

AGGRAVATED CRIMINAL SEXUAL CONTACT
IN THE COURSE OF A FELONY
N.J.S.A. 2C:14-3a [2C:14-2a(3)]

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

[READ COUNT OF INDICTMENT]

That section of our statutes provides in pertinent part:

A person is guilty of aggravated criminal sexual contact if he commits an act of sexual contact with another person during the commission or attempted commission, whether alone or with one or more other persons, of **[choose appropriate]** robbery, kidnapping, homicide, aggravated assault on another, burglary, arson, or criminal escape.

In order to convict defendant of this charge, the State must prove the following elements beyond a reasonable doubt:

1. That the defendant purposely committed an act of sexual contact with another person.

OR

1. That the 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, and
2. That the act of sexual contact was committed during the commission or attempted commission, whether alone or with one or more other persons, of **[choose appropriate]** robbery, kidnapping, homicide, aggravated assault on another, burglary, arson, or criminal escape.

The first element that the State must prove beyond a reasonable doubt is that defendant committed an act of sexual contact upon **(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.

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Intimate parts means **[CHOOSE APPROPRIATE]** sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person.

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 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

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

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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.³

The second element that the State must prove beyond a reasonable doubt is that the sexual contact occurred during the commission or attempted commission, whether alone or with one or more other persons of **[choose appropriate]** robbery, kidnapping, homicide, aggravated assault on another,⁴ burglary, arson, or criminal escape. **[Instruct the jury on the elements of the appropriate crime or attempted crime or, if already charged, remind jurors of instructions].**⁵

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.

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

³ The underlying offense(s) charged, e.g., robbery, kidnapping, homicide, burglary, may feature different states of mind. In that case, the court should include those states of mind in this portion of the charge.

⁴ Note that under this statute aggravated assault on another refers to a situation in which an aggravated assault is committed or attempted upon a third person (not the victim) to compel a victim to submit to an aggravated criminal sexual contact. State v. Rangel, 422 N.J. Super. 1 (App. Div. 2011), certif. granted, 209 N.J. 233 (2012). Where appropriate, the jury should be so charged.

⁵ If the court intends to instruct the jury on lesser offenses of these felonies, it should advise the jury that convictions on these lesser offenses will not support a conviction of aggravated criminal sexual contact in the course of an enumerated felony. For example, if defendant were charged with aggravated criminal sexual contact in the course of a burglary and the jury convicted defendant of the lesser offense of trespass, that would not support a conviction of aggravated criminal sexual contact in the course of a felony. Cf. State v. Gray, 147 N.J. 4, 15 (1996) (defendant's felony murder conviction reversed because the underlying felony found by jury was conspiracy to commit arson, which is not one of the enumerated felonies in the statute).