

**CONSENT  
(WHICH PRECLUDES THE INFLICTION OF THE HARM)**

**(N.J.S.A. 2C:2-10)**

As part of (his/her) defense to the charge of \_\_\_\_\_, the defendant contends that (he/she) is not guilty because the victim consented to the alleged criminal activity and was therefore not harmed in a way that the law seeks to prevent.

In considering this contention you should understand that the consent of the victim can be a defense if it precludes the infliction of the harm or evil that the law seeks to prevent under certain limited circumstances which I will describe for you.

First, you should know that consent in the law has a meaning very similar to its everyday meaning. It is the victim's voluntary and serious agreement or submission to the alleged criminal conduct or the result of that conduct. In order for consent to give rise to a valid defense it must, of course, be given freely and it must be legally effective.

Consent can never be legally effective in providing a defense to a criminal charge if:

**(CHOOSE APPROPRIATE FACTOR (S))<sup>1</sup>**

- (a) the victim was not legally competent to authorize the conduct charged to constitute the offense; or
- (b) the victim was by reason of (his/her) (choose appropriate factor) youth, mental disease or defect or intoxication either known by the defendant to be unable or was manifestly unable to make a reasonable judgement as to the nature of harmfulness of the conduct charged to constitute an offense; or
- (c) the victim's consent was induced by force, duress or deception of a kind that the law defining the offense seeks to prevent.

In determining whether the consent of the victim was freely and voluntarily given, you are advised that consent may be openly expressed, implied, or apparent from the victim's willing participation in the activity in question. Further, you may consider all that (he/she) said and did

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<sup>1</sup> Supplemental instructions regarding individual factors and code definitions of key terms should be provided where appropriate.

at the particular time and place, all of the surrounding circumstances and whether a normal competent person would freely and seriously consent to the conduct with which the defendant is charged.<sup>2</sup>

**(IN CASES INVOLVING BODILY HARM INCLUDE THE FOLLOWING)**

Because this case involves conduct which caused (or threatened to cause) bodily harm as I have previously defined that term for you, there is an additional requirement that must be satisfied before consent can be legally effective and give rise to a valid defense.

**(CHOOSE APPROPRIATE FACTOR)**

- (1) The bodily harm consented to (or threatened by the conduct consented to) is not serious; or
- (2) The conduct and the harm are reasonably foreseeable hazards of joint participation in a concerted activity of a kind not forbidden by law; or
- (3) The consent establishes justification for the conduct under Chapter 3 of the code.<sup>3</sup>

In this case, as I have already explained to you, the defendant is charged with a violation of a provision of our criminal law which reads in pertinent part:

**READ STATUTE**

This provision of our law was intended to: **(DISCUSS THE PURPOSE OF THE STATUTE AND THE HARM OR EVIL IT SEEKS TO PREVENT).**

Accordingly, you are advised that if the victim was not harmed or threatened in a manner that the statute seeks to prevent because (he/she) actually consented to the alleged criminal conduct, then the defendant has a valid defense.

Of course, you are reminded that the State has the burden of proving each element of the offense beyond a reasonable doubt and must also prove beyond a reasonable doubt that the victim did not give (his/her) legally effective consent as I have defined that term for you.<sup>4</sup>

Thus, if you find that the State has not proven each element of the offense beyond a reasonable doubt or also has not disproved the defense of consent beyond a reasonable doubt, then you must find the defendant not guilty.

If, on the other hand, you are satisfied that the State has proven each element of the

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<sup>2</sup> State v. Brown, 143 N.J. Super, 571, 577 (Law Div. 1976, aff'd 154 N.J. Super, 511 (App. Div. 1977).

<sup>3</sup> Supplemental instructions regarding justification should be furnished where appropriate.

<sup>4</sup> N.J.S.A. 2C:1-13 AND N.J.S.A. 2C:1-14h

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offense beyond a reasonable doubt and has also proven beyond a reasonable doubt that the victim did not consent or that (his/her) consent was not legally effective, then you must find the defendant guilty as charged.<sup>5</sup>

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<sup>5</sup> If the defendant claims he mistakenly believed that the victim consented, appropriate instructions on ignorance or mistake, N.J.S.A. 2C:2-4, may be necessary.