must have been within the defendant's design [contemplation] or, if not, the actual injury must involve the same kind of injury or harm as that designed [contemplated] and not be too remote, accidental in its occurrence or dependent on another's volitional act to have a just bearing on the defendant's liability or on the gravity of his offense. See N.J.S.A. 2C:2-3b.

⁵ If the State and the defendant offer different factual theories of causation, each should be summarized for the jury.

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[In all cases, judge should summarize factual allegations of State and defense here if appropriate]

[Charge the following language in all cases]

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.